

**Monitoring the  
Right of Access to Social  
Security and Appropriate  
Social Assistance  
in South Africa**

**SPI** SOCIAL  
POLICY  
INITIATIVE

INTRODUCTION: Understanding the Right	4
The Right to Social Security in the South African Constitution	4
Compliance with International Law	5
Jurisprudential Analysis	6
Minimum Core Obligation	6
Progressive Realisation	8
Policy Analysis	8
Public Social Insurance	14
Public & Private Pension Funds	15
Non-Contributory Social Assistance (Social Grants)	15
The Working-Age Gap in Social Assistance Provisions	19
Global Social Security Responses Post Covid-19	21

**ISBN:** 978-0-6397-2926-8  
**PUBLISHERS:** Social Policy Initiative & Friedrich-Ebert-Stiftung  
**EXECUTIVE DIRECTOR:** Isobel Frye  
**RESEARCHERS/AUTHORS:** Lindi-K Khumalo & Nkululeko Majazi  
**EDITOR:** Anita Makgetla  
**GRAPHIC DESIGNER:** Christopher Vermeulen

87 De Korte Street,  
 South Point Corner,  
 Office 401,  
 Braamfontein,  
 Johannesburg, 2001.  
 t. +27 11 833 0161  
 isobel@spi.net.za  
 lindi-k@spi.net.za

[facebook.com/SPI](https://www.facebook.com/SPI)  
[instagram.com/spi\\_za/](https://www.instagram.com/spi_za/)  
[twitter.com/SPI\\_OfficialZA](https://twitter.com/SPI_OfficialZA)



DISCLAIMER: THE OPINION EXPRESSED IN THIS PAPER DOES NOT NECESSARILY REFLECT THE VIEWS OF THE FRIEDRICH-EBERT-STIFTUNG, OR THE ORGANISATION WHICH THE AUTHOR REPRESENTS. COPYRIGHT: © PLEASE NOTE THAT THE FRIEDRICH-EBERT-STIFTUNG AND SOCIAL POLICY INITIATIVE (SPI) RESERVES THE COPYRIGHT FOR ALL MATERIALS/REPORTS OR ANY OTHER AUDIO/VISUAL MATERIALS DEVELOPED FOR OR DURING THE RESEARCH PROJECT. THE AUTHORS AND PUBLISHER HAVE MADE EVERY EFFORT TO OBTAIN PERMISSION FOR AND ACKNOWLEDGE THE USE OF COPYRIGHTED MATERIAL. COMMERCIAL USE OF ALL MEDIA PUBLISHED BY FES IS NOT PERMITTED WITHOUT THE WRITTEN CONSENT OF FES. READERS ARE ENCOURAGED TO QUOTE OR REPRODUCE MATERIAL FOR THEIR OWN PUBLICATIONS, AS LONG AS THEY ARE NOT BEING SOLD COMMERCIALY.

## INTRODUCTION: UNDERSTANDING THE RIGHT

The 1996 South African Constitution preamble starts by acknowledging the injustices of the past, and then sets out goals of establishing "a society based on democratic values, social justice, and fundamental human rights."<sup>1</sup> Thereafter a wide range of political and civil rights are put alongside socio-economic rights as human rights in the Bill of Rights.<sup>2</sup> The Bill of Rights in South Africa came about as a result of a period of struggle for black people in the country and it represents a shared commitment to ensure that the atrocities of the past under colonial and apartheid rule are never repeated again. As such, the Bill of Rights by nature has a retroactive element. The incorporation of socio-economic rights in the Constitution has been considered one of the most transformative aspects of the Constitution, and these rights have been hailed as tools for building a caring society based on equality and human dignity. The right to social security is among the various socio-economic rights outlined in the Bill of Rights. As per the Department of Social Development's (DSD) Social Security Review of 2021, social security can be defined as a "set of contributory and non-contributory programmes providing income security and access to health care, to those covered, in the event of certain life contingencies and social risks."<sup>3</sup> Social security in South Africa

functions as a means of poverty prevention, poverty alleviation, social compensation, and income distribution.<sup>4</sup> The social security system consists of three main components

- Private savings — people voluntarily save for unexpected contingencies such as disability, retirement and chronic diseases.
- Social insurance — joint contributions by employers and employees to pension or provident funds, or social insurance covering other unexpected events. Government may also contribute to social insurance covering accidents at work.
- Social assistance — non-contributory and income-tested benefits provided by the State to groups such as people with disabilities, elderly persons and unsupported parents and children who are unable to provide for their own minimum needs. In South Africa, social assistance has taken the form of social grants.

## THE RIGHT TO SOCIAL SECURITY IN THE SOUTH AFRICAN CONSTITUTION

The right to social security is among the various socio-economic rights outlined in the 1996 South Africa Constitution's Bill of Rights. Section 27(1)(c) of the Constitution provides that "everyone has the right of access to social security, including, if they are unable to support themselves and their dependents, appropriate social assistance." This is the most transformative aspect of the Constitution because it affirms the universal right to access to social security for all in South Africa. However, Section 27(2) outlines that "the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights." This

<sup>1</sup> <https://ourconstitution.constitutionhill.org.za/the-preamble-line-by-line/>

<sup>2</sup> Chapter 2 of the Constitution, No. 108 of 1996

<sup>3</sup> Social Security Review 2021: Evolution of Social Security in South Africa: An Agenda for Action. Pg 52

<sup>4</sup> Republic of South Africa Department of Welfare. 1997. White Paper on Social Welfare. August 1997.

section of the Constitution has been placed under much scrutiny due to its promise to alleviate the plight of the poor but in the same breath placing limitations on this provision by making it contingent on the availability of resources.<sup>5</sup> Section 36 of the Constitution outlines the limitations of rights, outlining that rights may be limited by a law of general application that is 'reasonable and justifiable in an open and democratic society based on dignity, freedom, and equality'. Should the State decide to limit its obligations in respect of socio-economic rights, the nature and extent would have to be publicly defined and justified.

This exercise encourages public accountability in support of the constitutional commitment to advance socio-economic rights. The relationship between the positive duties of the State in Sections 26(2) and 27(2) and the general limitations clause is a complex one. However, the State's positive duties are defined in terms of the adoption of reasonable measures, as we will see in the following section. If the State's conduct or omissions are found to be unreasonable at the outset of the constitutional inquiry, it is difficult to imagine situations in which it could still succeed in establishing a reasonable limitation of the right under Section 36.

## COMPLIANCE WITH INTERNATIONAL LAW

From a legal standpoint, the recognition of the right to social security has evolved through universally negotiated and accepted instruments that establish social security as a fundamental social right to which every human being is entitled.<sup>6</sup> South Africa signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1994 but only ratified the Covenant in 2015 in line with Section 231(2) of the Constitution. The ratification for South Africa was a momentous occasion for all because it consolidated South Africa's commitment to alleviating poverty and ensuring social justice for all. The ratification also meant that there was an obligation on the State to ensure that its domestic laws and practices are consistent with international law.<sup>7,8</sup> In line with Article 27 of the Vienna Convention on the Law of Treaties, 1969, the duty is on States to honour their international obligations even if it means changing their domestic laws.<sup>9</sup>

Article 9 of the ICESCR provides that, 'The States Parties to the present Covenant recognise the right of everyone to social security, including social insurance.' The United Nations Committee on Economic, Social, and Cultural Rights (UN CESCR) even went a step further by providing an interpretation of the right to social security in General Comment 19, noting that "the right to social security is of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realise their Covenant rights."<sup>10</sup> The UN CESCR also notes that social security should be treated as a social good which can be accessed based on: (a) a lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; and (c) insufficient family support, particularly for children and adult dependents.<sup>11</sup>

In understanding a States obligation in line with the ICESCR, Article 2(1) of the ICESCR states that: "Each state party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

<sup>5</sup> [https://www.gov.za/sites/default/files/gcis\\_document/201409/whitepaperonsocialwelfareo.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/whitepaperonsocialwelfareo.pdf)

<sup>6</sup> ILO: Building social protection systems: International standards and human rights instruments (2021) pg.2 [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---soc\\_sec/documents/publication/wcms\\_652219.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_652219.pdf)

<sup>7</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 9: The domestic application of the Covenant, 3 December 1998, E/C.12/1998/24, available at: <https://www.refworld.org/docid/47a7079d6.html> [accessed 22 February 2022]

<sup>8</sup> 233- SA Constitution). <https://www.gov.za/documents/constitution-republic-south-africa-1996-chapter-14-general-provisions> [accessed 26 February 2022].

