



CESCR - International Covenant on Economic, Social and Cultural Rights

66 Pre-Sessional Working Group (09 Mar 2020 - 13 Mar 2020)

Adoption of lists of issues prior to reporting

Submission by Italian Disability Forum - FID

10 January 2020

The Italian Disability Forum (Forum Italiano sulla Disabilità - FID) is an Italian not-for-profit organization of persons with disabilities (DPO), full member of the European Disability Forum (EDF), representing the interests of persons with disabilities in Italy. It is composed exclusively of national organizations of persons with disabilities and their families. Its aims are to fight for the recognition, promotion and protection of the human rights of persons with disabilities, as well as for non-discrimination and equal opportunities. Since its establishment, the Italian Disability Forum has participated in all initiatives and activities carried out by EDF. In the last years FID published and submitted to the specific Un Committees:

- Written Proposal for Recommendations on Italian UPR Review 2nd Cycle (2014) and contribution by our members to a joint submission for the 3rd Cycle (2019);
- Written Submission to the CESCR Committee on the List of Issues in relation to the fifth periodic report of Italy (2015);
- Alternative Report and List of Issues to the CRPD Committee (January 2016), Written Replies to CRPD Committee (July 2016), Italy's review CRPD (August 2016);
- Written Submission to the Human Rights Committee (HRC) for the 119th Session in relation to the sixth periodic report of Italy on the ICCPR (2017);
- Written Submission to CEDAW Committee in relation to the seventh Periodic Report of Italy (2017);
- Joint Submission to CoE GREVIO (Group of Experts on Action against Violence against Women and Domestic Violence) with Italian Women's NGOs of the Shadow Report on the Implementation of the Istanbul Convention (2018);
- Written Submission to CoE Grevio (Istanbul Convention) in relation to the Report submitted by Italy for the implementation of the Istanbul Convention in Italy (2018).

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FID written submission to CESCR Committee in advance of the adoption of LOIPRs

Recommendations: As per CESCR Committee, fifth periodic report on Italy *E/C.12/ITA/CO/5*

1. **NHRI - Recommendation 15** *The Committee urges the State party to redouble its efforts to establish an adequately resourced national human rights institution that is compliant with the principles relating to the status of national institutions (Paris Principles) and is mandated with the protection and promotion of all human rights, including economic, social and cultural rights.*

Italy is one of the two European States **still lacking an independent NHRI**, notwithstanding two voluntary pledges in connection with Italy's membership to the UN Human Rights Council and innumerable pertaining recommendations by each UN Treaty bodies and 1st, 2nd UPRs¹.

With reference to the **political will of the Government** to undertake the process to the NHRI establishment, even if there are important formal declarations and attempts on behalf of the various previous and present Governments, up to now **no real and concrete action has been implemented** in such direction. This is so evident, that also in the candidature to the HRC just entered by Italy for the 3rd time, no pledge was even made in this direction.

Proposal of List of Issues

- *Please provide information on the institutional process to set up a Human Rights Institution that should function in an independent manner, in accordance with the Paris Principles.*
 - *Please provide information regarding the establishment of an inclusive consultation process with civil society during the institution of the National Human Rights Institution.*
2. **Legal framework for non-discrimination – Recommendation 17** *The Committee recommends that the State party take steps to adopt a comprehensive anti-discrimination law that guarantees protection for everyone against discrimination in the enjoyment of economic, social and cultural rights, and encompasses all forms of discrimination, including sexual orientation and gender identity. It also recommends that the State party recognize that individuals in same-sex unions are entitled to equal enjoyment of their economic, social and cultural rights. The Committee draws the State party's attention to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.*

In 2006, the Italian Government passed law no. 67/2006: "Measures for the legal protection of persons with disabilities who are victims of discrimination". This law provides persons with disabilities the possibility to report any act of direct or indirect discrimination to the Judicial Authority, so as to obtain its termination. Through the Ministerial decree of 30 April 2008, the Ministry of Equal Opportunities (located within the Presidency of the Council of Ministers has given 43 organizations² the capacity to act on behalf of people with disabilities who have been subject to discrimination and wish to press charges, to which they can turn to see protected their

¹ 18 specific recommendations UPR 2010; 23 specific recommendations UPR 2014; at this date we are waiting the 3rd cycle recommendations to Italy.

