

COMPARATIVE DEVELOPING WORLD EXPERIENCES

INCLUSION, AND TRANSFORMATION:
Social Protection for Persons with Disabilities in the SADC



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INTRODUCING A RETURN TO WORK FRAMEWORK FOR WORKERS SUFFERING FROM OCCUPATIONAL INJURIES/DISEASES: THE VALUE OF COMPARATIVE DEVELOPING WORLD EXPERIENCES

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RATIONALE FOR INTRODUCING RTW AND DM

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RATIONALE FOR INTRODUCING RTW AND DM



- Compelling key considerations:
 - Affected workers are human beings in need not merely of monetary benefits, but also –
 - Personal recovery, and
 - Integration in the labour market and society
- The ability to earn an income has a dramatic effect on –
 - Individual and household poverty, and effectively also on
 - A country's fiscal position

- Compelling key considerations (cont)
 - Being able to work has important inherent values:
 - Individual's sense of self-esteem and confidence
 - Minimum disruption to family and social life of affected workers
 - If properly designed, RTW and DM will contribute to the improvement of –
 - OHS standards and practices; and
 - Positive health outcomes

- There are, of course, also RTW and DM benefits for –
 - Employers
 - Retention of skilled worker
 - Productivity can be maintained
 - Cost reduction: Scheme contributions and sickness benefits
 - Government and social security institutions
 - Concrete involvement with workers and their families
 - Reliance on compensation payments is reduced - savings are achieved, which should be passed on to employers and employees

UNCRPD

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UNCRPD

2.



- International standards: Importance of the UN Disability Convention (Convention on the Rights of Persons with Disabilities (UNCRPD))
 - Adopted in 2006; entered into force in 2008
- Overall: high number of ratifications and signatory states, also in SADC – see the presentation on the UNCRPD and SADC instruments
- Multi-faceted rehabilitation: important RTW and DM elements
 - Early and multi-disciplinary assessment (UNCRPD art 26(1)(a); see also art 25)
 - Voluntary nature (UNCRPD art 26(1)(b))
 - Professional (occupational) rehabilitation
 - Job retention
 - Introduce RTW programmes
 - Vocational and technical training, guidance programmes and placement services

- Lead provision is Article 27
- **Article 27(1): Obligation to "safeguard and promote the realization of the right to work,**
 - *including for those who acquire a disability during the course of employment,*
 - *by taking appropriate steps, including through legislation."*

- **Right to work (UNCRPD art 27)**
 - No employment discrimination; reasonable accommodation (UNCRPD arts 27(1)(a) & 27(1)(i))
 - Just & favourable conditions of work (UNCRPD art 27(1)(b))
 - Access to training (UNCRPD art 27(1)(d))
 - Opportunities, assistance and job protection (UNCRPD art 27(1)(e))
 - Promote opportunities for self-employment (UNCRPD art 27(1)(f))
 - Promotion of vocational & professional rehabilitation, job retention, as well as RTW programmes (UNCRPD art 27(1)(k))

- Involvement of those affected in policy development (macro-level) and individual rehabilitation plans (micro-level) (UNCRPD art 4(3))
- Promoting individual autonomy and independence (UNCRPD arts 3(a), 19 & 26(1))
- Promoting societal inclusion and participation (UNCRPD arts 3(c) & 26(1)(b))
- Introducing appropriate training
 - Professionals & staff (UNCRPD arts 4(1)(i) & 26(2))
 - PWD (UNCRPD art 27(1)(d))

ISSA GUIDELINES ON RETURN TO WORK AND REINTEGRATION

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ISSA GUIDELINES ON RETURN TO WORK AND REINTEGRATION

3.



- Published in 2013
- "Through a broad-ranging international consultation process, the ISSA has identified successful good practice models which include policies, processes and procedures designed and implemented by social security institutions. These models are developed to identify approaches which will allow decision-makers in social security institutions to lead their own process and influence their jurisdictional environment." (ISSA Guidelines)"

- These guidelines are designed to:
 - Outline strategic options for social security institutions in order to achieve these outcomes;
 - Stimulate discussion around good practice return to work programmes for social security institutions;
 - Identify critical success design elements;
 - Offer practical implementation tools.

