

Return-to-work and Disability Management in the developing world: Developments in South Africa and Malaysia, with reference to the UN Convention on the Rights of Persons with Disabilities and comparative precedents

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1. Introduction: Key considerations supporting the introduction of return-to-work and disability management, particularly in the developing world¹

Return-to-work of occupationally injured and diseased workers, and the management of their disabilities, is an area clearly in need of reform in the developing world. In most of these countries, in contrast with the position in the developed world, such a broad-based system has not yet been put in place. The lack of an appropriate return-to-work (RTW) framework and system often results in injured or ill employees losing their employment and becoming dependent on disability pensions or incapacity payments. It is therefore imperative to establish a RTW system that enables a disabled worker to secure, retain and advance in suitable employment, and thereby to further such person's integration or reintegration not only into the labour market but also into society.² Consequently, a clear need for policy and legislative reforms, supported by suitable institutional and operational arrangements of the social security systems in general and the workers compensation system in particular.

In perhaps one of the most influential recent reports,³ not only in the UK but also world-wide, on the relationship between health and workplace inclusion, Dame Carol Black, who had been commissioned by the UK government to conduct a review of the health of Britain's working age population, had the following to say – the relevance of this for the fields of Return-to-Work and Disability Management is obvious:⁴

¹ See Olivier, M, Govindjee, A, Nyenti, M & Wolvaardt, A *Reflections on developing an integrated comprehensive policy framework for rehabilitation, re-integration and return-to-work strategies in relation to workers who suffered occupational injuries or diseases* (Final research report prepared for the Compensation Fund of South Africa)(April 2011) 22-23, 30-32, as well as Olivier, M, Govindjee, A, Nyenti, M & Wolvaardt, A *Rehabilitation, reintegration and return-to-work of workers who have suffered occupational injuries or diseases* (Policy prepared for the Compensation Fund of South Africa)(April 2011) 22-27, from where this part has largely been taken.

² See also United Nations General Assembly Resolution 48/96 - Standard Rules on the Equalization of Opportunities for Persons with Disabilities.

³ Black, Dame Carol *Working for a Healthier Tomorrow* (Report presented to the Secretary of State for Health and the Secretary of State for Work and Pensions) (London, 2008). The UK Government accepted the findings and recommendations contained in the Black report, and mapped out a course for implementing the recommendations: see UK Government: *The Government's Response to Dame Carol Black's Review of the health of Britain's working-age population – Improving health and work: changing lives* (Presented to Parliament by the Secretaries of State of the Department for Work and Pensions and the Department of Health by Command of Her Majesty) (London, November 2008).

⁴ The quotations are all from the Executive Summary of the Black report. Emphasis has been added.

- "Recent evidence suggests that work can be good for health, reversing the harmful effects of long-term unemployment and prolonged sickness absence. Yet much of the current approach to the treatment of people of working age, including the sickness certification process, reflects an assumption that illness is incompatible with being in work."⁵
- "A shift in attitudes is necessary to ensure that employers and employees recognise not only the importance of preventing ill-health, but also the key role the workplace can play in promoting health and well-being."⁶
- "Any improvement in work-related support for those who develop health conditions will need to be underpinned by a fundamental change in the widespread perception around fitness for work; namely, that it is inappropriate to be at work unless 100% fit and that being at work normally impedes recovery."⁷
- "Employers have significant scope to facilitate an employee's early return from sickness absence. Early, regular and sensitive contact with employees during sickness absences can be a key factor in enabling an early return ..."⁸
- "Emerging evidence suggests that for many people, early interventions help to prevent short-term sickness absence from progressing to long-term sickness absence and ultimately worklessness ... "⁹

The importance of introducing measures aimed at returning injured workers back to work is of course not something new to the social security debate, even in the developing world. This is also true as far as South Africa and Malaysia are concerned. For example, in the case of South Africa, already in 2002, the Committee of Inquiry into a Comprehensive System of Social security for South Africa in 2002 stated that modern social protection policy-making is no longer merely curative – in the sense of providing compensation, but also as preventative and remedial / rehabilitative in nature.¹⁰ However, rehabilitation and reintegration measures are lacking in the South African employment accident and diseases system. This is the case despite the recognition that a comprehensive rehabilitation and RTW system is necessary and should be established.¹¹ As the Committee of Inquiry concluded, the reality of the current situation is that there is often no proper rehabilitation (medical and vocational) available to persons who receive compensation in terms of the relevant workers' compensation law.¹² In the meantime, the Compensation Fund of South Africa has taken decisive steps to undertake research and have a policy developed which will facilitate the country-wide introduction of RTW measures. As is indicated in this contribution, Malaysia has for some years now been implementing a successful RTW system.

The objective of a RTW system is to return workers to employment at the earliest possible date following any injury or illness. It attempts to speed recovery from injury or illness and

⁵ Black, Dame Carol *Working for a Healthier Tomorrow* (Report presented to the Secretary of State for Health and the Secretary of State for Work and Pensions) (London, 2008) p 9.

⁶ *Ibid*, p 10.

⁷ *Ibid*, p 11.

⁸ *Ibid*, p 11.

⁹ *Ibid*, p 12.

¹⁰ Committee of Inquiry into a Comprehensive System of Social Security for South Africa, *Transforming the Present- Protecting the Future* (Draft Consolidated Report) March 2002, 50.

¹¹ See, for example, the limited framework provided in the Compensation for Occupational Injuries and Diseases Act (COIDA) 130 of 1993 which states that the Compensation Commissioner may found, establish or subsidise organisations, bodies or schemes whose objects include preventing accidents, encouraging occupational health or safety or *providing rehabilitation facilities for disabled employees*.

¹² Committee of Inquiry into a Comprehensive System of Social Security for South Africa 72.

reduce compensation costs while ensuring that participation in a return to work plan will not, in itself, prejudice an injured employee. Employees who sustain an injury or illness should safely return to work at the earliest medically practical time [at least in a temporary (modified or alternate duty) assignment]. By allowing an employee to perform modified duties, the employee is allowed to remain a productive member of the workforce while he or she maintains their human dignity.

Evidence indicates that the savings achieved in the establishment of a RTW system far outweigh the costs, as it offers employers and/or the Compensation Fund (the government) a positive return on their expenditure.¹³ A RTW system will minimise the cost of disability to both the employer and the employee by enabling workers to either remain in work or return to work in a timely manner; it is intended to have a positive influence on the physical recovery and morale of an employee. The system also leads to a minimum disruption to the family and the social and working life of the injured or ill employee, and provides job and financial security, as well as guaranteeing that the injured worker will experience a smoother transition back to regular employment. It facilitates early identification of occupational injuries or illnesses to ensure that the worker receives a high quality and standard of health care and rehabilitation which can assist in ensuring that the worker returns to work in a timely and safe manner. The RTW system will also ensure that injured or ill employees are not unnecessarily dependent on disability pensions or incapacity payments, but are rather reintegrated into the workforce. Employment, earning money and being a productive member of society play an important role in the self value of individuals, and this is particularly important when an individual is recovering from an injury or disease.

