



**KwaZulu Natal Submission to the
Parliamentary Ad Hoc Committee on
Service Delivery**

19 April 2010

Ethekwini Metro Municipality

Presenters:

EVASHNEE NAIDU – KZN PROVINCIAL DIRECTOR

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INTRODUCTION

Black Sash would like to take this opportunity to thank the Ad Hoc Committee on Coordinated Oversight on Service Delivery for taking the initiative to hear our submission. This approach is of course in keeping with *Doctors for Life International v the Speaker of the National Assembly* [2006] in which the Constitutional Court found that public participation is a pivotal part of our constitutional democracy.

Honorable Chairperson Lechesa Tsenoli and members of the Ad Hoc Committee on Coordinated Oversight on Service Delivery – as you already have received Black Sash submissions from our National Advocacy Programme Office in Parliament a few days ago, and provincial submissions (Eastern Cape and Western Cape), the focus of this Submission will be through a specific lens – encompassing a few aspects of our work here in KZN.

As such, we hope that the recommendations and issues raised will be unique and contribute to a deeper understanding of the very important issues the Committee will be considering and acting upon.

Our submission in Parliament in Cape Town reflected on a broader national perspective, especially highlighting the challenges of service delivery in crisis situations. The Eastern Cape Submission focused on the huge challenges of service delivery at a local government level, irregular expenditure and poor community participation. Our Western Cape Submission would have revealed the successes and importance of community monitoring and advocacy to promote service delivery of the South African Social Security Agency (SASSA).

As a national organization based in 4 provinces and located within 7 municipalities and, due to our direct and daily engagement with the community, we are able to base our submission on the lived realities of our clients and their challenges to accessing service delivery in South Africa.

We noted with great concern the escalating service delivery strikes occurring all over South Africa.

We are deeply heartened by the formation of this Committee and the public hearings that will be held all over the country. It is imperative that we must collectively find ways to convince angry residents in our country that violent protest are not sustainable, constructive or able to find lasting solutions. This context makes the work and deliberations of this Committee all the more important.

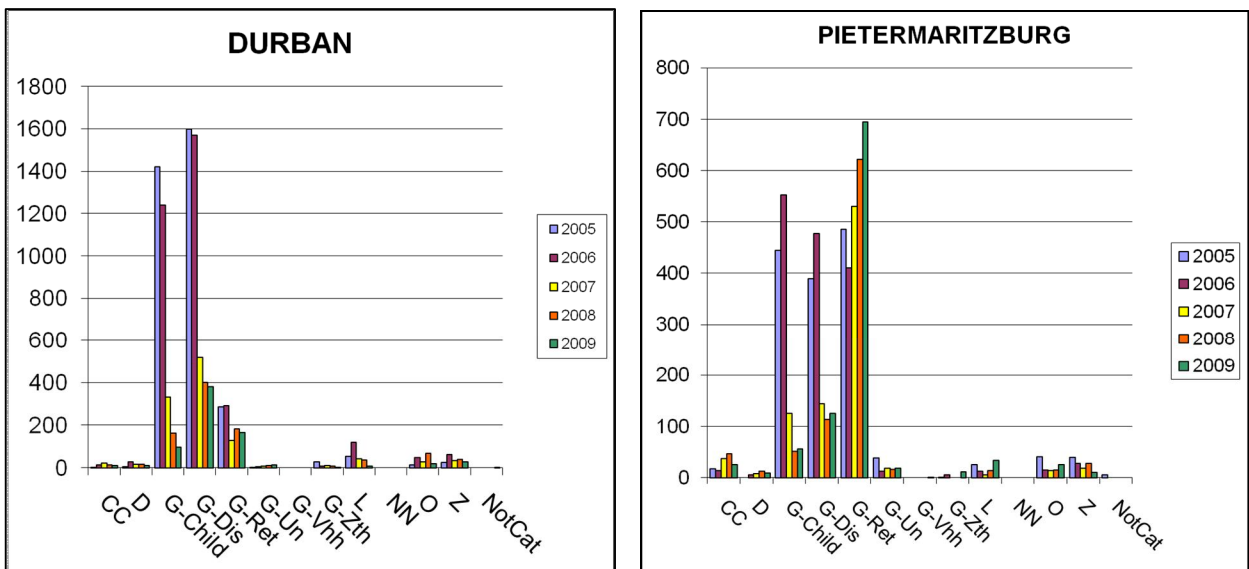
The scope and range of Black Sash work in KZN

Honorable Chairperson, as mentioned before, some of the work we do includes direct engagement with persons requiring paralegal advice. During the period 2003-2007, analysis of our carefully documented database revealed the extent to which thousands of poor people, unable to afford legal assistance, receive free advice from our highly experienced paralegals.