<sup>9</sup> Art 27 of Vienna Convention "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." The Convention is regarded as declaratory of customary international law and binds all states regardless of whether they are a party to it or not. South Africa is not a party to the Vienna Convention on the Law of Treaties, but is bound to the provisions of the Convention.

<sup>10</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 19: The right to social security (Art. 9 of the Covenant), 4 February 2008, E/C.12/GC/19, available at: <https://www.refworld.org/docid/47b7b5b39c.html> [accessed 20 February 2022] para 1

<sup>11</sup> Ibid [para 2]

The wording of Article 2(1) of the ICESCR indicates that the measures that are to be used to provide social security benefits cannot be defined narrowly and, in any event, must guarantee all citizens a minimum enjoyment of this human right.<sup>12</sup> The terms "reasonable measures", "available resources" and "progressive realisation" have specific meanings for the right of access to social security, which has been a source of various landmark cases in South Africa. Both the Constitution and the ICESCR adopt the phrase "subject to available resources," in an attempt to inject some realism into the debate over these rights, ensuring that the state is not required to do more than it has the resources to do. It is, however, not a blanket justification for failing to exercise the relevant right.<sup>13</sup>

The ICESCR stipulates that state parties are required to "... ensure that the right is enjoyed by as many people as possible." Even if resources are limited, the State must be able to demonstrate that it uses all available resources to the greatest extent possible to meet its obligations in terms of rights as a matter of priority. Section 7 of the Constitution emphasises this importance and provides instruction on how the state should handle socio-economic rights. Section 7(2) provides that "the state must respect, protect, promote, and fulfil the rights in the Bill of Rights," placing a positive obligation on the state to not derogate from its duties.

## JURISPRUDENTIAL ANALYSIS

In the landmark case, the Government of the Republic of South Africa v Grootboom, 2000,<sup>14</sup> the Constitutional Court held that in accordance with the Section 39(1)(b) of the Constitution, the Court is obliged to use international law as "a tool to interpretation of the Bill of Right."<sup>15</sup> This includes treaties that South Africa may not have ratified, which was the case with the ICESCR when Grootboom was decided. Henceforth, the Court undertook the task of identifying the significant differences between the relevant provisions of the ICESCR and the Constitution. Thus, in the context of Section 26 of the Constitution, "the ICESCR provides for a right to adequate housing while Section 26 provides for the right of access to adequate housing." Secondly, the ICESCR obliges states parties to take appropriate steps which must include legislation, while the Constitution obliges the South African state to take reasonable legislative and other measures. The precise implications of these differences in legal drafting are not entirely clear from the Grootboom judgement and subsequent socio-economic rights jurisprudence in South Africa.

## MINIMUM CORE OBLIGATION

What did come out of the Grootboom judgement is the South African Constitutional Court's rejection of the application of a minimum core obligation on the State. In General Comment 3<sup>16</sup>, the UN CESCR held that there is a need for a State at the very least to provide a minimum essential level with regards to each of the rights stipulated in the ICESCR: "in order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposal to satisfy, as a matter of priority, those minimum obligations."

<sup>17</sup>

<sup>12</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 19: The right to social security (Art. 9 of the Covenant), 4 February 2008, E/C.12/GC/19, available at: <https://www.refworld.org/docid/47b37b5b39c.html> [accessed 26 January 2022]. Para 4.

<sup>13</sup> General Comment No 3 ¶ 990 para II. <https://www.refworld.org/pdfid/4c38838e10.pdf> [accessed 26 January 2022].

<sup>14</sup> See Grootboom and Others v Government of the Republic of South Africa and Others - Constitutional Court Order (CCT38/00) [2000] ZACC 14 (21 September 2000), para 23. The Court further noted in para 44 as follows: "A society must seek to ensure that the basic necessities of life are provided to all if it is to be a society based on human dignity, freedom and equality. To be reasonable, measures cannot leave out of account the degree and extent of the denial of the right they endeavour to realise. Those, whose needs are the most urgent, and whose ability to enjoy all rights therefore is most in peril, must not be ignored by the measures aimed at achieving realisation of the right." <https://collections.concourt.org.za/handle/20.500.12144/2307>

<sup>15</sup> Grootboom (note 4 above) para 26.

<sup>16</sup> General Comment No. 3 (1990), The Nature of States Parties' Obligations (art 2(1) of the Covenant) UN Doc. E/1991/23 <https://www.refworld.org/pdfid/4c38838e10.pdf>

<sup>17</sup> General Comment No. 3 (note 6 above) para 10.

However, the Constitutional Court held that Section 26 and Section 27 do not give rise to an independent cause of action based on minimum core obligations.<sup>18</sup> In interpreting these sections of the Constitution, the Court noted that the reason it rejected the concept of a minimum core obligation was based on the complexities of determining the precise nature of the concept and resources needed for the state to guarantee a minimum core for everyone. Many critics argue that without a minimum core obligation, courts will be unable to determine whether or not the State's actions are reasonable in the first place. A "universal" standard has the potential to serve as a yardstick against which the reasonableness of government policies can be assessed and evaluated. Having such a standard will also allow the government to set priorities for those in society whose survival is threatened by extreme deprivation.

To date, the Constitutional Court has not applied the concept of minimum core obligations. The Court sees minimum core obligations only as a factor in determining the reasonableness of government measures. The possibility of the minimum core role does not relieve individuals of the enormous burden of establishing the unreasonableness of the State's social programmes, nor does it entitle them to direct individual relief. Nonetheless, it presents an important opportunity to assert minimum core obligations as necessary components of a reasonable government programme.

The Constitutional Court developed the following standards for assessing whether a policy or programme can be said to be meeting the reasonable criterion:

- a) The programme must be comprehensive, coherent and coordinated;
- b) Appropriate financial and human resources must be made available for the programme;
- c) It must be balanced, flexible, and make appropriate provision for short, medium and long-term needs;
- d) It must be reasonably conceived and implemented; and
- e) It must be transparent, and its contents must be made known effectively to the public.<sup>19</sup>

Moreover, the Constitutional Court held, in Khosa vs Minister of Social Development, that the limitation of the right of access to social security may be justifiable on the basis of a lack of resources, but the manner in which the existing resources are allocated must be consistent with the Bill of Rights.<sup>20</sup> Liebenberg concludes her review of the meaning of the constitutional right to social security by reflecting:

"...the nature of the reasonableness review and the latitude afforded the State of 'progressive realisation' and 'within available resources' makes it unlikely that the Court will order social security reforms with far-reaching resource implications. This is particularly the case where the Court fears that the resource implications of its decisions may impact on the enjoyment of other rights. However, it may be possible to require from government at least a plan of action or strategy for the progressive realisation of socio-economic rights."<sup>21</sup>

The decision from the Constitutional Court was a landmark decision because it opened the door for interpretation of the concept of "available resources" in South Africa's jurisprudence as a restriction or limitation on the state's positive duties. And in subsequent jurisprudence, the Constitutional Court has stated that it would interrogate the reasonableness of justifications by organs of state based on a lack of available resources.<sup>22</sup> Moreover, Liebenberg states "it has been accepted that where the relevant provisions of the Constitution impose a clear duty on an organ of state, they are obliged to allocate budgetary resources towards the fulfilment of this obligation."

<sup>18</sup> Liebenberg\_ICESCR\_Synergies\_SAJEJ Vol 3\_Issue 1\_pg 19

<sup>19</sup> Liebenberg, 'The Judicial Enforcement of Social Security Rights' pg.79 [http://www.scielo.org.za/scielo.php?script=sci\\_arttext&pid=S1996-20962014000200017](http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1996-20962014000200017)

<sup>20</sup> Khosa v Minister of Social Development, Mahlaule v Minister of Social Development supra par 45.

<sup>21</sup> Liebenberg, 'The Judicial Enforcement of Social Security Rights' pg.82 [https://www.researchgate.net/publication/251159337\\_The\\_Judicial\\_Enforcement\\_of\\_Social\\_Security\\_Rights\\_in\\_South\\_Africa](https://www.researchgate.net/publication/251159337_The_Judicial_Enforcement_of_Social_Security_Rights_in_South_Africa)

<sup>22</sup> See, for example, Khosa v Minister of Social Development; Mahlaule v Minister of Social Development 2004 (6) SA 505 (CC) Khosa' paras 58-62.

