

Corruption and social grants in South Africa

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About the authors

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Abbreviations

AOD	Acknowledgement of Debt
BIG	Basic Income Grant
DPLG	Department of Provincial and Local Government
DPP	Director of Public Prosecutions
DPSA	Department of Public Service and Administration
DSD	Department of Social Development
DSO	Directorate of Special Operations
GCIS	Government Communications and Information Systems
IMT	Interim Management Team
ISS	Institute for Security Studies
JACTT	Joint Anti-Corruption Task Team
MOU	Memorandum of Understanding
NACF	National Anti-corruption Forum
NDA	National Development Agency
NPA	National Prosecuting Authority
PERSAL	Government Personnel Salaries System
PFMA	Public Finance Management Act
PSAM	Public Service Accountability Monitor
PSC	Public Service Commission
SAHRC	South African Human Rights Commission
SAPS	South African Police Service
SARS	South African Revenue Service
SASSA	South African Social Security Agency
SIU	Special Investigating Unit
SCCC	Specialised Commercial Crimes Court
SCCU	Special Commercial Crimes Unit
SOCPEN	Social Pensions System

1 Introduction

Despite facing a beleaguered history, the provision of social assistance in South Africa is a progressively transformative experience. There has been a significant increase in the provision of social assistance for the vulnerable in terms of development and as a safety net. Moreover, while South Africa's peculiarities allow an increasingly richer minority to benefit from privatised medical, pension, and security services, a poverty-entrenched majority is forced to rely on the state for support.¹ In this context, critical roles are played by the macro policies that circumscribe the parameters for this support and those that help citizens realise their social security rights – also enshrined in the Constitution – as well as by the government actors responsible for managing the delivery process. This monograph acknowledges that the Department of Social Development (DSD), mandated to deliver social assistance, has made some laudable strides in increasing and widening its provision to those targeted. This monograph situates itself within this wider context.

In the narrower purview, it is important to understand that these improvements exist in a contentious, nuanced context that also needs to be examined. In the wake of the realisation of an estimated loss of about R1,5 billion a year through corruption (and maladministration) in the delivery of social grants, the DSD recently went on a major anti-corruption drive, the details of which are

outlined and assessed in this monograph. The DSD was galvanised into action in 2003, as reflected in a range of initiatives including, most prominently, its co-operation with the Special Investigating Unit (SIU) and other departments and the establishment of the South African Social Security Agency (SASSA). However, to date there has not been an independent, external non-state overview and evaluation of the measures instituted. This monograph seeks to fill this gap.

It should also be noted that the original intention was to present the DSD's anti-corruption efforts as a case of good practice. However, after a three-month (September–November 2006) research process involving desktop research and field interviews with key drivers and participants in the process, as well as members of civil society, it is impossible to submit an unequivocal verdict. Of course, there are most certainly lessons to be learnt from the DSD, on which other departments may wish to draw. These include, in part, the DSD's openness and willingness to share information and experiences on anti-corruption efforts and between and among its supporting agencies. The proactive, energetic drive of various actors and the critical approach to addressing the DSD's corruption woes are also noted. Redress on fundamental gaps is sought and encouraged to augment the progress made thus far in the anti-corruption drive.

This research also provides some general recommendations for consideration by the DSD and relevant associated actors, as well as for civil society.²

BACKGROUND

After 14 years of democracy in South Africa there remain numerous obstacles to service delivery. These include inappropriate policies and/or lack of implementation of policies, lack of capacity, and mismanagement and corruption,³ among others. Without negating the salience and interconnection of and between each of these issues, there is growing understanding that corruption and related issues of lack of accountability and transparency, where left unchecked, can undermine sound policies and competent management structures. The South African state has developed a relatively sound policy framework and mechanisms with which to counter corruption and promote effective service delivery. To this end, the Public Service Anti-Corruption Strategy of 2002 is regarded as one of the defining anti-corruption measures. The Local Government Anti-

Corruption Strategy, launched in December 2006, further buttresses efforts, albeit at a local level.

But, if service delivery is regarded to be largely failing poor and marginalised communities, it begs a few questions from a corruption perspective:

1. Has government, at various levels, implemented these strategies, policies and efforts to mitigate corruption?
2. What is the capacity and will to implement them?
3. To what extent are the dictates of these policies and measures enforceable, monitored and evaluated?

Based on these initial enquiries the Corruption and South African Service Delivery (SASD) Project within the Corruption and Governance Programme at the Institute for Security Studies (ISS) Cape Town initiated an 18-month project (later increased to 24 months) with the following objectives:

- To monitor the effects of corruption on service delivery by analysing corruption trends in specific provincial and local government authorities
- To assess efforts by these departments/institutions to adopt and implement minimum anti-corruption measures as required by the Public Service Anti-Corruption Strategy of 2002
- To assess the nature and impact of corruption in these departments on service delivery

STRUCTURE

The monograph is structured around three broad themes, which divide it into three interlinked chapters. The first chapter, after the methodological approach, sets the strategic context in which the DSD's anti-corruption efforts evolved. This includes a reflection on the apartheid system and its role in the current corruption tensions in the social assistance system. The examination then turns to the 1994 transition to a new democratic era, which saw the proclamation of basic constitutional rights for all South Africans (including the right to social security), corrective legislation on social assistance, and increased social assistance provisions both in terms of budget and recipients. The final overview in the first chapter is of the DSD's early attempts to identify corruption and

administrative problems, which involved the appointment of various committees of investigation.

The second chapter traces the DSD's subsequent measures in response to monetary losses because of fraud and corruption. The chapter is not an exhaustive discussion of every anti-corruption initiative, but rather a highlight of the most significant recent developments and the lessons that can be learnt from them.

The first of these is the highly publicised anti-fraud campaign, with a particular focus on the high-profile role of the SIU. The discussion then moves on to SASSA, another significant recent development, which has been operational since 1 April 2006 and has taken over the social assistance functions from the provinces, ostensibly to minimise costs, improve delivery and reduce fraud and corruption. Finally, the chapter profiles another new institution, which is provided for by the Social Security Agency Act of 2004, but is yet to become operational: the Inspectorate for Social Security, which, it is envisaged, will independently 'inspect' and hold both SASSA and the DSD to account.

The final chapter is a provincial, micro-level analysis in the form of a case study on the Eastern Cape Department of Social Development. It should be noted that it is not meant to provide generalisations about anti-corruption efforts in the rest of the country. That would require a review of more than one province. However, the numerous anti-corruption interventions in the Eastern Cape make it hard to discount it as an extremely compelling area of enquiry. While it is true that governance and service delivery there have drawn extensive research interest, which puts it at risk of being over-analysed, the same conclusion cannot be drawn with regard to the DSD itself.

Unlike other provincial departments, the DSD in the Eastern Cape has its own unique peculiarities, not least a manifest inability to retain key staff such as accounting officers and heads of department. Once again, of significance in this section is the legacy of the apartheid homeland system,⁴ which implied the perpetuation of erstwhile structural malfeasance. Armed with the understanding that monetary losses to the department are more than a fraud and corruption issue, this section also raises the issue of weak internal departmental controls, which have earned the department serious audit opinions as well as a litany of litigations. Further to this is a highlight of key initiatives towards tackling fraud and corruption in the department.

Particular emphasis is on the role of the SASSA regional office and the SIU. The provincial DSD still features in the discussion even though the social security function, specifically matters pertaining to social grants, has been transferred to the SASSA. There have been numerous other interventions such as the Joint Anti-Corruption Task Team (JACTT), and the Interim Management Team (IMT), among others. These usually had a broader mandate than social development but are also pertinent to the case at hand.

METHODOLOGICAL APPROACH

This study is a historico-contemporary descriptive analysis – or critical reflection – into anti-corruption efforts and activities employed in the DSD, with a specific focus on social grants. The attempt is to highlight the department as a sector where corruption problems in the delivery of social grants are now being systematically addressed. In particular, it focuses on understanding how the national department identified the corruption problem, and how it involved corruption agencies like the SIU and other law enforcement agencies in dealing with it. It also includes a focus on the establishment of new agencies – including the SASSA – and an explanation of how these new systems are being put in place.

It is imperative to note that the analytical framework consists of the social grant fraud as the main unit of analysis and not the agencies or bodies that were associated with its mitigation. In other words, this is not a holistic study of any of these particular bodies or agencies, but is rather about how their involvement assisted with the anti-corruption processes at hand. However, the involvement of the SIU, for instance, is particularly highlighted because the DSD contracted it to handle most of the social grants-related investigations. As the lead agency in implementing the DSD project the SIU naturally draws substantial commentary.

A case study of the Eastern Cape Social Development department is included to highlight these activities at a micro level. Once again, social grant fraud serves as the main unit of analysis. It should also be noted that the experiences in the Eastern Cape, as far as the investigations and their results are concerned, do not necessarily present as a microcosm of the national picture. In fact, they may be important for rather revealing their peculiarities. They do, however,

serve to understand the typologies – including the nature and extent – of the social grant fraud more generally.

Basic rationale

This is a targeted qualitative approach with a premise to understanding an important service delivery sector's efforts to tackle corruption. An underlying premise is to draw lessons from this experience, which may then make an impact on the broader context. Motivating for the choice of the DSD over other departments were developments including:

- The degree of attention paid in the media in terms of levels of corruption reported and redress interventions that warrants comprehensive, systematic research
- Stakeholder input from the SIU, Department of Public Service & Administration (DPSA) and Department of Provincial & Local Government (DPLG) indicating that there has been significant redress of the problem, which needs to be acknowledged and documented
- Exhaustive investigations and interventions already undertaken into corruption in the Eastern Cape by the Public Service Accountability Monitor (PSAM), SIU and South African Police Service (SAPS). However, a gap in research is that good practice has not as yet been researched and documented at the national level

Research techniques and tools

The research adopts a multi-pronged approach using:

1. *Desktop research*: News clippings from national, regional and local news sources. The ISS also has a database of a collection of clippings on corruption from 1999 to date and a monthly electronic briefing that monitors corruption trends in South Africa.
2. *Official data*: Documents including statistics, policy, guideline documents, department reports and records provide in-depth summaries of the situation.
3. *In-depth interviews*: Top officials in the national DSD and others involved in anti-corruption efforts, including the SIU and key SAPS personnel. Care

was taken to use comments fairly and for them to represent the views of the interviewee, as they perceived the organisations' or agencies' role. When contrasting views are presented – for example, when comments from middle management are not in line with those higher up in an organisation – it is hoped that this will bring to light the varying positions within an organisation, and not be read as merely anecdotal evidence.

4. *Engagement with stakeholders*: Communication with stakeholders including DPLG, DPSA, and the SIU assisted in highlighting gaps and current updates of the issues.
5. *Stakeholder feedback*: The draft report was sent to relevant stakeholders, including the DSD, for feedback. The head, Willie Hofmeyr, and deputy head, Faiek Davids, personally discussed their comments on the paper at a meeting with the SASD team on 26 May 2007. A 17-page memo was subsequently submitted and comments from this are integrated into the paper in relevant sections.
6. This work has been through *a rigorous review process* including an internal review, stakeholder feedback and external review by a social grants expert. All comments were carefully considered and incorporated in the final document. It is also worth noting that this process caused a major delay in publishing. A postscript of a few of the salient updates from the media is included to accommodate this delay.

Limitations

Resource constraints, including a small research team of two people and a limited research period of three months, had the following impact:

1. It was impossible to conduct an investigation into efforts in every province and thus a case study of one province was chosen.
2. There was only a select group of interviewees based on a targeted approach, as stated above. Recommendations by stakeholders as well as those seen as the key actors in efforts were taken into account when making selections.
3. An extensive literature review was not possible, partly because of time considerations and partly because the DSD does not have a library of all the studies. Much of the background material was accessed through the Internet, including online journals and various websites.

Understanding corruption

A broad understanding of corruption is employed in the study. The more obvious semantic conceptualisations are nuanced and worth expounding on. There is also a more liberal use of the term, which incorporates the more general, albeit no less serious, challenges that concurrently faced the department.

In a more semantic sense, for our purposes, fraud has been taken to be the misrepresentation of interests to gain an illegal grant. Both the DSD and agencies acting on its behalf have used this terminology for both public and civil servant fraudsters. More technically, civil servants who obtained grants illegally would be acting in a corrupt fashion, inasmuch as they were abusing their office or public mandate for personal gain. When looked at from this point of view, the weighting of the crime is more serious, although the study does not dwell on this fact. The essence was to understand how the actors understood the offence and how they thus proceeded to deal with it. Some work does go into prising apart motivating factors, although the results are a mere exploration and thus inconclusive.

The corruption of structure and process has also been tackled by the department in the various reforms conducted in the post-apartheid years. No doubt, reforming the apartheid system was seen as an anti-corruption process of sorts, attempting to remedy a system that failed its people because it was not acting in all of their interests. Similarly, a poor post-apartheid system bedevilled with maladministration, loopholes, backlogs, and organisational inadequacies was examined. Moreover, where there is a murky area around corruption and maladministration, for instance, as this case proves, all aspects of failure and efforts to tackle that failure need to be explicated.

Where the study diverges from the department's view on corruption is in considering why the anti-fraud campaign against both public and civil servants gained more prominence, and was more visible, especially in the public realm, than other systemic issues. Questions are raised on whether this effort really tackled the root of the system's problems.

2 Overview of the South African social security system

FRAGMENTATION IN SOCIAL ASSISTANCE

A brief background of the apartheid system of social assistance is necessary to contextualise the current corruption tensions in the present system. It is also important to note how apartheid's pejorative ideology was manufactured into a fully operationalised system of exclusion and discrimination. This, in itself, was a form of corruption and was buttressed by other more traditional forms of corruption, as outlined below.

The earliest period following the Union of South Africa in 1910 was the toughest and most discriminatory for the 'non-white' population. The provision of welfare in the form of childcare grants, unemployment and old-age pensions included whites and coloureds only. The apartheid system was also characterised by prejudicing women; thus only white women over 60 qualified for old-age pensions. Blacks and Indians were deliberately excluded under the pretext that customary extended familial support would suffice as a community safety net (Liebenberg & Tilley 1998).⁵

The construction of a basic social safety net was introduced in 1937 with means-tested pensions and disability grants. Pensions were finally paid to all

race groups but with stark discriminatory undertones. For instance, when the country became a republic in 1961, the highest white pensions were five times larger than black pensions (Liebenberg & Tilley 1998). This trend was to worsen progressively until 1961 and was marked by ‘administrative delays, corruption and inefficiency, particularly in rural areas, [which] were a form of covert discrimination for disenfranchised communities’ (Liebenberg & Tilley 1998).

As stagnation crept into the capitalist economy in the 1970s, the apartheid state started accepting the need to incorporate black people into the system. Thus reforms were attempted in the provision of social assistance, though reluctantly. Regulatory rules were relaxed and more people were incorporated. As more people entered the system, white pensions were indirectly reduced by being left at the same level or were increased at a lower rate than pensions for other groups, because of fiscal strain on the system. Indeed, economists at the time warned that ‘improved coverage of Black people may put the fiscal viability of the system in jeopardy’ (van der Berg 1994).

A NEW ERA DAWNS

Improved rights and legislation and increased provision

Jubilation at the end of structural oppression in 1994 was quickly tempered by the realisation that a strategy to deal with the past had to occur in tandem with future plans. For social assistance this meant that rights issues and policy and administrative reforms were necessary. In practice this meant three fundamental reforms:

- Recognising access to social assistance as a constitutional right
- Adopting the developmental social welfare approach (DSW)
- Implementing the Child Support Grant

Rights

The South African Constitution of 1996, touted as the most progressive in the world, includes social security⁶ as one of the socio-economic rights enshrined in the Bill of Rights. Section 27(1)(c) of the Constitution reads:

Everyone has the right to have access to social security, including, if they are unable to support themselves and their dependents, appropriate social security.