It ensures that the employer retains a skilled workforce, rather than losing a skilled employee as a result of injury. This assists in maintaining productivity in the workplace and can assist in ensuring that the workplace remains economically viable. It also improves the relationship between employers and employees; and reduces insurance costs and costs of sick leave. The focus on the economic benefits of the RTW system means that employers are particularly open to complying with government regulations concerning disability, RTW and rehabilitation.¹⁴

The RTW system is also beneficial to the Compensation Fund (the government/workers' compensation institution) as it is essentially an expression of government's or the social security institution's mandate to provide (a framework) for the meaningful labour market and social integration of occupationally injured and diseased workers. It further entails a shift away from the obligations on the Compensation Fund solely to pay compensation, but also places obligations on the employer, the workplace itself and various stakeholders to provide rehabilitation and reintegration. Also, the number of people who are dependent on compensation payments as a result of occupational disability, injury or illness are reduced. The RTW system contributes to the long-term sustainability of the Compensation Fund and also alleviates some of the financial pressures on the Fund. The system will further cut

¹³ See also Azman, M *Social and Cost Benefits of a Return-to-Work Programme* (Paper presented at the International Forum on Disability Management, 20-22 September 2010, Los Angeles); and Black, Dame Carol *Working for a Healthier Tomorrow* (Report presented to the Secretary of State for Health and the Secretary of State for Work and Pensions) (London, 2008) 10.

¹⁴ See further Allen, P. "For the Employer Productivity is critical" (2004) *Healthcare Papers*, 5(2), 95-9.

government spending due to reduction or elimination of incapacity or disability pensions, which are often long-term or permanent payments, especially for young claimants.¹⁵

There are some barriers to the establishment of a RTW system. Rehabilitation and RTW obligations are seen by many employers as another burden imposed by government (they often object to the additional cost of basic rehabilitation training for affected workers).¹⁶ It is also sometimes viewed as a cost to be curtailed. Where employees and/or trade unions are not properly informed and consulted on the establishment of a RTW system, they may not be supportive as the system could be perceived as depriving the employees of their entitlement to long-term occupational injury and disease compensation. Other barriers that have been identified as hindering rehabilitation and RTW systems include lack of knowledge on modified work and negative attitudes of employees; a longer period of time off work; the presence of psychological problems; a long period until settlement of a compensation claim; greater number of injuries and/or significant disability; the status of the employment market (high unemployment rate); the age of the injured worker; the level of skills / occupation in question; a longer period of actual or expected treatment; and the severity of (any) spinal injury. Further personal barriers include low morale and self-esteem; financial problems; family worries; unresolved anger or guilt; feelings of failure or anxiety; loss; depression; or insomnia.¹⁷

Measures to address these barriers should be adopted. In-plant (workplace) integration agreements should be concluded. Applicants for disability benefits or for extended sick leave could be routinely evaluated for rehabilitation and RTW. This will act as an incentive to reduce benefit entitlements over time. Financial incentives could also be extended to compliant employers in the form of reduced compensation assessment premiums. Non-compliant employers (employers with a poor rehabilitation and RTW record) will have increased premiums. Transitional work and supervised work-based rehabilitation arrangements also enhance the potential of long-term absent employees to return to work either in their current job or through redeployment. It is also important to institute prevention strategies (risk management and health and safety measures).¹⁸

Returning an injured worker to work is a shared responsibility primarily between government, trade unions, employers, employees and service providers.¹⁹ Therefore, these role players all have certain roles, responsibilities, and obligations to support early and safe return to work. Communication and cooperation toward this common goal is thus essential, as effective injury/illness management relies on the cooperative efforts of all participants – employers, workers, insurers, doctors and other health practitioners. A co-ordinated approach is required to achieve the shared goal of early and safe return to work and full productivity. It

¹⁵ See also OECD *The OECD Thematic Review On Reforming Sickness and Disability Policies to Improve Work Incentives: Switzerland - Round One (2005/2006) - Norway, Poland and Switzerland*, 2005/2006.

¹⁶ ABI/TUC *Cost & benefits of return to work and vocational rehabilitation in the UK. Summary report for the Association of British Insurers: Evidence from Overseas & UK Case Studies*. Greenstreet Berman Ltd 2002, accessed at

http://www.abi.org.uk/Display/File/364/cost_and_benefit_of_rehab.pdf.

¹⁷ See also <http://www.synergyinsurance.net/Handouts/ERTW.doc> and <http://www.iombudsman.org.nz/pdfs/conference/word5.pdf>.

¹⁸ Olivier, M, Govindjee, A, Nyenti, M & Wolvaardt, A *Reflections on developing an integrated comprehensive policy framework for rehabilitation, re-integration and return-to-work strategies in relation to workers who suffered occupational injuries or diseases* (Final research report prepared for the Compensation Fund of South Africa)(April 2011) 137-140.

¹⁹ See also Return to work, available at <http://www.wsib.on.ca/wsib/wsibsite.nsf/public/ReturnToWork>.

is imperative to ensure that these role players are properly informed and consulted on the introduction and implementation of a RTW strategy/policy/programme in South Africa, given the crucial role that these providers will play.

2. The United Nations Convention on the Rights of Persons with Disabilities

International standards in relation to the status and treatment of persons with disabilities, including workers who have suffered an occupational injury or disease, provide crucial benchmarks for the development of an appropriate RTW policy. These standards have primarily been encapsulated by the International Labour Organisation (ILO) and the United Nations (UN). The widely ratified recent UN Convention on the Rights of Persons with Disabilities (UNCRPD) of 2006 is of crucial importance for the arguments being developed in this paper.²⁰ South Africa ratified both the Convention and the Optional Protocol in 2007. Malaysia signed the convention in April 2008 and ratified same during 2010.²¹

By ratifying and being a party to documents such as the UNCRPD, provisions pertaining to, for example, workers compensation and issues regarding workplace re-integration are binding upon South Africa and Malaysia, from the perspective of international law and should find expression in these countries' domestic law. The UNCRPD contains several provisions which are of direct relevance and application to a RTW policy / programme.²² The core provision appears to be article 27, pertaining to the right to work and employment Persons with Disabilities (PWDs).

In terms of this article, South Africa and Malaysia are obliged to “safeguard and promote the realisation of the right to work, *including for those who acquire a disability during the course of employment*, by taking appropriate steps, including through legislation”, to, *inter alia*.²³

- a) Promote vocational and professional rehabilitation, job retention, as well as RTW programmes for PWDs;²⁴
- b) Enable PWDs to have effective access to technical and vocational guidance programmes, placement services and vocational and continuing training;²⁵

²⁰ Doc.A/61/611. Although the first ratifications only occurred in 2007, 106 countries have ratified this important instrument to date (there are 153 signatories to the Convention), while 63 countries have ratified the optional Protocol to the Convention (there being 90 signatories to the Optional Protocol). In terms of article 1 of the Optional Protocol to the UNCRPD, a State Party to the Protocol recognises the competence of the Committee on the Rights of Persons with Disabilities to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of the provisions of the Convention: see

<http://www.un.org/disabilities/countries.asp?navid=12&pid=166> – information obtained on 13 October 2011.