## PROGRESSIVE REALISATION

The Constitutional Court did however, endorse the UN CESCR interpretation of progressive realisation as detailed in General Comment No.3.<sup>23</sup> In accepting the UN CESCR interpretation of progressive realisation, the Court inadvertently endorsed the UN CESCR doctrine of “retrogressive measures”. The presumption against non-retrogression requires states to show that they are not removing any entitlements to social rights without justification. Henceforth, all maximum available resources must be fully used to progressively realise all rights in the UN CESCR in a way that guards against retrogressive steps or impacts.<sup>24</sup> Liebenberg argues that sufficient doctrine on retrogressive measures has been subsequently developed by the UN CESCR to constitute a presumption that retrogressive measures are in principle prohibited unless justified by the relevant State Party concerned.<sup>25</sup> In reference to social security, the UN CESCR held that it:

“Will look carefully at whether: (a) there was reasonable justification for the action; (b) alternatives were comprehensively examined; (c) there was genuine participation of affected groups in examining the proposed measures and alternatives; (d) the measures were directly or indirectly discriminatory; (e) the measures will have a sustained impact on the realisation of the right to social security, an unreasonable impact on acquired social security rights or whether an individual or group is deprived of access to the minimum essential level of social security; and (f) whether there was an independent review of the measures at the national level.”

The burden then shifts to the State to show why a failure to fulfil core obligations is not unreasonable. This goes some way to improving the practical justiciability of socio-economic rights for disadvantaged groups. The Constitution is clear that everyone has the right of access to social security, meaning that the state cannot deny anyone access to these benefits, however, it does not mean that everyone has the right to social security since access to the right is contingent on state resources. The constitutional approach is rotational not only in terms of the availability of resources but also in terms of the time frame for delivery. By parity of this reasoning, a service that is non-existent cannot be available overnight; there is the escape valve for government, the “progressive realisation” clause. It is evident that the debate around social security really boils down to political will. The prerogative of allocating state funds is a policy decision made by the legislative and executive arm of government that cannot be made by the judiciary through judgement.

## POLICY ANALYSIS INTERNATIONAL POLICY

South Africa is signatory to key international agreements committing the country to the reduction and alleviation of poverty and inequality, and the building of inclusive societies. Two such agreements are the United Nations’ (UN) 2030 Agenda for Sustainable Development and the African Union’s (AU) Agenda 2063. Both the 2030 Agenda for Sustainable Development and the AU Agenda 2063 have as their key cornerstones the progressive realisation of socio-economic rights and the protection of human rights in general. They also resonate with the values and principles enshrined in the South African Constitution as well as the country’s long-term development plan, the National Development Plan 2030. Though both the 2030 Agenda for Sustainable Development and AU Agenda 2063 do not explicitly mention social security as one of the strategic measures with which to achieve their objectives, the role of social security is implicit in the commitment made by both agendas’ goals and aspirations towards the realisation of the human rights of all people, including socio-economic rights.

<sup>23</sup> General Comment No. 3 (note 6 above) para 9.

<sup>24</sup> Concept of available resources has been interpreted in Grootboom (note 4 above) para.

<sup>25</sup> Liebenberg\_JCESCR\_Synergies\_SAJEJVol 3\_Issue 1\_pg 20

## TRANSFORMING OUR WORLD: THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT

In 2015, South Africa along with the other 192 member states of the UN adopted the 2030 Agenda for Sustainable Development. The 2030 Agenda for Sustainable Development is a global plan of action for the eradication of poverty in all its forms and dimensions, including extreme poverty.<sup>26</sup> Central to the Agenda are the 17 Sustainable Development Goals (SDGs) and 169 targets outlined in the plan, which seek to build on the previous Millennium Development Goals (MDGs) adopted in the year 2000. The aim of the SDGs is to complete what was not achieved in the MDG process, namely: ending poverty; protecting the natural environment; and ensuring inclusive, just, and peaceful societies with prosperity for all.<sup>27</sup> An important aspect of the Agenda is its view and prioritisation of the three dimensions of sustainable development - the social, economic, and environmental - as being intertwined and inseparable.<sup>28</sup> More importantly, though, the overarching goal of the SDGs is the realisation of the human rights of all people of the world and the achievement of gender equality and empowerment of all women and girls.<sup>29</sup>

As a signatory to the 2030 Agenda for Sustainable Development, South Africa has reaffirmed its commitment to the values, principles, and obligations enshrined in the country’s Constitution as the UN SDGs resonate and correlate with the Constitution. In the preamble of the South African Constitution, the country and its citizens commit to “Improve the quality of life of all citizens and free the potential of each person”.<sup>30</sup> Whilst, Section 1(a) of the Founding Provisions of the Constitution states that South Africa was founded on the values of “Human dignity, the achievement of equality and the advancement of human rights and freedoms”.<sup>31</sup> This is further emphasised in The Bill of Rights of the Constitution, Section 7(1) which “enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality, and freedom”.<sup>32</sup> Most importantly though, Section 7(2) of the Bill of Rights places an obligation on the state to “respect, protect, promote and fulfil the rights in the Bill of Rights.”<sup>33</sup>

South Africa’s Bill of Rights provides for the following socio-economic rights:

- The right to freedom of trade, occupation, and profession.
- Rights relating to labour relations.
- Environmental rights.
- Property rights.
- The right of access to adequate housing.
- The right to have access to health care, food, water, and social security.
- The right to basic education, including adult basic education and further education.

The following UN SDGs speak directly to the socio-economic rights outlined in the South African Constitution:

- Goal 1: End poverty in all its forms everywhere.
- Goal 2: End hunger, achieve food security and improved nutrition, and promote sustainable agriculture.
- Goal 3: Ensure healthy lives and promote well-being for all at all ages.
- Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.
- Goal 6: Ensure availability and sustainable management of water and sanitation for all.
- Goal 7: Ensure access to affordable, reliable, sustainable, and modern energy for all.
- Goal 8: Promote sustained, inclusive, and sustainable economic growth, full and productive employment, and decent work for all.

<sup>26</sup> United Nations. 2015. Transforming the World: The 2030 Agenda for Sustainable Development. <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>

<sup>27</sup> L. Haywood, N. Funke, M. Audouin, C. Musvoto, and A. Nahman. 2019. The Sustainable Development Goals in South Africa: Investigating the Need for Multi-stakeholder Partnerships. Development Southern Africa, Vol. 36, Issue 5.

<sup>28</sup> United Nations. 2015. Transforming the World: The 2030 Agenda for Sustainable Development. <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>

<sup>29</sup> Ibid

<sup>30</sup> The Department of Justice and Constitutional Development. The Constitution of the Republic of South Africa, 1996, p. 1. <https://www.justice.gov.za/legislation/constitution/pdf.html>

<sup>31</sup> Ibid, p. 3.

<sup>32</sup> Ibid, p. 3.

<sup>33</sup> Ibid, p. 3.

- Goal 9: Reduce inequality within and among countries.
- Goal 10: Make cities and human settlements inclusive, safe, resilient, and sustainable.
- Goal 11: Ensure sustainable consumption and production patterns.
- Goal 12: Take urgent action to combat climate change and its impacts.
- Goal 13: Conserve and sustainably use the oceans, seas, and marine resources for sustainable development.
- Goal 14: Protect, restore, and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, halt and reverse land degradation and halt biodiversity loss.

## **AGENDA 2063: THE AFRICA WE WANT**

The AU Agenda 2063: The Africa We Want is a 50-year continental plan for the achievement of inclusive economic growth and development for the African continent. Agenda 2063 was adopted in January 2015 at the AU Summit in Addis Ababa, Ethiopia following its conception by African Heads of State and Government in 2013 through the 50th Anniversary Solemn Declaration during the commemoration of the Fiftieth Anniversary of the Organisation of African Unity (OAU, later the AU). The plan is a democratic product of a 2-year consultative process between the 55 member states of the African Union and the different sectors of their societies, including business, civil society, women, and youth. It outlines a vision and aspirations of an Africa that is prosperous, inclusive, integrated, united, peaceful, and full of opportunities for the continuous development of its people. As such, Agenda 2063 “builds on, and seeks to accelerate the implementation of past and existing continental initiatives for growth and sustainable development.”<sup>34</sup>

The vision of Agenda 2063 is articulated through seven aspirations that the people of Africa would like to pursue and achieve by the year 2063. The seven aspirations contained in Agenda 2063 include the following: <sup>35</sup>

- Aspiration 1: A prosperous Africa based on inclusive growth and sustainable development.
- Aspiration 2: An integrated continent, politically united based on the ideals of Pan-Africanism and the vision of Africa’s Renaissance.
- Aspiration 3: An Africa of good governance, democracy, respect for human rights, justice, and the rule of law.
- Aspiration 4: A peaceful and secure Africa.
- Aspiration 6: An Africa whose development is people-driven - relying on the potential of African people, especially its women and youth, and caring for children.
- Aspiration 7: Africa as a strong, united, resilient, and influential global player and partner.