The table and graph below demonstrates the kinds of cases we have seen over a 5-year period ending 2007.

During the 2003-7 period, the Black Sash staff attended to 58 544 cases. Of this, the Pietermaritzburg – and Durban Regional offices attended to 21 507 cases. In the case of the Durban office, the bulk of the cases (in order of magnitude) were on disability grants, child support grants and state old age pensions (11 675 cases – 91% of the cases).

The Pietermaritzburg Office also mainly dealt with state old age pensions, retirement and disability grants (7417 cases - 85% of the cases). Other categories include debt, consumer contracts, and labour issues.



Most of this detailed and meticulous work was done by our paralegals present here today – Nelly Xaba, Njabulo Khumalo, Nelisiwe Hlope and Jerome Bele who through the years have assisted thousands of clients.

Our findings and recommendations are therefore rooted in deep experience in working with clients who visit our offices directly.

This submission substantively deals with:

- the appeals backlog in the arena of social assistance – especially in the area of disability;
- our engagements and experiences with the Department of Social Development in this regard – insights in public-CBO/NGO partnership relations in promoting efficient service delivery;
- Case study of successes and challenges;
- The need for a Chronic illness grant; and
- Summary of recommendations

Social Assistance - Appeals backlogs

We have for a long time worked with government policies and legislation towards realizing a provision of a comprehensive social protection system for those with disabilities. Currently, the provisions for people with disabilities are the disability grant, grant in aid and the care dependency grant; and a chronic illness grant for those with a chronic illness, particularly those with HIV/ AIDS.

Serious difficulties with backlogs

This area of the social assistance arena is experiencing a wide range of difficulties. In particular, we note that disability cases has risen to 50% of the Black Sash Durban Regional Office's case load. We are attempting to work with a range of strategies to tackle them appropriately.

As of 2008, all Black Sash regional offices reported on their fruitless attempts to resolve the cases of clients who had waited unacceptable periods for appeal hearings dates. We have realised that these backlogs have continued to grow and in March 2009 stood at approximately 60 000 cases nationally. Earlier in 2009 it was estimated by the Department of Social Development (DoSD) that with the resources allocated in the 2008/2009 budget, it would take 5 years to clear the backlog.

Advocacy initiatives within the Black Sash emanating from these experiences are, amongst other, through task teams. The Black Sash Disability Task Team has worked with the Provincial and National Departments of Social Development (DoSD). At the outset, we would not have been able to do this monitoring and advocacy work, had it not been for the bold decision for SASSA leadership to give us access to service points. It is imperative that other Agencies and government departments do similar arrangements, within a responsible relationship of accountability and mutual respect.

Thus far, we have the following to share with this Committee:

- *6 March 2009* - the **Disability task team had a full day meeting with a large government delegation from the National Department of Social Development**, including representatives of the Ministry, the Parliamentary Office, the Independent Tribunal for Social Assistance Appeals (referred to herein as the Appeals Tribunal or Tribunal), and SASSA, to discuss the serious problems in the appeals process.
- *2 April 2009* - We duly forwarded our observations, recommendations and questions in writing to the Minister.