²¹ The Convention and the Optional Protocol were ratified by South Africa on 30 November 2007. While some may argue that the UNCRPD was the main impetus for the implementation of RTW in Malaysia, it must be noted that the Act which governs SOCSO, namely the Employees' Social Security Act, 1969 (ESSA) pre-dates the convention.

²² Article 26, for example, specifies that member countries shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life by organising, strengthening and extending comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services.

²³ Article 27(1) – emphasis added.

²⁴ Article 27(1)(k).

²⁵ Article 27(1)(d).

- c) Prohibit disability discrimination in employment²⁶ - which includes a prohibition on the denial of reasonable accommodation;²⁷
- d) Protect the rights of PWDs, for example with reference to equal opportunities and equal remuneration for work of equal value, and *safe and healthy working conditions*;²⁸
- e) Promote employment opportunities and career advancement for PWDs in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;²⁹
- f) Promote employment opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;³⁰
- g) Ensure that reasonable accommodation is provided to PWDs in the workplace;³¹ and
- h) Promote the acquisition of PWDs of work experience in the open labour market.³²

The UNCRPD, furthermore, explicitly requires compliance with the following objectives, which are equally relevant to RTW programmes:

- i) Promotion of individual autonomy and independence;³³
- ii) Involvement of those affected in (relevant) policy-making (ie at the macro-level)³⁴ and when developing individual rehabilitation plans (i.e. at the micro-level);³⁵
- iii) Promotion of societal inclusion and participation;³⁶
- iv) Promotion of the availability, knowledge and use of assistive devices and technologies, designed for PWDs, as they relate to habilitation and rehabilitation,³⁷ and
- v) Introduction of appropriate training, for both –
 - a. Professionals and staff working in habilitation and rehabilitation services;³⁸ and
 - b. PWDs.³⁹

In particular, as far as rehabilitation is concerned, the UNCRPD requires that State Parties must “organize, strengthen and extend comprehensive habilitation and rehabilitation services

²⁶ Article 27(1)(a).

²⁷ See the definition of “discrimination” in article 2 of the Convention.

²⁸ Article 27(1)(b) – emphasis added.

²⁹ Article 27(1)(e).

³⁰ Article 27(1)(f).

³¹ Article 27(1)(i). “Reasonable accommodation” means a necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms – see article 2 of the Convention.

³² Article 27(1)(j).

³³ Articles 3(a), 19 and 26(1).

³⁴ Article 4(3) stipulates: “In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.”

³⁵ See par (o) of the Preamble: “Considering that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them”.

³⁶ Articles 3(c) and 26(1)(b).

³⁷ Article 26(3).

³⁸ Articles 4(1)(i) and 26(2).

³⁹ Article 27(1)(d).

and programmes, particularly in the areas of health, employment, education and social services...”⁴⁰ These multi-faceted rehabilitation services and programmes must –

- involve early intervention and a multi-disciplinary assessment of individual needs and strengths;⁴¹
- support community and societal participation and inclusion;⁴²
- be voluntary;⁴³ and
- be available to PWDs as close as possible to their own communities, including in rural areas.⁴⁴

Article 32 of the Convention requires progressive realisation of the rights contained in the Convention through international cooperation and through State Parties taking appropriate measures such as development cooperation, exchange programmes, bilateral and trilateral agreements, domestication of international instruments, development of mainstreaming norms and standards in line with international laws. According to Article 33 of the Convention, states must establish national focal points for the implementation of the Convention, co-ordination mechanisms, implementation mechanisms and legal and administrative frameworks to promote and monitor implementation, as well as ensure the participation of civil society.⁴⁵

For reasons considered below, South Africa, in particular, remains at a very early stage when it comes to developing and implementing such mechanisms. South Africa acknowledges the importance of national efforts, coupled with international cooperation, with regards to the implementation of the UNCRPD and its Optional Protocol in order to improve the living conditions of persons with disabilities in the country.⁴⁶ Despite this, it has been argued that South Africa has not adequately incorporated the UNCRPD into its legal framework since ratifying the Convention in 2007.⁴⁷ This has had the effect of reducing the impact of the Convention in South Africa.⁴⁸ South Africa has, in addition, failed to submit a report to the United Nations Committee on the Rights of Persons with Disabilities.⁴⁹ The Parliamentary Committee on Women, Youth, Children and People with Disabilities has, for example, expressed its concern at the disharmony of South African legislation pertaining to the disabled and the effect that the lack of implementation of the UNCRPD was having on people with disabilities.⁵⁰

⁴⁰ Article 26(1).

⁴¹ Article 26(1)(a).

⁴² Article 26(1)(b).

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ Statement by Minister L Xingwana, Minister for Women, Children and People with Disabilities “Enabling Developing, Realizing CRPD through Participation, Employment and International Cooperation”.

⁴⁷ Combrinck has noted that South Africa presently has no specific national legal framework for the UNCRPD and that this has significantly weakened the effect of the Convention in South Africa: PMG Report “South Africa’s compliance with the United Nations Convention on Rights of Persons with Disabilities: University of the Western Cape (UWC) Centre for Disability Law and Policy Presentation” (2011).

⁴⁸ See PMG Report “South Africa’s compliance with the United Nations Convention on Rights of Persons with Disabilities: University of the Western Cape (UWC) Centre for Disability Law and Policy Presentation” (2011).

⁴⁹ States are meant to submit reports to the Committee, which meets twice per year and was established to give guidance on the implementation of the Convention at national level. State Reports to the Committee are due within two years of ratification, and then subsequently every four years. South Africa missed the deadline for its first report, as well as the second extended deadline.

⁵⁰ *Ibid.*

Although the UNCRPD cannot be said to have informed the introduction of RTW in Malaysia, there is little doubt that it has proved to be a good reference point for purposes of benchmarking SOCSO's RTW programme. SOCSO's RTW programme, in fact, covers practically all aspects contained in Articles 26 and 27 of the UNCRPD, having been modified in the years since its introduction in order to comply more closely with these international obligations.⁵¹ The completion of SOCSO's Rehabilitation Centre in 2014 will, for example, amount to another practical step in accordance with Malaysia's international commitments in terms of the UNCRPD.

3. Adjusting principles and practices in South Africa and Malaysia

In Malaysia several adjustments have been made to develop an appropriate RTW framework, suited to the Malaysian context. Suitable RTW measures have not yet been introduced in South Africa, as the policy framework for the country-wide introduction of a RTW system was only recently finalised. Yet, certain steps have been suggested, and apparently endorsed by government.⁵² This part of the contribution therefore deals with how the dedicated roll-out of the RTW system has occurred in Malaysia, and which steps are in the main foreseen in South Africa.