² For the list of the 43 organizations officially authorized to act on behalf of persons with disability to press charges on the basis of discrimination see here: http://www.gazzettaufficiale.it/do/ricerca/pdf/serie_generale/3?resetSearch=true

rights and not to be left alone to act with Court proceedings. However it is important to note that legal actions are undertaken by associations alone, with no economic support whatsoever by the government in facing the high legal expenditures.

At the moment, there are no mechanisms to collect data on the phenomena and to monitor implementation of law no 67/2006. Due to the lack of data and statistics, it is not possible to analyze the situation of discrimination against persons with disabilities, the level of their participation in society and access to equal opportunities.

With regard to conditions of **multiple discrimination³** and **intersectional discrimination⁴** in the current legal system, **the application of anti-discrimination law is still carried out in separate categories without any reference to the different ground of discrimination or recognition of the multiple identities** (in our case, for example: gender and disability, ethnic and disability, sexual orientation and disability, etc).

3. **Discrimination against persons with disabilities – Recommendation 21** *The Committee recommends that the State party ensure that persons with disabilities fully enjoy their rights under the Covenant without discrimination, particularly with regard to their right to work, an adequate standard of living and education. The Committee also recommends that the State party incorporate the concept of reasonable accommodation into all legislation affecting persons with disabilities, and take measures to ensure its implementation.*

Law 67/06 does not completely satisfy the obligations deriving from the ratification of the UN Convention in the field of non-discrimination. In particular, it does not include a legal definition of reasonable accommodation and **it does not explicitly acknowledge the lack of reasonable accommodation as a form discrimination based on disability. It also does not include the definition of the concept of multiple and intersectional discrimination.**

Moreover, the anti-discrimination Law 67/06 fails to provide details on its implementation in practice, thus preventing citizens with disabilities from undertaking legal actions at individual or collective level on the grounds of such Law in case of direct or indirect discrimination, multiple and intersectional discrimination.

The Court of Justice of the European Union ruled against Italy (CJEU, Case C-312/11 European Commission v Italian Republic) on 4 July 2013 for the inadequate transposition of the reasonable accommodation obligation. As a consequence, the above-mentioned Law 99/2013 modified Legislative Decree 216/2003 (which transposed EU Directive 78/2000 into national legislation) by including **reference to reasonable accommodation but only regarding the field of employment and vocational training and not in other areas of life.** Again in the same Legislative Decree 216/2013 in the article 3 there is a reference to "available resources". This means that the Decree (216/2013) justifies the denial of reasonable accommodation and the resulting discrimination of persons with disabilities based on economic reasons invoked by the employer.

Remaining in the employment field, the Italian legislator has planned to issue the Guidelines on the job placement of persons with disabilities, but despite the fact that 4 years have passed (Legislative Decree 151/2015), to date it has not even issued this "soft law", which should also contain indications concerning reasonable accommodation. "*De facto*" **there is no legal definition of the**

³ "multiple discrimination" is that experienced by an individual not on the basis of a single factor (gender, sexual orientation, race or ethnic origin, disability, age, religion or belief), but on the basis of two or more concomitant factors, if the subject is characterized by a " complex identity".

⁴ "intersectional discrimination" means multiple discriminations with respect to which risk factors operate in a contextual and synergistic way, so as to become inseparable, so that the consequences of discrimination cannot be traced back to the simple summation of the effects descending from the single factors involved (e.g. gender and disability, in the case of women with disabilities).

concept and principle of reasonable accommodation.

Proposal of List of Issues

- Please provide information on any steps taken, including a timeframe, to include the definition of multiple discrimination and intersectional discrimination in the national anti-discrimination law.
 - Please provide information on any steps taken, including a timeframe, to include the definition of reasonable accommodation and the recognition of denial of reasonable accommodation as a form of disability-based discrimination in the anti-discrimination Law 67/2006.
 - Please provide information on the measure taken to ensure the access to judicial protection against discrimination to persons with disabilities at individual and collective level.
4. **Equality between men and women – Recommendation 23** Recalling its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, the Committee recommends that the State party step up its efforts to combat gender stereotypes and that it embark on national awareness-raising campaigns, including by increased use of the media, aimed at modifying the population's mindset as regards gender roles. It also recommends that the State party take effective measures to enhance women's participation in all areas of public life, and that it consider the adoption of temporary special measures including quotas, paying particular attention to Roma women and women from the south.

