

POVERTY AND INEQUALITY HEARINGS

SOCIAL SECURITY THEME

Background paper for

**South African National Non-Governmental Organisation
(SANGOCO), the
South African Human Rights Commission and the
Commission for Gender Equality**

Jointly Compiled by

**Sandy Liebenberg, Community Law Centre
(University of the Western Cape) and
Alison Tilley (Black Sash)**

28 April 1998

*“Everyone has the right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance”
(section 27(1)(c) of the Constitution)*

TABLE OF CONTENTS

1. INTRODUCTION	3
2. THE HISTORY OF THE SOCIAL SECURITY SYSTEM	4
2.1 The origins of social security	4
2.1.The construction of a basic social safety net	4
2.3 The impact of apartheid on the social security net	5
2.4 Reducing racial inequalities in the social security system	5
3. SITUATIONAL ANALYSIS OF SOCIAL SECURITY IN SA TODAY	6
3.1 SOCIAL ASSISTANCE	6
3.1.1 Introduction	6
3.1.2 Overview of the main forms of social assistance	7
3.1.3 Evaluation of the social assistance system	12
3.2 SOCIAL INSURANCE	15
3.2.1 Introduction	15
3.2.2. Social insurance and economic security	15
3.2.3 An overview of the main types of social insurance	16
3.3 PRIVATE INSURANCE PROVISION	19
4. THE RIGHT TO SOCIAL SECURITY: THE CONSTITUTION AND RELEVANT INTERNATIONAL STANDARDS	19
4.2.1 The Constitutional framework	19
4.2.2 Relevant international standards	20
4.2.3 The scope of the right to social security	21
4.2.4 The state's duties in relation to the right	23
5. CURRENT POLICY INITIATIVES	23
5.1 The White Paper for Social Welfare	23
5.2 The Committee for the Restructuring of Social Security	24
5.3 The Public Service Commission's Investigation	25
5.4 Occupational Retirement Insurance	25
6. BUDGETARY ISSUES AND THE IMPACT OF GEAR	27
7. CRITICAL AREAS FOR ACTION	29

This paper was commissioned by the South African National NGO Coalition (SANGOCO) for the Hearings on Poverty and Inequality - Social Security Theme.

The Community Law Centre (UWC) also wishes to acknowledge the European Union Foundation for Human Rights in South Africa who sponsored Sandra Liebenberg's work on this paper as part of the project on economic and social rights. The views expressed herein do not necessary represent the official view of the European Union Foundation for Human Rights in South Africa.

1. INTRODUCTION

One of the mechanisms that enables people to escape destitution is social security. It meets people's basic needs when their income stream has stopped, been disrupted or has never adequately developed. Social insurance usually protects the income of those who are vulnerable to certain contingencies which threaten their income-earning capacity, for example, pregnancy, illness, old age etc. Social assistance aims at ensuring that those who are poor at least gain access to a minimum income in order to satisfy their basic needs.

Although the social security system in South Africa is fragmented, discriminatory and fraught with delivery problems, it is an important measure for the alleviation of poverty.

The campaign to have social and economic rights included in the new Constitution was a success. Together with the organisations which participated in the campaign, a platform has been created from which to demand accountability from government on substantive issues relating to housing, health, education and social security. Rights are not simply given but must be claimed. The struggle for rights to be made real must continue. It is hardest in the area of social and economic rights, not least because the interpretation of these rights is still at an early stage.

The government's Growth, Employment and Redistribution programme (GEAR) has emphasised the role of the market in social security provision, and the role of the state as providing only a "social security safety net". However, as things stand at present, few people will be adequately protected by the market.

The image of 'the safety net', which catches those who cannot provide for themselves, is a popular one. It suggests, correctly, that people must provide for themselves if they can. However, it also suggests highly skilled acrobats in a circus, swinging from a trapeze to loud applause, with the net providing security in the unlikely event that one of them should fall. This image does not work in South Africa. As pointed out by Francie Lund, "Most people in South Africa have never had any opportunity for skills training. So the majority of South Africans cannot afford the price of a ticket to the circus, and certainly never had the opportunity to become skilled acrobats."¹

The social security system must take full account of the systematic attempt made through apartheid to deprive the majority of people in South Africa of land, education, social security and dignity:

"The priority for us all has to be achievable measures for the alleviation of dire poverty. If we do not do that we are not going to be able to preserve democratic constitutional government and a culture of human rights"²

This paper does not examine the issues of social welfare more broadly which includes social services and financial awards for welfare organisations. Neither does it examine other

¹ At a Black Sash Social Security Workshop, March 1997.