Furthermore, according to the Constitution, the state is required to ensure the progressive realisation of those rights by employing 'legislative and other measures, within its available resources' (Liebenberg & Tilley 1998). Liebenberg and Tilley (1998) and Vorster (2006) argue that this requires the state to draw up a clear plan of action on how to execute this dictate and avoid regressive measures. Although the courts have proven in the Constitutional Court cases of *Grootboom*⁷ and *Khosa* (Swart 2006) that socio-economic rights to social security are to be restituted, to some extent the discretion is left up to the state, unless tested. In particular, according to the *Grootboom* decision, 'the measures instituted must consider the plight and conditions of people in desperate circumstances and those who are living in conditions of poverty' (South African Human Rights Commission (SAHRC) 2000/01). This is disturbing when one considers that the destitute are not equipped either financially or educationally to contest their exclusion from the system.⁸ It is particularly relevant for the structurally unemployed. In an era of a neo-liberal macro-economic policy, the underscoring of fiscal discipline means that this group of people may be excluded from the safety net provided.

The role of poverty and unemployment

Furthermore, the broader questions of poverty and unemployment, which continue to be instrumental in perpetrating social grant fraud, seem to have been given very little consideration. As Jehoma notes:

poverty and unemployment is real out there and people lack options. And ... that exacerbates the extent to which one has fraud in the grant system ... People will attempt to alter their behaviour because of unemployment (Jehoma 2006).

It may be reasonably argued that among those charged with benefiting 'illegally' from the system are some faced with desperate poverty, coupled with the inaccessibility of the security system in which they seek refuge. In an increasing number of cases, doctors and social workers, because they are understanding

and sympathetic of cases of chronic poverty and unemployment, are certifying technically ineligible individuals for social grants. In these cases fraud occurs without the intention to defraud. It would seem that prosecuting or pursuing cases like these on an Acknowledgment of Debt (AOD) basis is a case of not seeing the wood for the trees. In his quantitative study on incentive structures of social assistance grants in South Africa, Vorster argues:

Given the high levels of unemployment and poverty, the impact of AIDS and the growing awareness of citizens' right to social security, the disability grant and foster child grant are under pressure to cater more widely than was originally intended when the systems were designed. Most of the concerns about perverse incentives are related to impoverished people requiring income support within a system that does not provide universal coverage. It appears that within these limitations, local officials were, for years, already responsive to this need (Vorster 2006:x).

As stated above, the fundamental shift to a flexible, market-related macro-economic policy that curtails government spending affects the nature and quality of the response to corruption by various state actors. Narrow confines are thus created in which to deliver on mandates and deal with corruption. The neo-liberal macro-economic policy rudely imposed in 1996 set up contradictions in the system, in which structural unemployment was created and fostered with no recourse to a social security safety net.

The response – or rather non-response – of the state to recommendations by the Taylor Commission⁹ to introduce a Basic Income Grant (BIG) as a way to stave off corruption and reduce poverty is an example of the limits imposed by this system. The effort to use the baseline as fiscal restraint also meant that even though grants were increased over the years, they were not always inflation-rated. Fundamentally, the pragmatics of the system caused deep tensions with the constitutional right to social security and its progressive realisation. It also meant, as the current case perhaps exhibits, that tackling corruption involved a technocratic, number-crunching exercise that would deny the root causes and results of poverty.

Reducing corruption in the context of social security is not simply a technocratic exercise that involves weeding out fraudulent beneficiaries, no matter how sophisticated the techniques are for doing so. Thus assessments of anti-cor-

ruption measures in progress sit alongside critiques of the institutional system and policies in place.

Legislation

The first policy mechanism was the 1997 White Paper for Social Welfare, in which developmental aspects of social security were evoked. This also remains the most significant policy discussion paper, which paved the way for widespread legislative reforms governing the delivery of social assistance. In a country newly emergent from an insular approach, the international trend of developmental social welfare was quick to catch on. As part of the United Nations Development Programme's (UNDP) approach, it favoured ensuring that social policies contribute to development rather than transference of resources from the productive economy to social welfare services (Midgely 2004). It also included a differentiation between social security and social assistance (Swart 2006) that did not exist before. Box 1 below defines and differentiates the concepts of social security, social protection and social assistance.

Box 1 Unpacking concepts: Social security, social protection and social assistance

Social security as defined by the White Paper is the widest form of a safety net that includes both contributory forms of social insurance and the needs-based assistance received from public funds (i.e. social assistance).¹⁰

Social protection is usually used interchangeably with social security. However, the former is a much broader concept. It encompasses both the welfare functions of the state and developmental strategies and programmes to ensure at least the minimum acceptable living standards of all citizens. The purpose of it is thus emancipatory.

State-funded *social assistance* in South Africa is termed 'social grants' and is entirely supported by the state. Social grants are key to the survival of people and are considered to be the safety net in the event of an incapacity/inability to work. The state approach is a targeted one and grants are thus delivered to those identified as 'vulnerable', including the old, disabled and children.

Sources: SAHRC 2000/01, 2002/03

However, it was recorded in the Social Development Portfolio Committee of May 31 2003 that then-Chief Director: Grant Systems and Administration (now the Deputy Director-General [DDG] of Social Security), Selwyn Jehoma, refuted the reference to social security. He felt rather that in the South African context 'social assistance' was a more appropriate term than 'social security' as the system was too fragmented and as, at that point, the government could only offer social assistance (Social Development Portfolio Committee 2003). In an interview he conceded that the means-test approach to the provision of grants had its weaknesses. Most significantly this meant that, 'sometimes the poorest don't get [grants]' (Jehoma 2006). Moreover, the levels within the means test are arbitrary without an official poverty line. In spite of this the department chose to take a 'targeted approach as opposed to something that reaches all [people]' (Jehoma 2006). However, even with this approach the means test has not been corrected for inflation for many years.

In spite of these apparently contradictory declarations it is imperative to note that the scope and functions of the DSD have certainly transformed. To start with, the name of the department changed from the Department of Welfare to the Department of Social Development to indicate an expansion in mandate and a change in philosophy. Unlike the welfarist approach, which helps people in the traditional way with handouts, the social development perspective views people as 'masters of their own destiny' thereby moving on to the 'development and empowerment of individuals, groups and communities, teaching them to be self-reliant' (Skweyiya 2006a). The department now also delivers on social security and community development. It has also taken on an HIV/Aids focus and oversees the beleaguered National Development Agency (NDA)¹¹ responsible for the disbursement of NGO funds (Government Communications and Information Systems (GCIS) 2005/06). Box 2 outlines the core functions of the Department as described by its Strategic Plan 2006–2010. However, in spite of taking on these functions there is 'widespread consensus amongst welfare commentators' that developmental social welfare still needs to be properly operationalised.¹²

Box 2 Core functions of the DSD 2006–2010

1. *To provide a social security safety net*
Management and oversight of social security/assistance in the form of equitable cash transfer benefits to the poor, the vulnerable and those with special needs who qualify for such grants.
2. *To provide development social welfare services*
Developmental social welfare services that provide support to reduce poverty, vulnerability and the impact of HIV/Aids through sustainable development programmes in partnership with implementation agents, such as state-funded institutions, non-profit organisations (NPOs), community-based organisations (CBOs), and faith-based organisations (FBOs).
3. *To deepen social policy discourse and policy*
Co-ordinate research and policy initiatives aimed at sharpening the understanding about, and delivery of, social policy aimed at improving the quality of life of the poor and vulnerable.

Source: DSD *nd.*

The transformation of the apartheid system is more varied. After all, it is recognised that it was no easy feat to unify the 14 separate systems that existed under the apartheid dispensation. Each of these systems had its own management and information systems, rules and procedures, allowing for easily exploitable, profitable loopholes for the unscrupulous. The administrative difficulties alone in grant administration due to the outdated and inadequate Social Pension (SOCPEN) system were a massive hurdle. Problems related to the re-registration process and dealing with suspensions were especially evident when the government decided to freeze out beneficiaries it believed were defrauding the system. Budget constraints, the lack of capacity in provinces, infrastructure limitations, poor customer service and backlogs all dogged the system (Welfare and Population Development Portfolio Committee 2000).

The current forms of social assistance in South Africa are listed in the box below:

Box 3 Forms of social assistance in South Africa as at 2007

1. Old-age pensions, which are payable to women who are 60 and older, and to men of 65 and older.
2. Disability grants, which are payable to people who are 18 or older but who are younger than the pensionable age, whose disability will last more than a year and who cannot support themselves because of the nature of their disability and other reasons.
3. The Child Support Grant, which is payable to a primary caregiver who cares for a child or up to six children who are under the age of 14. The caregiver can be the mother, father, grandparent, relative, friend or other, of the child or children.
4. The Care Dependency Grant, which is for people who care for children with severe disabilities and who are in need of full-time and special care. This applies to parents, foster parents and court-appointed caregivers.
5. The Foster Child Grant, which is for children who are placed in the care of a person who is not their parent, such as a grandparent.
6. A person who is already in receipt of a grant but needs full-time care from someone else can apply for a Grant-in-Aid. This is a limited additional amount of money over and above the grant or pension.
7. War veterans' grants, which are paid to people of 60 and older, who served in the South African army during the First World War (1914–1918), the Second World War (1939–1945) or the Korean War (1950–1953), and who are unable to maintain themselves due to physical and/or mental disability.

Source: SAHRC 1999/2000.¹³

Increased provision

The number of recipients of social assistance was increased from 3,1 million in 2001 to 11 million in 2006 and equity in the distribution of grants is being addressed (GCIS, 2005/06). The bulk of these recipients are children under 14 who, as at the end of October 2006, exceeded 7,6 million (Skweyiya 2006b).

Spending on the social grant recipients, including old-age pensioners, the disabled and children, has increased over the years. Old-age pensions had, from 1995 to 2000, constituted over 60 per cent of the total budget for social security (SAHRC 1998/99). The SAHRC comments, '[u]nderstandably, pension grants are an effective vehicle for redistributing wealth.' However, reports suggest that increases in the budget since 1995 were below the inflation rate, and represented a real decline (SAHRC 1998/99). Table 1 shows the various grants with a partial breakdown of amount provided per type and number of beneficiaries by year.¹⁴

Table 1 Partial breakdown of amount and number of beneficiaries per grant type¹⁵

	Old age	Disability	Child support	Care Dependency	Foster Care	Grant in Aid
2006						
Amount p/m	R780	R780	R190	R780	R560	R170
No of beneficiaries	2 131 820	1 312 726	6 961 046	91 604	300 119	
2003						
Amount p/m	R700	R700	R160	R700	R500	R150
No of beneficiaries	2 000 041	897 059	2 513 693	56 150	133 309	12 279
2002						
Amount p/m 2002/2003	R640	R620	R140	R130	R460	R640
No of beneficiaries 2002	1 903 042	694 232	1 907 774	34 978	95 216	10 332

Sources: 2003 Inter Governmental Fiscal Review: figures for March 2003; and SAHRC reports from 1998 to 2006.

The SAHRC noted that the budget for social assistance grants was not adequate, which resulted in overspending by the Department on the allocated budget for the programme. The funds for the social grant payments have been far below what is required. Furthermore, indicators of fraud and/or maladministration in 2002/03 present a reason why 953 965 people received disability grants

when, according to departmental figures, 943 676 people were eligible for them (SAHRC 1998/99). Approximately 12 000 people were thus not eligible for the grant they received. It has been argued that the exponential increase in child support grants and disability grants could provide a perverse incentive and thus create more pressure on already overstretched systems.

EARLY ANTI-CORRUPTION INTERVENTIONS (1996–2002)

There is a history in the Department of identifying corruption and administrative problems. The Mouton Committee of Investigation into a Retirement Provision System in South Africa began in the late 1980s, for example, and concluded its task in 1992. The most aggressive efforts were, however, understandably recorded in the post-apartheid era. Four committees were set up and operated in a period of four years, from 1996 to 2000. The progress on recommendations from these various committees is somewhat circumspect and requires careful evaluation.

Chikane Commission

Due to the high level of ‘abnormalities’ in the system, the Committee for the Restructuring of Social Security (the ‘Chikane Commission’) was appointed in 1996 to review the entire social security system – also regarding fraud and corruption – and to provide recommendations. The Commission characterised the system as being in crisis and made the recommendations below:

Box 4 Recommendations of the Chikane Commission

- A nationally organised social security system should be established
- The Department of Welfare should develop a national human resources strategy
- Management systems should be standardised and integrated
- A focused communication plan should be developed
- No contract should be awarded for fingerprint identification systems at the time of the report

- Legislation and rules relating to internal discipline should be simplified
- A uniform approach to the payment of disability grants should be addressed as a matter of urgency
- A costing system must be developed
- A specific budget must be developed for the administration of social security at the national and provincial levels

Source: Liebenberg & Tilley 1998.

These recommendations were supported by revelations in a *Mail & Guardian* report of February 1997 (released by the department) that R1 billion was being lost to pension fraud per annum. This was a sizable chunk of the R14,3 billion social security budget at that time. In fact, as Table 2 shows, when compared with the losses of R1,5 billion of the R57 billion budget in 2006 it is a staggeringly higher percentage of the budget.

Table 2 Amount lost to social security through corruption

	Estimated corruption losses in rand	Total social security budget	Percentage of total social security budget 'lost' to corruption
1997	R1bn	R14,3bn	6,99%
2006	R1,4bn	R57bn	2,46%

Source: *Mail & Guardian* 1997.

If the department was aware of these losses, why did they take almost five years to implement the recommended reforms? In response Jehoma (2006) argues that it took a while for the National Treasury to believe that the Department was in fact experiencing such acute losses and they were convinced only after the department had presented concrete evidence in the form of two baseline studies in 2002 and 2003.

A reflection over the years of losses to corruption, as displayed in table 2 above, actually poses a critical challenge to the department, as it reveals that corruption has actually decreased in relation to the budget. This also runs against current perceptions created by the massive anti-fraud campaign, which

seems to suggest that losses due to corruption have present dimensions and significance.

It is instructive to reflect on the challenges raised by the then-Social Welfare Minister, Geraldine Fraser-Moleketi, in implementing the bulk of the Chikane Commission's recommendations indicated by the department so that there may be comparisons drawn with current actions. These challenges include the following:

- A national social security system would incur a high cost, running into millions of rands
- There would be constitutional difficulties in forcing provinces to fall into line behind the national minister
- There is ineffective punishment of corrupt officials
- The complexity of departmental disciplinary rules and lack of communication between provincial departments are serious complications

The one recommendation of the Chikane Commission that was actually implemented, and with disastrous consequences, was the outsourcing of the distribution of social grant payments (SAHRC 2002/03). Government contracted two private companies, Cash Paymaster Service (CPS) and Allpay, to undertake this function. A report from the DSD in SAHRC stated that, 'The privatisation did not bring improvements to the grant recipients, because services were still not accessible and conditions at pay points were still appalling' (DSD 2002/03). Furthermore:

In the Eastern Cape, CPS and Allpay were granted a R180 million contract to pay out grants in the former Transkei. Despite the privatisation of services, problems still persisted ... There were still long queues, and lack of shelter, water and toilet facilities at some pay points. Staffs at pay points insulted Grant recipients, and paymasters arrived late with machines breaking down. The problems were, inter alia, the long queues at pay points; venues that lack shelter, chairs, toilet facilities and water; and attitudes of paying staff (SAHRC 2002/03:30).

Lund Committee on Child and Family Support

Cost projections of R20 billion in 1996 to reduce racial inequity in the delivery of the state maintenance grant led the government to appoint a technical committee of enquiry, the Lund Committee on Child and Family Support, to investigate the problem. Makino records that the influence of fiscal restraint on the Lund Committee's outcomes was severe and transparent (SAHRC 2000/01). In fact, the Committee itself reported that it started its work 'knowing that whatever recommendations are made, there will be losers ... no win-win situation is possible' (SAHRC 2000/01). Although this did not point to corruption *per se*, it did indicate more generally that reform measures would not necessarily contribute to an immediate narrowing of the gaps in the safety net. Arguably, this could also have meant that the gaps would begin defining the parameters of the social security net, which is a significant indicator of the approach of government to inherent problems in the system.

Box 5 Recommendations of the Lund Committee

- Parental financial responsibility for children should be promoted through the reform of the private maintenance system
- A flat-rate child support benefit should be introduced
- The Care Dependency Grant should remain in place
- The Foster Care Grant should remain in place
- The Department of Welfare should develop a strong strategic position on HIV/Aids, defining what it will do best at, and also defining the limits to its responsibilities
- Practical links should be forged between professional welfare staff and social security staff in provincial departments and in the national department in order to divert as many applicants for social security as possible to opportunities that could increase their independence
- The welfare sector should lend its active support to the development of appropriate reproductive health services and life skills education in schools

- There should be bold changes in social work and community development curricula, recognising that the demand for primary welfare care continues at the same time as social workers need to be better equipped for the demands of developmental social welfare
- Research in the field of social security, social policy and inequality should be encouraged

Source: RSA 1996.