All the campaigns run by the Government against discrimination and or stereotypes never specifically refer to women and girls with disabilities.

Women with disabilities are hidden away in the disability dimension in the campaigns that are devoted to “persons with disabilities”, while campaigns on gender equality run by the Equal Opportunities State Department never mention women with disabilities. **As a result, women with disabilities and their role in the society aren’t recognized at all.**

Consequently, **there is a policy and service vacuum concerning the condition of girls and women with disabilities.** Generally speaking, gender is not taken into account in analyses concerning disabilities. This gender irrelevance is the cause and also the effect of an absence of information to help explore and analyze the influence that gender has on women with disabilities. These factors have contributed to a lack of interest by governments concerning the specific needs of girls and women with disabilities. It has also led to a **shortfall in analyses and observations, in planning measures and practices to be adopted, and in drafting policy guidelines and specific measures concerning every area of their lives.**

Generally speaking, it is worth underscoring the fact that the Italian legal system does not set out any specific regulations for protecting women and girls with disabilities. As a result, the laws governing equal opportunities and equal gender treatment for both men and women are applied, along with specific regulations for disabilities. This means that **there are no regulations, policies, measures or actions geared towards promoting gender equality, nor do they include specific reference to girls and women with disabilities.** A gender prospective is not adopted when developing and applying standards, measures and programmes for the disabled.

Proposal of List of Issues

- How is the government ensuring that the gender perspective is explicitly adopted in the development and implementation of laws, actions and programs related to disability?
- Please provide information on the measures envisaged to make sure the issues of women with disabilities are explicitly considered in all policies and programs in favor of women.
- Please provide information concerning the organization of awareness raising actions and campaigns to foster overcoming prejudice and stereotypes on women with disabilities

5. Women employment – Recommendations 27 *The Committee recommends that the State party take effective measures to raise the employment rate of women, while paying particular attention to the situation of women in the south. It is encouraged to do so including by embarking on education and training programmes aimed at reducing occupational sex segregation and encouraging women to take up traditionally male-dominated occupations, as well as by considering creating incentives for employers. Furthermore, it recommends that the State party ensure that austerity measures do not generate a disproportionately negative effect on women's employment.*

The current legislation on the right to work of persons with disabilities is **based on a quota system** (Law 68/1999). The last available data (2013) show that 676.775 persons with disabilities are registered in the provincial list of unemployed persons. In 2013 the ISTAT (National Institute for Statistics)⁵ reported an employment rate of 24,8% of males (15-44) with disabilities compared to 62,7% of males without disabilities, and an employment rate of 23% of males with disabilities (45-64) compared to 71,2% of males without disabilities. As regards women (15-44) with disabilities the survey reported an employment rate of 20,4%, compared to 46,3% of women without disabilities, and an employment rate of 14% of women with disabilities (45-64) compared to 46,7% of women without disabilities. In the obliged enterprises that respect the quota system there are 41.738 available places, which could amount to covering only 6.1% of unemployed persons. A legislation that has positively reformed law 68/99, approved in 2015, are not implemented.

The Report “*The labour inclusion of persons with disabilities in Italy*” has been presented last December 3, 2019 in the presence of the Minister of Labour and Social Policies Nunzia Catalfo. This report, conducted by the Foundation of Studies Consultants of the Work, is based on data relating to Disabled Prospectuses compiled by companies with more than 14 employees. *The recommended labor market reform has not been implemented. The employment rate of persons with disabilities is 35,8%, compared to 57,8% of persons without disabilities. 43,5%, of persons with disabilities result to be inactive (i.e. unemployed and not seeking for a job) compared to 27,5% of persons without disabilities. 44,9% of private companies and public administrations required to comply with the Law 68/1999 on targeted placement have not covered the quota of work places to be reserved to people with disabilities.*⁶

Lastly and finally, persons with disabilities are discriminated when compared to other citizens with regard to the availability of data and statistics, working opportunities, active labor policies and