Aspirations 1, 3, 4, and 6 of Agenda 2063 speak directly to the important issue of the progressive realisation of socio-economic rights that is central not only to the South African Constitution regarding socio-economic rights as human rights but also to the UN’s ICESCR. Aspiration 1 of Agenda 2063 gives expression to the goal of eradicating poverty in one generation and building shared prosperity through the social and economic transformation of the continent.<sup>36</sup> Aspiration 3 gives voice to the need to build strong African states that are capable and led by ethical leaders with the capacity to deliver basic services to the people of the continent whilst protecting their human rights through the rule of law and impartial legal systems. While Aspiration 4 speaks to the

critical issue of an Africa that is not only free from war and violence, but also one that is free of the insecurities of poverty, hunger, disease, and other political, social, economic, and ecological injustices that threaten the lives of Africans on a daily basis. And importantly, Aspiration 6 encapsulates an egalitarian vision of an Africa where development and opportunity are no longer a class project and the preserve of a privileged few in society but are inclusive programmes putting at centre stage those that currently constitute the most vulnerable in our societies, i.e. women, youth, and children.

## **DOMESTIC POLICY OBLIGATIONS**

In addition to international policy obligations, South Africa has put in place its own domestic policy frameworks committed to implementing strategies geared towards delivering on the progressive realisation of socio-economic rights. Two such important policy frameworks are the National Development Plan 2030 (NDP) and the Medium-Term Strategic Framework (MTSF).

## **THE NATIONAL DEVELOPMENT PLAN**

The National Development Plan 2030 (NDP) is South Africa’s long-term development plan and vision for the country. It is one of the most important policy documents giving effect to the progressive realisation of socio-economic rights in the country, including the right to social security. Under the NDP, social security is viewed as an integral part of a broader social protection system designed to provide measures to the most vulnerable people in society to help prevent, manage, and overcome situations that adversely affect their well-being.<sup>37</sup> Chapter 11 of the NDP focuses exclusively on social protection and the different measures that make up South Africa’s social protection system.<sup>38</sup>

These include :

- Social assistance – defined as cash grants.
- Social wage – defined as the provision of basic social services such as education, health care, water, sanitation, housing, etc.
- Social security – defined as a contribution-based system that is biased towards workers in the formal economy as it covers workers for retirement, unemployment, and compensation for injury and diseases.
- Protection for the unemployed poor through labour market policies – defined as labour market activation programmes, including public works programmes and training and skills development programmes.
- Household food security and nutrition – defined as access to land and sea for subsistence farming to ensure a minimum standard of living, and government provisions to prevent under-nutrition and ensure maternal health and nutrition.
- Developmental social welfare – defined as a developmental approach to social welfare provision, which includes a focus on the social and economic development of individuals, families, and communities. Social welfare services include things such as homes for the elderly and the frail, mental health clinics, child guidance services, and services related to addictions provided by the government, non-government organisations (NGO’s), and private sector organisations.

The above-listed measures form the basis of the NDP’s vision for a comprehensive social protection system in South Africa geared towards providing a social safety net or social floor, which would act as a benchmark for a standard of living below which no one should fall. The NDP envisages social protection as a cradle-to-grave system covering an individual’s entire life cycle from conception to retirement by providing for maternal nutrition and health and ensuring the

<sup>34</sup> African Union. 2015. Agenda 2063: The Africa We Want – 01 Background Note, p. 2. [https://au.int/sites/default/files/documents/33126-doc-01\\_background\\_note.pdf](https://au.int/sites/default/files/documents/33126-doc-01_background_note.pdf)

<sup>35</sup> African Union. 2015. Agenda 2063: The Africa We Want – Popular Version, p. 2. September 2015. [https://au.int/sites/default/files/documents/36204-doc-agenda2063\\_popular\\_ver-](https://au.int/sites/default/files/documents/36204-doc-agenda2063_popular_version_en.pdf)  
[sion\\_en.pdf](https://au.int/sites/default/files/documents/36204-doc-agenda2063_popular_ver-sion_en.pdf)

<sup>36</sup> Ibid, p. 2.

<sup>37</sup> Republic of South Africa, National Planning Commission. 2011. National Development Plan 2030 (NDP), p. 354.

<sup>38</sup> Ibid, p. 359-361.

eradication of old age-related poverty.<sup>39</sup> However, despite this, the NDP sees formal employment as the best form of social protection. This means that social protection in the NDP is also viewed as a measure that is targeted at those "...who are not gainfully employed due to their vulnerable status, i.e. children, people with disabilities and the aged, as well as those who experience labour market vulnerability due to the nature of their jobs, low-income levels or unemployment."<sup>40</sup>

In the context of South Africa, where rates of poverty and inequality are extremely high due to structural unemployment and distortions in the labour market stemming from past injustices associated with colonialism and apartheid, the "not gainfully employed" category encompasses a large portion of the country's citizens. As such, there is a realisation within the NDP that formal employment as the best measure of social protection is impossible in the country's immediate future.<sup>41</sup> Thus the NDP calls for a context-specific approach to social protection that is based on a hybrid model that "protects the vulnerable and those at risk while at the same time ensuring economic inclusion through a range of active [employment] strategies."<sup>42</sup> In this context, social protection serves as a bridge between protecting vulnerable groups in society from the adverse effects of poverty and the challenge of rebuilding opportunity structures and the capabilities of people to be able to lead the life that they desire.

That said, there seems to be a contradictory and reluctant approach to social protection within the NDP. This can be attributed to the South African government's neo-liberal outlook towards development. To illustrate, on the one hand, the NDP states that social protection should be a cradle-to-grave system that provides a social safety net and standard of living under which no individual in society should fall. While on the other hand, there seems to be an assertion that the state should play a minimal role in providing social protection for people and, where it does, it should only be for vulnerable groups because the best form of social protection is employment. Essentially, the NDP places more emphasis on the need for employment and less government intervention in providing for people's livelihoods. Whilst there is nothing wrong with the government wanting more people to be employed, there seems to be a lack of realisation on the part of the government that it is its own economic policies that have failed to transform the structure of the South African economy. Consequently, the economy has been unable to produce enough jobs for South Africans to be gainfully employed to be able to achieve their own social protection through employment.

This point is further demonstrated in Chapter 15 of the NDP where there is a push by the government against the principle of progressive realisation of socio-economic rights. The following passage captures clearly the South African government's contradictory neo-liberal approach to development and its reluctance to use the state as a means to facilitate and protect people's livelihoods:

Many clauses in Chapter 2 of the Constitution are styled as: "Everyone has the right to..." followed by the "the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights". The interpretation that has developed from these clauses is that people demand and the state delivers. It is important that the government fulfils its responsibilities, but, equally, all South Africans have roles as responsible and active citizens to be agents of their own development.<sup>43</sup>

It is for the same reason - the government's contradictory neo-liberal approach to development - that social security and social assistance are viewed as separate measures within the NDP. In fact, social security within the NDP is defined as a contribution-based system that is biased towards workers in the formal economy. However, that is not at all accurate. According to the Green Paper on Comprehensive Social Security released by the DSD in August 2021, "A well-structured social security system seeks to protect every member of society, irrespective of income level or socio-economic status, from catastrophic risk through non-contributory (social assistance)

and contributory (social insurance) arrangements."<sup>44</sup> This reiterates the approach within the Constitution which sees social assistance as an element of social security. As per Section 27(1)(c) of the Constitution "everyone has the right of access to social security, including, if they are unable to support themselves and their dependents, appropriate social assistance."<sup>45</sup>

## **THE MEDIUM-TERM STRATEGIC FRAMEWORK (MTSF)**

The Medium-Term Strategic Framework (MTSF) is another policy instrument giving effect to the implementation and realisation of socio-economic rights in South Africa. The MTSF is a 5-year implementation plan for the vision and objectives laid out in the NDP.<sup>46</sup> Adopted at the start of South Africa's Sixth Democratic Administration in 2019 following the national elections, the MTSF 2019-2024 provides an outline of seven priority areas that constitute the practical framework within which the Sixth Administration is implementing the NDP during this 5-year period. The MTSF 2019-2024 seven priorities include<sup>47</sup> :

- Priority 1: Building a capable, ethical, and developmental state.
- Priority 2: Economic transformation and job creation.
- Priority 3: Education, skills, and health.
- Priority 4: Consolidating the social wage through reliable and quality basic services.
- Priority 5: Spatial integration, human settlements, and local government.
- Priority 6: Social cohesion and safe communities.
- Priority 7: A better Africa and world.