Public Service Commission Investigation into Social Security Services

In 1998 the department announced another task team, the Public Service Commission's (PSC) Investigation into Social Security Services. The team's findings were delivered to the welfare portfolio committee task group. The recommendations in the box below were proposed to improve delivery and root out corruption:

Box 6 Recommendations proposed by the PSC

- The incremental approach to the implementation of the Hybrid Model would not be a viable option due to the lack of capacity at national level. The national department should rather invest in training of provincial officials to empower and capacitate provinces to be able to administer services efficiently. There should also be greater monitoring by the national department. The following conditions **MUST** be met:
 - A national computer system (database)
 - Types and amounts of grants must be determined and controlled nationally
 - Fiscal requirements for social security grants should be handled nationally (appropriation by Parliament) with conditional allocations to provinces
 - There must be national and provincial auditing

- There must be accountability at both levels of government (national and provincial)
- Delivery of social security services should be a provincial responsibility but national should monitor closely
- Future backlogs should be a provincial responsibility. All new applications should be processed within three months
- Past backlogs should be a national responsibility

Kobus van der Merwe, from the PSC, who was centrally involved in the drafting of the report, commented in an interview that the recommendations were implemented but the success of implementation ‘cannot be determined’ (Van der Merwe and Simpson 2006). To this end, some provincial departments have placed on record their establishment of anti-corruption and anti-fraud units, which they report to be successful, however tenuous that success is, given current evidence (Welfare Portfolio Committee on Social Security 1998).

The Taylor Commission on Comprehensive Social Security for South Africa

The ‘Taylor Commission’ of 2000 is the latest committee response to dealing with inadequacies in the system. It also remains the most controversial because it did not take the financial parameters of the macro-economic orthodoxy for granted, as did the Lund Committee (Liebenberg & Tilley 1998). It was different from other committees because it included more members from civil society and the unions. The Committee’s main recommendation was the introduction of a Basic Income Grant (BIG) for all citizens as a means to address poverty issues and temper corruption universally.¹⁶ This meant the abolition of the means test for identifying those in need, as it was regarded as being too discriminatory and as it allowed those who were structurally unemployed or in the informal economy to fall outside of the ambit of state protection. The means test was also regarded as an inadequate measure of poverty because of its strictly quantitative basis. This is buttressed by the fact that South Africa has no real indicators for poverty.

Box 7 The definition of poverty

Although statistics about poverty abound, South Africa does not have a definition of the concept (Mafongosi 2006). In arguing for the importance of such a definition, Sarel van der Walt (2004:2) states:

We cannot fight poverty if we have not clarified what we are fighting. Clearly defining poverty will also assist us in accurately measuring our success or failure in reducing poverty.

Two years later the DSD's Strategic Plan 2006–2010 outlined its comprehensive definition of the 'poorest of the poor', which includes both an individual and a community perspective. The following items are included:

- Asset capital poverty – key examples include lack of visible assets, lack of food, and generally meeting the criteria of indigence.
- Income poverty – key examples include lack of income, limited access to basic services, and also generally meeting the criteria of indigence.
- Human capital poverty – key examples include lack of access to skills and education, and generally meeting the criteria of indigence (DSD nd: 27).

The department has in fact, gone as far as defining the vulnerable as:

those who have no social protection and who are therefore exposed to social ills. Key characteristics describing the client group include the various forms of poverty cited for the poorest of the poor, lack of visible social support, homelessness, people living in conflict or violent settings, and disorganized or dysfunctional families. Generally this client group lack adequate safety nets (DSD: nd: 28).

This signals progress.

However, when it comes to determining the recipients of social security, the department only considers ‘income poverty’ and in so doing measures the income or expenditure level of the household by using the means test. As Van der Walt (2004:3) argues, ‘The result of the mismatch could be that government is not having a direct impact on reducing poverty, but “hoping” that measured poverty would be reduced indirectly through higher income and/or lower unemployment.’ From a corruption perspective, it means that those who are slipping through the system because they do not qualify for the means test (the income measurement for eligibility) may fraudulently try to access a grant.

Gaps abound in the current system. In its comments on the Taylor Commission, Idasa (2003) points out that:

- There is no income support for poor children between the ages of nine and 18 including street children and child-headed households
- There is no income support for poor adults between the ages of 18 and 59 to 64 years including those living with HIV/Aids
- There is no general social assistance for households where no-one is employed
- The unemployment insurance fund (UIF) covers less than 40% of the labour force at any given point in time and offers benefits to less than 6% of the unemployed

In reality this means that those who are most vulnerable are unable to access social assistance (Idasa 2003).

The adoption of a BIG, which at R100 per person per month would cost the state billions of rands a year,¹⁷ is not the greatest issue of contention. Perhaps the most startling outcome of the Taylor Commission was not in its recommendations but rather in the response to them. Idasa (2003) reports that apart from Minister Skweyiya’s rhetoric of approval, the report was sidelined and repressed within government circles: the interpretation by conservative forces, particularly within government, of BIG as a threat to macro-economic strategy, helps to explain their reluctance to engage in meaningful discussion on the merits of the matter, as well as the ideological character of the debate. The lack of an

official response makes it difficult to analyse the wider governmental position on Taylor's proposals.

It can be argued, then, that the *real* anti-corruption agenda that the Taylor Commission links to broader concerns, one that ultimately looks at institutions and policies, would be marginalised in favour of narrow limits set by an even narrower macro policy. Addressing journalists at a recent press conference the minister, however, emphasised that 'the debate was continuing on the issue of a basic income grant, which he said in his "personal view" should be looked into, given the country's unemployment and poverty levels' (Sakoana 2006).

ADDITIONAL EFFORTS

National Action Plan

In December 1998 the then-Department of Welfare (DOW) was allocated R100 million for improving social security delivery and financial systems (SAHRC 2001/02). The SAHRC comments that the National Action Plan for the Promotion and Protection of Human Rights 'identified the development of mechanisms to discourage corruption and improve efficiency in service delivery as one of the challenges facing the Department of Welfare in its attempt to fulfil the right to access to Social Security and Social Assistance'. To this end, the SAHRC notes that the then-DOW's annual report failed to provide satisfactory information on the effectiveness of the measures instituted to contribute to the progressive realisation of social security rights. By the reporting period of 2000–2001 the DOW had still not provided any information regarding the outcomes of the plan (SAHRC 2001/02).

Task team to review social assistance legislation and regulations

In light of the fact that the Social Assistance Act 59 of 1992 had not been amended, the department appointed a task team in 2000 to review the policy. A general overview of the Act indicated further that social assistance was not comprehensive and integrated. Box 8 outlines the areas which were identified for review:

Box 8 Areas identified for review by the task team

- The availability of medical officers to assess disability is lacking in rural areas
- The assessment process is duplicative and expensive. A medical officer provides a medical report that must be confirmed by a pensions medical officer
- There are no uniform objective assessment procedures. Assessment of disability is highly subjective and varies from one medical officer to another
- There is a great deal of bribery and corruption in the issuance of reports
- Medical officers complain of threats to their lives if they do not issue favourable reports
- There are several problems in the administration of the disability grant. For example, the definition of disability is broad in interpretation but narrow in scope

Source: SAHRC 2001/02:36.

There are no reports indicating whether these areas have been reviewed.

3 Recent anti-corruption efforts

2003–2006

The well-publicised initiative of the DSD to combat fraud and corruption in the South African social assistance system has its genesis around 1999 when the department estimated that it was losing close to 10 per cent of its (then) R20 billion annual budget to social grant fraud (Jehoma 2006). The social security budget, which was dramatically hiked from R10 billion in 1994 to R57 billion in 2006, is the second highest consumer of revenues next to education. The estimate of financial loss, whose credibility was initially questioned, was the product of a benchmarking exercise against the Australian social assistance system, which reportedly lost around five to 10 per cent of its annual Aus\$42 billion (approximately R160 billion) budget to fraud and corruption.¹⁸ It is sobering to note that even in the developed world, where institutions are relatively mature, there are still challenges of this nature. Australia, however, may be losing this much because it provides social assistance to approximately 33 per cent of the population while South Africa provides it to only 20 per cent (Jehoma 2006). In comparison with Australia, social assistance fraud and corruption in South Africa may actually be more acute given the higher proportion of loss relative to the recipient population.

Consequently the DSD, with the assistance of Ernst & Young and the State Information Technology Agency (SITA), undertook baseline studies in 2002 and 2003 that reportedly confirmed the DSD's initial estimate of losses. The DSD was therefore able to provide concrete evidence of losses to convince the National Treasury (Jehoma 2006). Cognisance of losses of this magnitude prompted the DSD in 2003 to establish a Compliance and Support Unit, which was specifically mandated to deal with social grant fraud (Mosheshe 2006). Departmental anti-corruption efforts culminated in the involvement of a specialised team of investigators from law enforcement agencies such as the SAPS, the Directorate of Special Operations (DSO), popularly known as the 'Scorpions', and most significantly, for the purpose of this paper, the SIU.

THE DEPARTMENT OF SOCIAL DEVELOPMENT'S ANTI-FRAUD CAMPAIGN

Civil servants

A comparison between the SOCPEN database and the Government Personnel Salaries System (PERSAL) revealed that 41 000 public servants, across various government departments in different provinces, were receiving both salaries and social grant benefits from government, a discovery the DSD arrived at independently of the SIU.¹⁹ While some public servants were legitimately entitled to social grants, particularly among low-level employees such as cleaners and gardeners, a significant number were not. These cases were of high priority to the national department. DSD worked in co-operation with the SIU on the civil servant cases (as discussed later in this monograph) in a strategy that prioritised cases based on the severity of the offence rather than prosecuting all civil servant fraudsters. The official position is that capacity issues militated against taking all civil servant fraudsters to court, as is traditional due process.

Public indemnity

As part of the anti-fraud campaign the department offered indemnity from prosecution to beneficiaries receiving grants illegally (DSD 2006). The indemnity offer covered the period from 1 December 2004 to 31 March 2005. What

the minister did not immediately make clear, however, was that civil servants, social grant fraud syndicates and those already under investigation by the department or detected during the indemnity period would not qualify for the indemnity.

Nor was the general public offered a blanket indemnity. Guidelines were developed to determine which cases warranted indemnity, prosecution and/or debt recovery. Applicants for indemnity were also required to submit documents motivating why they deserved indemnity and why they had committed the crime (Mosheshe 2006). Provincial committees were set up and given a mandate to assess which applicants were 'indemnifiable' based on the guidelines. The Compliance Unit and the SIU had to check whether the committees awarded or failed the applications on reasonable grounds. Grant payments to indemnity applicants were suspended pending review. Applicants were notified in writing of the outcome (Mosheshe 2006). The whole indemnity project proved extremely tedious and time consuming as a result.

This part of the anti-fraud campaign was the subject of extensive media coverage. The state's communications strategy involved the bulk-buying of media through the GCIS, as well as marketing and advertising, in both mainstream and community-based print and electronic media. In areas such as the Eastern Cape, departmental officials also held public meetings in a bid to encourage beneficiaries of illegitimate grants to reveal themselves.

According to the department's 2006 Annual Report, 86 000 members of the public applied for indemnity. This number grows to over 90 000 if applications from public servants and members of organised criminal syndicates are included. Five per cent of the applications were disregarded because they fell outside the guidelines. The remaining 85 500 applications, were then distributed to the provincial committees mandated with reviewing and assessing applications. Mamiki Mosheshe, a Former DSD employee and now the manager of the Compliance and Support Unit in the SASSA complained this process was difficult because of 'serious capacity issues' in the provinces.

There were three likely outcomes for each application:

- Indemnity granted – if the offence is deemed not sufficiently severe
- Prosecution – if the case is deemed severe (e.g. if the applicant is 'rich'), a case is opened and charges are brought

- Recovery of debt – if the amounts involved are not very high the department can indemnify the applicant from prosecution but the applicant will have to reimburse the department for any money that was fraudulently claimed. The applicant also has to pay the money back if found to have a higher income level than that prescribed by the means test

The majority of cases were indemnified (Mosheshe, 2006). Those indemnified were removed from the social security system, thus reportedly saving the state an estimated R400 million (Cull 2005).

CRITIQUE

Civil servants

Civil society watchdogs (the Grahamstown-based PSAM and Black Sash) issued a press statement that criticised the plea bargaining approach of the DSD to civil servant fraudsters. According to Jonathan Walton of Black Sash, allowing officials to negotiate their way out of court, deducting monies from salaries to pay back to the system, is tantamount to, ‘encouraging robbing from the system’. Furthermore, ‘money is not a problem, capacity is not a problem’ with the department, and that special arrangements need to be made so that those who have committed fraud are dealt with in a consistent manner: ‘arrested, investigated and prosecuted’ (Walton 2006).

The DSD, in defence of their more laissez-faire approach, would no doubt reiterate capacity constraints to pursuing the thousands of fraudsters, the clogging up of courts and additional impediments in cleaning up the grants system, as well as the impact on the capacity of the civil service should it lose thousands of staff members through prosecution. This expedient short-term approach may be judged more harshly in the medium to longer term if offenders use the precedent set in this instance as a ‘get-out-of-jail-free’ ticket. A subversion of the judicial system is also implicit in the approach and does not bode well for faith in the legal and democratic processes.

Indemnity

The announcement of the indemnity has led to much confusion. The department did not inform the public that there were no blanket indemnities. Indeed, although notifications have been sent out to applicants, the public has not been warned that the SIU plans to investigate cases as part of the next phase of its anti-corruption mandate, signed with the department.²⁰ In some instances, civil servants who did not qualify for indemnity nonetheless applied and were granted it (Davids & Bishop 2006).

Once again, for the Black Sash the whole indemnity campaign sets up a dangerous precedent as it does not send the right message to offenders. Walton argues that this is tantamount to allowing criminals to 'roam the street'. The DSD, however, insists on the need to be realistic about the state's ability to prosecute the astronomical number of fraudsters, while the DPSA is concerned about the impact of prosecutions on the overall functioning of the public service – an issue that we revisit at a later stage.

The following counter-argument to the civil society objections is offered by the SIU (SIU 2007):

Of the 2 570 persons convicted since commencement of the project 750 persons were convicted by way of plea bargaining, 1 769 entered Section 112 pleas of guilty, 36 persons were convicted after trial and 15 persons were acquitted.

In the minority of cases where a plea-bargain was agreed, officials did not 'negotiate their way out of court'. A plea-bargain can only take place in court and can only proceed if the magistrate agrees that the plea and sentence is appropriate.

The average amount involved in these cases was in the region of R6 000 and the accused being public servants with no previous convictions will still have to face disciplinary action. An appropriate sentence was imposed on all these accused, and was either a suspended sentence of imprisonment and/or a fine incorporating an order for the accused to repay the money fraudulently obtained.

It should be stressed that these cases are not ones in which custodial sentences are likely to be imposed. In fact, in the 1 769 cases where there was no plea-bargain, no magistrate in the country imposed a prison

sentence. In a few instances where the accused were private beneficiaries some of them will testify against other individuals responsible for organising syndicates who systematically defrauded the Department.

The SIU contends, though, that the disciplinary process is the hardest part, presumably because provinces need to institute these measures. In this respect, SASSA is seen as the main driver with the SIU fitting into the broader process.

Corruption versus poor administration

It is surprising that the department has still not worked out the extent to which fraud and corruption are bigger problems than maladministration and/or poor administration within the DSD. According to Jehoma (2006), both exist, but ‘no empirical study’ has been conducted as yet: ‘In the next year or two – when we have dealt with everything – we can calculate the numbers’. The determination of these calculations could potentially be the DSD’s Achilles’ heel in the anti-corruption campaign, especially if it proves that poor administration or maladministration was the crux of the problem. By that stage, the millions of rands that will no doubt have been spent on the anti-corruption campaign will arguably have also caused undetermined losses to the country’s collective psyche and understanding of grant fraud.

