Southern African Catholic Bishops' Conference
PARLIAMENTARY LIAISON OFFICE

Briefing Paper 644

March 2026

Cerebral Palsy – A Symptom of Systemic Failure

"Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, and promote his self-reliance and active participation in the community".

African Charter on the Rights and Welfare of the Child[1]

1. Introduction

Recent High Court and Supreme Court of Appeal (SCA) rulings have introduced critical precedents regarding the payment and calculation of damages in Cerebral Palsy (CP) cases. A recent ruling by the SCA[2] overturned a finding from the Eastern Cape High Court that the health department in that province could provide health services to a patient who had been harmed by its negligence, instead of paying multimillion-rand settlement amounts for future medical expenses. Judge Ashton Schippers held that the ruling "violated the child's best interests".[3] In this case the mother had instituted legal action against the department after her child suffered severe birth injuries at Cecilia Makiwane Hospital in KuGompo City (formerly known as East London).[4] She successfully secured a R23 million lump-sum settlement after a multi-year battle against the health department. The department admitted liability but contested the damages.

This ruling is important in that it highlights the difficulty in managing the intersection of medical realities and legal entitlements. Furthermore, it highlights the consequences of systemic neglect, as well as the oft-neglected rights and needs of children living with disability.

2. What is Cerebral Palsy?

Cerebral Palsy (CP) is a group of lifelong non-progressive motor disorders and is the leading cause of childhood physical disability. CP is caused by abnormal brain development or damage before, during, or shortly after birth, and it affects posture, movement, and muscle co-ordination. While not progressive, it is a lifelong condition requiring multidisciplinary care. About 90 per cent of cases stem from brain tissue damage, with 70 per cent resulting from birth injuries. The signs of CP vary greatly because there are many different types and levels of disability. Symptoms ranging from mild to severe and include stiff muscles (spasticity), uncontrolled movements, poor balance, and difficult posture. Many children with CP also experience epilepsy, intellectual disabilities, or vision, hearing, and speech problems, as well as respiratory and swallowing difficulties. The motor disorders of CP are often accompanied by disturbances of sensation, perception, cognition, communication, and behaviour.[5] While there is no cure, treatments include physical, occupational, and speech therapies, medication, and, in some cases, surgery.

Although CP typically does not worsen over time, its symptoms can change, and it requires lifelong management to improve functionality and quality of life – all of which involve significant effort and expense.[6] In its appeal to the SCA, the E-Cape health department argued if it were required to pay the award of R23 million upfront, it would not be able to meet its health service delivery obligations to the public more generally.[7] However, it is important to note that it is the very inadequacies in critical care at hospitals which typically result in the lifelong disability of children who will, in turn, go on to need a lifetime of special care at considerable cost to the health budget.

3. Incidence of Cerebral Palsy

South Africa's CP statistics surpass the global average for the prevalence of CP at birth at 2 children per 1 000 births. As many as 10 in 1 000 children are diagnosed with CP, and the incidence of avoidable birth-related injuries is alarmingly high in South African state hospitals. As noted, this high prevalence is often linked to preventable issues, including inadequate training for nursing staff and a lack of resources in state hospitals. A study in the Western Cape provides longitudinal evidence to confirm that CP in a South African is strongly correlated with a high number of preventable causes.[8] Medical malpractice and poor-quality care in public hospitals are significant factors in South Africa's shocking CP statistics. The findings from this study indicate that state hospitals often provide inadequate care during childbirth, and that South Africa more generally has insufficient prevention strategies for healthcare malpractice or neglect.

5. Medical Negligence Claims

The SCA ruling overturned the Eastern Cape High Court order that permitted the Department of Health to provide medical services and supplies at state hospitals instead of a cash payout. The SCA reaffirmed the 'once-and-for-all' common-law rule, meaning that all damages, including future medical expenses, must be paid as a single lump-sum amount to the affected individual. The Court held that requiring patients to use state facilities – often the very ones that caused the injury – to receive ongoing healthcare services and treatment violates the child's best interests and constitutional rights to equality and dignity.