Malaysia

Legal Framework

As far as Malaysia is concerned, the Employees' Social Security Act 1969 applies to all industries and formal sectors in Malaysia. Some of the benefits provided under these schemes are; medical treatment coverage, periodical payments to dependants of insured persons who die as a result of employment injury, supply of artificial limbs, periodical payments to an injured person who becomes severely incapacitated and funeral benefits. The Act has also a provision for the rehabilitation and return to work for disabled workers.

According to the Act, SOCSO may, in addition to the scheme of benefits specified in the Act, promote measures or co-operate with existing institutions for the improvement of the health, occupational safety and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured and may incur in respect of such measures expenditure from the funds of the Organization within such limits as may be prescribed by the Minister. Such measures may include provision of artificial limbs and appliances, opportunities for gainful employment under suitable conditions.⁵³

⁵¹ SOCSO was established on 1 January 1971 as a Government Department to enforce the ESSA. SOCSO became a statutory body on 1 July 1985. It provides two social security schemes to protect the welfare of employees and their dependants, namely the Employment Injury Insurance Scheme and the Invalidity Pension Scheme (introduced in 1974).

⁵² See the recent Ministerial announcement at <http://www.polity.org.za/article/sa-dlamini-briefing-by-the-minister-of-social-development-at-the-social-protection-and-community-development-ministerial-cluster-briefing-cape-town-14022012-2012-02-14>, accessed on 14 February 2012: "The Compensation Fund is making strides in improving policy in the rehabilitation of employees and re-integration, post occupational injury or occupational diseases. Furthermore, a policy framework is being developed to provide guidelines for all stakeholders that include employees, employers, healthcare providers and the general public for vocational rehabilitation."

⁵³ Section 40, Employees' Social Security Act 1969, Malaysia.

Apart from that, an Insured Person under this Act suffering from or claiming to suffer from invalidity or permanent disablement may be provided by the Organization, free of charge facilities for physical or vocational rehabilitation.”⁵⁴

Based on section 40 and section 57(1) of the Act, SOCSO has enough provisions in establishing a Return to Work framework to fulfill its obligation as a social insurance provider.

Besides the legal mandate provided under the Act, SOCSO had analysed its compensation trends. The current developments of accidents, temporary disablement benefit, permanent disablement benefit, invalidity pension and those claiming invalidity is alarming in the absence of any carefully planned intervention.

The SOCSO Return to Work program was established in the year 2007 with the objective of assisting SOCSO's Insured Persons with employment injuries as well as those claiming for invalidity pension to be able to return to work as quickly and safe as possible through a biopsychosocial and multidisciplinary case management approach. To achieve the most optimal outcome, SOCSO adopted the case management approach. Case Management is a collaborative process that facilitates recommended efficient treatment plans to assure the appropriate medical care is provided to disabled, ill or injured individuals to ensure that they return to employment. Proper planning and coordination of health care services appropriate to achieve the goal of medical rehabilitation are designed by Disability Managers. Case management may include, but is not limited to, care assessment, including personal interview with the client, and assistance in developing, implementing and coordinating a medical care plan with healthcare providers, as well as the clients and the clients' family, including evaluation of treatment results while promoting cost-effective care.

SOCSO's scheme protects workers as defined under the Act and with this, SOCSO covers all workers below RM3000 which can range from the lower income earners to the middle income earners from the formal industries. The self-employed are not covered under this Act. Given this range, SOCSO covers most workers from every type of employment, various industries, cultures and education levels. On the income distribution side, it must be noted that there were 5.8 million households in Malaysia in 2007. Of these, 8.6% had a monthly income below RM1,000, 29.4% had an income between RM1,000 and RM2,000, while 19.8% earned between RM2,001 and RM3,000; 12.9% of the households earned between RM3,001 and RM4,000 and 8.6% between RM4,001 and RM5,000. Finally, around 15.8% of the households had an income of between RM5,001 and RM10,000 and 4.9% had an income of RM10,000 and above.⁵⁵

The Return to Work Program commenced in 2005 by adopting an evidence-based, multidisciplinary rehabilitation protocol-based system, borrowed from Finland. During this period, the RTW Programme was implemented without the assistance of case managers and was highly dependent on service providers. In 2007, SOCSO decided to introduce case managers into the program. In establishing the Return to Work Program in 2007, SOCSO requested the assistance of the Commonwealth Rehabilitation Services (CRS) of Australia. CRS introduced SOCSO to their processes of return to work, such as initial assessments, rehabilitation plans, vocational assessments, worksite assessments and monitoring. These

⁵⁴ Section 57(1), Employees' Social Security Act 1969, Malaysia.

⁵⁵ Puah, "Half of M'sian households earn below RM3,000 a month", The Edge, 2008.

processes have since been adopted by SOCSO but have now been modified to suit the Organisation's needs and legal framework. There were initially only five Case Managers in Malaysia. In 2009, SOCSO sent two of its case managers to the German Statutory Accident Insurance Organisation (DGUV) for a three month attachment in order to seek further best practice experience which could be adopted into SOCSO's RTW program. In 2010, SOCSO adopted the Canadian-based protocol from the National Institute of Disability Management and Research (NIDMAR) for the professional development of its case managers. SOCSO has, ever since, continued to improve its return to work processes to suit the community's needs in Malaysia. SOCSO presently has 35 Case Managers (of which 18 are certified as Disability Management Professionals under the NIDMAR education standards) and 10 Job Placement Officers.

SOCSO's Centralised Model

SOCSO presently remains focused on its case-targeting model, rather than having an employer-liability model, due to the current centralised system. Case-targeting is needed due to the limitation of human capacity, there being only 35 Case Managers serving throughout the country. A smart predictive modelling system has, however, assisted the SOCSO RTW Department to have a standardised case targeting and referral system.

While Disability Management may not presently be a liability for employers, there are indeed provisions in the ESSA to support a programme in terms of which employers are not allowed to dismiss or discharge an employee during a period of medical leave subsequent to an employment injury.⁵⁶ Enforcing this provision would itself encourage employer participation in the RTW Program and would afford the case managers a proper time frame to assist the injured worker to return to work.

Towards a Decentralised Model

As indicated above, SOCSO has adopted the NIDMAR protocols in its attempts to move towards a decentralised model. In terms of this model, SOCSO plans to offer the NIDMAR certification to employers. By doing this, SOCSO would be able to ensure that there exists a sufficient amount of generic disability management knowledge in the labour market needed for purposes of implementing a decentralised model in Malaysia. It is foreseen, for example, that larger companies may utilise part of their resources to manage their own cases in future (by employing or obtaining the service of a certified disability manager), while smaller companies may continue to rely on SOCSO's Case Managers.

South Africa⁵⁷

Legislative framework

The workers' compensation laws in South Africa lean, in a lopsided fashion, towards compensation, with little focus on rehabilitation and RTW.⁵⁸ For example, there is little provision in the Compensation for Occupational Injuries and Diseases Act 130 of 1993

⁵⁶ Section 53, Employees' Social Security Act 1969, Malaysia.

⁵⁷ The following paragraphs have been taken from Olivier, M, Govindjee, A, Nyenti, M & Wolvaardt, A *Rehabilitation, reintegration and return-to-work of workers who have suffered occupational injuries or diseases* (Policy prepared for the Compensation Fund of South Africa)(April 2011).