THE ROLE OF THE SPECIAL INVESTIGATING UNIT

Because of its enormous scale, the social grant fraud problem was a mammoth task for the DSD to tackle single-handedly, especially given its limited capacity. The indemnity project, for instance, faced serious issues in the provinces around a lack of capacity to deal with applications (Mosheshe 2006). For this reason, senior officials in DSD advised the minister to call in the SIU to initiate investigations, assist the Compliance Unit in reviewing failed indemnities and then to prosecute where necessary.

The SIU intervention in the DSD/SASSA is a result of what was initially a three-year service level agreement entered into by the two institutions. The DSD funds the SIU to deliver upon mutually agreed-upon targets in terms of its Presidential Proclamation to investigate corruption. The three-year time frame, however, is set to be reviewed, as the project is likely to require extension

(Davids & Bishop 2006). At a little over R2 million per month, the SIU is said to be relatively cheap in comparison to forensic/consulting firms. A case in point is the six-month social grant fraud investigation in KwaZulu-Natal, during which the DSD reportedly paid about R80 million to a conglomerate of forensic firms in a joint venture to address the grant fraud problem in that province (Visagie 2006). Not only was this expensive, but it also offered no corrective action. The SIU therefore offered both affordability and a remedial approach.

Subsequent negotiations between the SIU head, Willie Hofmeyr, and the Minister for Social Development, Zola Skweyiya, saw the latter supporting the concept of countrywide project teams that would ‘focus on a one stop-shop that would deal with criminal prosecutions, the civil recoveries, the disciplinary hearings, and most importantly, the cleansing of the [SOCPEN] database’ (Visagie 2006). Similar three-year co-operation agreements have been effected between the SIU and the national Department of Transport, the Eastern Cape departments of housing, local government and traditional affairs, and the Western Cape departments of correctional services and local government and housing.

The agreement between the SIU and the DSD was based on a set of measurable indicators that were mutually agreed upon: the numbers of successful prosecutions, number of identified cases, the speed in which cases are concluded, accrued savings to the department in both the short and long term, as well as the monies recovered. According to Jehoma (2006), the department would have wanted to see more indicators agreed upon, as well as an increased pace in finalising cases. At times, this creates tensions and debates between the partners. Jehoma adds that the SIU in particular feels that the DSD is ‘putting too ambitious targets’.²¹

Reflection on SIU evolution and mandate

The purpose of this subsection is not to offer a comprehensive description, explanation or in-depth analysis of the SIU model. It rather seeks to highlight some key aspects of the model, which at least give an idea of the country’s anti-corruption dynamics, particularly those relating to the DSD’s anti-fraud and anti-corruption campaign.

First created in terms of the Special Investigating Unit and Special Tribunals Act No. 74 of 1996 (the SIU Act) as an independent statutory body that reports

to the President and Parliament, the SIU was temporarily dissolved in June 2001. This followed a Constitutional Court ruling that a judge cannot head an investigating unit. Judge Willem Heath headed the unit at the time. The judgment was seen by some as being suspicious. In the run-up to the ruling Judge Heath was not particularly popular among the African National Congress' most senior leaders. Former Justice Minister Dullah Omar once threatened to 'clip Heath's wings' (Steinberg 2000) and Finance Minister Trevor Manuel accused the judge of lying about his achievements (Steinberg 2000). This antipathy towards Heath has been linked to his alleged cowboy-style approach to fighting corruption (Steinberg 2000).

A month later the unit was reconstituted with Willie Hofmeyr as its head. In terms of the SIU Act, it is the President's prerogative to appoint a fit and proper South African citizen as the head of a Special Investigating Unit. The President may also 'at any time remove the Head of a Special Investigating Unit from office if there are sound reasons for doing so' (SIU Act s3(d)). The SIU's mandate was still more or less the same:

To investigate and institute legal proceedings, where applicable, in instances where maladministration of the affairs of a state institution, misuse of funds and/or assets, corruption, fraud, irregular and/or unapproved and/or unlawful acts, transactions or measures relating to state assets or money and/or improper or unlawful conduct by officials of state institutions, have occurred (Hofmeyr and Davids 2007).

This brief also incorporates private sector accomplices and private sector matters that cause substantial harm to the interests of the public (National Anti-Corruption Forum (NACF) 2005).

Proclamation from the State President is a precondition for any SIU intervention. In the case of the DSD investigations the minister approached the President for a proclamation.²² Besides the R53,4 million it received from various client departments in 2005/06, the SIU also receives funding from the National Treasury which allocates it a budget through the Department of Justice and Constitutional Development (SIU 2006). The unit's budget increased threefold from R23 million in 2002/2003 to R76 million in 2008/09 (SIU 2006). International funding valued at R2 million (SIU 2006) has been forthcoming from agencies such as the Royal Danish Embassy, the United States Embassy,

the British High Commission and German Development Co-operation (Gesellschaft für Technische Zusammenarbeit – GTZ).

Civil legal action is the SIU's official method of redress, which establishes the 'Cobras' (as it is known) as the only institution that uses civil law to fight corruption (NACF 2005). The Special Tribunals are specialised courts that deal specifically with SIU cases and this reportedly avoids some of the delays usually associated with civil litigation in the ordinary civil courts (SIU 2006). In terms of the SIU Act, the SIU 'may institute civil proceedings in a Special Tribunal if, arising from its investigation, it has obtained evidence substantiating any allegation contemplated in section 2(2)' (SIU Act s5.5). The tribunals however have allegedly not been used since 1999 (Wolvaard 2006).

Specialising in civil legal action largely works to the unit's advantage because a civil case only has to be proven on a balance of probabilities, which makes it easier to prove than a criminal case, which has to be proven beyond reasonable doubt (NACF 2005). However, while pursuing a civil case, the unfolding of evidence about criminal activity is not uncommon. This is reportedly the context in which the SIU also becomes involved in criminal investigations.

As it does not have the power to make arrests or prosecute suspects, the SIU has to work closely with the police and prosecution on criminal cases. While this has proven valuable at times, as illustrated in the Eastern Cape JACTT, it has also been an occasional source of frustration for all the parties involved. Reliance on the SAPS for arrests, and the DSO for prosecution, for instance, has often meant that the speed in which the SIU concludes its cases is not always on a par with set targets. On the other hand, law enforcement partners may become frustrated by the SIU muscling them out of investigations or disabling their capacity by recruiting their staff, as explained below. While the SIU implicitly admits the existence of a few isolated instances of strained relationships with certain individuals in law enforcement, it strongly cautions against building generalisations from these.²³ The unit further explains that:

since the start of the new SIU in 2001, we have set out on a deliberate strategy to move away from the previous one of recruiting experienced investigators from SAPS, and create extra investigative capacity in the state. The previous Heath Commission primarily recruited experienced commercial crime investigators from SAPS. Of course this recruitment

strategy was neither sustainable nor helpful to building good inter-agency cooperation.

With the re-launch of the new SIU in 2001, and the subsequent exponential growth of the unit, we have gone out of our way to feed this growth mainly from the private sector and our ambitious trainee programme that will meet at least 50% of our recruitment needs in future.

Understandably some movement of personnel from other law enforcement agencies to the SIU is unavoidable, but this had been preceded by discussions with the Heads of these Divisions to mitigate any de-capacitating effect and is not part of an explicit strategy.²⁴

Investigations

This section focuses largely on unpacking the three-phase process of SIU investigations. The SIU maintain that there is a bigger strategy, informed in turn by their ‘developing’ model, which puts this process in perspective. Below are excerpts from a meeting with the SIU about the approach, which assisted in shaping their intervention.

Box 9 The SIU approach: A defensible strategy?²⁵

Given the scale of the problem, the approach taken was a strategic ‘problem-solving one given the dysfunctionalities within the system’. The primary aim was to create an ‘effective deterrent, particularly by ensuring that effective criminal action was taken’. Furthermore, it ‘reflects the tough decisions of resource deployment that had to be made. We are not uncomfortable with these choices but they are (also) not beyond debate’.

The approach also reflects the SIU model, which they believe is successful because it is meant to be ‘complementary and non-threatening’ to others’ efforts in this case. The SIU is also keen to clarify that they have a ‘separate legal mandate versus our client relationship’.

PHASE I

As set out in Presidential Proclamation R18 of April 2005, the SIU's specific terms of reference with respect to the DSD project is to investigate:

- The payment and/or receipt of social grants or benefits in respect of deceased and/or fictitious persons and/or persons who do not qualify for the receipt of such grants/benefits or any portion thereof and any conduct directed at, promoting, or facilitating payment and/or receipt thereof;
- The conduct of government officials and/or agents responsible for the administration and/or payment of social grants or benefits, which has or may in the future result in losses of, lack of control over, or delays in payment of monies allocated for the payment of social grants or benefits and any conduct directed at, promoting, or facilitating thereof.²⁶

Proclamation R18 does not specify the time in which the investigations should be concluded. The DSD, however, entered into a three-year service level agreement with the SIU, which, according to the SIU response to this study, began on 1 February 2005.²⁷ The agreement would therefore expire on 1 February 2008. Proclamation R18 has since been amended by Proclamation R5 of 30 March 2007, which has extended the investigating period.

This initial phase of the SIU/DSD project, which was implemented during the 2005/06 financial year, entailed the establishment of a 'rapid reaction' capacity in all priority provinces – Northwest, Mpumalanga, KwaZulu-Natal, Gauteng and Limpopo – to investigate government employees who were not entitled to social grants. The focus was on 'high risk' grants, such as old-age pensions, disability grants, child support grants, care-dependency grants and foster care grants.²⁸ The investigation involved the grading and verification of all public servants on SOCPEN to identify unentitled public servants for potential prosecutions, recommendations for disciplinary action and AOD recoveries; to ensure the final removal of verified fraudulent accounts from the SOCPEN database; and to ensure perpetual savings for the DSD.²⁹ Civil servants who were found to be registered on the SOCPEN as social grant beneficiaries numbered 43 705, a slight increase on the 41 000 whom the DSD had originally identified. The following table is a provincial break down of this national figure:

Table 3 Public servants on SOCPEN

Province	Grant type								Total
	OA	WV	DG	FCG	Comb	GIA	CDG	CSG	
Eastern Cape	246		286	1 788	21	2	459	3 716	6 518
Free State	67		105	681	5		44	921	1 825
Gauteng	66	2	147	648	6	1	198	1 771	2 838
KwaZulu-Natal	1 163	1	2 356	1 620	49	5	704	16 224	22 121
Limpopo	592	5	145	497	1	2	177	2 948	4 367
Mpumalanga	128		91	244	1		70	1 790	2 324
Northern Cape	20		52	253	3	3	42	467	840
North West	40		66	395	4	1	67	908	1 481
Western Cape	74		80	470	4	2	63	698	1 391
Total	2 396	8	3 328	6 596	94	16	1 824	29 443	43 705

OA = Old Age; WV = War Veteran; DG =Disability Grant; FCG =Foster Care Grant; Comb = Combination of Grants; GIA = Grants-in-Aid; CDG = Care Dependency Grant; CSG = Child Support Grant.

Source: SIU 2006.

A preliminary report, tabled after the completion of the analysis, revealed that 22 117 civil servants received social grants legitimately and ‘required no further action in terms of criminal action or civil litigation, while 21 588 grants required further investigation’. Potentially prosecutable cases numbering 13 920, including civil recovery of illegal benefit, were also identified. Finally, 7 668 cases were found to be for civil recovery only and not criminally prosecutable.

Debt recovery

The recovery of monies stolen from DSD is said to be incidental to the work of the SIU (Visagie 2006). The process involves persuading the offender to sign an AOD. This is a negotiated amount, which the debtor is able and willing to pay at an annual interest rate of 15,5 per cent per annum. The case for the AODs is as an alternative to prosecuting all the implicated civil servants, which would arguably affect the functioning of the civil service negatively. This issue was primarily the concern of the DPSA (Visagie 2006).

Signing the AOD does not exempt public servants from disciplinary actions, which their departments are expected to administer. The DPSA, however, observed in an interview in 2006 that there is a dearth of expertise, resources and personnel to manage the disciplinary processes, as the scale of the social grant fraud problem is unprecedented (Kitshoff, Gopane & Bodasing 2006). The Department of Justice alone has 30 000 disciplinary cases pending (Kitshoff, Gopane & Bodasing 2006). At the time of the interview with the DPSA, the DPSA was considering the introduction of policy around the disciplinary system.

But compelling debtors to pay is a slow, cumbersome process with many constraints, including having to obtain a civil judgment in a magistrate's court, the evidence required to refute a debtor's version of the story, and the fact that a debtor cannot be ordered to pay more than they can afford (Social Development Portfolio Committee 2006). The SIU has also acknowledged that in a number of cases people earning substantial salaries are paying small amounts over extremely lengthy repayment periods (Social Development Portfolio Committee 2006). Repayment schedules are set for up to 31 years (*Business Day* 2006).

There is another related issue to the AODs that deserves to be highlighted. The total value of signed AODs is impressive: R20 million. But the actual total amount collected through AODs, at approximately R2 million, is rather meagre by comparison, perhaps demonstrating the difficulties already highlighted around compelling debtors to pay. This also relates to the psychology of guilt that comes into effect when someone is prosecuted, as opposed to being 'let off the hook' and being allowed to pay a fine. Presumably, the failure to pay an AOD correlates to a diminished sense of moral blameworthiness, which the AOD process inadvertently engenders. This also may have repercussions for how the offender thinks about committing fraud in the future. On a different

note, it perhaps also demonstrates capacity and technical constraints within the existing SIU system in failing to ensure compliance among offenders.

Prosecutions

Legislation governing the SIU does not allow for it to institute criminal prosecutions, yet it undertook to prosecute 1 200 civil servants nationally in the 2006/07 financial year. This was reportedly agreed upon in the Memorandum of Understanding (MOU) Agreement between the SIU and the DSD.³⁰ Another justification the SIU offers for undertaking criminal prosecutions is that this aspect is only incidental to its work. Moreover, where prosecutions were involved there was no use of tribunal courts, as dictated by the SIU Act.³¹ Criminal prosecutions were thus dealt with in Special Commercial Crimes Unit (SCCU) courts. There were no civil prosecutions involved.

PHASE II

The investigation of vulnerable grants and the identification of private individuals receiving social grants is the key focus area of the SIU/DSD project's second phase, which began on 1 April 2006. At least 400 000 private beneficiaries are being investigated for allegedly defrauding the social grant system (Sakoana 2006). This phase, which runs concurrently with phase one investigations, consists of comparing employer datasets with SOCPEN. This, in turn, involves reviewing the Ernst & Young exception reports identifying irregular SOCPEN transactions and interfacing SOCPEN with a number of big employer databases, such as the South African Revenue Service (SARS), Unemployment Insurance Fund (UIF), PERSAL, local government, private employers and social grant payment contractors like CPS, Empilweni and Allpay. Identification of syndicated transactions for further investigation also forms part of this phase.

At the time of writing, the SIU had already set up a central intelligence database, which compared the active data on SOCPEN with data received from the SARS PAYE (Pay-As-You-Earn). There are 350 516 SOCPEN beneficiaries registered for PAYE with SARS. A comparison of SOCPEN beneficiaries with selected mining employees and Telkom is also being instituted. In addition to identifying the top 20 companies with the most beneficiaries registered on

SOCPEN, the SIU is also in the process of isolating the top 20 per cent of private beneficiaries for fast-tracked investigations.

Lastly, there are ongoing syndicate investigations in KwaZulu-Natal, Western Cape, Gauteng and Mpumalanga, as well as a joint SIU/DSO probe into paperless crime, dubbed *Project PC*, focusing on the remote electronic registration, authorisation and payment of fictitious beneficiaries via bank accounts.

PHASE III

The third phase focuses on ‘identifying procedural weaknesses in grant administration and systemic weaknesses in Socpen’.³² As it only began in April 2007, four months after this project’s research period ended, it is not possible to incorporate a substantial analysis of this phase here.

Overall, the joint investigation between the DSD and the SIU has been marketed as an anti-corruption success story and Hofmeyr is seen presenting statistics of success at parliamentary briefings, to departments likely to solicit the SIU’s assistance, and to the media. Indeed, about 95 000 beneficiaries reportedly cancelled their grants or simply stopped collecting them for fear of prosecution. Beneficiaries are allegedly removed from the system if they fail to collect grants for three to four consecutive months. And the savings to the DSD are valued at more than R3 billion (SIU 2006).