The Eastern Cape Department of Health has approximately R22-billion in medico-legal claims pending against it and has the highest incidence of successful medico-legal claims out of all the nine provinces. A total of R339 million in successful claims was paid out by the department during 2025.[9] Most of the province's medico-legal claims concern babies with CP who were injured during birth at state facilities.[10] These are difficult to quantify, and successful claims result in court orders for multimillion-rand lump sum payments that must be made immediately. [11&12] Nationally, it is estimated that around half of medical negligence claims against state hospitals are CP-related. Thus, apart from the direct impact on infants and families, CP claims also have a major impact on public health budgets.

Medical malpractice claims for children with CP in South Africa are rising, driven by under-resourced public hospitals, with payouts often exceeding R10 million to R20 million for birth negligence. Though not a direct measure of actual CP cases, medical negligence claims against the government suggest that rates remain high.[13] Over 50 per cent of malpractice claims in most provinces relate to CP caused by preventable birth complications, including inadequate monitoring of the foetal distress during labour; failure to perform timely caesarean sections; poor management of breech births or umbilical cord complications; and undetected or untreated infections.[14]

Multiple reports point to a lack of resources and inadequate training for nursing staff in state hospitals as significant root causes CP in babies. From 2018 to 2022, the maternity unit in a single Johannesburg hospital was responsible for medical negligence claims amounting to almost R1-billion.[15] In 2023, then Health Minister Joe Phaahla confirmed that the majority of medical malpractice cases in Gauteng – totalling R20 billion – involved CP. He admitted that these matters could "be resolved by intervention from clinical services through intensive training of the clinicians dealing with patients at the healthcare facilities."[16]

Establishing the appropriate financial compensation for a claim involving CP in a baby should take into account the severity of the brain damage, and the estimated costs arising from this, over the life of the child.[17] Dr Natalie Benjamin-Damons, a physiotherapist and lecturer in paediatric physiotherapy at the University of the Witwatersrand explains that "all of us… from the medical professionals to even our law practitioners, [must understand] that it's not about getting this huge sum of money or proving our healthcare system is inefficient. It's about ensuring that the patient is getting the best care and that the government is also in a position to provide good care".[18]

6. The Care Dependency Grant

The primary form of social protection available to caregivers of children with disabilities is the Care Dependency Grant (CDG). The CDG is a monthly payment of R2 400 (as of April 2026)

for parents or caregivers of children (under 18) with severe, permanent disabilities needing full-time home care.[19] The grant serves to assist with the extra costs of caring for a child with severe disabilities at home, but is subject to a means test.[20] Research shows that most people who are likely to access this grant generally live far below the CDG income threshold,[21] as a result of which the CDG has functionally become the primary source of government support for the social protection of children with disabilities and their families, and as such its impact is inadequate.[22] However, it is arguable that "if additional services and entitlements were available to support the multidimensional needs of these families, the grant would likely have a dramatically enhanced impact".[23] These services and entitlements would include the provision of wheelchairs and the availability and accessibility of health services and therapeutic treatment and support.

7. Provision of Wheelchairs

For those with mobility constraints, the wheelchair is one of the most-used assistive devices for enhancing personal mobility, which is a precondition for enjoying human rights and living in dignity. The National Department of Health is the primary authority responsible for the supply and fitting of assistive devices in the public sector.[24] However, there is a significant backlog in the supply of wheelchairs to children with disabilities (including those with CP), though the severity varies by province. In 2023 there was a waiting list of 5 140 wheelchairs in the Eastern Cape – substantially more than in other provinces.[25] Some children with CP require custom-fitted 'buggies' rather than standard wheelchairs. These are more expensive and require trained physiotherapists for fitting. Furthermore, wheelchairs must be adjusted and fitted for use in rural areas. The lack of an appropriate wheelchair for a child with CP can result in that child being permanently bed-bound and isolated from the outside world. This robs the child of mobility, independence, and enjoyment of social and religious facilities, and compromises access to healthcare services and schooling opportunities.[26]