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COMPARATIVE DEVELOPING
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4.



- Motor Vehicle Accident Insurance (MVA) context: traffic accidents
- Legislative framework not sufficiently developed –
 - For example, lack of obligation on employers to participate and accommodate workers
- Also, absence of overarching policy framework and workplace-based policies and programmes
- Nevertheless: commendable achievements

• Namibia

- 2007 MVA Fund Act introduced rehabilitation as key deliverable of MVA Fund
 - Is now one of the Fund's three Strategic Focus Areas
- It is now possible to align medical expenses to rehabilitation efforts
- Focus on return either to work or independence
- Some significant successes
- Lack of (legal) obligation on employers to accommodate workers a challenge
- Social Security Commission: Comprehensive research undertaken for introducing RTW for occupationally injured and diseased workers

• Botswana

- Absence of legal framework for RTW and no employer obligation to accommodate workers
- Lack of –
 - Adequate medical specialists and rehabilitation centres
 - Public/employer awareness
- And yet, the Botswana MVA Fund –
 - Has established a Case Management Section
 - Is involved in Disability Management of severely injured claimants
 - Focuses on full rehabilitation aimed at independent living

• Botswana: aim of Case Management Section:

- Early intervention: immediate hospital follow-up and helping to draft Individual Rehabilitation Plan
- Supporting the claimants: medical treatment and rehabilitation
- Accessibility: assistive devices; house modifications; caregiver allowances
- Vocational rehabilitation:
 - Workplace assessment – modifications supported by Fund
 - Retraining support and job accommodation
- Loss of earnings benefit: if unable to work

• South Africa

- Existing incomplete RTW models – emphasis on work capacity assessment: rehabilitation and functional assessment
- Public domain: Current emphasis on compensation and *medical* rehabilitation
- Development of an enhanced policy and legal framework replacing limited legal provisioning, supported by dedicated institutional arrangements
- Now: three-pronged role of Compensation Fund foreseen
 - Compensation and rehabilitation – clinical, vocational, occupational
 - Provision of guidance on RTW to employers, etc. – including larger employers
 - Direct provision of RTW services in the event of small employers

- Some examples of limited rehabilitation facilities (e.g.: Zimbabwe)
- Legal frameworks already existing (Tanzania) or in draft form (Lesotho)
 - Relevant public scheme to provide rehabilitation (not an employer obligation)
 - Rehabilitation “benefits” include clinical, vocational and social rehabilitation
 - Assessments and rehabilitation plans a core element

- Most advanced developing world RTW system?
- Introduced in 2005, informed by comparative template; gradual roll-out
- Limited legal basis (ESSA, 1969) and informed by jurisprudence on, e.g., a right to employment
- Well-developed case management system
 - Individualist approach
 - Workplace modification
 - Professional training: Canada-based Protocol

- Enhanced employee protection needed
- Achievements:
 - Numerous clients served; high level of satisfaction
 - Tax incentives for employers
 - Multi-purpose and inter-disciplinary state-of-the art rehabilitation centre (2014)
- Evaluation:
 - Broad compliance with ILO Convention, UNCRPD and ISSA instruments
 - Presence of a “continuum”: from prevention, care, rehabilitation and a smooth transition back to work
 - Decentralisation foreseen: employer responsibility

SOME REFLECTIONS AND CONCLUSIONS

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**SOME REFLECTIONS AND
CONCLUSIONS**

5.