There is cognisance within the MTSF 2019-2024 that Priority 1 underpins all the other six priorities of the MTSF.<sup>48</sup> This is an accurate assessment for it is only with a capable state, filled with the necessary qualified human capabilities and guided by the ethics and values of the Constitution, that the government can meet the developmental obligations of the state towards its people. It is only with a capable, ethical, and developmental state that the government can fulfil its obligations of the progressive realisation of socio-economic rights for the people of South Africa. It is for this reason that the MTSF provides the following definition of an ethical state: "An ethical state is driven by the constitutional values and principles of public administration and the rule of law, focused on the progressive realisation of socio-economic rights and social justice as outlined in the Bill of Rights."<sup>49</sup>

The MTSF 2019-2024 informs the 2020/2021 – 2024/2025 Strategic Plan of the DSD, which is the government department charged with the implementation of social security provisions. DSD's 2020-2025 Strategic Plan is given effect by Priority 4 of the MTSF 2019-2024, namely, 'Consolidating the social wage through reliable and quality basic services.' As such, by way of implementing the MTSF 2019-2024, DSD has undertaken through its 2020-2025 Strategic Plan to achieve three key outcomes within this 5-year MTFS period:

1. Reduced levels of poverty, inequality, vulnerability, and social ills.
2. Empowered, resilient individuals and families, and sustainable communities.
3. Functional, efficient, and integrated sectors.

<sup>39</sup> Republic of South Africa Department of Social Development. Green Paper on Comprehensive Social Security and Retirement Reform, p. 39.

<sup>40</sup> The Department of Justice and Constitutional Development. The Constitution of the Republic of South Africa, 1996, p. 15. <https://www.justice.gov.za/legislation/constitution/pdf.html>

<sup>41</sup> Republic of South Africa Department of Planning, Monitoring and Evaluation (DPME). 2019. Medium-Term Strategic Framework 2019-2024, p. 4.

<sup>42</sup> Ibid, p. 5.

<sup>43</sup> Ibid, p. 2.

<sup>44</sup> Ibid, p. 2.

<sup>39</sup> Ibid, p. 362.

<sup>40</sup> Ibid, p. 354.

<sup>41</sup> Ibid, p. 355.

<sup>42</sup> Ibid, p. 355.

<sup>43</sup> Ibid, p. 460.

## **SOCIAL SECURITY: CONTRIBUTORY AND NON-CONTRIBUTORY PILLARS OF THE CURRENT SYSTEM**

South Africa has one of the largest social assistance programmes in the world providing support to more 18 million people in the country.<sup>50</sup> However, the country's social security system is fragmented with no mandatory nationwide contributory social security fund for all citizens. As such, the system does not provide universal cover to all of the country's citizens.

South Africa's social security system is made up of three pillars: public contributory funds; private contributory pension and insurance funds; and non-contributory public social assistance. Public contributory social insurance includes three major statutory funds. There are also public contributory funds for state employees

## **PUBLIC SOCIAL INSURANCE**

Public contributory social insurance is made up of three main funds: the Unemployment Insurance Fund (UIF), the Compensation for Occupational Injuries and Diseases Fund (The Compensation Fund), and the Road Accident Fund (RAF). There are three other industry-specific compensation funds: the Mines and Works Compensation Fund (overseen by the Department of Health); the Rand Mutual Association fund for injured miners; and the Federated Employers' Mutual Assurance fund, for injured construction workers. The Unemployment Insurance Act of 2001 and the Unemployment Contributions Act of 2002 are the two main pieces of legislation governing the UIF, while the Compensation for Occupational Injuries and Diseases Act of 1993 and the Road Accident Fund Act of 1996 (amended in 2001, 2002, and 2005) are the main legislative instruments governing the Compensation Fund and RAF, respectively. The UIF and the Compensation Fund are overseen by the Department of Employment and Labour, while the Road Accident Fund is overseen by the Department of Transport.

The UIF provides short-term relief to full-time and seasonal workers when they become unemployed or are unable to work due to: maternity; adoption and parental leave; childbirth; death; or illness.<sup>51</sup> The fund does not cover independent contractors or occasional workers, nor does it pay out benefits to workers who have voluntarily resigned from their jobs. UIF contributions are made by both employer and employee. UIF benefits are capped, which resulted in the fund operating at a net surplus every year in the pre-Covid19 period. However, since the beginning of the Covid19 pandemic over two years ago and the subsequent government-imposed national lockdowns, which have resulted in major job losses in the economy, the UIF has been operating at a deficit. The UIF has had to pay out benefits at an unprecedented rate with the introduction of the CoronaVirus Temporary Employer-Employee Relief Scheme (Covid19 TERS). The Covid19 TERS was introduced to "save jobs and ease the financial burden on businesses and most importantly, their vulnerable workers who lost income during the various lockdowns."<sup>52</sup> Since the start of the lockdown in March 2020, the UIF has provided relief to about 5.4 million affected workers to the tune of R63 billion thus exceeding its initial R40 billion budget in the period by R23 billion.

The Compensation Fund provides compensation for illness, disability, or death incurred in the workplace through injuries and diseases.<sup>53</sup> The Compensation Fund contributions are made by both employer and employee. In 2019/20, the Compensation Fund recorded an increase of 25%

<sup>50</sup> Republic of South Africa Department of Social Development. Green Paper on Comprehensive Social Security and Retirement Reform, p. 27.

<sup>51</sup> <https://www.sars.gov.za/types-of-tax/unemployment-insurance-fund/>

<sup>52</sup> Department of Employment and Labour. 2021. UIF continues to make a difference to lives of ordinary workers in time of covid and beyond. 14 November 2021. <https://www.labour.gov.za/uiif-continues-to-make-a-difference-to-lives-of-ordinary-workers-in-time-of-covid-and-beyond>

<sup>53</sup> Department of Employment and Labour. 2021. Compensation Fund. [https://www.labour.gov.za/About-Us/Pages/Compensation\\_Fund.aspx](https://www.labour.gov.za/About-Us/Pages/Compensation_Fund.aspx)

in benefits paid compared to the previous financial year.<sup>54</sup> These amounted to R6.7 billion with medical claims accounting for 78% of all benefits paid.<sup>55</sup>

The RAF provides compulsory accidental cover to all users of South African roads against injuries sustained or death arising from accidents involving motor vehicles within the borders of South Africa.<sup>56</sup> RAF covers both South African citizens and foreigners. The cover provided by RAF comes in two forms: (i) personal injury and death insurance to victims of motor vehicle accidents and their families, and (ii) indemnity insurance to persons who cause the accident.<sup>57</sup> The fund is financed through a fuel levy collected by the South African Revenue Service (SARS).

## **PUBLIC AND PRIVATE PENSION FUNDS**

The South African pension fund landscape is made up of a large and well-established private pension sector and public pension schemes providing retirement savings for government employees.<sup>58</sup> The amended Pension Funds Act of 1956 is the main legislative framework governing all retirement funds in the country. This is true with the exception of the Government Employees Pension Fund (GEPF), the Associated Institutions Pension Fund (AIPF), the Temporary Employees Pension Fund (TEPF), Transnet Funds, the Telkom Pension Fund, and the Post Office Retirement Fund, which were all established through separately enacted legislation and do not fall within the ambit of the Pensions Act.<sup>59</sup> As of 2020, there was also one foreign fund reported in official statistics.<sup>60</sup>

Pension and provident funds rely on frequent contributions (usually monthly) from employees and employers over the course of an employee's career. The GEPF is the largest pension fund in Africa with accumulated funds and reserves of R2.09 trillion as per financials as at 31 March 2021.<sup>61</sup> The fund covers South African public employees and is the single largest investor in the Johannesburg Stock Exchange-listed (JSE) companies. The GEPF is governed by the Government Employees Pension (GEP) Act of 1996 and is administered by the Government Pensions Administration Agency (GPAA).<sup>62</sup> The Public Investment Corporation (PIC) is responsible for handling the investment of GEPF funds.