8. Availability of Therapies in the Eastern Cape

According to data based on a study of public sector physiotherapists in South Africa, published in 2023, there were approximately 51 physiotherapists working in the surveyed public-sector hospitals in the Eastern Cape. The Eastern Cape accounted for 12% of the 429 public sector physiotherapists surveyed across the country. The province has faced severe shortages, particularly in rural areas, due to a lack of funding for permanent posts. [27]

A 2020 study using 2018 data indicated that there were roughly 271 occupational therapists in the Eastern Cape across all sectors (public and private), with a ratio of 0.42 per 10 000 population, which is one of the lowest in the country.[28] Data from provincial audits show that many public hospitals in the Eastern Cape may have only one speech therapist available or no permanent speech therapy staff at all. State hospitals are heavily reliant on community service placement therapists. However, the Department has recently focused on strengthening rehabilitation services, with a January 2026 announcement indicating the recruitment of new professionals.[29]

9. Corruption

Turmoil and corruption within the National Department of Health have been well documented. The Eastern Cape Department of Health is currently characterized by systemic procurement irregularities, fraudulent medical-legal claims, and critical financial mismanagement that has led the department to a state of near-bankruptcy, having R4.8 billion in unpaid debt. Organized labour and political oversight bodies have called for the department to be placed under administration due to 'collapse in governance'. In October 2024, President Ramaphosa authorized the Special Investigating Unit (SIU) to probe 19 contracts flagged for flouting procurement processes.[30]

10. Conclusion

Children with disabilities, including those with CP, are among the most vulnerable and marginalized members of our population. Dr Benjamin-Damons points out that South Africa does not have a registry to determine the number of children who develop CP and how many survive into adulthood. Such a registry would be useful as it would allow for effective monitoring of the treatment outcomes for those with CP, and provide information on how many children are born with CP, detail the factors which contributed

to it, and indicate how many persons with CP have access to school and healthcare services, as well as their survival rates.[31]

This would greatly aid in the development of efficient prevention strategies and the provision of optimal treatment and care that meet the needs of each child. It would also enable the department to identify structural weaknesses in its current provision of healthcare services to those with CP, and allow for appropriate steps to be taken to mitigate its causes which, as noted above, are typically due to the provision of inadequate healthcare services or medical malpractice.

As several studies have found, many of the causes of CP are preventable and there are measures that can be taken before pregnancy, as well as during pregnancy and labour, to mitigate the occurrence of CP. There is an urgent need to focus on further improvements in obstetric and neonatal services.[32] State hospitals and clinics with maternity units must be properly staffed with the necessary equipment and medical supplies.

While courts have been awarding sizeable damages to successful claimants, no amount of money can truly compensate for life-long injuries caused by negligence. The systemic problems, and the lack of positive steps by the department to address them, were raised in the case of *M v Member of the Executive Council for Health, KwaZulu-Natal,* in which the Court said the following: "Although they present as a bipolar dispute between a plaintiff and a defendant with the remedy being findings on liability, compensation and costs, the problem of malpractice remains institutional. Malpractice suits are retroactive in the sense that they seek to remedy past wrongs. The litigation resolves the dispute but not the institutional problems. Remedies that are forward-looking, that seek to resolve problems for the future should be considered for long-term sustainable solutions. The Court cannot initiate such remedies without the co-operation of the litigants."[33]

Lois Law
Project Co-ordinator
lois@cplo.org.za

---

[1] https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf

[2] https://www.saflii.org/za/cases/ZASCA/2026/14.html

[3] https://www.dailymaverick.co.za/article/2026-02-12-blow-for-eastern-cape-department-of-health-as-sca-overturns-saviour-judgment/

[4] https://www.dailymaverick.co.za/article/2026-02-12-blow-for-eastern-cape-department-of-health-as-sca-overturns-saviour-judgment/

[5] https://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1999-76712020000100002

[6] https://www.cdc.gov/cerebral-palsy/about/index.html#:~:text=Cerebral%20palsy%20(CP)%20is%20a%20group%20of,symptoms%20can%20change%20over%20a%20person's%20lifetime.