² Sheena Duncan.

developmental programmes such as the Flagship Programme for unemployed women with children under 5 years. Our brief was to focus on social security in this paper. In doing so, we fully acknowledge the importance role of these other programmes for poverty alleviation and eradication.³

2. THE HISTORY OF THE SOCIAL SECURITY SYSTEM IN SOUTH AFRICA

Comment [SL1]:

2.1 The origins of social security

The history of racial discrimination in welfare provision dates from the very origins of social assistance in South Africa soon after Union in 1910. The Children's Protection Act of 1913 provided maintenance grants for children. Very few of these grants reached African parents and none were given to rural Africans. In terms of the Old Age Pensions Act of 1928 all Coloured and white men over 65 years, and women over 60 years were entitled to draw old-age pensions. Whites' pensions were a maximum of R5 a month and Coloured's R3. Africans and Indians were excluded. This social pensions legislation was mainly established as a safety net for poor whites. The rationale for excluding rural Africans was that they could rely on rural kinship ties and custom to assist them in their old age, and urban Africans were excluded as they could not be easily distinguished from rural Africans.⁴ The Unemployment Benefit Act of 1937 covered 88 000 workers, but excluded all black agricultural, domestic and mining workers.⁵

2.2 The construction of a basic social safety net

From 1937 a basic social safety net was constructed through the introduction of means-tested state pension and disability schemes. In 1944 blind and old age pensions were extended to Africans and Indians. The Disability Grants Act of 1947 extended disability grants to all racial groups. Although pensions were paid to all races, the payment of discriminatory benefits was the norm. In 1947 the maximum pension for whites was five times that for Africans. Coloured and Indian pensioners were paid half as much as whites. In 1941 the War Veterans Pension Act was passed, excluding Africans who had served in the Native Military Corps in the first World War. The Workmen's Compensation Act had provided benefits since 1914, and was revised in 1941.

The United Party had made rudimentary, imperfect attempts at extending social security provision to all races. However, this trend came to an end with the Nationalist Party victory

³ We have also not examined the issue of health insurance on the assumption that it will be dealt with in the health background paper.

⁴ H. Bhorat, *The South African social safety net: past, present and future*, vol. 12, No. 4 Development Southern Africa (1995) pp. 595 - 596; Pollak, *State social pensions, grants and social welfare* in S.T. van der Horst and J. Reid (eds.) Racial Discrimination in South Africa - A Review (David Philip: Cape Town, 1981); J Kruger, *State provision of social security: Some theoretical, comparative and historical perspectives with reference to South Africa*, M Comm. Thesis, University of Stellenbosch, 1992.

⁵ C. Meth and S. Piper, *Social Security in Historical Perspective*, Second Carnegie Inquiry into Poverty and Development in South Africa, No. 250, SALDRU, UCT.

in 1948. The Nationalists sought to use the law to protect white workers from the rapidly urbanising African workforce.⁶

2.3 The impact of apartheid on the social security net

From 1948 to 1961, the gap between white and African means-tested old age pensions widened steadily. Finance for black pensions was assigned to the Native Trust for disbursement which only disbursed half of its pensions revenue. Payments were also geographically differentiated with eleven different pension rates up to 1960 and eight afterwards. The application of the means test also became increasingly discriminatory:

“Administrative delays, corruption and inefficiency, particularly in rural areas, were a form of covert discrimination for disenfranchised communities.”⁷

The 1946 Unemployment Insurance Act was repealed by the National Party because 74% of benefits accrued to African workers. A minimum income level was set for African workers to qualify for benefits which was adjusted upwards in 1957. By 1954 whites were drawing most of the available benefits.⁸ According to the Mouton Committee, until the late 1970's UIF usually did not cover Black workers. Racial differentiation in the payments under the Unemployment Insurance Act was abandoned in 1977. Minimum income restrictions also no longer apply. Only in 1993 was legislation enacted to extend UIF coverage to agricultural workers.