In the letter of 2 April to the Minister, we:

- Reiterated our concern that the Appeals Tribunal operates without the necessary **Regulations** relating to the powers, procedures and processes of the Tribunal and requested a written commitment for a date by when the Regulations are to be finalised.
- Became aware of different approaches within the DSD around the consideration of **new information** by the Tribunal. We argue that the Appeals process should **only deal with information that SASSA itself used to pronounce on the matter, and should not consider new information received after the SASSA pronouncement.**
- We managed to **broker a formal agreement with the Tribunal to refer a monthly list of clients** to the Tribunal.
- ***At a provincial level***, our offices entered into a formal agreement with the KZN office of the Tribunal for a list of Black Sash clients to be attended to each month. The office sent two lists of sixty clients each on 13 February 2009 and 26 March 2009. **Despite our agreement, these clients were not allocated dates to appear before the Tribunal.**
- *23 April 2009* - the Black Sash communicated with DSD/ITSAA (KZN) about the to-be-confirmed dates of hearings. We were informed that **no hearing will be held until July 2009 as they are now 'strictly focusing on communication of outcomes of appeals'** – these are highly irregular decisions and a renegeing by the Tribunal on an agreement.
- We questioned the logic for delay regarding the above, as **Tribunal members are not part of the administration** responsible for communicating appeals decisions.
- Meetings with senior representatives were also fruitless and frustrating. Black Sash also met with a senior official within the Tribunal in August 2009 to discuss the procedures that the Tribunals use to administer appeals. Reasons provided

- for the delays include “a shortage of staff in the Tribunal Office and an absence of electronic systems”.
- The above senior official was provided with a list of all pending appeal matters for 2008/09 period. He “promised that he will check all these cases and give us feedback of each and every case and those that are still awaiting sitting and will try to fast track their files and set dates of the sittings.” However, the letters of demand for 100 of our clients could not be found, requiring our staff had to pull out all these files again and fax through the letters a 2nd time.
 - Even appeals for clients that were approved were not paid. District office appeals section supervisors informed that temporary grants will only be given as once-off payments and that persons receiving other grants will be paid these lump sums “as they are already in the system, but the process for those who are not on the system is not yet clear”.

Moreover, even though it appears that **decisions by the Tribunal are not considered to be final**, a quality control procedure is proposed – but to be applied after the Tribunal has met. Problematically, this may influence the decision of the Tribunal and further contribute to serious delays.

Evidence from the coalface – putting a face to a number

One of our paralegals, Ms Nelly Xaba, expressed her ongoing frustrations about the “agreement” as follows:

“The Department of Social Development is dragging their feet on giving out appeal hearing dates. The agreement was that we send the manager in the Durban Tribunal Office a list once a month. He will respond to our list and come back with appeal hearing dates. That’s not the case now as I have cases that were on the list from the end of May that still do not have appeal hearing dates. As of November 2008, I have sent about 226 cases to the manager.

Out of these, only 48 have been given appeal hearing dates and have appeared at the Tribunals, 6 have received outcomes of their hearing but have not received payments of their grants, and 172 are still waiting for the date of the sittings.”

Chairperson, what does Ms Xaba say in the meanwhile to these anxious and increasingly desperate and vulnerable fellow-citizens? They are victims of administrative bungling and persons within the system who have failed to make a definitive decision.

Though there are committed, decent and helpful public servants and service providers, we must identify where the critical weak link is in the chain of critical service delivery! Surely several of the Batho Pele principles have been violated here. Service Standards,

Access, Information, Openness and Transparency; Redress, despite protracted Consultation appear to have no meaning and weight to this important arena of service delivery.

Lessons from the limited appeals outcomes

In June 2009, the Black Sash received 9 appeal outcomes.

- 1 June 2009 - we received notice of outcome for nine appellants
- There were no rejections of the appeals
- 6 were awarded a permanent disability grant payable from the date of application;
- 3 were awarded a temporary disability grant of 12 months payable from date of the Appeal. The three temporary disability grant recipients were given the opportunity to re-apply after the expiry of the temporary grant with comprehensive and recent medical reports.

In a period of 5 months, despite this formal arrangement, only **9 out of 255 clients have appeared** at the Tribunal between 25th of November 2008 and 21st of April 2009.