CRITIQUE

Highlighted below are noteworthy points:

- If the Presidential Proclamation R18 of April 2005 authorises the SIU to investigate the unlawful receipt of social assistance and improper conduct by public servants between 1 April 1996 and 1 April 2005, then who investigates cases that happened before and afterwards? The limited scope for investigations may be seen as a pragmatic approach to addressing fraud but has obvious shortcomings in dealing with those cases that fall outside of the SIU’s remit. This may not necessarily be a criticism of the SIU itself but points to a broader concern about how cases outside SIU’s remit will be taken up. To date, the likely DSD strategy on this issue remains unclear.

- Criminal cases, in the case of the DSD investigations, have been dealt with in-house by the SIU, managed by the appointed head of prosecution, Frank Kahn (formerly of the National Prosecuting Authority (NPA)). However, according to the SIU Act the unit is permitted to ‘refer’ all criminal cases to the relevant law enforcement agents. The SIU may contend that first, it has the approval of and co-operation from the NPA (using, in particular, the SCCU courts and NPA-seconded prosecutors); and second, according to the SIU Act, the unit’s staff, who may be lawyers, are permitted to perform such work for the SIU. However, perhaps a more general understanding needs to emerge on whether the SIU envisages the DSD investigations as they pertain to criminal prosecutions to be an exceptional part of the SIU’s work or whether this will become a continued feature of operations. This is not only a point of introspection for the SIU but for watchdogs, too, in order to maintain the accountability of SIU in relation to its activities. The SIU, however, contends³³ that the Act limits what it sees as its mandate, both in the the initiation process and in not allowing the unit to streamline the process of instituting litigation.
- A similar criticism may be levelled at the SIU in terms of its focus on criminal as opposed to civil investigations. The SIU is mandated according to the Act to focus on the latter, and to refer criminal cases to the relevant law enforcement agencies, which it has not done, in the strictest sense, in the social grant fraud case. The SIU perspective on the issue of criminal investigations and prosecutions, as opposed to civil investigations and recoveries as inscribed in the SIU Act, is captured in Box 10 below:

Box 10 The SIU perspective

When the DSD matters were first brought to the attention of the SIU, the sheer volume of cases and the overlap between the criminal and civil aspects of these cases caused the SIU to negotiate with the SAPS, DSO and the NPA, at an executive level, to effectively deal with the problem in an integrated manner.

The investigations required for the civil recovery process in this matter is almost the same as required for the criminal investigation, and it was felt that it would be a waste of time to recover civil assets without completing the criminal investigation.

Given the scale of the problem, a strategic approach was adopted to create an effective deterrent effect, particularly by ensuring that effective criminal cases were instituted. It was estimated that some R1,5 billion was lost to the State as a result of these offences and that a holistic approach should be adopted in order to make the recovery process effective.

It is important to point out that it is clearly envisaged in the SIU Act that the SIU will come across and investigate conduct that amounts to criminal conduct during the course of its own investigations.

Section 4(1)(d) of the SIU Act provides that one of the functions of the SIU is to ‘refer evidence regarding or which points to the commission of an offence to the relevant prosecuting authority’.

It further envisages that the SIU will co-operate with other institutions when it has done so and that steps will be taken to promote co-operation and avoid duplication in the future conduct of investigations, which may have both civil and criminal aspects.

Section 4(2) provides further that the SIU ‘must, as soon as practicable after it has obtained (criminal) evidence inform the relevant prosecuting authority thereof, whereupon such evidence must be dealt with in the manner which best serves the interests of the public’. While the SIU Act does not empower the SIU to conduct a full criminal investigation, it does allow the SIU to obtain evidence of a criminal offence where it comes across incidents in the course of its investigation.

The SIU does not have the powers of arrest and prosecution, and does not see it as its core business to investigate systematic criminal conduct or organised crime, and does not have the capability to do so. In terms of the arrangement with the SIU, the Scorpions and the SAPS Commercial Crimes Unit agreed to focus on the organised crime cases, e.g. in KwaZulu-Natal, while the SIU will assist the SAPS to bring the smaller opportunistic abuse criminal cases to court.

Because of the relatively minor amounts involved in these cases, they were not seen in their proper context and the cumulative economic impact of such offences on the community was lost. Deciding to centralise these cases – which are widely and in some cases thinly spread across each province – in appropriate courts was the only manner in which they could be dealt with speedily and effectively through focused

attention. Centralisation also enhanced the deterrent effect of these prosecutions. From July 2005 to date 3 307 cases were brought to court of which 2 570 persons were convicted countrywide.

The deterrent effect as a result of these prosecutions can be measured by an increase of 105 000 persons who cancelled their grants voluntarily or allowed their grants to lapse since the inception of the prosecution.

Source: SIU 2007:2.

- In the case of the AODs and the rights afforded to signatories, the SIU may need to verify the amount of, and manner in which, information was provided before self-incrimination took place. Once again, expediency may sometimes give way to awareness about rights to legal representation, for instance, and this must be considered carefully
- The SIU has not used Special Tribunals in the DSD investigation, most likely because the focus has been on criminal prosecutions. In general, the use and value of these courts needs to be examined in light of the on-going and more predominant work of the SIU
- There are a number of agencies responsible for law enforcement efforts and this inevitably has potential for contestation of space. The SIU must, under these circumstances, continuously ask itself to what extent its work contributes to a multi-agency approach or whether it hollows out or de-capacitates other agencies. On this issue, the SIU, with specific reference to the NPA, argues that:

These cases were conducted by five former prosecutors employed by the SIU who were given delegations to prosecute by the NPA after extensive consultation and agreement on the *modus operandi*. The former prosecutors were not recruited from the NPA and had all left the NPA and the Department of Justice some years previously and had in the interim been involved in occupations unrelated to the public service.

In addition, the team has worked closely with the provincial DPPs who have been kept informed of all relevant developments as the ultimate source of authority for these prosecutions. Criticisms that the NPA was deprived of capacity and that relationships with the SIU were harmed are therefore incorrect. On the contrary, the

joint project has helped to build an excellent practical working relationship with the NPA.

In addition to prosecutorial duties, these specialist prosecutors also supervised the investigation of these cases. A prosecutorial strategy was developed to embark on these prosecutions in a structured manner in all nine provinces.³⁴

- Somewhat related to the point above is the issue of managing the growth of the SIU. Effective anti-corruption efforts conducted by the SIU in other departments, as well as the ostensible successes reported by the SIU in the DSD investigation, have perhaps inadvertently led the organisation on a path of growth. The challenges are how to manage this growth without encroaching on the mandates of other law enforcement agencies and how to prevent this growth from taking place at their expense. Trying to foster a co-operative relationship while still trying to build resources and profit may yet be the defining challenge for the SIU
- Another area of concern is around co-ordination between various departments and the SIU. The responsibility for this does not rest solely with the SIU but it remains a general area of concern in trying to ensure effective and efficient progress in anti-corruption efforts such as these
- A further minor challenge relates to ensuring compliance in payments from AOD signatories

THE ROLE OF THE SOUTH AFRICAN SOCIAL SECURITY AGENCY

Background

In 1999 the DSD convened an inter-departmental task team to review the South African social security system. The severe weakness in the management and administration of social grants coupled with numerous litigations and negative publicity in the press, among other things, necessitated this review. Thus the rationale behind the inclusion of the SASSA in this DSD anti-corruption review is the notion that it would lead to the 'drastic minimisation of fraud related to social grant administration and payment' (Parliament of the Republic of South

Africa 2006). According to a *Business Day* report, Minister Skweyiya argued that ‘financial leaks had necessitated the centralisation of control and payment of grants, leading to the formation of a social security agency that would do the job’ (Radebe 2006). However, it is worth noting that the SASSA was also a response to unacceptable service delivery conditions, such as people queuing for days in rainy weather (Mosheshe 2006). The social grant problem also meant spending significant amounts of time and energy on the Social Security Programme at the expense of other programmes.

The task team identified a number of critical gaps, resulting in the recommendation that South Africa should investigate a move towards a comprehensive and integrated social security structure (Taylor 2002). This was effected through the appointment of a Committee of Inquiry into a Comprehensive System of Social Security in South Africa – the Taylor Commission, discussed above.

The Taylor Commission’s terms of reference required reviewing a broad range of elements relating to social security, including the evaluation of all grants, their funding mechanisms and the efficiency with which they achieve their goals (Taylor 2002). The aim was to evaluate the entire social assistance mechanism. In 2002, after three years of investigation, the Taylor Commission presented its findings and recommendations to the minister. Some of these, including the BIG, have already been discussed. Among other recommendations was a proposal to revise the organisational framework and institutions governing social security, and most significantly, implement a social security agency to operationalise various social security functions outside the civil service (Taylor 2002). These functions would involve, among other things, managing the non-contributory social assistance funds including budget determination and the administration of grants (Taylor 2002). Policy development, though, would remain the department’s prerogative. This effectively emphasises the role of the national department as a regulator and service assessor, rather than a service deliverer. As the National Treasury notes:

As the executing Authority, the national department of Social Development will perform a regulatory role by setting the policy framework on who qualifies for social assistance grants, setting norms and standards for the social grants administration, and monitoring the agency’s operation (RSA 2005).

The SASSA, now listed as a Schedule 3A entity in terms of the Public Finance Management Act (PFMA), emerges against this background. It is essentially the reincarnation of the Social Security Programme – then known as Programme Two – within the DSD.

Establishment and functions

In 2004, two years after the recommendations by the Taylor Commission, President Thabo Mbeki assented to the South African Social Security Act. This is the founding legislation that provides for the establishment of the SASSA as an agent for the administration and payment of social assistance (RSA 2004). The objects of the SASSA are thus to act, in the long term, ‘as the sole agency that will ensure the efficient and effective management, administration, and payment of social assistance; serve as an agent for the prospective administration and payment of social security; and render services relating to such payments’ (RSA 2004). Stassen sums up the SASSA’s function this way:

I think it’s a matter of paying the right grant to the right person at the right time. And taking away from those that should not be getting the grant (Stassen 2006).

On 10 June 2004, a mere eight days after the SASSA Act was approved, the Presidency announced the publication of the Social Assistance Act, which, among other things, delegated additional functions to the SASSA and prescribed the manner in which it should execute them. These functions include administering social assistance, populating and managing a national database for all social assistance applicants and beneficiaries, and establishing a compliance and fraud mechanism to ensure that the integrity of the social security system is maintained (RSA 2004). There is a potential overlap between the functions of the SASSA and the Inspectorate for Social Assistance, as will be shown.

Prior to the establishment of the SASSA, the social assistance function, as already mentioned, lay within the national and provincial department. The provinces were autonomous and the national department could not institute provincial uniformity in the administrative approach to social assistance. This created a number of problems. The non-uniform definition of disability, for instance, meant that an applicant might qualify for a disability grant in one prov-

ince but not if s/he moved to another province, and vice versa. Consequently the provinces have been, and in some cases are still being, reconstituted as functional SASSA regions. In this regard Stassen observes:

I think national SASSA wants to... [avoid]... every province doing what they like or how they like it. I think they would like uniformity. But sitting down and deciding on that uniformity, that's going to be a challenge (Stassen 2006).

The integration of the provincial social assistance functions was effected through a Service Agreement (Agency Agreement) signed between national and provincial departments and the SASSA. The agreement is said to provide for continued corporate services (finance, human resources, information technology and communications) support to SASSA by the provincial departments of social development (Stassen 2006). This is expected to remain in place until 'the regional offices of SASSA have sufficiently built and acquired the critical and essential capacities to operate as independent entities' (Stassen 2006).

Budget

The Portfolio Committee on Social Development estimates that SASSA has an annual budget of R55 billion. Sixty per cent comes directly from the DSD and a huge chunk of it relates to the payment of grants, which is no longer the function of the DSD (Stassen 2006). The SASSA was set up with an estimated cost to the DSD of R300 million (*Mail & Guardian Online* 2004).

Staffing and oversight

A Chief Executive Officer (CEO), whom the President must appoint for a renewable five-year term, heads the SASSA. The current CEO is Mr Fezile Makhiwane, the former Chief Director of Social Security in the department, who was also a member of the Taylor Commission. He is accountable to the minister, to whom he must disclose his interests or any conflicts of interest. The minister is also empowered to override any decision the CEO takes. The Portfolio Committee on Social Development, which, in 2003, was also tasked with legislating for the

establishment of the SASSA, also plays a critical oversight role over it. So far the Committee has:

facilitated a number of interactions with officials from the social security branch in the national Department of Social Development and South African Social Security Agency on such pertinent issues as the reporting mechanism of SASSA to Parliament, SASSA's Business Plan as well progress made and challenges currently experienced with regard to its rollout plan and its general transitional arrangements; update on the Human Resource issues one of which was the issue of the transfer of staff and assets (Portfolio Committee on Social Development 2006).

The department moved numerous staff members to SASSA, both nationally and provincially, and seconded key officials to the Agency. The Social Development Portfolio Committee report notes:

From the onset of April 2006, about 6 246 personnel consisting of both senior managers and low-ranked staff have been transferred from the provincial and national Departments of Social Development to the Agency. Of these transferred staff, approximately 135 were from the national Department of Social Development, with the highest numbers coming from the Eastern Cape (1 372), and from KwaZulu-Natal (1 128). The lowest numbers of transferees came from the Northern Cape region (Portfolio Committee on Social Development 2006).

Stassen also notes that all the senior managers and managers working on the Social Security Programme (Programme Two) were given the opportunity to migrate to the SASSA (Stassen 2006). There was a much-talked about possible stalemate surrounding the process of transferring ring-fenced staff from the department to the Agency. According to a Social Development Portfolio Committee report, this was apparently avoided, very much to everyone's relief (Parliament of the Republic of South Africa 2006). A possible explanation for this positive outcome is the fact that all transferred staff were reportedly furnished with letters that they had to sign to acknowledge acceptance of transfer. This was consistent with the terms of the agreement reached within the

Collective Bargaining Council, between the Agency, the DSD, and the unions (Parliament of the Republic of South Africa 2006).

What has been less talked about, however, is whether the staff are adequately trained for the new SASSA approach. Anecdotal evidence from an SIU brief to run a basic investigative training course for key staff members unfortunately suggests that this is not the case. At the end of the course the SIU deduced that there was a general inability to take accurate, detailed and admissible statements – the most important competency that all investigative staff needs to have. Vetting of staff was also recommended. The Black Sash, a key advocacy NGO which now fully supports the establishment of the agency after some initial reservations, also emphasises the issue of staff training. In an interview Nceba Mafongosi, the co-ordinator of the Black Sash in the region, noted that the SASSA employs more or less the same personnel who were part of the inefficient provincial administration system (Mafongosi 2006).

The root of the SASSA concept

The SASSA is closely modelled on Centrelink, an Australian statutory authority whose establishment in 1997 involved reorganising a ‘quarter of the federal administration body and the merging of functions and staff from various social security and employment departments into the new independent agency.’³⁵ Besides reportedly ensuring eligibility for benefits and grants, this merging of government services and functions eligibility is touted as an important part of the Australian government’s campaign against welfare fraud.³⁶ Centrelink also involves the centralising of administrative functions, on one hand, and further distributed services, on the other.³⁷ A CEO heads the institution.

The SASSA employs an identical logic, and is in many ways a local manifestation of the emerging Commonwealth public administration trends, in particular the discourses on strengthening the centre of government and integrated service delivery. In this way SASSA does not represent centralisation in the strict Weberian sense of public administration, where there is strict hierarchy and very little room for managers to manage. Instead, Stassen’s account of the supposedly decentralised system that existed prior to the SASSA evokes a familiar authoritarian milieu:

In the past the districts reported to the chief director of social security. And of course the chief director of social security reports to the HOD and then the HOD reports to the MEC ... There was a long process of getting something done (Stassen 2006).

The SASSA therefore borrows extensively from abroad. The Social Development Portfolio Committee has recently sent a delegation to Centrelink to learn, among other things, about Centrelink's relationship to the Australian Parliament. It was hoped that this would enhance the committee's capacity to exercise oversight over the SASSA. Similarly, the head of SASSA's Compliance Unit has been visiting similar agencies abroad to compare notes. Whether this practice of imitating trends from other countries is profitable is something to consider in future debates.