⁵ ISTAT, Disabilità in cifre, 2013, [http://dati.disabilitaicifre.it/dawinciMD.jsp?a1=u2i5Y4Y&a2=-&n=\\$\\$909\\$\\$\\$\\$&o=1R1M&v=1UT0904M0ANE00000010000&p=0&sp=null&l=0&exp=0](http://dati.disabilitaicifre.it/dawinciMD.jsp?a1=u2i5Y4Y&a2=-&n=$$909$$$$&o=1R1M&v=1UT0904M0ANE00000010000&p=0&sp=null&l=0&exp=0)

⁶ L'inclusione lavorativa delle persone con disabilità in Italia. Fondazione Studi Consulenti del lavoro, 2019 https://welforum.it/wp-content/uploads/2019/12/InclusioneLavorativaPersoneDisabilita_FondazioneStudiConsulentiLavoro_3dic19.pdf

investments intended for them in the labor market. In addition, **women with disabilities live in a condition of multi-discrimination that penalizes them in the attainment of a job.**

Proposal of List of Issues

- Please provide information on any steps taken, including a timeframe, to start the mainstreaming of persons with disabilities in general policies or national and regional labor and in general active policies on labor.
- Please provide information on the measures envisaged to make sure better quality of the employment services with competence and professionalism for the job coaching of persons with disabilities, placing major attention on those persons that require more intense support.
- How is the government taking into consideration the elaboration, by the National Institute of Statistics, of the data regarding the employment of persons with disabilities with the same deadlines as the data made available for ordinary occupation.
- How is the Government taking concrete steps to put in place the measures included in the reform the Law 68/99 approved in 2015?

6. Social security – Recommendation 35 The Committee recommends that the State party:

- (a) Take immediate measures to mitigate the effects of social expenditure cuts, and fully restore the financial allocations to the main national funds for social interventions, notably the National Fund for Social Policy and Fund for Dependent Persons;
- (b) Redouble its efforts to allocate resources so as to ensure that social spending per capita and social services provision are made on a non-discriminatory basis across the State party;
- (c) Guarantee that social benefits, including unemployment benefits, are indexed to the cost of living and provide a decent living for beneficiaries and their families.

Generally speaking the social funds are insufficient to ensure resource policies and consolidated services in the area of competence. Their scarcity, the heavy cutting of financial transfers to the Regions, the strictness of the Stability Pact, a reduction in health expenditure, represent serious and practical limitations to welfare.

The Italian welfare system is, still today, based on three pillars: health, social security and assistance⁷. Unfortunately, the resources allocated are not balanced among these pillars. In fact, public spending is skewed towards social security rather than health and assistance, and towards monetary transfers rather than the provision of services⁸. The social services supporting persons are mostly delegated to families where women are relegated to roles of careers and assistants⁹.

According to Eurostat, in 2015 Italy allocated 9.0% of its GDP to healthcare expenditure. In 2017 it was 6.8%. Again according to Eurostat, in 2015 Italy allocated 29.8% of its GDP to social

⁷Understood as a field of action that helps to define the level of quality of life of citizens and of the nation

⁸In Italy the total expenditure for pension is 16.5% of GDP and the 26.4% of total population. The majority of pension beneficiaries are old age pension (26.4 total pension of which 19.5% old-age pension, 22% +65 age). https://ec.europa.eu/eurostat/statistics-explained/index.php/Social_protection_statistics_-_pension_expenditure_and_pensionBeneficiaries

⁹ Available at: <http://www.condicio.it/allegati/109/Rapporto2014.pdf>

protection. In 2017 this fell to 20.9%¹⁰. Such drastic reductions challenge the implementation of important social measures. Moreover, the gradual reduction of funding for social policies has increased the gap between the North and the South of the country. According to the ISTAT 2016 survey (the Italian Institute of Statistics)¹¹ a person with a disability residing in Northeast Italy benefits, on average, from services and interventions at an annual cost of 5,150 euros, while in Southern Italy it is about 865 euros per capita. The extra costs that persons with disabilities and/or their families have to cover for the social impoverishment they undergo (barriers, obstacles and discriminations) are not taken into account by anti-poverty policies, and support measure for independent living are very limited¹²

In the field of Health The 2012 report of the Ministry of Health¹³ on the compliance with the provision of what are called, “Essential Level of Assistance - LEA”, confirms that they are only guaranteed in eight regions, seven in the Centre-North (Emilia-Romagna, Umbria, Tuscany, Marche, Veneto, Piedmont, Lombardy) plus Basilicata, while they are partially disregarded in Abruzzo and Liguria. The situation is critical in regions with repayment plans: Molise, Lazio, Sicily, Calabria, Campania and Puglia in which are present more than one third of the Italian population (more than 23 million of inhabitants in little more of 60,5 millions).