⁵⁸ Paragraph 12.1 (p 159) of the Main Report.

(COIDA) which specifically attempts to enforce reintegration measures such as compulsory rehabilitation or vocational training programmes. Measures aimed at remedying or repairing damage, such as re-skilling or re-training, labour market and social integration must be adopted as an integral part of the social security system, alongside compensatory measures. The establishment of a well-structured, co-ordinated and unified health system in South Africa is a state priority and the introduction of a RTW system in cases of occupational injury, disease or broader instances of disability must dovetail with such a system in South Africa.

This requires multifaceted and multi-layered involvement of the government, as well as the meaningful contribution of all stakeholders to be involved in early RTW interventions. There are various legislative options for achieving this end. The mandate of the Director-General of the Department of Labour (DOL), or the Compensation Commissioner as the delegate of the Director-General, is broad and incorporates matters wider than merely providing compensation. This mandate includes the provision and funding of facilities to assist injured employees in returning to work.⁵⁹ The Director-General also has the discretion to apply unclaimed compensation for the general welfare of injured employees or employees suffering from occupational diseases, which will include the performance of any wider rehabilitation activities that the Compensation Fund decides to support.⁶⁰ Nevertheless, various provisions currently contained in COIDA require expansion and amendment in order to clarify the Compensation Fund's role beyond medical rehabilitation matters alone. Re-integration into the labour market is currently not an express goal of COIDA.⁶¹

A new chapter to be contained in COIDA will be the best vehicle to achieve the objective of relating a RTW strategy to the existing compensatory mechanisms contained in COIDA. The changes which are required should -

- Describe and define the roles, functions and responsibilities of various role-players, in a manner which creates legal obligations;
- Identify the range of incentives (positive and negative) to promote participation in RTW interventions;
- Adjust, in COIDA, the notions of “benefits”, “medical aid” and “rehabilitation activities” to ensure that the complete range of RTW-linked rehabilitation activities is covered;
- Extend the range of benefits / services available in the event of occupational diseases to specifically include rehabilitation and reintegration within the framework of RTW;
- Introduce a legal obligation to keep the position of an occupationally injured / diseased employee open for a particular period of time, subject to participation in an agreed rehabilitation plan;
- Extend dismissal protection, also within the context of the Labour Relations Act 66 of 1995, to specifically protect occupationally injured / diseased employees from being dismissed or otherwise disadvantaged while they are engaged in an agreed rehabilitation activity. This protection could be time-bound;
- Consider the adoption of similar interventions and forms of protection in ODMWA (Occupational Diseases in Mines and Works Act 78 of 1973 and in environments not covered by COIDA, to ensure consistency of treatment of all workers in South Africa;

⁵⁹ Section 4(2)(b) COIDA.

⁶⁰ Section 4(2)(d) COIDA.

⁶¹ Committee of Inquiry into a Comprehensive System of Social Security for South Africa *Transforming the Present Protecting the Future* (2002) 63.

- Clarify certain provisions of the Unemployment Insurance Act 63 of 2001 (UIA), including the introduction of a provision which would disqualify a beneficiary in the event of refusal or failure to participate in a RTW-based rehabilitation programme;
- Establish a new multi-level or multi-tiered dispute resolution framework, impacting on RTW and rehabilitation within the COIDA framework; and
- Reformulate COIDA provisions regarding the position of migrant workers and (South African) workers abroad.

Role of the Compensation Fund and larger employers

It is envisaged that the Compensation Fund should play a three-pronged role in the new proposed system: firstly, by continuing to provide compensation for employees with an occupational injury or disease, while directing employers (and employees) to the obligations / recommendations of the new chapter proposed for introduction in COIDA. Secondly, in the event that the employer is unable to reasonably accommodate and retain such employees, the Compensation Fund may itself carry out / contract out activities which will contribute towards the attainment of the broader (and new) objectives of that Act. Thirdly, given the reality of the South African labour market, with specific reference to the large number of small- and medium-sized enterprises, and the perceived inability of these enterprises to provide rehabilitation, reskilling and reintegration services, it should only be expected of larger employers to roll-out RTW and Disability Management, and to provide rehabilitation and reskilling services. Therefore, as far as workers employed by smaller employers are concerned, it is envisaged that the Compensation Fund should make available these facilities and services.

Training and workplace audits

Given the range of functions to be exercised by Disability Managers in the South African context, it is essential that the correct person is chosen for the role. DMs themselves require adequate training to ensure that they appreciate the significance of their position and are able to properly do the job. There are a number of skill areas in which DMs need to be proficient in order to provide a high quality of service. It is proposed that legislation or ministerial regulation be introduced to ensure that DMs who work in enterprises of a certain size, or those involved in hazardous work, are certified as being competent to coordinate, implement and manage RTW programmes in these types of enterprises. The worldwide leader in the provision of training and certification for disability managers and RTW coordinators is the National Institute of Disability Management and Research (NIDMAR). Training could also be provided in-house, or outsourced to higher education institutions in South Africa. It is clear that training needs will differ depending upon whether the person seeking to obtain qualification as a DM is already in possession of a related-qualification or not. The DM training programme can, in other words, be more intensive for people who have no other qualification or related experience as a service provider in this area.

Proper planning of RTW and the creation of policies at the enterprise level play an important role in ensuring that RTW outcomes are positive. Policies and programmes should be tailor-made to suit each enterprise, and the policies should be clear and specific regarding the roles of stakeholders, and regarding how the RTW programme is to be implemented. The importance of communication, early intervention, clear planning and detailed information regarding the role of the important stakeholders in the process can be provided in this way. Disability management and RTW audits are available and have also been used in a number of

jurisdictions, and could be of relevance in the South African context. In particular, NIDMAR is currently the only organisation in the world which has developed an **audit / assessment tool** in the field of disability management and RTW. As such, it is also able to audit RTW programmes implemented in companies around the world and to assist companies in achieving international standards with respect to their RTW programmes. One example is the Worksite Disability Management Audit (WDMA), which strives to monitor that RTW programmes are being correctly implemented and to evaluate whether the correct policies are being implemented at an enterprise level.⁶² Such an audit is able to provide information to organisations and other stakeholders regarding the suitability and receptiveness and preparedness of the workplace to RTW and rehabilitation. A workplace audit, by, for example, measuring what is happening at the workplace when it comes to rehabilitation, can accordingly play an important role in assisting workplaces in developing policies and implementing plans which are relevant to their particular environment and context. Use of an audit tool will enable enterprises to appreciate what they need to do in order for disability management to be introduced in their environment. Once a designated and trained DM has been appointed in a particular workplace, it may be expected that the DM will himself / herself conduct periodic audits of the workplace in order to maximise the potential of rehabilitation and early RTW.

Implementation and roll-out

The rolling out of the RTW programme in South Africa requires gradual implementation and capacity building starting with large enterprises, the adoption of a comprehensive approach to DM, and education of and consultation with the various stakeholders. The design of the RTW system must ensure that stakeholders have a vested interest in the system and the Compensation Fund should take a leading role in the roll out of the RTW system.