[7] https://iol.co.za/news/crime-and-courts/2026-02-15-mother-wins-landmark-case-for-lump-sum-damages-in-cerebral-palsy-claim/

[8] https://ajod.org/index.php/ajod/article/view/1449/2934

[9] R1bn in unpaid bills triggers medical crisis in Eastern Cape

[10] https://www.dailymaverick.co.za/article/2026-02-12-blow-for-eastern-cape-department-of-health-as-sca-overturns-saviour-judgment/

[11] https://www.golegal.co.za/cerebral-palsy-compensation/

[12] Three judges described as overly generous the R28.8m award by the KZN High Court (Pietermaritzburg) to the mother of a child with CP

[13] https://www.spotlightnsp.co.za/2022/06/30/part-2-how-can-we-reduce-incidence-of-cerebral-

palsy-in-sa/

[14] https://www.spotlightnsp.co.za/2022/06/29/in-depth-cerebral-palsy-in-sa-part-1/

[15] https://www.sowetan.co.za/news/south-africa/2022-10-24-bara-maternity-unit-has-r1bn-medical-negligence-cases/

[16] https://www.news24.com/southafrica/news/cerebral-palsy-contributes-to-the-most-number-of-medico-legal-claims-in-gauteng-20231113

[17] https://www.golegal.co.za/cerebral-palsy-compensation/

[18] https://www.spotlightnsp.co.za/2022/06/30/part-2-how-can-we-reduce-incidence-of-cerebral-palsy-in-sa/

[19] Applicants must be South African citizens/permanent residents/refugees, pass a means test (single: <R223,200/year; married: <R446,400/year), and have the child assessed by a state doctor. The child is not eligible for the Child Support Grant.

[20] https://www.gov.za/services/services-residents/parenting/child-care/care-dependency-grant

[21] Shung-King M, et al. South African Child Gauge 2019: Child and Adolescent health – leave no one behind. Children's Institute, University of Cape Town; Cape Town, South Africa: 2019. https://pmc.ncbi.nlm.nih.gov/articles/PMC7614334/

[22] https://pmc.ncbi.nlm.nih.gov/articles/PMC7614334/#R33

[23] https://pmc.ncbi.nlm.nih.gov/articles/PMC7614334/#R33

[24] https://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2310-38332021000200011

[25] https://iol.co.za/capeargus/news/2023-03-28-sa-has-a-long-waiting-list-for-wheelchairs-says-health-minister-joe-phaahla/

[26] https://www.news24.com/life/wheelchairs-the-assistive-device-that-gives-life-20190327-2

[27] https://journals.co.za/doi/10.4102/sajp.v79i1.1803 The province faces severe shortages, particularly in rural areas. In the Eastern Region of the Eastern Cape, 5 out of 24 district hospitals had no physiotherapist at all, with only 26 total physiotherapists serving those 24 hospitals. As of October 2025, more than 40 newly qualified physiotherapists and other allied healthcare workers held protests, citing a lack of funding for permanent posts in the Eastern Cape.

[28] https://pmc.ncbi.nlm.nih.gov/articles/PMC7083000/

[29] https://web.facebook.com/ANCECape/posts/for-immediate-release-04-january-2026anc-eastern-cape-welcomes-the-rec

[30] https://www.medicalbrief.co.za/siu-probes-eastern-cape-health-contracts/

[31] https://www.spotlightnsp.co.za/2022/06/30/part-2-how-can-we-reduce-incidence-of-cerebral-palsy-in-sa/

[32] https://www.spotlightnsp.co.za/2022/06/30/part-2-how-can-we-reduce-incidence-of-cerebral-palsy-in-sa/

[33] https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/ReproductiveHealthCare/Legal_Resources_Centre_and_Women%27s_Legal_Centre_South_Africa.pdf

This Briefing Paper, or parts thereof, may be reproduced with acknowledgement.