While the current South African retirement system covers many workers, there are many workers in the country who are not contributing to any pension scheme. What is more, the majority of the country's citizens (approximately three-quarters) reach retirement age without a paid pension benefit.<sup>63</sup> As a result, the majority of South Africans of pension age depend on the government's social assistance programme, i.e. the Old Age Pension Grant.

## **NON-CONTRIBUTORY SOCIAL ASSISTANCE (SOCIAL GRANTS)**

Non-contributory social assistance refers to government programs that provide a minimum level of income support to people who do not have enough resources to provide for their own livelihoods. However, in South Africa there is currently a coverage gap in social assistance provision for people of working age between the ages of 18 and 59 – the "missing middle" – who lack the necessary resources or access to employment to provide for themselves. Needless to say, the majority of people falling within this category are black and African people. This can be attributed to the country's historic racially discriminatory practices in the provision of social security and labour market policies. That is, under colonialism and apartheid black people were excluded from

<sup>54</sup> Department of Employment and Labour. 2021. Compensation Fund Annual Report 2019-2020, pp. 11.

<sup>55</sup> Ibid, pp. 11.

<sup>56</sup> National Government of South Africa. Road Accident Fund. <https://nationalgovernment.co.za/units/view/152/road-accident-fund-raf>

<sup>57</sup> Ibid

<sup>58</sup> National Treasury. 2004. Retirement Fund Reform: A Discussion Document, pp. 4. December 2004. <http://www.treasury.gov.za/public%20comments/Retirement%20Fund%20Reform%20A%20Discussion%20Paper.pdf>

<sup>59</sup> Financial Services Board (FSB). 2017. Registrar of Pension Funds Annual Report 2017.

<sup>60</sup> Republic of South Africa Department of Social Development. Green Paper on Comprehensive Social Security and Retirement Reform, p. 21.

<sup>61</sup> <https://www.gepf.gov.za/who-is-gepf/>

<sup>62</sup> Ibid

<sup>63</sup> National Treasury. 2004. Retirement Fund Reform: A Discussion Document, pp. 4. December 2004. <http://www.treasury.gov.za/public%20comments/Retirement%20Fund%20Reform%20A%20Discussion%20Paper.pdf>

state funded social assistance programs and private contributory pension funds while restrictions on access to higher education and racially determined job reservation policies reserved skilled, professional and managerial jobs for the white minority.<sup>64</sup> All of this worked together to create a mass base of black unskilled labour suffering from permanent, chronic unemployment and without any means to provide for their basic, everyday needs.

It is only with the introduction of the Social Assistance Act of 1992, and its subsequent amendments in 1997 through the Welfare Laws Amendment Act of 1997, that racial parity in the monetary value of and equality of access to South Africa's social assistance grant allocations was achieved.<sup>65</sup> This Act remains the foundation for the subsequently redrafted Social Assistance Act of 2004. This must be noted, given that the original act was drafted during Apartheid and before the adoption of the Constitution in which social assistance was included as a justiciable right.

The Social Assistance Act of 2004 and the South African Social Assistance Agency Act of 2004 consolidated non-contributory social assistance. These acts established nation-wide social assistance through a single agency, housed under the DSD, and administered on a national level. The payment of social assistance grants is the responsibility of the DSD and its sub-agency, the South African Social Security Agency (SASSA), which pay the grants to those who meet the qualifying criteria. All grants are means-tested and unconditional, except for the Child Support Grant (CSG), of which receipt is dependent on requirements such as mandatory school attendance for the recipient child. The eight categories of social assistance grants are provided in the table below.

Grant Type	Eligibility	Maximum Amount as of Jan 2022
Older Person's Grant (60 to 74 years old)	Citizen, permanent resident or refugee who does not live in a state institution. Annual income below R86 280 if you are single or R172 560 if married. Assets below R1 227 600 if you are single or R2 455 200 if you are married.	R1890
Older Person's Grant (Beneficiary older than 75 years)	Citizen, permanent resident or refugee who does not live in a state institution. Annual income below R86 280 if you are single or R172 560 if married. Assets below R1 227 600 if you are single or R2 455 200 if you are married.	R1910

Disability Grant	Citizen, permanent resident or refugee who has submitted a medical assessment of disability and does not live in a state institution. Annual income below R86 280 if you are single or R172 560 if married. Assets below R1 227 600 if you are single or R2 455 200 if you are married.	R1890
War Veteran's Grant	Citizen or permanent resident who fought in World War I, World War II or the Korean War; does not live in a state institution. Annual income below R86 280 if you are single or R172 560 if married. Assets below R1 227 600 if you are single or R2 455 200 if you are married.	R1910
Grant in aid	Recipient of Older Persons Grant, Disability Grant, or War Veterans' Grant, who requires a full-time caretaker, and does not receive care in a state-subsidised institution. No means test.	R460
Child Support Grant	Citizen, permanent resident, or refugee. Annual income below R48 000 (single) or R 96 000 (married). No assets test.	R460
Foster Child Grant	Citizen, permanent resident, or refugee. No means test, must provide court order of foster care status.	R1050
Care Dependency Grant	Citizen, permanent resident or refugee; child under 18 with a medical assessment of permanent severe disability, who does not live in a state institution. Annual	R1890

<sup>64</sup> M.S. Ulriksen. 2020. A Racialised Social Question: Pension Reform in Apartheid South Africa, pp. 236. In L. Leisering. 2020. One Hundred Years of Social Protection. Palgrave Macmillan.

<sup>65</sup> S. van der Berg, K. Siebrits, and B. Lekezwa. Efficiency and Equity Effects of Social Grants in South Africa. Stellenbosch Economic Working Papers: 15/10, pp. 4-5; <https://www.ekon.sun.ac.za/wpapers/2010/wp152010/wp-15-2010.pdf>; Department of Social Development Website. Legislative Mandate. <https://www.dsd.gov.za/index.php/about/legislative-mandate>

	income below R223 200 a year if you are single. Your combined income should not be above R446 400 a year if you are married. No assets test.	
Social Relief of Distress	Citizen, permanent resident or refugee registered with Home Affairs; above the age of 18; unemployed; not receiving any income; not receiving any social grant; not receiving any unemployment insurance benefit and does not qualify to receive unemployment insurance benefits; not receiving a stipend from the National Student Financial Aid Scheme; not receiving any other government COVID-19 response support; and not resident in a government funded or subsidised institution.	R350

Since 1992, the number of people receiving social assistance in South Africa has been gradually increasing. Grant allocations have expanded incrementally, while qualifications for the grants have also become less onerous. These incremental changes have followed civil society mobilisation and advocacy aimed at improving the system of administering social assistance grants. The largest grant by number of beneficiaries is the Child Support Grant, while the largest by state expenditure is the Older Persons Grant. Since 2008, South African residents aged 60 and over can receive the Older Persons Grant if they qualify by means testing, regardless of gender. Previously, women could apply at age 60, and men at age 65. This policy change followed the legal challenge in *Roberts and Others v Minister of Social Development and Others* (unreported decision of the Transvaal Provincial Division, Case No. 32838/05). Likewise, the age limit for the Child Support Grant gradually extended to cover more South Africans, moving from age 7 (2001) to age 9 (2003) to age 11 (2004) to age 14 (2005), and now to age 18 (2010).<sup>66</sup> Civil society groups such as the Basic Income Grant Coalition advocated for the incremental expansion of the Child Support Grant to cover older children, and also following the legal challenge of *Mahlangu v Minister of Social Development and Others*, Case

No.25754/05 (Transvaal Provincial Division). Today, the Child Support Grant is the grant that the largest number of South Africans have access to, with 13.3 million children accessing the grant in 2020/2021.<sup>67</sup>

While the expansion of the Child Support Grant laudably extends coverage to a greater share of poor South Africans, it is important to note that many South Africans living in poverty still do not have access to social assistance. As such, the current structure of social assistance may be said to be exclusionary and inadequate. As has already been mentioned, poor people of working age between the ages of 18 and 59 represent the most vulnerable sector of South African society as they have inadequate access to social assistance.