In the field of social insurance, a form of indirect racial discrimination took place. In the 1920's occupational retirement insurance has expanded rapidly to many skilled, mainly white, employees. The 1956 Pensions Fund Act was introduced to regulate pension funds, but lower skilled workers were generally excluded from coverage. In the context of apartheid this had the effect of excluding most Black workers. Occupational insurance only widened to include less skilled workers in the 1960's and early 1970's when industrialisation increasingly drew Black workers into industry.⁹

2.4 Reducing racial inequalities in the social security system

The 1970's heralded a period of economic stagnation with a greater acceptance of the need to integrate the black labour force in the economy in order to sustain economic progress. A slow, sporadic process of reducing inequality in welfare provisioning took place. African old age pensions as a percentage of white pensions increased from 16% in 1972 to 85% in 1993.¹⁰ Parity was eventually achieved in 1994. However, the administration of maintenance and foster-parent grants remained discriminatory. In 1987 African grants were 17% of white grants. According to the Lund Committee on Child and Family Support:

⁶ Bhorat, note 4, pp. 596 - 597.

⁷ See Bhorat, note 4, p 598 and sources quoted there.

⁸ Bhorat, note 4, p. 598.

⁹ S. van der Berg, *South African social security under apartheid and beyond*, vol. 14, No. 4 Development Southern Africa (1997), p. 485.

¹⁰ Bhorat, note 4, p. 600 and sources quoted.

*“In the former welfare administrations serving African people there was little consistency in what happened to the SMG. Some administrations did not award them at all; some had them in the regulations but in fact did not apply them; some awarded only the child part of the grant, and not the parent part.”*¹¹

Although welfare budgetary allocations to the bantustans increased from 1989 to 1991, the separate departments and channels of administration continued to provide inefficient, inequitable delivery of services to the African poor.¹² Servaas van der Berg points out that a major impetus for increased welfare funds flowing to the homelands came from attempts to give the homeland system and the tricameral Parliament political legitimacy.¹³

The principle of moving to parity in social spending levels which was reluctantly accepted in the 1970's created a major fiscal challenge. From this time onwards “fiscal expenditures on social assistance rose rapidly. Fiscal constraints did not allow for increasing benefits paid to Black persons to White levels. Deracialisation was achieved most easily in areas where there was the least resistance to reducing white benefit levels, for example, in the area of social pensions and grants where the small numbers of elderly and disabled poor whites who qualified under the means test were “politically marginal”.¹⁴ Thus pension equalisation occurred through increasing Black pension benefits, and seriously eroding real white pensions. The maximum real value of the pension for a White recipient decreased from R430 in 1980 to R234 in 1996, while an African recipient received a real increase from R132 to R234.¹⁵

The government intends to achieve equity in the system of child support through the phased abolition of the old system of state maintenance grants, and its replacement by a new system of child support grants with effect from 1 April 1998. The new system effects a drastic reduction in the level of the grant and the age group of children qualifying for the grant (it is discussed in more detail below).

3. SITUATIONAL ANALYSIS OF SOCIAL SECURITY IN SOUTH AFRICA TODAY

3.1 SOCIAL ASSISTANCE

3.1.1 Introduction

Among comparable middle-income developing countries, South Africa has one of the worse records in terms of social indicators (health, education, safe water, fertility), and among the worse records in terms of income inequality. Poverty in South Africa has strong racial (nearly 95% of South Africa's poor are African), gender, rural, regional and age

¹¹ Report of the Lund Committee on Child and Family Support (August 1996), p. 10

¹² Bhorat, note 4, pp. 600 -601.

¹³ van der Berg, note 9, p. 487.

¹⁴ van der Berg, 1997, note 9, pp. 487 - 488.

¹⁵ Financial and Fiscal Commission, *Public Expenditure on Basic Social Services in South Africa*, An FFC Report for UNICEF and UNDP, p. 89 [hereafter the FFC Report].

dimensions.¹⁶ The migrant labour system contributed to the breaking-up of social support systems. There are a large number of impoverished female-headed households in rural areas.¹⁷

Social assistance in South Africa represents one of the most significant mechanisms of poverty alleviation and income redistribution. Pensions for disability and old age and remittances are the main sources of income for over 40% of the poor (poorest 40%) and nearly 50% of the ultra-poor (poorest 20%).¹⁸ These social transfers reach communities who have otherwise been poorly provided with social services such as education and health.¹⁹ According to van der Berg, barely 50% of the labour force today has formal employment. In this situation, “occupational social insurance can reach at best only half the labour force, leaving the most vulnerable dependent upon various forms of social assistance.”²⁰

3.1.2 Overview of main forms of social assistance

There are three main categories of grants: support for the elderly, persons living with disabilities and child and family support. All are non-contributory. The eligibility criteria, means testing and size of grants are specified in the welfare regulations (No. R. 373 of 1996) which fall under the Social Assistance Act (Act No. 59 of 1992).