The RTW programme in South Africa should be piloted with the results and recommendations used for the further introduction of the RTW programme. Also, an equitable roll-out is required, ensuring that all provinces and the different geo-economic constituencies in South Africa be served. Appropriate funding arrangements have to be developed for an early RTW framework in the South African context.

Finally, broad-based consultation with key stakeholder groups is required. Key stakeholder groups include: Government; health professional bodies; disability movement, employers and trade unions. There are different levels at which this new policy should be communicated.

4. The need to develop unique, country-specific approaches in the developing world

This paper argues that it is necessary to develop unique and country-sensitive RTW approaches in the developing world, bearing in mind the nature of the national labour market, and effective means to ensure stakeholder participation.

A variety of innovative, country-specific strategies may succeed in securing stakeholder buy-in and, ultimately, RTW success in the developing world. For example, as the Malaysian (SOCISO) example has proved, establishing a tripartite body immediately secures an element

⁶² Shrey, DE and Hursh, NC “Workplace disability management: International trends and perspectives”, (1999) *Journal of Occupational Rehabilitation*, Vol 9 No. 1, 54.

of stakeholder buy-in.⁶³ In addition, insufficient and expensive labour inspection of occupational safety and health standards in Malaysia was strengthened by integrating RTW with an employer obligation to improve occupational safety and health standards.⁶⁴ Also, in Malaysia, employer involvement is ensured by formally linking employer support of the RTW system to the notion of corporate social responsibility. Simple mechanisms such as conducting employers' seminars, and facilitating consultations with affected individuals, may also prove to be highly effective.⁶⁵ Furthermore, supporting self-employment and entrepreneurship may constitute appropriate interventions in the developing world, as accommodation in formal employment may often not be possible, in view of the structure of the labour market.

Creativity and thought is also required in order to address critical concerns relating to lack of funding. In Malaysia, for example, contractual arrangements have been entered into with a range of service providers. As public hospitals are not suitable for RTW purposes, reliance has been placed on private providers. These providers must comply with criteria set by SOCSO, and have to be officially accredited. Payments to such providers are made in accordance with a fixed tariff.

It is interesting to note that the Malaysian RTW programme is entirely a Web-based system, which is also conducive for purposes of gathering statistics. Use is made of an interactive model, based on similar Australian and German systems, and containing information on, among others, clients' profiles, ICD 10 classification, case notes & photographs, initial assessment, rehabilitation plan and job-seeking data.⁶⁶

Research conducted in Hong Kong has resulted in the identification of a range of other critical factors and intervention modalities. These interventions are considered to be essential for the future direction of facilitating workers with work injury in community re-integration and return to work in Hong Kong. Some of these factors, which may also be relevant for purposes of informing developing country RTW attempts, include:

- The importance of timely intervention;⁶⁷
- Workplace-based rehabilitation (work-site based rehabilitation is found to be particularly effective for better management of workers with work injury);⁶⁸

⁶³ The SOCSO Board comprises representatives from employers, trade unions and government agencies. As at 2011, the number of active employers in Malaysia totalled 347 871. The number of active employees presently totals 5 518 823.

⁶⁴ Case Managers who arrange for worksite assessments in Malaysia have played a role in preventing future accidents by advising employers about safety and health matters pertaining specifically to their workplace. This has served to illustrate to employers in Malaysia how RTW is able to act as an indicator of good occupational health and safety policies. Positive outcomes have flowed from this. For example, a few Malaysian employers now seek active assistance from SOCSO before implementing disability management protocols in their human resource practices. Some Malaysian hospitals have already established RTW Clinics as part of the services offered, and SOCSO is attempting to replicate and standardise such practices throughout the country.

⁶⁵ SOCSO has, for example, taken the initiative to organise Annual RTW Conferences for purposes of information sharing / knowledge transfer and also to convince stakeholders such as employers, members from the medical fraternity, allied health practitioners and NGOs, of the benefits of RTW. SOCSO Case Managers have been specifically involved in these initiatives and have played an important role in establishing and explaining the relationship between RTW practices and good corporate social responsibility.

⁶⁶ Olivier *et al* (note 1 above) 38.

⁶⁷ This has been defined as provision of rehabilitation at an optimum time so as to maximise rehabilitation outcomes.

⁶⁸ This would include a job site visit, evaluation and developing strategies for transitional work, job accommodation and worksite modification.

- Communication among different stakeholders: good communication throughout the occupational rehabilitation process is of the utmost importance for facilitating workers with injury to return to work.
- Company dynamics: dynamics of employers and the different personnel involved in interacting with workers with work injury within a company is also crucial to the success of the return to work process.⁶⁹
- Rehabilitation counselling: psychosocial factors play a role in influencing the worker's rehabilitation outcome and the success of reintegration into competitive employment. Self-expectation (on the part of an employee) of return to work has a significant impact on determining the probability of a worker's return to work and the reduction of pain intensity. Therefore, rehabilitation counselling, as one of the psychosocial interventions, could be used to tackle the worker's psychological hurdles that may arise from the disability, loss of work role, and anxiety associated with reengagement in work role.⁷⁰
- Community reintegration: voluntary work, in particular in a community setting, is one of the models to provide a platform for workers with injuries to share feelings, establish empowerment, regain self-confidence and obtain mutual support, in order to achieve better reintegration into the community and the workforce.⁷¹

It is clear from the above that rehabilitation is not necessarily restricted to the area of occupational injuries and diseases. As is evident from the German example, a range of social security institutions could/should provide for rehabilitation, and can meaningfully share services and facilities. A comprehensive approach to disability management should also involve the setting of in-company standards, relying on an audit system, and the accreditation of disability managers and return to work coordinators. A Code of Practice could further ensure informed and standardised RTW interventions. The Canadian National Institute of Disability Management and Research (NIDMAR) provides an exemplary range of services in these areas. A recent German experience shows that there is scope for including in RTW arrangements in-plant integration agreements between employers and worker representatives.

Prevention strategies should also be integrated in RTW frameworks. Employees should be prevented from and protected against developing or acquiring disabling conditions through effective risk management and health and safety measures with targeted responses to workers who are at risk. A range of other options may also enhance the potential of long-term absent employees to return to work either in their current job or through redeployment. Transitional work and supervised work-based rehabilitation are among the possible interventions.

Finally, in this regard, it is clear that tailor-made individualised work resettlement programme is crucial to enhancing workers' work skill and knowledge, to be a productive part of the labour force and continue to contribute to society.

⁶⁹ In fact, many frontline supervisors and co-workers hesitate or are even reluctant to assist in job accommodation for workers with work injury due to their concerns for unfairness and imbalance in sharing the workload. Intervention on the part of a skilled human resources manager (for example, by meeting with an injured worker's frontline supervisor and co-workers before the worker returns to transitional work) may address such concerns.