In 2019 November Fondazione GIMBE www.gimbe.org published its Report on 2010-2017¹⁴ LEA (Essential Level of Assistance) monitoring by photographing an "unacceptable" gap between Regions. The survey also shows that more than a quarter (26.3%) of the resources allocated over the years by the State to the Regions to guarantee the Essential Levels of Assistance to citizens, (i.e. the services that the National Health Service gives free of charge or against payment of a ticket), have gone empty by not producing services. The report also counts the "unacceptable" gap between the Regions in overall performance which is 73.7%: at the top of the performance is Emilia Romagna with 92.5% compliance, in the queue Campania with 53.9%¹⁵.

A specific attention must be given to the issue of **disability and poverty**. In fact the economic crisis has produced a strong impoverishment of the Italian population. Persons with disabilities live, to a large extent, without a job, benefit from an extremely modest pension (3,700 euros annually, if they exceed 75% disability), while if they have a hundred percent disability and need accompanying they can get up to 6,180 euros annually, enough to pay for 50 hours of assistance per month or less than two hours a day. Inadequate to ensure full autonomy.

There are reductions in taxes for the purchase and adaptation of cars, for some technologies, medical expenses or for the removal of architectural barriers at home, but they do not cover the extra costs they have to incur.

The anti-poverty measures indicated by the latest Governments have not provided for effective measures to reduce the risk of poverty for persons with disabilities. The provisions, named Social Card (2016) and Inclusion Income (2017), replaced by the new Citizenship Income (2019), treat poor families where a disabled person is present less favorably compared to other families.

¹⁰ Available at: <https://ec.europa.eu/eurostat/cache/infographs/cofog/>

¹¹ Available at: <https://www.istat.it/it/files/2019/01/Report-spesa-sociale-2016.pdf>

¹² Available at: [https://www.disability-europe.net/search?searchword=italy&searchphrase=all&areas\[0\]=documents_search](https://www.disability-europe.net/search?searchword=italy&searchphrase=all&areas[0]=documents_search)

¹³ AA.VV., Il rapporto sui LEA 2012 del Ministero della Salute, <http://www.salute.gov.it/>

¹⁴ 2017 is the last year in which complete data exist.

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https://www.sanita24.ilsole24ore.com/pdf/2010/Editrice/ILSOLE24ORE/QUOTIDIANO_SANITA/Online/_Oggetti_Correlati/Documenti/2019/11/28/Lea_mappa.pdf?uuid=ACvlf1

Proposal of List of Issues

- Please provide information on any steps taken to enable actions to support persons with disabilities and their families living in poverty, preventing the reduction of services and benefits aimed at children and adults with disabilities.
- How is the Government introducing active measures to ensure that the social economic benefits reach a minimum enough for an adequate standard of living also developing compensatory measures which could counteract the costs related to the disability condition?
- How is the Government strengthening poverty reduction programs
- Please provide information on any steps taken to ensure that LEA are guaranteed in all Regions.

7. **Violence against women and girls – Recommendation 37** *The Committee recommends that the State party redouble its efforts to combat violence against women and girls and to prosecute perpetrators. In that regard, it calls upon the State party to ensure effective implementation of the related legislation, and the adequate resourcing of plans of action, including the action plan against sexual and gender-based violence. Furthermore, the Committee recommends that public awareness-raising campaigns against domestic violence be strengthened, and that support for victims of domestic violence be reinforced, including by facilitating their access to adequate services for recovery, counselling and other forms of rehabilitation. The Committee draws the State party's attention, in particular, to the domestic violence experienced by women and girls with disabilities and recommends that the State party facilitate their access to complaint procedures and ensure that they receive adequate support and assistance.*

As regards the phenomenon of violence, no specific reference is made to women with disabilities in Law no. 66 1996 “Rules against sexual violence”, and instead a merely generic increase in sentences handed down for violence against disabled persons regardless of gender. There is a complete absence of any reference to women with disabilities in the “Extraordinary action plan against sexual and gender-related violence” DPCM 7 July 2015.