¹⁶ World Bank/SALDRU, *Key Indicators of Poverty in South Africa* (October 1995), pp. 3 - 4; pp. 6 - 7. [hereafter, *Key Indicators of Poverty in SA*].

¹⁷ *Key Indicators of Poverty in SA*, note 16, pp. 12 - 14.

¹⁸ *Key Indicators of Poverty in SA*, note 16, p.15, para. 7.

¹⁹ E. Ardington and F. Lund, *How the social security system can complement programmes of reconstruction and development*, Development Bank of South Africa (1995); A. Case & A. Deaton, *Large cash transfers to the elderly in South Africa*, Discussion Paper No. 176, Princeton: Research Program in Development Studies (1996).

²⁰ van der Berg, note 9, p. 498.

OVERVIEW OF THE MAIN FORMS OF SOCIAL ASSISTANCE IN SA

Type of Grant	Who is Eligible?	Means Test	Amount	Duration
(i) State Old Age Pension	Women - attained age of 60 years; Man - attained age of 65 years. Resident in SA; SA Citizen.	Sliding-scale; Single person - net income less than R13 324 per yr., or R1 110 per mth; Married persons - combined income less than R24 884 per yr. or combined income of R 2074 per mth.	Maximum amount payable: R490 per month	For the rest of aged person's life unless their financial situation improves.
War Veteran's Grant	A person - attained age of 60 years or who is unable to provide for his maintenance owing to any physical or mental disability, and served in the First or Second World War.	As above	R488 per month	As above
(ii) Disability Grant	A person who has attained the age of 18 years, and is unfit to provide for his or her maintenance owing to physical or mental disability. Permanent or temporary disability (less than 6 mths/or 1 year) to be confirmed by a medical officer. Resident and SA citizen	Sliding-scale; Single person - net income less than R13 324 per yr., or R1 110 per mth; Married persons - combined income less than R24 884 per yr. or combined income of R 2074 per mth.	Maximum amount payable: R490 per month	Until a permanently disabled person dies, or the lapsing of the period of temporary disability. The grant will also lapse if a person is admitted to and maintained in state institution e.g. a psychiatric hospital.

Type of Grant	Who is Eligible?	Means Test	Amount	Duration
<p data-bbox="193 510 320 600">(iii) Child Support Grant -</p> <p data-bbox="193 1267 336 1301">Replaces the:</p> <p data-bbox="193 1384 341 1503">State Maintenance Grant (SMG) on 1/04/1998.</p>	<p data-bbox="384 483 592 1285">The 'primary care-giver' of a child under 7 years old. No limit on no. of children except if children are non-biological - restricted to max. of 6 children. Resident and SA citizen. No of further conditions in terms of the regulations (e.g. - immunisation of child if service available; may not without good reason refuse to assume employment of participate in a development programme; must make effort to secure maintenance from parent/s).</p> <p data-bbox="384 1429 592 1688">SMG - single parents of children under 18 years - max. of 2 children. The grant of present recipients to be phased out over a 3 year period from 1/04/1998</p>	<p data-bbox="614 483 815 1055">The household income of which the primary care-giver is a member is below - (i) R9 600 per annum; or (ii) R13 200 per annum and the child and the primary care-giver either - (a) live in a rural area; or (b) live in an informal dwelling (without brick, concrete or asbestos walls).</p> <p data-bbox="614 1368 815 1487">Sliding scale means test based on applicant's income and assets</p>	<p data-bbox="837 483 1007 539">R100 per month per child.</p> <p data-bbox="837 1368 1007 1576">Max. parent allowance - R430 per month + R135 for each child (max. of 2). Max amt payable = R700.</p>	<p data-bbox="1029 483 1203 770">Grant lapses - child's 7th birthday; - death of child or primary care-giver; - child no longer in custody of primary care-giver.</p> <p data-bbox="1029 1368 1203 1749">Youngest child's 18th birthday - provision for extension until 21 years to allow for schooling to be completed. Upon death of child or if child no longer in parent's custody.</p>