The Older Persons Grant, the War Veterans' Grant, the Disability Grant, and the Care Dependency Grant all have allocations that are large enough to place an individual just over the upper-bound poverty line (UBPL), standing at R 1335 in 2021/22. However, as will be discussed in greater detail in the budget analysis section of this report, the economic value of these four grants along with all other social assistance grants is projected to decline by over 5% each year for the next three fiscal years between 2022/23 to 2024/25. Thus, lowering the impact of the grants in providing for the basic needs of recipients. In addition, social assistance grant allocations are often further eroded by the fact that beneficiaries often have to share them with other family members who are indigent but do not qualify for grants.<sup>68</sup> This will be covered below in the section on the unemployment gap in social assistance.

At R460, the Child Support Grant is only equivalent to 72% of the current Food Poverty Line of R624. As such, the Child Support Grant is an inadequate amount of money to feed a hungry child, let alone lift a person out of poverty or meet the bare daily minimum energy levels for a person to survive. However, despite its modest size, the Child Support Grant is often recognized as a highly effective means of improving child health and education, particularly during the early years of a child's development. An impact assessment of the grant published by UNICEF in 2012 found that early take-up of the grant improved nutrition and raised grade attainment in primary school by 10.2% for children whose mothers had less than 8 years of schooling.<sup>69</sup>

## THE WORKING-AGE GAP IN SOCIAL ASSISTANCE PROVISION – THE 'MISSING MIDDLE'

In the face of the triple challenges of high rates of poverty, inequality, and unemployment, South Africa's employment-centric approach to social security provision means that a large portion of poor and unemployed people of working-age lack access to both unemployment benefits and social assistance. Since unemployment benefits are only available for those who work in the formal sector, for this group of people the only available access to social assistance is the Disability Grant (predicated on disability), and the new temporary Covid-19 Social Relief of Distress Grant (SRoD).<sup>70</sup> Given the current state of the South African economy and the unprecedented loss of jobs suffered since the start of the Covid-19 pandemic, poor and unemployed South Africans of working age constitute the most vulnerable sector of our society.

In the third quarter of 2021, South Africa's unemployment rate reached unprecedented high levels. In Q3 2021, the Quarterly Labour Force Survey, published by Statistics South Africa, reported a staggering decrease of 4.4% in the percentage of employed persons. At the same time, the number of discouraged work-seekers increased by 16.4% (up by 545 000 in real terms) and the number of people who were not economically active for reasons other than discouragement also increased

<sup>67</sup> National Treasury. 2021. Budget 2021: National Estimates of Expenditure, pp. 328.

<sup>68</sup> World Bank. 2021. South Africa Social Assistance Programs and Systems Review, pp. ix.

<sup>69</sup> DSD, SASSA and UNICEF. 2012. The South African Child Support Grant Impact Assessment, p. 106. <https://www.unicef.org/southafrica/media/1121/file/ZAF-South-African-child-support-grant-impact-assessment-2012-summary.pdf>

<sup>70</sup> World Bank. 2021. South Africa Social Assistance Programs and Systems Review, pp. 12.

by 3.3% (up by 443 000 in real terms) between the second and third quarters of 2021.<sup>71</sup> As a result, the country recorded unprecedented increases in the narrow or official unemployment rate by 0.5 percent from 34.4% in the second quarter of 2021 to 34.9% in the third quarter of 2021.<sup>72</sup> While the real or expanded unemployment rate according to the expanded definition of unemployment increased by 2.2 percentage points to 46.6% in quarter 3 2021 compared to quarter 2 of the same year.<sup>73</sup> The expanded unemployment rate includes those that would like to work but are not actively seeking a job.

The highest levels of unemployment are found among the youth and those without substantive educational qualifications. Among youth ages 15-34, 46% are Not in Employment, Education, or Training (NEET).<sup>74</sup> Of the 7.6 million people who are unemployed in South Africa, 51.8% have no Matric qualification while 37.8% of them have matriculated. This means that almost 90% of South Africa's unemployed population is without formal skills to enable their labour market participation. Only 9.4% of unemployed persons are graduates or hold some form of tertiary qualification. This suggests that the South African economy is no longer structured to employ unskilled labour. This leaves us with a significant population of working-age people without a decent permanent source of income or any prospects of finding decent jobs.

## THE SOCIAL RELIEF OF DISTRESS GRANT (SROD)

Although it existed as an exceptional category of grant in the Social Assistance Act of 2004, the Covid SRoD was first introduced in March 2020 as an emergency social assistance grant for unemployed people of working-age under the Disaster Management Act of 2005 in order to provide temporary relief from the loss of jobs and livelihoods at the height of the Covid-19 pandemic specifically linked to the hard lock-down introduced. The SRoD is a temporary emergency social grant paid at R350 per month. It was initially introduced for 6 months to be paid to individuals who are currently unemployed, do not receive any form of income, social grant or UIF payment, etc. During the first iteration of the grant, almost 10 million applications were received by SASSA with just over 6 million approved for payment to the tune of R24 billion. Women caregivers were excluded from receiving the grant on the grounds that they were receiving a caregiver's grant of R500, which constituted a massive blow for the rights and well-being of women.

The Covid SRoD was reintroduced in August 2021 until March 2022 following the socio-political unrest of July 2021. In its second iteration, the grant was opened up to women caregivers who were unfairly discriminated against in its first iteration. To date, SASSA has received a total of 14 939 169 applications for the SRoD.<sup>75</sup> Youth under the age of 35 years (total of 8 988 124) accounts for 60% of the total number of applications, thus constituting the largest number of applicants.

In light of the lack of a permanent social assistance measure for people of working-age, civil society organisations in alignment with the DSD have been pushing for the extension of SRoD into a Basic Income Grant (BIG) or what others call Basic Income Support (BIS). The idea has received ambivalent responses from policymaking circles within government with President Cyril Ramaphosa and Minister of Finance Enoch Godongwana at some point issuing contradictory statements regarding the idea of a BIG for South Africa. Speaking at the annual Nelson Mandela memorial lecture in July 2021, President Ramaphosa was quoted as saying "the government is considering the feasibility of introducing a permanent basic income grant beyond the end of the SRoD grant in March 2022. This will validate our people and show them that we are giving serious consideration to their lives."<sup>76</sup> Whilst only a month later in August 2021, the newly appointed Finance Minister at the time, Mr Enoch Godongwana, spoke against the idea of a BIG for South Africa stating that it would

throw black youth, who constitute the majority of the unemployed in South Africa, into a cycle of dependence rather than assist in creating employment opportunities for them.<sup>77</sup>

## GLOBAL SOCIAL SECURITY RESPONSES POST COVID-19

The global Covid-19 pandemic has had a profound socio-economic impact on all countries of the world. The pandemic has resulted in millions of job losses in the global economy and has impacted different sectors of the global economy unevenly. Workers in the informal economy across the world have been the hardest hit, whilst certain sectors of the world economy have suffered more than others. Economic sectors such as hospitality, tourism, arts and entertainment, and retail are some of the sectors to have suffered the most significant losses in business and employment. According to the International Labour Organisation's (ILO) World Social Protection report released in 2021, of the 2 billion workers globally involved in the informal sector, 1.6 billion work in the most adversely affected sectors.<sup>78</sup> Whilst, women, youth, people with disabilities, and migrants are some of the vulnerable groups to have come off the worst in the unfolding crisis. As such, the global Covid-19 pandemic has exposed and exacerbated the stark economic and social inequalities characterising global society within and between countries.

The pandemic has magnified global inequalities in employment, healthcare provision, and social protection. Low-skilled, semi-skilled, and self-employed workers have experienced the most job losses than any other categories of workers.<sup>79</sup> Migrants, refugees, and asylum seekers have also proven to be most vulnerable as they have been at the frontline of job losses. As per the ILO:

"Migrants and the forcibly displaced were among the first to lose their jobs in the pandemic, and now face significant barriers to re-entering the workforce. They also confront multiple hurdles in accessing social protection, owing to a lack of citizenship or legal residency status, and in many cases the informal nature of their employment, and many are compelled to return to their countries of origin or to live in unsanitary and overcrowded conditions, increasing their susceptibility to contracting the virus."<sup>80</sup>

Women have also been disproportionately affected by Covid-19 job losses thus further exacerbating existing global gender inequalities. The reason for this is that women make up most of the labour force in the sectors of the global economy that have been hardest hit by the pandemic.<sup>81</sup> At the same time, the pandemic has increased the strain on women working in paid care-work sectors such as healthcare and increased the burden of unpaid care-work on women within families and communities in general. As the World Social Protection report states:

"Women comprise 70% of the health workforce, including the large majority of front-line workers; many of them have had to work without adequate personal protective equipment, heightening their risk of exposure to the virus (ILO 2019f, 2020c). In addition, with the closure of childcare services, schools and long-term care homes, much of the responsibility of caring for young children and frail older people has been shifted on to families, and disproportionately on to women."<sup>82</sup>

The pandemic has also exposed gross inequalities within access to quality healthcare services and the lack of access to comprehensive social protection systems for most of the world's populations.<sup>83</sup> According to the World Social Protection report, "before the crisis, half of the global population did not have access to health services, and about 40 per cent were not affiliated to a national social

<sup>71</sup> Statistics South Africa (Stats SA). 2021. Quarterly Labour Force Survey Q3: 2021, pp. 2. <file:///C:/Users/Spii%20Intern/Documents/OLFS/Po2113rdQuarter2021.pdf>

<sup>72</sup> Ibid, pp. 2.