Critique

At the time of writing it was only a few months since the SASSA had been operational and there was as yet no empirical research comparing services before and after the SASSA's establishment. Critical performance measures, such as scorecards and customer satisfaction surveys, have not been much discussed either. It is not clear what forms of performance measurements the SASSA will adopt. For this reason it would be safe to say that the SASSA benefits are surmised rather than proven.

It is also worth noting that, in the minds of the broader, less informed and largely rural public, the difference between the SASSA and the DSD is not immediately evident (Webb 2006). In some cases complaints related to social grants are still channelled to the DSD. Conversely, matters that should be addressed to the department, such as community development issues, end up on SASSA's plate. In the first instance it is not clear whether the DSD takes the initiative to pass these on to SASSA on behalf of the complainants (which ought to be the case), or actually directs the complainants to SASSA to enquire for themselves. The same concern also applies to the second instance.

Either way, as far as this scenario is concerned, SASSA seems to entrench bureaucracy and lengthen the red tape. This is counter to the goal of effective and efficient service delivery. In response to this problem, SASSA and the DSD in the Eastern Cape have, for instance, together with the MEC and the Standing

Committee on Social Development, developed a communication strategy to sensitise communities about the new developments. SASSA has adopted the name *Gwebindlala* (defeat hunger), which resonates with local experience and aspirations (Webb 2006).

THE ROLE OF THE INSPECTORATE FOR SOCIAL SECURITY

Background

While finalising the South African Social Security Agency Act of 2004 the department was acutely aware of the problem of fairly widespread social grant fraud. A mechanism to address this was sorely needed. It was thought that an independent institutional arrangement was necessary, which was at arms' length from both the department and the SASSA (Jehoma 2006). This would ensure that those appointed as guardians of social grants did not dictate the structure and operation of the organ, to safeguard its independence.

The envisaged institution, somewhat similar to the Independents Complaints Directorate (ICD) at SAPS, would have investigative powers. Against this backdrop, the Social Assistance Act of 2004 made provision for an Inspectorate for Social Assistance, and established it as an organisational component contemplated in Schedule 3 to the Public Service Act of 1994 (RSA, 2004).

Like SASSA, the inspectorate concept borrows extensively from the experience of the developed world. It was a product of extensive consultations with European, Australian and American social security agencies, where inspectorates can play a critical role in objectively assessing the extent of corruption and fraud within an institution (Jehoma 2006). Strictly speaking, then, the inspectorate proposal is not a purely departmental initiative. This suggests serious ramifications for the department's sense of ownership over the it, which will no doubt affect implementation.

Constitution and functions

The Social Assistance Act provides for a person designated as executive director to head the Inspectorate. The Minister of Social Development, however, exercises the final responsibility, an arrangement that obliges the executive direc-

tor to report and account directly to the minister (RSA 2004). This has serious implications for maintaining the critical independence of the Inspectorate as an oversight body in relation to the department it is meant to oversee.

The Inspectorate must 'conduct investigations to ensure the maintenance of the integrity of social assistance framework and systems' (RSA 2004). This includes investigating:

fraud, corruption and other forms of financial and service mismanagement and criminal activity, within the Agency; any alleged contravention of the Social Assistance Act (2004); and any matter in respect of social assistance referred to it by the Minister, the Department's Director-General or the Agency's Chief Executive Officer (RSA 2004: 26).

Finally, the Inspectorate must 'execute internal financial audits and audits on compliance by the Agency to ensure that it is paying the right amount to the right people, as well as establish a complaints mechanism' (RSA 2004).

In general, the Inspectorate is required to 'do everything necessary to combat the abuse of social assistance' (RSA 2004). However, there are concerns among some civil society groups that the broadness of this mandate 'could amount to carte blanche for the Inspectorate to intrude on the lives of grant recipients ...' (South African Council of Churches 2003). The Black Sash also strongly believes that 'inconvenience should be as minimum as possible' (Mafongosi 2006). The Inspectorate thus has to tread a fine line between ensuring that corruption, leakage, fraud and bad practices are reduced to the minimum and ensuring that the privacy of grant beneficiaries is respected.

The Inspectorate was allocated a budget of R10 million in 2005 and R20 million in 2006 (Mafongosi 2006). However, this amount is not reflected in the department's latest³⁸ Annual Report (2005/06), further attesting to the fact that the Inspectorate is not yet operational.

Operational status

At the time of writing, the executive director was yet to be appointed. The minister, in concurrence with the national Cabinet, is responsible for making the appointment. The executive director, in turn, must appoint the Inspectorate's employees and differentiate between those who are to be appointed as inspec-

tors and those who are to perform other functions within the institution (RSA 2004).

The complexities and complications arising from setting up the SASSA, which are yet to be effectively addressed, have apparently distracted the department from ensuring that the Inspectorate is up and fully operational (Jehoma 2006). However, it is maintained that this has not meant that the work the Inspectorate would eventually do is not being done. The department, for instance, continues to assess payments made in order to pick up anomalies, which are referred to the SIU and SASSA. The Office of the Auditor-General is taking care of internal financial auditing, while the Compliance Unit and the internal auditing unit within SASSA (established in line with requirements of the PFMA), ensure that the right amount is paid to the right people. When the Inspectorate becomes fully operational, the department will then phase out these functions and hand over to the Inspectorate; otherwise duplication of functions would be inevitable and tensions within the system would result. Mosheshe echoes similar concerns about duplication in the work of SASSA and the Inspectorate (Mosheshe 2006).

Critique

The Social Assistance Act, which specifies the functions of the Inspectorate and the Agency, already guarantees the feared duplication. As we saw earlier, the legislation tasks the Inspectorate with conducting investigations to ensure the maintenance of the integrity of the social assistance framework and systems (s27(1)(a)), and, in general, to do everything necessary to combat the abuse of social assistance (s27(1)(e)). The same legislation also states: '[w]here the Agency has reasonable grounds to suspect that a beneficiary, parent, procurator, or a primary care giver is abusing the social grant, the Agency may appoint a person to investigate such suspected abuse' (s19(1)).

Further on, under the heading 'Power of Agency to investigate', the legislation stipulates that '[t]he Agency may, in the performance of its functions, inquire into any matter concerning the rendering of social assistance' (s23(1)).

The SASSA Act tasks the Auditor-General with conducting an annual audit of the Agency's books, records of account and financial statements (s11(2)). The Social Assistance Act, however, tasks the Inspectorate with the same function.

Section 27(1)(b) reads: ‘The Inspectorate must ... execute internal financial audits and Audits on compliance by the Agency.’

Amid all this the Agency has its own internal auditing unit, which it ought to have in terms of the PFMA (Jehoma 2006). Clearly there is an unavoidable overlap of functions here.

Furthermore, it is unclear why the department would still need an Inspectorate if its envisaged central functions were already being fulfilled. The department itself admits that it has already been very successful without an Inspectorate (Jehoma 2006). While the notion of establishing a separate independent institution dedicated to uprooting fraud and corruption in social assistance is a noble ideal, it is not a satisfactory justification for erecting a separate structure. The US Inspectorate, which operates within the Social Security Agency, effectively demonstrates that efficient inspection is not contingent upon the creation of a separate, arms-length body.

The logic for a South African Inspectorate is also thin on pragmatism. For instance, it fails to take into account the inevitable resistance from the institutions already fulfilling the Inspectorate’s envisaged functions. With SASSA it was just a matter of transferring staff from the department to the Agency. But in the case of the Inspectorate, the dynamics are more complex as the interests of actors from outside the department are involved. Transferring staff from the SIU, the Attorney-General’s office and the Compliance Unit to the Inspectorate is certainly not an uncontroversial option. The Attorney-General’s Office and the Compliance Unit, in particular, are in fact questioning the setting up of the Inspectorate.

It is no wonder that some key officials within the department and SASSA are still ambivalent about the Inspectorate (Jehoma 2006). The role of the Inspectorate’s chief architects, who thought that taking the functions of provinces through SASSA was a bigger risk than keeping the functions at provincial level, is worth noting at this point. These are the authorities that apparently imposed on the department the option of either desisting from establishing SASSA, or proceeding with the proviso that an Inspectorate will be put in place. Needless to say, the department reluctantly opted for the latter, while hoping that at some point, when the Agency has proved itself and faith in its ability to deal with fraud and corruption has been renewed, the Inspectorate will be integrated into SASSA. This is quite enlightening in terms of why the department is dragging its feet in making the Inspectorate operational.

Finally, as a separate point, the challenge in creating the independence of the Inspectorate may be further compromised if it is headed by the Minister of Social Development. In fact, this may pose the biggest challenge if its integrity as an oversight body is compromised.

4 Eastern Cape case study

Challenges to the delivery of social assistance

The Eastern Cape is mired in problems. From poverty to corruption and debilitating administration woes the province, and particularly its DSD, struggles to develop a presence that resonates well with the vision for all South Africans embodied in the Constitution. However, it is also fast developing a national reputation for its vigorous, watchful civil society – perhaps spurred into action by the endemic weaknesses. The judicial system and, in particular, the judges, are also arguably among the most progressive in the country (Walton 2006). Recently, the Eastern Cape adopted a unique and much-publicised approach for other interventions that purport to assist in harnessing the potential of the department.

Some may argue that the anti-corruption interventions in the Eastern Cape have been over-researched by government itself (by way of investigation through these initiatives), by civil society, the media and the courts. In analysing the Eastern Cape, however, the aim of this case study is not merely to scratch old wounds but rather to review all anti-corruption interventions so that a more holistic understanding may feed into debates on the province's progress. Indeed, the researchers' field research with key stakeholders in the social assistance arena in the Eastern Cape has largely been a positive interaction from

which enlightening findings emerged. What follows is a brief history of, and insights into, the workings of the department and anti-corruption interventions from a social assistance point of view, gleaned from both desktop research and through interviews.

STRATEGIC CONTEXT

The Eastern Cape has been charged with being one of the poorest and most corrupt provinces in the country. This may be attributed to a large extent to the legacy of the homeland system that was put in place by the apartheid government. *Business Day* quotes Minister Skweyiya thus:

We have established that former homeland civil servants, particularly in places such as Umtata, which is the capital of this crime, are prone to abuse of the system to enrich themselves (Radebe 2006).

This point has been alluded to earlier. In keeping with the policy of ‘separate development,’ the homelands sought to segregate blacks from whites by dividing blacks into ‘ethnic nations’ (GCIS 2005/06). The Eastern Cape was thus divided into three distinct areas, two of which were the homelands: Transkei and Ciskei.³⁹ Far from being the establishment of independence from the apartheid state, the creation of the homelands was rather an expulsion of Black people into overpopulated, over-burdened pieces of land ruled by a collaborating class.

Thus what is now the Eastern Cape Province was divided under apartheid into three distinct ‘zones,’ subdivided by race. Most prominently there was a white and two black areas, each with its own administration. There were also government structures for coloureds and indians. The result was that six different administrations were responsible for social grants with different Acts and Regulations applying to each administration (Froneman J in *Ngxuza and Others v Secretary, Department of Welfare, Eastern Cape Provincial Government and Another* (2000:3)).

The Social Assistance Act 59 of 1992 finally brought legislative consolidation and consequently repealed all previous Acts (Froneman J in *Ngxuza and Others v Secretary, Department of Welfare, Eastern Cape Provincial Government and Another* (2000:3)). Social grants were thereafter administered from a central

point: Pretoria. This also meant that previously fragmented databases were unified into SOCPEN, also referred to above. The difficulties associated with the amalgamation resulted in the detection of anomalies and fraud.

Currently, poor administration and corruption are blamed on the legacy left by the past administrations. For instance, Jonathan Walton, regional head of the Black Sash in the province, argues:

Unfortunately when the homeland system was demolished there was a lot of corruption (in the homelands) and when the new government came in, they had to accommodate them. They had to absorb the corrupt officials. Our province really battled in that regard. Mismanagement and maladministration was a massive problem (Walton 2006).

The problem of weak internal controls

A 2006 report released by the Auditor-General's office in the Eastern Cape gave the provincial DSD a 'disclaimer',⁴⁰ its most serious audit opinion. In an interview the Provincial Auditor-General, Singa Ngqwala, stated that the provincial DSD was faced with severe problems of internal control (Ngqwala 2006). He further noted that 'activities were not adequately monitored, supervised [and] authorised so it impacted on the Department. They could not produce the reports [that were requested].' Ngqwala identifies these as the root causes of the problems manifesting in the DSD, especially in areas such as social grants.

In fact, a deeper revelation is that many of the current challenges emanate from the lack of leadership and direction in the department. This relates back to the central issue of corruption and the fact that '[a]ll the top people in the Department were suspended' (Ngqwala, 2006) on corruption and fraud charges.' A corporate services director allegedly went as far as using 'fraudulent ways to obtain an unqualified audit report for the 2003/2004 financial year' (Zuzile 2005).

Currently the department has an acting head seconded from the provincial Department of Sport, who had only been in this position for just over six months at the time of writing.⁴¹ The Acting Chief Financial Officer had also been in the position for a brief period.

Reports from the provincial Auditor-General's office for the past five years also show a beleaguered department beset with issues of internal control. Box

11 highlights the key findings from the PSAM's monitoring brief on the department from 2001 to 2005.

Box 11 Summary of key findings of the PSAM's Monitoring Briefs, 2001–2005

2001/02 and 2002/03

- The department continued to struggle with poor record-keeping and a weak internal control environment
- The department's vacancy rate for 2002/03 stood at 51 per cent
- Notable progress was made in the uptake of Child Support Grants (CSG) notwithstanding the downward revision of the original uptake target
- The department showed an increasing reliance on consultancy services
- Monitoring of service providers and other contractors remained poor
- The department has not responded to PSAM's request for information on corrective action taken in regard to cases of misconduct and maladministration
- The department had a litigation bill of over R5 million in 2002/03
- Long-standing systemic issues raised by the Auditor-General and SCOPA have not been adequately dealt with by the department

2003/04

- The department was issued with an unqualified audit opinion by the Auditor-General
- The department's budget increased in the year under review by R1,48 billion (23,6 per cent) from the previous year's budget of R6,35 billion
- A lack of effective internal control mechanisms within the department continued to result in monetary losses. This is a recurring issue within the department that the Auditor-General has drawn attention to for the last three financial years

- Adequate budgetary provision was not made for the turnaround strategies identified by the IMT. As a result, funds allocated to other programmes were used to fund the implementation of some of these strategies
- Expenditure on litigation has increased from R5 million in 2002/03, to R20 million in 2003/04

2004/05

- The department was issued with an unqualified audit opinion by the Auditor-General
- The department's budget increased by R1,85 billion, from R7,84 billion in 2003/04 to R9,69 billion in the year under review
- The department continues to be plagued by litigation cases brought against it by social grant applicants
- The department had a social worker vacancy rate of 50 per cent during the financial year
- The department failed to budget adequately for the payment of social grants and overspent Programme 2 (Social Security) by R177 million
- The department failed to spend R84,24 million (89,5 per cent) of its conditional grant for the National Food Emergency Programme

In response to the issue of weak internal controls, the department is reportedly planning to develop a new and enhanced permanent structure in the form of an internal control unit to improve internal capacity (Webb 2006). At the time of the research interview the proposed structure was yet to be approved.

Legal battles

Social grant delivery bottlenecks continue to compromise the realisation of indigents' right to access social security in the Eastern Cape. This inaccessibility and violation of the fundamental right to social security exposes the provincial DSD to numerous class action litigations. It is therefore no surprise that the bulk of cases that the Black Sash advice office in Grahamstown encounters relate to the DSD (Black Sash 2004). Litigation has had major cost implications for the department. Within a space of three years, litigation costs increased by

25 per cent from over R5 million in 2002/03 to R20 million in 2003/04 (Tetyana 2005). In most cases that end up in court the department opposes the payment of the grants to recipients. This occurs in spite of the contention that poor administration or maladministration by the department itself lies at the root of the problems. The consequences are explained thus:

Each time the Department opposes a case in this nature it costs in the region of R4 000 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 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 (Joseph 2006).

The consistent under-performance of the department in terms of the administration of social grants is belaboured by the PSAM. However, the Acting Head of Department for the Provincial DSD, Denver Webb, disassociates from these problems entirely. In an interview he attributed this attitude to the separation of the department's social grant wing from the department's other functions. In effect, all problems that previously existed are now transferred to the SASSA. He stated: 'Social security loomed over everything in the Department and other things tended to be neglected' (Webb 2006). Now, however, it is really only the MEC that has some involvement, though only via political interventions that do not directly relate to the operations of SASSA. The department is then arguably left to get on with other aspects of its role effectively (and perhaps indeed with impunity).