Type of Grant	Who is Eligible?	Means Test	Amount	Duration
(iv) Foster Care Grant	Foster parents of children under 18 years (placement in terms of Ch. 3 & 6 of the Child Care Act, 1983 or s 290 of the Criminal Procedure Act, 1977). The foster parent and the child are resident in South Africa.	Grant not payable if the income of the child exceeds twice the annual amount of a foster care grant	R340 per mth per child.	Until the foster child turns 18 years (provision for extension until 21 years to enable child to complete schooling). Until last-living foster parent or foster child dies, or child no longer in custody of foster parent/s.
(v) Care-dependency Grant	The parent or foster parent of a child between the ages of 1 and 18 yrs who requires and receives permanent home care due to his or her severe mental or physical disability. Parent and child must be resident in SA, and SA citizens. Medical report required. Child may not be permanently cared for in a psychiatric hospital or a care and rehabilitation centre run by the State.	The combined annual income of the family (after permissible deductions) - may not exceed R48 000 (income of foster parent/s of a care-dependent child not taken into consideration).	R470 per month per child	Grant lapses when: - child attains 18 yrs (can then apply for a disability grant); - parent or child dies; - child admitted to a state institution for care.

Type of Grant	Who is Eligible?	Means Test	Amount	Duration
(vi) Grant-in-aid	Any person receiving a social grant as an aged person, war veteran or disabled person who is in a physical or mental condition that he or she requires regular attendance by other persons.	Grant not payable where a subsidy is payable by the State for the housing and care of the beneficiary in any home for the aged or other similar institution.	Determined by Minister from time to time by notice in the <i>Gazette</i> .	Death of beneficiary.
(vii) Social relief of distress	A person in need of temporary material assistance who complies with one of the following conditions - (a) awaiting permanent aid; (b) person medically unfit to work for period < 6 mths; (c) non-receipt of maintenance; (d) deceased breadwinner & insufficient means; (e) breadwinner admitted to institution for less than 6 mths; (f) person affected by a disaster or by any other emergency situation - disaster area not yet been declared; (g) no other assistance received	Person not entitled to a grant & social relief of distress simultaneously. Notwithstanding the previous conditions assistance may be rendered in exceptional cases when the DG is of the reasonable opinion that refusal may cause undue hardship.	Not exceeding the max. social grant payable per month (i.e. up to R470 per month); Child - not exceeding the max. CSG per month (i.e. R100 per month). Transport expenditure may be approved by DG in exception cases - for medical treatment or to take-up employment.	Issued monthly - max. period of 3 continuous months - DG may, in exceptional cases, approve the extension of the period by a further 3 mths. <u>Note:</u> The award of social relief of distress is not at all common. i.e. The award of this grant is discretionary, is not guaranteed.

The *Special Pensions Act No.69 of 1996* provides for special pensions to be paid to persons over the age of 60 years who made sacrifices or served the public interest in the establishment of a democracy as well as the dependants of those persons.

3.1.3 Evaluation of the social assistance system

Old age pensions form the largest portion of the social security budget (53.2% of all welfare, 62.4% of social security) and are received by a total of 1.7 million beneficiaries (3/5th of all grant recipients) Approximately 2/3 of these pensions go to households in rural areas.²¹ Racial parity in pensions was achieved in 1993. Disability grants are the next largest grant with 754 830 beneficiaries (1/5 of all recipients). The now repealed system of state maintenance grants reached about 350 000 beneficiaries.

Research has shown that the pension system has the following advantages as a poverty-alleviation measure -

- it is well-targeted for rural areas;
- it has a positive impact on the welfare of other household members (including children) - the pension is used as a source of “pooled” income to support other household members;
- it is well-targeted for poverty (a Kwa-Zulu Natal study found that the poorest decile (1/10) of household was not reached by grants);
- it has achieved an excellent take-up rate (approx. 80%)
- it contributes 29% of income to the poorest 20% of the population.
- it contributes to household security;
- it performs well in gender terms.
- it performs well in terms of inter-provincial equity.²²

Certain authors have demonstrated that the means test for old age pensions creates ‘a poverty trap’ particularly in relation to retirement insurance and have supported a universal grant for the elderly.²³ A situation even existed where an applicant was disqualified under the means test although his or her income was less than the amount of the pension.