<sup>73</sup> Ibid, pp. 2.

<sup>74</sup> Ibid

<sup>75</sup> SASSA. 2022. Report on COVID-19 social relief of distress grant as at 04 January 2022. 7 January 2022.

<sup>76</sup> Mkontane, L. 2022. Ramaphosa right to insist on feasibility of basic income grant, say economists. Business Day. 24 January 2022. <https://www.businesslive.co.za/bd/nation->

<all/2022-01-24-ramaphosa-right-to-insist-on-feasibility-of-basic-income-grant-say-economists/>

<sup>77</sup> BusinessTech. 2021. South Africa's new finance minister speaks out on a basic income grant. 8 August 2021. <https://businesstech.co.za/news/finance/511790/south-africas-new-finance-minister-speaks-out-on-a-basic-income-grant/>

<sup>78</sup> International Labour Organisation (ILO). 2021. World Social Protection Report 2020-2022: Social protection at the crossroads – in pursuit of a better future, p. 67.

<sup>79</sup> Ibid, p. 67.

<sup>80</sup> Ibid, p. 67.

<sup>81</sup> Ibid, p. 67.

<sup>82</sup> Ibid, p. 67.

<sup>83</sup> Ibid, p. 68.

health insurance system or national health service.<sup>84</sup> Additionally, “only approximately a third of the global population had access to comprehensive social protection systems.”<sup>85</sup> What this means is that when Covid-19 hit two years ago, the majority of the world’s population was ill-prepared and not sufficiently covered for the health, social and economic shocks brought by the pandemic. People lacked access to essential basic healthcare services and basic income security, thus exposing the lack of adequate and comprehensive social protection floors across most countries in the world.<sup>86</sup>

Consequently, most countries in the world were plunged into a health, social, and economic crisis when the pandemic hit. However, some managed to cope better than others. A major commonality amongst all countries though was the introduction of social protection measures to ease the burden of loss of income and extend the provision of essential healthcare services to the most vulnerable to help combat the spread and health impact of the virus. In total, over 1600 social protection measures were announced across the world in 2020 alone.<sup>87</sup> Countries with stronger social protection systems found it easier to cope than countries without. These countries fell back on their pre-existing statutory schemes which played their part in providing the required social protection, while pumping in more financing for emergency relief programmes and other protective measures needed to assist vulnerable groups of people requiring additional assistance.<sup>88</sup> Countries without a solid social protection system had to act quicker and “urgently fill gaps by introducing new measures or extending the coverage, comprehensiveness and adequacy of benefits, and to adapt delivery mechanisms to accord with public health objectives.”<sup>89</sup>

According to the ILO, the social protection measures introduced globally to ease the impact of the Covid-19 pandemic can be broadly categorised into four areas, and about 75% of these measures comprised non-contributory scheme while the remaining quarter of them comprised contributory measures:<sup>90</sup>

1. Ensuring access to healthcare, including for vulnerable groups such as migrants – for example, in countries like Thailand, this included injecting additional financing into health systems to scale up the provision of health services and financing for free Covid-19 testing and vaccination for both nationals and legal residents.
2. Protecting incomes – included extending employment injury benefits, recognizing COVID-19 as an occupational disease; extending the coverage and expanding the scope of sickness benefits to cover workers who would not otherwise be entitled to them by providing a cash benefit for mandatory quarantine; expanding the coverage of unemployment protection schemes by relaxing eligibility criteria or enhancing the adequacy of benefits; expanding public employment programmes where public health measures permitted work to continue, or amending them to continue paying wages while waiving work obligations; providing emergency means-tested benefits to informal workers and adapting delivery mechanisms by using online or phone applications to facilitate access to new benefits; reducing financial pressures on households through complementary measures (postponements of utility bills, mortgage and rent payments); introducing universal one-off or multiple population-wide payments, or an emergency universal basic income (UBI); enhancing existing national humanitarian cash transfers and using short-term emergency measures to expand coverage in fragile contexts, etc. Countries that have implemented such measures include Somalia, Spain, Togo, and the United States, to name a few.
3. Protecting jobs and the liquidity of enterprises through job retention schemes and waiver of contributions – included supporting enterprises in retaining workers through short-term work benefits, partial unemployment benefits, wage subsidies or furlough schemes. Jordan, New Zealand, South Africa, and the United Kingdom are some examples of countries that instituted such measures.
4. Ensuring access to childcare and other social services – Providing cash transfers or vouchers for babysitting or other childcare services, especially for healthcare workers; providing or

expanding special family leave to support working parents affected by the crisis and subsidising employers providing such leave; and adapting access to social services for people with disabilities. Argentina, Bahrain, Japan, and Mongolia are some of the countries that put in place such measures.

In addition to the above-mentioned policy areas, about 196 countries around the world also implemented fiscal stimulus measures to support economic recovery and finance Covid-19 social protection responses.<sup>91</sup> These measures had a combined value of US\$17.1 trillion by March 2021. According to Duma Gqubule of the Centre for Economic Development and Transformation, state spending accounted for a large share (US\$10 trillion) of the stimulus measures as governments embraced unconventional monetary policies such as quantitative easing, the purchasing of bonds on primary and secondary markets, as part of their policy toolkits.<sup>92</sup> However, much of these global fiscal stimulus measures were concentrated in high-income countries as lower income countries depended more on the financial support of international financial institutions and development corporations, which amounted to US\$ 1.3 trillion by 1 February 2021.<sup>93</sup> While countries such as Bangladesh, Côte d’Ivoire, Jordan, Nigeria and Togo set up solidarity or “basket” funds, which involved co-financing between their governments and an international partner.<sup>94</sup>

Despite the global community’s laudable attempts at combatting the dire impacts of the Covid-19 pandemic, global social protection responses to the pandemic have not been without their own challenges. The ILO’s World Social Protection report outlines the following policy observations and lessons learned from the global social protection response to the pandemic, and these are very relevant in the South African context:

- The crisis has poignantly shown the inherent vulnerability of all, thereby making the case for universal social protection more strongly than ever.
- COVID-19 made it impossible for policymakers to ignore the “missing middle” and unpaid carers.
- The COVID-19 pandemic has acted as a stress test for gauging national crisis preparedness. Solid social protection systems, working coherently with labour market policies, increase countries’ capacity to: deal with large-scale, multifaceted and complex crises; effectively protect individuals and businesses; and accelerate recovery.
- In some countries, social protection has been insensitive to the needs of women, children, indigenous people and people with disabilities.
- Many social protection responses have been “maladapted, short-term, reactive, and inattentive to the realities of people in poverty”.
- Inclusive dialogue has too often been reactive or absent, rather than proactive.
- The crisis has highlighted the need to build inclusive delivery systems.
- Even when the immediate health crisis begins to wane, the legacy of COVID-19 in terms of its social, psychological, economic and political consequences will not instantaneously evaporate.

<sup>84</sup> Ibid, p. 68.

<sup>85</sup> Ibid, p. 68.

<sup>86</sup> Ibid, p. 68.

<sup>87</sup> Ibid, p. 68.

<sup>88</sup> Ibid, p. 68.

<sup>89</sup> Ibid, p. 68.

<sup>90</sup> Ibid, p. 68-71.

<sup>91</sup> Ibid, p. 69.

<sup>92</sup> D. Gqubule. 2021. Basic Income for a Better South Africa: A Studies in Poverty and Inequality Institute Discussion Document, p. 4.

<sup>93</sup> International Labour Organisation (ILO). 2021. World Social Protection Report 2020-2022: Social protection at the crossroads – in pursuit of a better future, p. 69.

<sup>94</sup> Ibid, p. 69.

# SPI

S O C I A L  
P O L I C Y  
I N I T I A T I V E