Box 12 Ruling for the people – the verdicts of Judges Froneman and Cameron

Arguably the defining case for the department, which curiously links with the problem of social grant fraud, is the class action brought against it in 1997. The department cancelled or suspended the grants of thousands of people in the Eastern Cape on 1 March 1996 in an apparent bid to stem detected fraud/anomalies within the system. The amalgamation process of the six different administrations into the national SOCPEN system showed, ‘that the information on record for many of the beneficiaries was incomplete, that there was duplication of payments and that the eligibility of many beneficiaries for grants was suspect’ (Froneman J in *Ngxuza and Others v Secretary, Department of Welfare, Eastern Cape Provincial Government and Another* (2000)). The Froneman judgment that was delivered in 2000 found in favour of the applicants and mandated the department to reinstate grants currently as well as retrospectively.

The 32-page judgment is touted as a victory over negligent unlawfulness and set a precedent for others to follow. The reason why the department racks up such high litigation costs, for instance, is from people now demanding due process in the payment and treatment of grant cases.

Judge Froneman stated:

What cannot be allowed ... is 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. What we are talking about in this case are rights, which give expression to the “oneness of community” that Steve Biko spoke of as at the heart of black culture. He also said that Africa has a great gift to give to the world, namely “giving the world a more human face” ... The facts disclosed in the papers indicate that the welfare department of this province has been sadly lacking in that regard’ (Froneman J in *Ngxuza and Others v Secretary, Department of Welfare, Eastern Cape Provincial Government and Another* (2000:22/23)).

In spite of this, the department, supposedly on advice from counsel, declined to comply with the court mandate and reinstate the grants. This provoked a vitriolic response from the judge, which was heard on 31 August 2001 (Froneman J in *Ngxuza and Others v Secretary, Department of Welfare, Eastern Cape Provincial Government and Another* (2000)).

The department eventually appealed the decision but Cameron JA, writing a unanimous judgment on behalf of the court in *Permanent Secretary, Department of Welfare, Eastern Cape Provincial Government and Another v Ngxuza and Others* (2001), dismissed the appeal with costs to the department and pronounced another damning indictment in his judgment:

All this speaks of a contempt for people and process that does not befit any organ of government under our constitutional dispensation ... [T]he province's approach to these proceedings was contradictory, cynical, expedient, and obstructionist.

Fast forward to the present and the same complaints are voiced. Sarah Sephton from the Legal Resources Centre – the organisation that represented the people in the class action suit against the department in 1997 – complains that the department is still full of ‘people who really don’t care’ (Sephton 2006). She also describes the ‘threatening’ tactics used whenever the organisation attempts to bring a case to the department. She relates that what is equally disturbing is the fact that predatory lawyers in the region are benefiting financially from the administrative delays of the department, extracting money from poor clients (Sephton 2006).

Webb (2006) confirms the existence of an adversarial relationship between the department and local organs of civil society. However, he emphasises the department’s attempts at ‘building a better relationship ... to avoid a confrontational approach between government and ... civil society’.

PROVINCIAL SOCIAL ASSISTANCE CLEAN-UP INITIATIVES

Interim Management Team

The performance of the provincial DSD has been of great concern to central government, as has the performance of the provincial departments of health, education, roads and public works, and the Treasury. Concrete expressions of this concern included the deployment of a multi-sectoral interim management team (IMT) in 2002. The team comprised one national manager from each of the departments listed above, as well as the Presidency. The provincial Directors-General, the DPSA, the Public Service Commission and the Superintendent-General of the Provincial Treasury led the IMT (BuaNews). They were accountable to Premier Makhenkesi Stofile and, through the DPSA, to Minister Geraldine Fraser-Moleketi, who in turn reported to President Thabo Mbeki. The IMT was also significant because it was the first initiative of its kind in South Africa.

President Thabo Mbeki authorised Premier Stofile to set up the IMT for the purpose of ‘dealing with maladministration and breakdowns in service delivery in the province’ (GCIS 2003). Unlike previous interventions, which only focused on problem analysis, the IMT was to develop turnaround plans for implementation.

The establishment of the IMT coincided with an anti-corruption study by the PSC, which recommended the creation of an anti-corruption unit within the Premier’s Office. The Anti-Corruption Unit, which was duly established in 2004, is meant to contribute to the fight against corruption by developing ‘an updated database on all cases of corruption, including their resolution’ (Balindlela 2005/06). It is also meant to give effect to the Public Service Anti-Corruption Strategy, which sets out minimum anti-corruption requirements for all government departments, and is further responsible for co-ordinating all anti-corruption activities and initiatives in the provincial departments. At the time of interviewing Zola Tyikwe, Head of the Anti-Corruption Unit, the Unit was set to contract the Gobodo forensic firm to develop a fraud-risk profile for all 12 provincial departments (Tyikwe 2006). The provincial Auditor-General,

however, had already pronounced the Department of Social Development as 'high risk' (Ngqwala 2006).

The IMT's intervention in the provincial Department of Social Development came after a long history of departmental clean-ups. Twenty interventions prior to the IMT found similar types of problems (Interim Management Team 2003).

Joint Anti-Corruption Task Team

Propping up the IMT by way of prosecuting uncovered cases of fraud and corruption was the Joint Anti-Corruption Task Team (JACTT). This comprised the SAPS, the provincial Auditor-General, the DSO and the SIU. Different structures were pulled together under one roof for the first time. All personnel were remunerated by their respective institutions. Overall leadership of the JACTT, including financial matters, was vested in the DSO (Vabaza 2006).

JACTT was a highly effective mobilisation of disparate law enforcement agencies, and outlived its anticipated initial six-month lifespan. As a task team, however, JACTT was by definition not meant to last indefinitely. This fact seems to have been overlooked and its successes engendered the ambition to take on more cases. However, the more JACTT exceeded its shelf life, the more it seemed to lose its flavour. This primarily manifested internally, among its personnel, as the disparate elements within the structure began to assert their original identities. SAPS personnel would normally be promoted after serving for a certain period but working in JACTT did not accommodate this peculiarity, which was a huge disincentive (Vabaza 2006). Working in JACTT provided no prospects of additional financial rewards. Uncertainty about the future was another nail in the JACTT coffin. By February 2006, JACTT's staff complement had decreased sharply – from 87 to 22. JACTT's eventual disbanding in April 2006, nearly three years after its inception, was therefore inevitable.

Notwithstanding its ultimate demise, JACTT provided concrete proof that law enforcement agencies can work together successfully under one roof and for extended periods. Even more remarkable was the fact that 'there were no criminal charges or disciplinary enquiries brought against any of [JACTT] members' (Vabaza 2006). This is unheard of, especially in agencies like the SAPS and the NPA.

The provincial DSD and SASSA Regional Office

The provincial DSD began investigations into social grant fraud in 2001, before the social security function was transferred to SASSA. To date⁴² 22 000 cases have been dealt with, many of which were cases of negligence in which grant recipients fail to notify the department of their change in employment status. They not really constitute an offence in terms of the law (Stassen 2006). Only 30 per cent of the cases dealt with were cases of misrepresentation in which people intentionally applied for grants to which they were not entitled.

Because the investigations and the Compliance Unit have been moved to the SASSA, the provincial DSD has no investigative clout. It refers all matters relating to grant investigations to the SASSA regional manager. The Eastern Cape has 24 SASSA district offices and about 58 service offices where people can apply for grants, among other things (Stassen 2006). But only the regional head office can undertake investigations and develop fraud prevention strategies. The internal audit function for all the district offices is also located at the head office.

As of April 2006 1 400 personnel from the Social Security programme had been transferred to the SASSA regional office. More than 600 contract workers were also hired (Stassen 2006). Of the 57 critical posts, 52 have been filled, even though the recruitment of critical staff is said to be a time-consuming challenge (Parliament of the Republic of South Africa 2006).

In terms of social grant fraud prevention, SASSA's regional office has put in place certain control measures such as the introduction of pre-numbered application forms, and the Management Information System (MIS), which replaces the manual records management process with an electronic system (Parliament of the Republic of South Africa 2006). It also functions as a tracking tool that stalls the system whenever a document is missing. The creation of a central registry of files also means that the regional head office is able to locate application files within two or three minutes, compared with the two-month period that was characteristic of the pre-SASSA era (Stassen 2006). The effect is a reduction in potential litigation costs.

The SASSA regional office is also working closely with the education and home affairs departments to ensure, among other things, that children listed for the child support grant are indeed in existence, and that birth certificates are not fraudulent. However, syndicates are still found in collusion with of-

officials in the Department of Health, who sell TB cards for use in fraudulent grant applications (Stassen 2006). The SASSA regional office has reportedly identified 3 109 government employees illegally receiving social grants (Stassen 2006). These cases have been referred to the SAPS for criminal prosecution. The Scorpions, meanwhile, are dealing with a case involving 175 municipal employees who were also fingered for fraudulent receipt of grants.

The SASSA regional office has come a long way since it became operational in April 2006. It now has departments for corporate services, finance and human resources, which did not exist initially (Stassen 2006). There are also now managers in financial accounting and supply chain management. However, there is clearly still a lot to be done. While more staff members have been sourced, shortage of personnel is still a formidable challenge. At the time of the research, the Compliance Unit, which, as we have seen, is the hub of anti-fraud and anti-corruption in SASSA, had only four permanent appointees. Two of these, plus one contract worker, are tasked with risk management control for all the 24 districts. This involves scrutinising reports of the auditors general, Gobodo forensic reports, and all the exception reports, including ACB payments, to identify risk areas.

Of the 13 recently employed contract workers, only one had an investigative background (Stassen 2006). Yet the unit currently has a case involving 14 252 civil servant pensioners who are accessing social grants (Stassen 2006), which is more than half the number the SIU identified in its preliminary analysis. (See Table 3). Of these cases, 1 500 originate in the Department of Education and 900 are from the Department of Health (Stassen 2006). Only 15 cases have been finalised in court in the past two years (Stassen 2006), making it rather puzzling that the Eastern Cape claims to be, 'far ahead of the country in terms of investigations pertaining to Social Development and SASSA' (Stassen, 2006). Since October 2005 some 1 301 cases were reportedly handed over to the SIU and nearly half a million rand recovered from the various departments (Stassen 2006).

Critique

Without diminishing the inroads SASSA has made in dealing with social grant fraud in the Eastern Cape, it is fair to say that there is still a lot of room for improvement. For example, the Compliance Unit, which is located at the heart

of the fraud and corruption battleground, is, despite assertions to the contrary, extremely stretched and under-capacitated. Tasking only three people with all the provincial investigations borders on the absurd. Any improvements hinge on acknowledging and tackling the acute capacity issue within the unit.

Previous sections of this report have already reflected on the litigation challenges facing the DSD. The bulk of these stemmed from the process of cleansing the SOCPEN database. The then-Acting Head of the DSD, Denver Webb, notes that people came forward 'claiming that they were taken off the system and they should have been on the system ... now we've had to pay legal costs to fight that'. The key question, however, is, to rephrase Webb, whether the savings accrued from cleaning up the system justifies the costs incurred in litigations. At the time of the research Webb did not have any assurance on this because he 'does not have the figures'. Therefore it could well be that the costs of litigation far outweighed the savings accrued from cleansing the system.

It also remains unclear who, between the department and SASSA, is responsible for litigation cases that were filed before and after 1 April 2006, when the SASSA officially became operational. For the Agency's legal services unit, this is a very stern challenge (Parliament of the Republic of South Africa 2006).

However, it is encouraging to note that the provincial department does acknowledge the severity of its problems. For instance the DSD, in its 2003/04 Performance Brief, reports that:

- It lacks effective internal control mechanisms
- Expenditure on litigation against the department has increased from R5 million in 2002/03 to R20 million in 2003/04
- The department has a 51 per cent vacancy rate (Black Sash 2005/06)

THE ROLE OF THE SIU

Although the Eastern Cape is a compelling case study for anti-corruption interventions, for reasons highlighted earlier it is unfortunately not a suitable example for reflecting on the SIU's national anti-corruption achievements. To start with, other anti-corruption initiatives already taking place in the province, such as the DSO, SAPS and JACTT investigations, reportedly led to a joint decision by the DSD and the SIU to move on to other provinces where there

was a shortage of investigative capacity (SIU 2007). SIU interventions in the province therefore only began later, on 1 March 2005 (SIU 2006), which was actually prior to the publication of the Presidential Proclamation on 6 April 2005. Our research into the DSD anti-corruption campaign began roughly 18 months later when SIU investigations were still building momentum.

A caveat is thus required: At this stage any conclusions that may be drawn regarding the role of the SIU vis-à-vis social grant fraud investigations in the Eastern Cape province are at best premature. That, however, does not absolve the provincial SIU of the onus of proving its relevance, particularly given the complaint that the prevalence of corruption in the province tends to be blown out of proportion (Wolvaard 2006), for reasons that are not exactly altruistic. Unfortunately this is not the perspective of one disenchanted individual. Webb notes how '[the] Eastern Cape has got this unfortunate habit of shooting itself in the foot ... [W]hen we uncover fraud and corruption it is reported as if [it] has increased when in fact what ... is increasing is the detection and action against it' (Webb 2006).

The challenge for the SIU is how to integrate and reconcile these perceptions with the apparent self-generated headline-grabbing corruption statistics. If the Presidential Proclamation is a more reliable indicator of the extent of the problem, then the stipulated period of investigation – 1 April 1996 to 1 April 2005 – may need to be revisited. Surely the periods before and after also deserve thorough scrutiny. This is, of course, beyond the SIU's statutory powers but is an issue for the President and the Minister of Social Development to revisit.

Co-operation and conflict

The working relationship between the SAPS and the SIU in the province is a murky area. This is despite reported efforts on the part of the SIU to cultivate a good working relationship with the police, including consultations at the highest level. Visagie concedes, albeit conservatively, that in some instances there are difficulties because the SIU is placing certain demands on the police and on their time (Visagie 2006). Personality differences, Visagie continues, also factor into the equation. Stassen, on the other hand, in his capacity as chairperson of the steering committee that comprises the SASSA, the SAPS Commercial Crimes Unit, the DSO, and the SIU, among others, is more explicit:

There is not a good, and I will say this on record ... there is not a very good relationship between the SAPS and the SIU (Stassen 2006).

At the time of initial research, the Head of the SAPS Commercial Crimes Unit, Piet Wolvaard, expressed concerns about the SIU's deployment to investigate grants, which are highlighted here⁴³ along with counter-arguments, where applicable, from the SIU.

- The state created a 'very expensive' middleman between the Department and the police. However, it is unclear how Wolvaard relates the R2 million the SIU charges per month to the R80 million previously paid to a conglomerate of private forensic firms for six months work, i.e. averaging R13 million per month
- The department is clearly prepared to invest its financial resources, but not in the proper structures. In funding the SIU to prosecute corruption cases it bypassed the legitimate structure – the Special Commercial Crimes Court (SCCC). The SIU argues that 'the SCCC clearly conveyed that they would not accept social grant cases as the amounts involved were not significant. In any event, it would not have been possible for the Department to create a dedicated investigative capacity within the SAPS or the SCCC' (SIU 2007)
- Criminal prosecution, the policeman's key expertise, is now also an increasingly prevalent component in the work of the SIU. The latter vigorously denies extensive involvement in criminal matters because it is aware of the impropriety of doing so. They know that 'legislation does not allow them to do what they do'
- Social grant fraud cases are 'too straightforward', and not sophisticated enough to warrant deployment of 'special investigations'
- At the time of the interview the SIU did not have the personnel to deal with the new work structures it was assuming. At times this meant poaching experienced staff from other agencies, particularly SAPS.
- The conduct of prosecutions is unjust. Only those who plead guilty are pursued while those who do not plead guilty are let off the hook. The SIU argues that this assertion 'has absolutely no foundation and is untrue. Irrespective of whether a person pleads guilty or not guilty, they are prosecuted if there is a *prima facie* case ... When Wolvaard made these allegations, the prosecution of cases had not even commenced in his province.