In contrast, the system of disability grants does not have a particularly good correlation with poverty, nor with respect to racial equity.²⁴ The FFC Report identifies a lack of access to this grant by poor and rural Africans, especially from the former TBVC states.²⁵ This is largely attributed to inconsistencies in the application of the relevant regulations in the different regions.

²¹ The FFC Report, note 15, p. 92.

²² Ardington and Lund, note 19; The Lund Report, note 11, pp. 6 - 8; The FFC Report, note 15, pp. 91 - 92.

²³ Van der Berg, note 9, p. 493 - 494. The National Consultative Retirement Forum (set up in 1997) has expressed support for a universal grant for the elderly, though cognisance was taken of the fiscal constraints.

²⁴ Disability grants go to 13 out of every 1000 South Africans: 8 per 1000 White persons; 12 per 1000 African people; 31 per 1000 Coloured persons; and 23 per 1000 Indian persons: van der Berg, note 9, p. 494.

²⁵ The FFC Report, note 15, p. 91.

Access to the old state maintenance grant (SMG) was highly racially biased²⁶ and manifested a poor correlation with poverty.²⁷ Although since 1992 there has been no legally-sanctioned discrimination, administrative barriers and lack of knowledge of the SMG among potential beneficiaries continued to obstruct the attainment of equal access to this grant. The SMG contributed significantly to coloured household income, especially in the former Cape Province. According to research commissioned by the Lund Committee on Child and Family Support on the impact of the grant in the Western Cape, SMG's and other state transfers played an important role in keeping households above the Household Subsistence Level.²⁸

The following criticisms can be levelled at the new child support grant (CSG) which replaces the state maintenance grant with effect from 1 April 1998²⁹ -

- the small benefit level that is not linked to a transparent, accepted assessment of the needs of poor children, and the costs of their support (neither is there a clear commitment to link the grant to inflation);
- the restrictive age cohort - children over 7 years are not eligible for the CSG³⁰;
- the targeting rate does not correspond with prevailing poverty levels among children, and will exclude a significant number of poor children in the eligible age group from support.

The grant will be targeted at 48% of children in the eligible age group. However, the White Paper for Social Welfare estimates that "60% of children of pre-school age live in impoverished circumstances (of these 90% are Africans who live in poorly resourced rural areas).³¹ Thus not all children in poverty will be eligible to receive the grant. It has been estimated that the means test would exclude in the region of 45% of the poorest children in South Africa.³² The Department of Welfare has given a political commitment that the grant will reach 3 million children by the year 2003 (the intended target for the 1998/99 financial year is 390 000 children countrywide³³).
- the means test is based on the primary care-giver's "household income" thereby discriminating against children in larger households which is also where the poorest children live.
- the means test and other conditions applicable to the CSG have a number of negative gender implications.

²⁶ In 1990 - 48 and 40 per 1000 Coloured and Indian children respectively received SMG's, as compared to 2 grants per 1000 African children. 15 per 1000 White children received the grant which was high given white standards of living: The Lund Report, note 11, p. 12;

²⁷ The FFC Report, note 15, p. 91.

²⁸ The Lund Report, note 11, p. 8.

²⁹ See SANGOCO representations on the draft regulations for the CSG, dated 17 November 1997 and 5 March 1998.

³⁰ The Constitution defines a 'child' for the purposes of the rights protected in s 28 as a person under the age of 18 years.

³¹ Ch. 8, section 1, para. 19. Other estimates are that 68% of children in the age group 0 -6 years live with care-givers earning less than R250 per month: D. and C. Haarmann, *A Child and Family Support System for South Africa*, Ecumenical Foundation of South Africa (EFSA) Institute for Theological and Interdisciplinary Research, pp. 20 - 24.

³² Haarmann's, *Living Conditions of South Africa's Children: The context of a means-test for the new child support grant*, delivered at the SANGOCO/Black Sash Workshop, 27 August 1987.

³³ Press statement by the Minister for Welfare and Population Development, Parliamentary Briefing Week, Cape Town, 9 February 1998, p. 12.