- **(1) The importance of a sufficiently comprehensive underlying legal and policy basis**
 - Legal rights and obligations are and in fact have to be created – indicating the role and responsibilities, rights and duties of different parties: clarity is required
 - Who are these parties/stakeholders? – affected employees, the employer, involved professionals, the social security agency
 - The legal framework provides a mandate, in particular to government and social security institutions to act, implement and enforce
 - It also provides benchmark(s), against which performance, progress and achievements can be monitored

- **(2) Protection of the affected employees**
 - Required participation in RTW and DM needs to be supported by appropriate protective measures
 - Prohibition of discrimination as a result of the occupational injury/disease
 - Adjustment of working conditions
 - Preserve employee's right to return to work (i.e. keep position open) pending participation in the RTW and DM processes
 - Strengthen dismissal protection

- **(3) Incentives invariably require a legal basis and mandate**
 - Rationale of incentives –
 - To encourage and reward participation in RTW and DM processes, but also
 - To discourage and, where relevant, impose sanctions in the event of refusal or failure to participate
 - Incentives could –
 - Focus on either/both the employer and the affected workers, and
 - Be of either a negative or positive nature
 - Examples of incentives
 - Rebates, levies on non-participating employers, job-seeker allowances

- **(4) The role of three parties/stakeholders should be highlighted**
 - **4.1 Employer**
 - Involvement of employer is crucial
 - The workplace is the best place for (eventual) rehabilitation and integration, and where monitoring has to occur
 - The employer, who has to keep the employee's position open, has to be familiar and involved with the individualised rehabilitation plan and has to take needed measures to accommodate the affected employee
 - Larger employers are often required to take direct responsibility for the RTW and DM of affected workers

- **(4) The role of three parties/stakeholders should be highlighted**
 - **4.2 Trade union/other representative institutions**
 - Their task is to represent and protect the interests of employees who are their members
 - An uninformed and uninvolved union could obstruct implementation of RTW and DM
 - Unions and their members know the workplace context and could make meaningful contributions to rehabilitation plans and the adjustment of working conditions

- **(4) The role of three parties/stakeholders should be highlighted**
 - **4.3 Disability manager (DM)**
 - Crucial integrative, facilitative and coordinating role – this person has to constantly liaise with (and monitor the inputs given by) the employer, the employee, the professional team, the social security agency
 - Provides a constant “human face” to the employee concerned, with whom the employee could regularly liaise
 - Key to the longer-term success and efficacy of RTW and DM programmes is the sensitive drafting of an individualised RTW and DM rehabilitation plan
 - What is required is an “individual case management, return-to-work and accommodation plan is established and communicated effectively to major stakeholders” (ISSA Guidelines, p 36.)
 - The case/disability manager has to take primary responsibility for the drafting, execution, monitoring and adjustment of the plan

- (5) The broader context of a developing country always has to be considered when developing RTW interventions: unique approaches may be required
 - And yet, the essential elements of a RTW system need to be present, such as early intervention, assessment, a rehabilitation plan, medical and vocational rehabilitation
 - Bearing in mind the broader context, choices need to be made, such as whether rehabilitation is essentially a public, an employer or a mixed public/private responsibility

- **(6) Before or at the very early stages of setting up a system in a developing country, investments should be made in –**
 - Training of a cadre of disability/case managers
 - Utilising an audit tool to understand what changes need to take place at the level of the workplace
- **(7) Room should be left for a system to develop gradually**
- **(8) Employer involvement and buy-in is crucial**
- **(9) Consulting and involving stakeholders and professional bodies is imperative, also to address misconceptions/negative perceptions**

- **(10) Public awareness has to be raised** for people and users of the system to understand the system
- **(11) Institutional reforms need to be effected**, in particular at the level of the lead institution (such as a workers compensation fund)
- **(12) A legislative framework** which clearly indicates the role and responsibilities, rights and duties of different parties, **needs to be in place**

- **(13) Best practice examples are of great value**
 - The UN Disability Convention provides important direction
 - The ISSA Guidelines on Return to Work, being developed in partnership with RI (Rehabilitation International) and the IDMSC, will of considerable assistance
 - Even where a system has been established and operational for some time, higher levels of provision, support and protection should be considered

- **(14) Strengthen underdeveloped health system and labour market support frameworks**
 - Develop innovative and practical measures to deal with scarce resources – e.g. consolidated health care service delivery to various invalidity streams
 - Enhanced public employment support services particularly important (see SA developments)
- **(15) Priority investment in technological, infra-structural and institutional capacity-building and innovation**
- **(16) Geography and population size disparities may require varied responses**



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