⁷⁰ The counseling aims to enhance the worker's work readiness by re-establishing the worker's role. He/she can understand the meaning, value and demands of work, modify attitudes and work behaviour, relate to co-workers and employer, accept supervision and obtain information on the labour market.

⁷¹ Olivier *et al* Report 130.

5. Further measures informed by the developed world

This paper argues, finally, that there is a need to introduce further measures to support the effective implementation of RTW and DM systems in the developing world. In this regard, much can be learnt from the vast experience of countries in the industrialised world, where effective RTW systems have been in place for some time. Since new practices are rarely adopted in isolation, experts caution that any consideration of borrowing practices from other countries needs to take into account the unique economic, social, and political elements in each country. Although other countries appear to be very successful in their rehabilitation programmes, practices that are successful in one country may not necessarily work well in another.⁷²

Despite this caution, there would appear to be a number of themes which emerge from an analysis of the RTW legislation and policies of countries such as Sweden, the Netherlands, Canada, Australia and New Zealand, which may be relevant for the implementation of RTW in South Africa and Malaysia.

Employer and workplace focus

The first important theme which is apparent is that RTW legislation and policies are largely centred on the employer, and the duties and responsibilities of the employer. These duties often commence with the employer making contributions on behalf of the employee to the relevant fund, but also extend to the employer implementing rehabilitation programmes and supporting the injured or ill employee during rehabilitation. The focus on the responsibilities of the employer is important as it is in the workplace where the employee contracts occupational diseases, or picks up occupational injuries, and it is the employer who has control over the workplace. This orientation can clearly be seen in the Swedish system, for example, which views the workplace as the best place for both preventative work and rehabilitation, and places pressure on the employer to implement RTW programmes.

The employer has a number of responsibilities under the various RTW systems already in operation in the developed world. The employer, for example, has the responsibility not to dismiss the worker in the case of occupational disease or injury, at least for a specified time period, and also, in many jurisdictions, to provide the employee with suitable work while they are recovering. This can either involve the modification of the employee's pre-injury duties to allow for their restricted abilities; providing a different set of duties; or assisting the injured employee to gain employment elsewhere, should they not be able to continue at their current job. The employer has to take reasonable accommodation measures. The responsibilities also involve the employer making contributions to the relevant compensation or invalidity fund in their jurisdiction, and often necessitate the implementation of a rehabilitation programme, or policy. In some jurisdictions, depending on the size of the firm, employing a disability manager is considered to be warranted. The employer is also tasked with administration of the RTW system, with assisting the employee in obtaining an assessment of their injury or illness and with providing the link between the employee, those assisting in the employee's rehabilitation and between the employee and the relevant government agency.

⁷² Sim "Improving return-to-work strategies in the United States disability programs, with analysis of programme practices in Germany and Sweden" 1999 *Social Security Bulletin* Vol. 62 No. 3 41.

It is particularly noteworthy that the responsibility of the employer is often dependent on the size of their organisation. The comparative perspective demonstrates that larger organisations have more responsibilities with reference to RTW than smaller organisations. This can especially be seen in the area of the disability manager, with larger organisations in a number of jurisdictions tasked with employing a disability manager.

Incentives

A number of the RTW laws and policies operating in the developed world provide innovative incentives in order to ensure that RTW is correctly implemented. These incentives can either be negative or positive, and may be applied to employees, employers and /or new employers of those recovering or recovered from occupational disease or injury.

Positive incentives can, for example, be seen in the Swedish system, which provides financial incentives for both the employer and the employee to participate in RTW.⁷³ An example of a negative incentive for the employer can be seen in the Dutch system which prohibits an employer from dismissing an injured employee, meaning that it is in the best interests of the employer to ensure that the employee returns to work as quickly as they are able to.⁷⁴ Incentives to new employers of injured workers can be seen in a number of Australian jurisdictions, and include allowances, benefits and retraining of injured employees.⁷⁵ Incentives can be introduced to ensure that stakeholders (such as employers, employees and new employers) are properly invested in participation and implementation of RTW programmes. In some jurisdictions, employees can even have their benefits reduced or taken away should they not fully participate in the rehabilitation process.⁷⁶

⁷³ Sweden's system provides economic incentives for employees to be interested in RTW: See Olivier *et al Report* 80; Sealander, J. "Economic incentives for Return to Work in Sweden: In Theory and in Practice", 2006 *International Journal of Disability Management Research*, Vol. 1 No. 1.

⁷⁴ Dutch labour law, for example, prohibits an employer from dismissing an employee while they are sick. This ensures that, in order to limit their financial risk, it is in the employer's interest to assist their injured or sick employees to return to work; if a Dutch employer fails to do its best to reintegrate the employee, or to find him a suitable job elsewhere, then it can be required to pay the employee his full salary for an extra year. The Dutch system also penalises employers in instances where too many of their workers become injured and claim disability benefits: OECD (Organisation for Economic Co-operation and Development) *Sickness and Disability Schemes in the Netherlands - Country memo as a background paper for the OECD Disability Review – November 2007* (2007). In South Australia, failure to comply with the employer's obligation to provide suitable alternative employment for a worker disabled at the workplace may be forced to pay a \$25000 fine: Commonwealth of Australia *Comparison of Workers Compensation Arrangements Australia and New Zealand 2009* (2010) page 211-212.

⁷⁵ In New South Wales, for example, new employers of injured workers are incentivised to the tune of \$300 per week, while in Victoria, wage subsidies up to an amount of \$26000 for 12 months are offered as an incentive to employers employing workers ready to return to work but unable to do so with their former employer: Commonwealth of Australia *Comparison of Workers Compensation Arrangements Australia and New Zealand 2009* (2010) page 211-221.

⁷⁶ In New South Wales, for example, injured employees are obliged to participate and cooperate in the establishment of an Injury Management Plan. Such employees must make reasonable efforts to return to work with the pre-injury employer as soon as possible, having regard to the nature of the injury, and an unreasonable failure to comply with this requirement may result in the suspension or cessation of weekly payments: Commonwealth of Australia *Comparison of Workers Compensation Arrangements Australia and New Zealand 2009* (2010) page 211-221.

Activating measures

A number of jurisdictions also highlight the importance of activating measures to ensure that employees with occupational diseases or injuries are redirected to employment opportunities rather than claiming disability benefits. This can be seen in the Netherlands and in Switzerland, for example, where there are efforts to make it more difficult for employees who have suffered an occupational injury or disease to claim disability benefits, while at the same time ensuring that those employees are accommodated at their place of work either through an adaptation of their normal duties or through a new set of duties, or a new place of employment. This provides an environment which results in employees and employers ensuring that they attempt rehabilitation and return to work instead of receiving disability benefits without question. In some jurisdictions an active policy is pursued to rehabilitate before paying disability pensions.

Disability manager and disability management

The importance of disability management to the implementation of RTW is highlighted in the legislation of a number of foreign jurisdictions. This is with reference to both the appointment of a disability manager, and also the importance of proper disability management. The Swedish system, for example, contains legislation which is meant to ensure that the employer implements disability management in the workplace. Various jurisdictions in Australia require the employer to establish and comply with the provisions of an injury management plan. A number of jurisdictions also require the employer of larger companies (the size of a large company is dependent on the jurisdiction) to employ a disability manager.