The primary care-giver (who in the most instances will be a woman) may not know, or be able to provide the requisite proof, of household income. Furthermore, the fact that household income involves a contribution to the costs of the household, does not mean that the care-giver or the child in fact has equal or sufficient access to this income.³⁴ Despite commitments to the contrary one of the conditions for the grant is that the primary care-giver must show proof that they have “made efforts” to secure maintenance for the child concerned from the parent/s of the child. It is not clear what the precise nature of these efforts must be. However, given the poor workings of the private maintenance system, this condition is bound to act as a further barrier on poor women accessing the grant. Women may also be exposed to violence from their partners in making these efforts to secure maintenance. Further burdens are placed on poor care-givers as conditions for receiving the CSG, including proof of efforts to secure employment and join a development programme. In addition, a further set of “special conditions” are imposed on the primary care giver, including the requirement that “the child shall have proper accommodation, be properly fed and clothed”, allowing the Director-General “reasonable access” to the child and the dwelling, and carrying out “instructions regarding the use of the grant.” This excessive conditionality is unnecessary, impractical and paves the way for inequities and abuse by administrative officials. For example, what standard of accommodation, food and clothing will be applied to extremely poor care-givers? What will be regarded as “a good reason” for refusing to assume employment or participate in a development programme? What if the primary care-giver refuses for the very reason that she is the only person who can take care of her young child during the day? Similar conditions are not imposed on old age pensioners.

- the two-tier means test with a higher income threshold for persons living in informal dwellings and rural areas may give rise to perceptions of unfairness and is susceptible to claims of unfair discrimination. It also increases administrative complexity and the possibilities for political manipulation;
- the means test and the excessive conditionality of the grant described above will make the administration of the grant more complex and time-consuming, as well as less transparent and accountable;

The administration of the means test is a key factor for the success of the CSG system. The CSG requires a doubling of the capacity of the welfare system to process grants. In view of the fact that the present system is already over-burdened and huge back-logs exist in the poverty-stricken areas, the simplicity of the administration of the CSG should have been an absolute priority.

The current grant system clearly excludes those poor households who do not have elderly or disabled members, or children qualifying for the CSG. Many children and young families are especially vulnerable, as are older workers who cannot compete for manual work but are too young to qualify for pensions.³⁵ In addition, most of the grants completely exclude non-citizens, including those with permanent residence status.

The major contingency against which the social security system provides no proper protection is unemployment.³⁶ Large numbers of poor people cannot gain access to social assistance. The present levels of social assistance also are insufficient to guarantee a

³⁴ Intra-household inequalities in access to household resources (including food) has been widely researched. In general women and children have less access to the “pooled” resources than men: See D. Budlender, conference paper on household food security (1993).

³⁵ van der Berg, note 9, p. 499.

³⁶ van der Berg, note 9, p. 498; M. Ray, *The Poor - Paying the Price* vol. 22, no. 2, Labour Bulletin (1998), pp. 10 - 11.

minimum standard of living. In conclusion, the existing system of social assistance provides a basic, but inadequate, safety net for the poor in South Africa.

3.2 SOCIAL INSURANCE

3.2.1 Introduction

“Social insurance” usually refers to earned benefits of workers and their families. It is most often linked to formal employment. There is frequently a direct connection between the amount paid and the benefit received. On the other hand, earnings-related benefits often also have non-contributory elements (e.g. the state may supplement the contributions). Thus the distinction between contributory and non-contributory benefits becomes blurred. Similarly, there is an overlap between these benefits and needs-based social assistance.³⁷ We have however separated social assistance and social insurance on the basis that there is some contribution directly by employer and employee in the latter case.

3.2.2 Social insurance and economic security

Social insurance is intended to enhance economic security. According to O’Connell, “During the past century these economic security devices have proliferated rapidly, and both private employers and legislatures have created multiple sets and complex roles to govern their distribution.”³⁸ O’Connell suggests that for most Americans, access to economic security is closely linked to participation in the paid labour force:

*“The greatest security belongs to those whose attachment to paid work is lengthy, uninterrupted and highly remunerative. Those who earn a low wage, or whose labour force participation is interrupted or less than life-long, may glean access to some economic security devices, but their share is markedly poorer than that garnered by the preferred worker - the highly paid long term employee.”*³⁹

The pattern is similar in South Africa. Those who do not have access to work and work-related benefits must rely on the flawed social assistance scheme outlined above. Even when beneficiaries are able to access social insurance there are frequently many limitations and they are inappropriately targeted.