From this it is clear that there is a gap and urgency in lobbying for the harmonized assessment tool as it proves that SASSA has its own way of understanding disability as opposed to the department of Social Development.' The following is one of these cases:

- Ms N. (ref. no. 08-0599) is HIV positive. She applied for a disability grant on the 25th of February 2008 but was rejected.
- On the 27th of February 2008 she lodged an appeal application to the office of the Minister of Social Development through SASSA offices.
- After a long wait for her appeal hearing date she decided to come to Black Sash offices where she reported the delay on the 16th of September 2008.
- The Black Sash referred her to her local SASSA office to query the delay.
- On the 22nd of September she called back to the Black Sash with the response from her local SASSA office confirming that her name was on the list sent to the SASSA regional office for appeal hearing dates. On the same date Black Sash wrote a letter to the Minister of Social Development requesting reasons for the delay in processing appeals.
- On the 02nd of December 2009, I sent a list to Mr. Mokoela of DSD who was coordinating urgent appeal hearing dates for KZN.
- On the 12th of January 2009 we received an email from DSD advising the client to appear before the Tribunal on the 04th of February 2009. I phoned and advised client on the appeal procedure and the date of appearance.
- On the 01st of June 2009 I received a letter from the DSD advising on the outcome of the Tribunal. The Tribunal had established that the appellant is HIV POSITIVE and suffers from PULMONARY TURBERCULOSIS. The Tribunal

determined that as a result the appellant is functionally impaired and was awarded a PERMANENT DISABILITY GRANT.

This appeal took 15 months to finalise Chairperson. The hardships of our client and her family and dependants are untold – clearly the bureaucracy around these delays is completely unacceptable.

Rational for a Chronic Illness Grant

The abundant evidence provided around the bottlenecks experienced in social assistance with regards to assisting the disabled underscores the need to think of innovative ways not only to deal with the accumulating backlogs, but also to assist people currently excluded from the current grant regime, but clearly in need.

Recent initiatives around disability grant reform has been carefully monitored by the Black Sash. We are acutely conscious of the possible **implications of disability grant reform** for people who are chronically ill.

We are deeply concerned that many people with chronic illnesses will inevitably be excluded from income support by the proposed consistent application of a standardized disability tool (known as the Harmonised Assessment Tool, or HAT). This is a tool based on a definition of **disability linked to functionality**.

While we are apprehensive of the negative impact this will have on individuals and households. At the same time, we cannot support the current system which serves people's real needs only through the discretion of medical practitioners and officials.

On principle, we also do **not think it is appropriate for people who have chronic illnesses to depend on a temporary or permanent disability grant**, as it both misrepresents people's potential and works perversely against health affirming behaviour.

For example, most people can manage a chronic illness if they have access to medication and can maintain a healthy lifestyle. Ironically however, improved health results in the withdrawal of a disability grant and inevitably a return to ill health. If the only form of income support available to people with chronic illnesses is one associated with disability, our society is essentially encouraging those who are ill to become disabled too.

Since 2008, the Black Sash has been working to gather the support of civil society organizations for the introduction of a Chronic Illness Grant, a policy choice that had been under consideration by the Minister of Department of Social Development. We believe a grant targeting people who are vulnerable through chronic illness, will positively intervene to help break the poverty/ illness cycle, thereby allowing

beneficiaries to take up active places in society and removing pressure from our already over-extended health system and dependency on able-bodied members of a household.

Summary of recommendations

In summary then, Honourable Chairperson, the Black Sash recommends:

- Urgent regulations be drafted to ensure that the Appeals Tribunal operates within clear guidelines regarding their powers, procedures and processes to accelerate the outcomes of their work;
- An acceptable mechanism be developed to ensure that Department of Social Development cannot amend procedures, post-negotiation and written commitments, that will hinder and frustrate effective service delivery on this matter;
- Serious consideration for the tabling of a Chronic Illness Grant – as part of comprehensive social security system that would enable residents in South Africa to be adequately protected with income support , where needed;
- How the Social Assistance Amendment Bill can be retabled to address the concerns outlined above.

Finally, we would like to establish:

- what weight this Committee’s final report will carry?
- what status it will have after recommendations are accepted by the National Assembly?
- Whether regulations will likely be promulgated, and whether these will be based on existing legislation, or a new set of laws and amendments?

Thank you for this opportunity. For any queries or matters for further clarity or elucidation, feel free to contact:

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