In the Strategic Plan 2017-2020, praise worthy attention is finally dedicated specifically to the situation of migrant, refugee and asylum-seeker women, whilst women with disabilities are relegated to a generic mention of the “*Persistent phenomena which should prompt reflection and specific measures, such as the exposure to violence of vulnerable groups (young women, disabled women).....*”, which is not sufficient to ensure measures to protect these women are fostered.

Whilst the activity Reports in issue 1522 provide figures regarding disabilities in victims of violence, they are cited as figures from *a phenomenon which is never sufficiently reported in analyses and monitoring. Yet the phenomenon is a widespread one which goes relatively unpunished, and only rarely receives the attention it should*¹⁶.

The same final Report of the “*Parliamentary inquiry commission into femicide, and all gender-related forms of violence*”¹⁷ records the scant attention paid to the situation of girls and women with disabilities, owing to the impossibility of exploring the phenomenon in relation to this group of women. It acknowledges that it is a critical problem and includes a section¹⁸ that reads as follows:

In consideration of the points that arose whilst examining the issue of violence to which women with disabilities are subjected, and to which part of paragraph 2.2 of Chapter 2 has been dedicated, the

¹⁶ <http://www.pariopportunita.gov.it/media/3287/relazione-secondo-semestre-1522.pdf> pages 25 and 26

¹⁷ <https://www.senato.it/4731>

¹⁸ 10.6 Violence against women with disabilities page 178

Commission deems it essential for the statistical records concerning the phenomenon of gender violence to specifically highlight and gather data concerning this form of violence, the prevention of which should also involve appropriate measures in plans for counteracting gender violence.

Proposal of List of Issues

- Please provide information on any steps taken, including a time frame, to set up an integrated system of data collection, including judicial data, bound by law to overcome the fragmentation and partiality of information and capable of generating structured flows of information usable at national and local level for the purposes of all institutional, political and social actors, also disaggregated by the different conditions, particularly considering situations of disability
 - How is the Government taking in account the need to secure funds for raising awareness and preventing violence against women and girls with disabilities.
 - Please provide information on any steps taken in account regarding the development and implementation of specific training for general and protection services in conjunction with women with disability organizations that are experts in the field, and Anti-violence centres and shelters. And if the training should ensure the capacity to recognize women with disabilities victims of violence.
8. Poverty – Recommendation 39 *The Committee urges the State party to step up its efforts to address poverty while paying particular attention to child poverty and poverty in the southern provinces. Among other measures, it recommends that the State party strengthen social and financial support for families in situations of vulnerability and develop human rights-based poverty-reduction programmes, taking into consideration the Committee's statement on poverty and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2001/10).*

As cited in the previous chapter at page 7, the anti-poverty measures indicated by the latest Governments have not provided for effective measures to reduce the risk of poverty for persons with disabilities. The provisions, named Social Card (2016) and Inclusion Income (2017), replaced by the new Citizenship Income (2019), treat poor families where a disabled person is present less favorably compared to other families.

Regarding **child poverty**, the current anti-poverty measures refer to income parameters related to the household and do not take into account the specific aspects concerning children with disabilities, and it takes for granted that resources are evenly distributed within the family. Because in Italy children with disabilities are invisible in statistics (0-5 years), they do not usually benefit from any measures to combat childhood poverty. **To date we do not know how the measures against childhood poverty are being assessed, nor the effects of these measures on children with disabilities.**

Proposal of List of Issues

- Please provide information on the measures envisaged to make sure the issues of persons with disabilities and their families living in poverty are explicitly considered by avoiding reduction of services and benefits targeted to children and adults with disabilities.
- How is the government taking in consideration the need to introduce measures steps to bring the amount of social benefit in line with minimum wages for an adequate standard of living, and develop and implement compensation schemes concerning disability-related extra expenses incurred by persons with disabilities and their families.
- How is the government taking in consideration to ensure close consultation of persons with

disabilities and their representative organisations in policy making concerning social welfare benefits and services and poverty reduction programmes to ensure that policies and programmes are implemented to effectively meet their needs.