Employment protection

Ensuring that the injured or ill employee is not dismissed due to their occupational injury or disease is an integral part of RTW in a number of jurisdictions. The Dutch system, for example, prohibits an employer from terminating the employment of an injured employee, as is the case in a number of Australian jurisdictions, such as New South Wales, where the employer is guilty of an offence should they dismiss the injured worker within 6 months of the worker becoming injured. In fact, the Dutch system prohibits the employer from dismissing an injured employee for up to two years, with the employer tasked with assisting the employee in their rehabilitation and also with paying the employee a salary.

Funding source – essentially an employer responsibility

The funding source of RTW in the above examples is mostly through contributions, especially from the employer. The Dutch system, for example, requires the employer to pay two payments: the first is a base payment which is the same for all employers, and the second payment is dependent on the number of employees which that employer has on disability benefits. Canada makes use of a Compensation Fund, with contributions from the employer being paid to the Contribution Fund, and this is then used either for disability benefits, rehabilitation of injured workers or administration of the fund.

Employee obligations

The employee has a number of obligations in relation to RTW. These include such areas as ensuring that employees participate in the rehabilitation programme, by attending relevant

therapy and rehabilitation sessions, as well as communicating and interacting with their employer as well as the fund in their jurisdiction. In some jurisdictions the refusal to participate is met by penalties and negative incentives – e.g., the loss or substantial reduction of benefit payments.

Compensation fund and government responsibilities

The tasks of the compensation fund or relevant government body which administers RTW are also indicated in the legislation and policies of the various jurisdictions considered. The tasks of the administrative body include: providing a supervisory function in relation to whether both the employer and employee comply with their respective obligations and responsibilities under the RTW system, as well as in relation to work and other assessments. In Switzerland, for example, this can include making an objective ruling on whether an injured employee is still able to do some type of work in order to earn money. This is central to the duties of the IV scheme in Switzerland. The relevant administrative body must also provide incentives for new employers, and also implement regulations regarding incentives for both employers and employees. This can involve checking to ensure that organisations have created rehabilitation plans and that their plans are implemented, checking that employers have completed their duties to the injured or ill employee, and also that employees are fully participating in their rehabilitation programme.

Maintaining a balance between rehabilitation and benefit payments

Both the Dutch and Swiss examples have tried to ensure that there are fewer employees on disability benefits, and more employees successfully completing rehabilitation in order to enable them to return to work. One of the principles of the new system in Switzerland, for example, is enforcing stricter eligibility criteria for disability in an attempt to ensure that there are fewer people claiming disability benefits. This means, therefore, that compensation funds and the relevant government bodies are tasked with finding the correct balance between, on the one hand, assisting an employee who has suffered an occupational disease or injury with rehabilitation and returning to work in a speedy manner, and ensuring that the employee does not return to work before they are fully able to, which could result in another injury and, on the other hand, the payment of benefits in appropriate circumstances. The relevant government bodies in some of the jurisdictions are also tasked with an extension of this, namely to decide whether an injured or ill employee is likely to be able to return to work after rehabilitation, or whether they should be given disability benefits from the beginning.

Accreditation

Another task of the compensation fund or relevant government body, in some of the jurisdictions discussed above, is accreditation of RTW and rehabilitation coordinators/disability managers and also the accreditation of vocational rehabilitation providers and other service providers.

6. Conclusion

In conclusion, as the experience of Malaysia and developments in South Africa are indicating, there is no reason why state of the art and internationally RTW and DM principles, practices and tools cannot be implemented in the developing world. Yet, there is need to factor in the particular contexts of developing world realities and socio-economic

contexts, to ensure appropriate and country-sensitive roll-out of RTW and DM. Suggestions as to how this could be achieved in the South African context were made in this contribution. For Malaysia, in addition to the range of existing measures described in this paper, there is scope to consider and introduce several other interventions that are regarded as needed and important:

Future direction in Malaysia

Though the RTW Program in Malaysia has enjoyed some positive and sustainable results, there are a few further measures and future improvements needed to further improve the system.

Legal Framework

Protecting Employment

It is, for example, necessary to improve the legal framework in order to better secure employment in the country. Though there are provisions for securing employment during the course of temporary disablement (Medical Leave) due to employment injury,⁷⁷ there are no provisions in securing employment for those suffering from Invalidity, apart from the very basic protection enjoyed under the Employment Act 1955. A law should be drafted to prohibit dismissals in instances where disability management is not offered to the affected worker. This would ensure employer participation in accommodating a worker with some form of disability. The proposed law should also clearly outline the roles and responsibility of the employer, unions, PWD Representatives, Human Resource Department, Insurer, etc to ensure that appropriate steps are taken in order to retain workers with disabilities.

Incentives & Disincentives

Besides providing a legislative approach protecting against dismissals, proper incentives should be designed to support the program, as discussed elsewhere. The incentives could be awarded to both employers and workers to participate in the program. For employer incentives, a levy could be implemented for companies who do not have disability management policies in place. The levy collected from such employers could be given to support employers who have accommodative or disability management policies for workers with disabilities. This could be similar to the levy and grant system for employing persons with disabilities imposed by the Japan Organization for Employment of the Elderly and Persons with Disabilities (JEED)⁷⁸ or Germany's Landschaftsverband Rheinland (LVR).⁷⁹ Such a levy has played a role in providing incentives for employers who are willing to employ people with disabilities. A similar model could be adopted by SOCSO. One of the fastest ways to achieve this would be to use SOCSO's statutory contributions mechanism in order to implement the levy system by JEED and LVR. This would act as an incentive or disincentive to employers in terms of adopting disability management protocols.

Financial support to the worker with disabilities is also a very important factor in a disability management program. Such support can take the form of job trial allowances or job seeker allowances and would have to be designed carefully in order to serve as an incentive to workers who may suffer temporarily from their disability. A wrongly-designed compensation

⁷⁷ Section 53, Employees' Social Security Act 1969, Malaysia.

⁷⁸ http://www.jeed.or.jp/english/levy_and_grant_system.html.

⁷⁹ http://www.lvr.de/de/nav_main/.

system to support these affected workers during this period may become a “disincentive” to the program.

Decentralization

With all these benefits in place, it would also be a good time to implement legislation compelling the appointment of Disability Managers in Malaysia. This would be particularly applicable to the larger organisations who should be able to afford to have a Disability Manager within their organisations. The smaller to medium enterprises could still be supported by the SOCSO Disability Managers. This would result in employers playing an active role in disability management at the (large) workplace and SOCSO could accordingly move from a centralised model to a decentralised mode. This could be the most appropriate strategy for providing disability management or the RTW program to all workers.

Infrastructure

SOCSO must also improve its rehabilitation infrastructure pending the building of the SOCSO Rehabilitation Centre. The SOCSO Rehabilitation Centre is one of the main future projects for improving the RTW services in Malaysia, directed specifically towards assisting injured workers to return to work.”