In fact, the DPP in the province has given the go-ahead for prosecutions to proceed on the basis explained⁴⁴

- Concern with statistics at all costs seems to take precedence over strategy and proper planning. Although not a direct counter to this assertion, the SIU maintains that while the SAPS is concerned with statistics, the SIU concentrates on money saved⁴⁵

5 Recommendations

The recommendations listed below are addressed primarily to the main players in the social grant anti-corruption efforts in the DSD, including those in the Eastern Cape, the SIU and other law enforcement agents, including the NPA, DSO and SAPS. More broadly, the recommendations highlight broader areas of concern which government may review, as well as those that civil society may consider to be areas requiring advocacy.

Stemming administrative weaknesses

The social grant fraud and corruption problem is not only solved through arresting, prosecuting and recovering money from the offenders. Strengthening internal control mechanisms, such as increasing the security of the SOCPEN database, is equally, if not more, critical. In this regard the recently unveiled plan to overhaul the SOCPEN system is noteworthy. But stemming the grant fraud problem also hinges on the administrative capacity of related departments such as health and home affairs. Fake documents, are often obtained from these departments, such as ‘doctors taking bribes to falsely certify that someone had a disability in order to be eligible for a disability grant’ (Ancer 2005). Anti-corruption efforts within the DSD are inadequate if administrative weaknesses in

these other departments are not sufficiently addressed. There needs to be an interface between the databases of the different departments to ensure improved detection of anomalies – a point that the SIU also highlights.

Internal reflection on anti-corruption efforts

It is also important for the DSD to reflect on and take stock of the anti-corruption initiatives undertaken over the last few years. Of particular value would be a fresh benchmarking exercise, which is already being considered, to provide an updated estimate of the financial costs of fraud and corruption to the department. This is necessary if the department is to plausibly justify the by no means insignificant amounts of money spent on fraud-curbing initiatives. These costs relate to compensating the SIU for its services and the establishment and operation of the SASSA and the Inspectorate, among other things. A new benchmarking exercise would ensure that the costs associated with curbing fraud in the social assistance system do not outweigh the costs of the fraud itself. This is a potential unintended consequence of the department's intensive anti-corruption efforts.

Identifying root causes

Essential to the solution of a problem is identifying the root causes. This is common knowledge, which one would expect the DSD to apply. However the devastating impacts of social grant fraud and corruption seem to have understandably given the DSD little time to interrogate the causes. Of the almost R1,5 billion lost annually, it is not known exactly how much is due to fraud and corruption, and how much is due to poor administration by the DSD. There is sometimes a fine line between the two. Our research indicates that the monetary loss may be more or less an even combination of the two variables. Fraud and corruption thrive in the context of weaknesses within the social grant administration system. It would therefore seem that problems of poor administration warrant the same vigour that the DSD has shown in tackling fraud and corruption. Indeed, it requires even-handedness in publicity as well.

Understanding poverty and unemployment

It is out of the scope of this paper to advocate for a Basic Income Grant for all citizens. However, it must be understood that the targeted grants have not provided a safety net for the structurally unemployed who are within working age

and not disabled. Furthermore, as unemployment has increased to a current 40 per cent, it may be considered that the cause is government's macro-economic policies. It may thus be reasonably conjectured that many of the people illegally accessing grants are among the poorest of the poor, those who are not targeted by the system, as also acknowledged by Jehoma. What appears to be required is a more holistic understanding about grants, poverty, unemployment and fraud. Within this context, the definition of poverty and poverty lines should be devised as a priority if the grants are aimed at assisting with its alleviation.

Resourcing and using law enforcement agencies in combating corruption

The DSD has made attempts to involve law enforcement agencies, including SAPS, DSO, NPA and the SIU, in weeding out corruption and fraud in the grant system. The main vehicle for anti-corruption efforts has, however, rested predominantly with the SIU, which has since grown in size and in the scope of its work, and no doubt also in the efficacy of its actions. However, this potentially has repercussions for the functioning of other law enforcement agencies. The substantial resourcing of the SIU in comparison with those agencies may have the effect of de-capacitating the agencies in some instances. Unless found to be severely compromising to an anti-corruption effort and lacking in mandate, law enforcement agencies should be assisted in addressing their shortfalls so that they may contribute adequately to their assigned tasks. This will also go some way to alleviating tensions between agencies around issues of cross-agency recruitment, and their respective profiles and image. The mandate of the SIU also needs to be re-examined if criminal prosecutions are to become a focal area of work. The value and use of tribunal courts, in particular, need to be reassessed. Managing the growth of the SIU needs to be done in a more collective spirit of enabling all law enforcement agents to maximise anti-corruption efforts. Finally, the SIU was open to and encouraged efforts to critically examine its 'model' or approach to dealing with corruption cases. Researchers and relevant government bodies should follow this up. Furthermore, a similar approach should be used with other law enforcement agencies to gauge and understand better how the different models can work with one another to produce optimum results.

Examining the role and independence of the Inspectorate for Social Security

Issues of the duplication of functions between the Inspectorate for Social Security and the SASSA are to be addressed by the DSD and in wider governmental discussions. Although not mentioned above because the unit is not yet fully operationalised, it is a recommendation that the Inspectorate should have external scrutiny to avoid unpalatable intrusion into the lives of citizens when it is investigating grants cases. The independence of the Inspectorate appears to be compromised as an oversight body if the Minister of Social Development heads it. A potential conflict of interest also needs to be seriously considered. Finally, should the Inspectorate be deemed to have an important role in social grant management, then more effort should be taken to set it up and institutionalise its functioning, which has been absent thus far.

Examining the functioning of SASSA

The effort to learn from successful international models of grant administration and the acceptance and implementation of recommendations by the Taylor Commission to centralise grant administration are to be applauded. However, there needs to be a serious scrutiny of the costs of setting up the SASSA vis-à-vis its added benefit. Provincial offices of SASSA are also being set up to support the national office and the attempt appears to be creating additional layers of bureaucracy. This may ultimately impede rather than expedite administration of grants and confuse the grant collectors. There also needs to be consideration given to whether former civil servant grant fraudsters from the DSD are to become employees in the new SASSA, although this may have happened after the time of writing this paper. There needs to be more education to enable the poor rural public to see the difference between SASSA and the DSD. Finally, more intensive training of SASSA staff, as well as increasing the number of permanent employees, are key to the proper functioning of the Agency.

Equal treatment of fraudsters

This recommendation is in support of calls from other civil society organisations for all fraudsters to be dealt with even-handedly. Due regard is given to the peculiarity of the situation in which many thousands were simultaneously found guilty of what is regarded as petty fraud. This also extends to an under-

standing from the DSD, which did not wish to see the public service debilitated by the sacking of thousands of officials. However, it should be maintained that there is a higher purpose and longer-term vision that must not be sacrificed for expediency in quick results and rewards. Along with the Parliamentary Travelgate affair,⁴⁶ the manner in which offenders were treated sets a dangerous precedent that threatens to subvert the rule of law and democratic process. Acting on this may also ultimately be the best instrument in the prevention of fraud in the long run.

Anti-corruption efforts in sister departments

Administrative weaknesses in sister departments such as health and home affairs also impinge on the DSD's ability to minimise the social grant fraud problem. It therefore makes immense sense to institute similar anti-corruption drives within these departments.

6 Postscript

Since the research was undertaken there have been a few significant activities and events in the administration of grants and the anti-corruption efforts that are worth noting:

NOVEMBER 2006: PERVERSE INCENTIVES STUDY

A report on Incentive Structures of Social Assistance Grants in South Africa commissioned by the DSD provides preliminary findings that dispel assertions that the social assistance programme encourages teenage pregnancies, that children are fostered for the purpose of accessing grants, and that people with disabilities harm themselves in order to continue accessing social grants. The study, involving both quantitative and qualitative work, confirmed, for instance, the increase in uptake and the feminisation of disability grant beneficiaries. Minister Skweyiya stated in a media briefing on 15 February 2007, ‘We should now focus on the benefits of social assistance and comprehensive social security programmes for the long-term growth and stability of our society’ (Skweyiya 2007).

MARCH 2007: THE SOCIAL SECURITY AGENCY (SASSA)

SASSA reported at the Social Development Portfolio Committee Meeting that during the 2006/07 financial year, 80 per cent of its resources were spent on establishing the agency, on operational issues and integration of the social assistance administration and payment. With respect to the anti-fraud efforts, 15 178 public servants involved in fraudulent activities had been identified, of which 2 258 had been convicted, and acknowledgments of debt had been signed and money was being recovered. In addition, 86 000 indemnity applications had been processed and 71 038 applicants had been granted indemnity while 8 693 had been denied it. Six thousand grant administration staff were transferred from the national DSD and nine provincial departments to SASSA, while 300 new staff had been recruited. Most of the executive and senior management positions had been filled (DSD 2007/08).

MARCH 2007: MINISTER ZOLA SKWEYIYA PRESENTS THE BUDGET SPEECH

The DSD's budget, excluding transfers to SASSA and the National Development Agency (NDA), grows at an average rate of 27,5 per cent per annum. The number of beneficiaries of social assistance has increased from about 3,5 million in 1999 to 12 million to date. Over eight million children now have access to social assistance. These include 7,8 million who benefit from the child support grant, close on 395 000 who benefit from foster care grants and over 95 000 who benefit from the care dependency grant. More than 2,1 million elderly people receive the old-age grant and 1,4 million people receive the disability grant. Expenditure on social security increased from R36,9 billion in 2003/04, which was 2,9 per cent of GDP, to a projected R73 billion in 2009/10, constituting 3,1 per cent of GDP. The old age, disability and care dependency grants will increase by R50 to R870, the foster care grant will increase to R620 and the child support grant to R200 in 2007/08 (Skweyiya 2007).

OCTOBER 2007: ANTI-FRAUD CAMPAIGN REPORTS SAVINGS FROM SIU EFFORTS

The DSD reported to the *Business Day* that it had saved the state R7,7 billion since commissioning the SIU in its antifraud campaign more than two years ago (Johwa 2007). Minister Skweyiya said that to date R63 million had been recovered from unentitled beneficiaries, mainly 21 600 government employees. More than 5 600 people were prosecuted while another 140 000 were recommended for removal from the system. As a result of the investigation, which also involves SASSA, the DSD states that it has saved R213 million in the past financial year and much more in future disbursements. More than 120 000 beneficiaries had voluntarily stopped making claims, arguably because they feared prosecution. The SIU reported that one of the largest syndicates uncovered so far was a group that had been siphoning off R700 000 in grants per month.

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Notes

- 1 South Africa has one of the highest gini coefficients – the statistical measure of inequality of income or wealth distribution – in the world, signifying a highly unequal society. The 2005 United Nations *Human Development Report for Southern Africa* stated that the gini coefficient for SA was 72.2 (with 100 indicating the highest inequality and one signifying an equal society). See The Star Online, 9 September 2005, *Africa's elite enriched at the expense of the poor*. Available at <http://www.thestar.co.za/index.php?fSectionId=233&fArticleId=2869530>.
- 2 Findings of this monograph are based on research that was conducted from September–November 2006. Progress of redress in the delivery of social assistance based on the anti-corruption strategies instituted by the Department of Social Development after the research period stated is thus not recorded here. Also omitted is discussion on critical policy changes highlighted by President Thabo Mbeki in his State of the Nation address at the opening of Parliament on 9 February 2007.
- 3 Corruption refers to the abuse of entrusted power for private benefit, and continues to plague development in South Africa. Largely a crime of 'greed', corruption is not the single biggest problem facing the country but rather a cross-cutting issue that negatively affects economic growth, poverty alleviation and efforts to entrench a culture of democracy.
- 4 The homeland system consisted of black 'self-governing' territories, which the apartheid government created to restrict the movement of Black Africans. These territories, categorised

- in terms of their various tribal and linguistic antecedents, were Transkei, Bophuthatswana, Venda, and Ciskei.
- 5 This was a background paper compiled for the South African National Non-Governmental Organisation (SANGOCO) and the South African Human Rights Commission for Gender Equality.
 - 6 Social security is the broadest form of safety net. Social assistance, which takes the form of social grants falls within this ambit.
 - 7 'In *Government of Republic of South Africa v Irene Grootboom and Others* (2000)(11) BCLR 1169 (CC), the Constitutional Court held that the "right to access" can be interpreted more broadly than "the right to social assistance". Following the judgment and applying it to social security, one can infer that "access to" means more than just a "pure right to", and that the state will have to provide social security protection to everyone. It must achieve this by recognising the responsibilities of other actors in this regard and by enabling these actors to make the required provision' (SAHRC, 2003/06:55).
 - 8 Class action against the Eastern Cape DSD is another exception that will be explored in the case study of the Eastern Cape.
 - 9 The Taylor Committee, headed by Vivienne Taylor, was tasked in 2000 to understand the nature of the problems experienced by the DSD in social grant delivery. It was also required to make recommendations based on its findings and analysis of peculiarities and trends.
 - 10 For a background understanding of the concept see SAHRC 2000/01:11–12.
 - 11 The National Development Agency has been mired in allegations of corruption since its inception. See the newsletter, *Umqol'uphandle*, for more information. Available at www.ipocafrika.org.
 - 12 Vorster, J. Provided written feedback on a draft of this monograph.
 - 13 Also see <http://www.services.gov.za/en-za/warveteransgrant.htm>.
 - 14 The breakdown was limited due to non-availability of relevant data.
 - 15 The War Veterans' Grant is excluded as adequate information could not be found.
 - 16 This is explained in more detail in *Sunday Times*, 8 September 2002, Inaccessible social security system penalizes the poor.
 - 17 A potential population of 47 million x R100 x 12 months = R56 400 million.
 - 18 The National Treasury initially questioned the credibility of the monetary loss because it did not believe it was possible to lose money, on such a large scale, from petty corruption. There has always been a degree of tension between the DSD, which would like more grants to alleviate poverty, and the National Treasury, which would like to slow the rapid growth in grant spending (see *Business Day*, 30 January 2007).

- 19 SOCPEN is the electronic database that details social assistance (social grant) beneficiaries. The DSD is responsible for maintaining it. PERSAL, on the other hand is the electronic database that contains the employment details of public servants. Because they are in employment, public servants generally do not qualify for social grants. There are, of course, exceptions, such as lowly-paid employees such as gardeners and cleaners.
- 20 At the time of writing the SIU was dealing with public servant fraud.
- 21 Feedback by the Special Investigating Unit.
- 22 Ibid.
- 23 Ibid.
- 24 Ibid.
- 25 Ibid.
- 26 Ibid.
- 27 Ibid.
- 28 Ibid.
- 29 Ibid.
- 30 Ibid.
- 31 According to the SIU Act civil prosecutions dealt with by the SIU are to go through tribunal courts. In the DSD investigations, the cases were all criminal, and there was no use of the tribunal courts.
- 32 Feedback by the Special Investigating Unit.
- 33 Ibid.
- 34 Ibid.
- 35 See [www. Centrelink.gov.au](http://www.Centrelink.gov.au).
- 36 Ibid.
- 37 Ibid.
- 38 At the time of writing.
- 39 In total four homelands existed in the segregated South Africa. The other two were-Bophuthatswana and Venda.
- 40 A disclaimer is usually issued when a department cannot furnish the AG with the relevant audit documents for the year under review. It is also given when documents presented are of such poor quality that no reasonable estimation of expenditure can be adequately made.
- 41 This was the situation as at 30 September 2006.
- 42 At the time of writing, 30 September 2006.

- 43 Wolvaard indicated in the interview of 18 September 2006 that his views do not necessarily represent those of the SAPS in the Eastern Cape or any other individual. Wolvaard had filed a letter of complaint against the way in which the social grant fraud issue was being tackled at the time and the outcome of his case was pending at the time of writing. In a subsequent meeting with the SIU on 26 May 2007 the authors were informed that Wolvaard had dropped the complaints raised and had been offered another position within law enforcement. However, as he was a senior member of SAPS Eastern Cape at that time, the authors feel that it is imperative to reflect his concerns at the time so that if these issues present themselves they might be addressed by all those concerned.
- 44 Feedback by the Special Investigating Unit.
- 45 Ibid.
- 46 This scandal erupted when a number of Members of Parliament (MPs) were found abusing their travel vouchers for personal gain. The government's handling of the MPs and the corruption involved has also been the source of much public contention.