This also has major gender implications. Access to contributory social insurance is usually tied to a stable, uninterrupted job in the formal sector. Many women are indirectly excluded because of their higher unemployment rates, their prevalence in less secure, informal sector jobs, and because of the fact that their employment record is much more likely to be interrupted due to child care and other domestic responsibilities.⁴⁰

³⁷ C. Krause, *Lowering of Social Security Standards Under International Human Rights Law*, Unpublished LLM Thesis, pp. 3-4 (1994).

³⁸ M. E. O’Connell, *On the Fringe: Rethinking the Link between Wages and Benefits*, vol. 67, No. 5 *Tulane Law Review* (1993).

³⁹ O’Connell, note 38, p. 23.

⁴⁰ Key Indicators of Poverty in SA, note 16, p. 4; The 1995 October Household Survey estimates that 75% of African workers in the informal sector are women: referred to in D. Budlender. (ed), *The Second Women’s Budget*, Idasa (1997), p.26.

3.2.3 An overview of the main types of social insurance available.

(i) Unemployment Insurance

The main form of social insurance in South Africa is provided by the Unemployment Insurance Act (No. 30 of 1996) [UIF]. It is a fairly typical example of social insurance legislation found in countries in which the labour force has not been fully absorbed into wage-earning employment.⁴¹

The main features of such social insurance schemes are

- costs are met by contributions shared between employers and workers, with sometimes the supplementary contribution from the state out general revenue;
- participation is compulsory for prescribed areas of employment;
- contributions are accumulated in a special fund from which benefits are paid;
- surplus contributions that are not required for the payment of benefits are invested to earn supplementary income for the fund;
- the contributor's right to benefits is related to his or her contribution record;
- contribution and benefit rates are usually earnings-related.⁴²

The Unemployment Insurance Fund which was established in 1946 provides a limited number of categories of benefit. In 1946 the state's concern was limited to alleviating poverty among whites. A major part of the work force including agricultural workers, African gold and coal mining workers and domestic workers were excluded.⁴³

The five categories of benefits provided under the UIF Act are:

- unemployment benefits;
- maternity benefits;
- illness benefits;
- adoption benefits; and
- survivor's benefits in the event of the contributor's death.

Benefits are calculated at 45% of the wages earned by the contributor immediately prior to the cessation of employment. The normal maximum entitlement is 26 weeks within any period of 52 weeks.⁴⁴ The following groups are excluded from coverage: casual workers, piece workers, seasonal workers and domestic workers. The overwhelming majority of domestic workers are women, and as UIF covers maternity benefits their exclusion from the Act is a major disadvantage.

⁴¹ John Limbrick and Associates, *Extended the Provisions of the Workman's Compensation Act and the Unemployment Insurance Act to Domestic workers*, A Report to the Department of Manpower (July 1993).

⁴² Limbrick and Associates, note 41, p.8.

⁴³ C. Meth, R. Naidoo, and B. Shipman, *Unemployment Insurance and Related Coverage Issues*, Interim Report of the Task Team (October 1996).

⁴⁴ Limbrick and Associates, note 41, p. 9.

(ii) Occupational Injuries and Diseases

The Compensation For Occupational Injuries And Diseases Act (No. 130 of 1993) [COIDA] is in many respects is also a typical example of the kind of legislation found in many countries. The Act requires all employers of workman as defined to pay annual premiums related to the amount of wages paid, and the assessed risk of accidents in the particular sector of industry in which the employer carries on a business. Workers are not required to contribute to the fund nor does the state make any contribution to the fund.

Workmen (as defined in the legislation) are entitled to benefits under the Act regardless of whether the employers have paid the necessary premiums. The COIDA provides that if workers are injured at work or get a disease caused by their work (occupational disease), they get benefits from the Compensation Fund.⁴⁵

The COIDA benefit structure covers five contingencies:

- a) Medical and hospital costs arising from occupational injuries and diseases;
- b) Temporary incapacity which may be either total or partial. Compensation is 75% of the worker's monthly wage;
- c) Permanent total incapacity. Compensation is a monthly pension;
- d) Permanent partial incapacity. Compensation is a proportional monthly pension or a lump sum, depending on the extent of the disability;
- e) Fatalities. Compensation is paid to the worker's dependants.⁴⁶ When a fatal injury happens, and the worker is killed or dies as a result of the injury his or her dependents (widow or widower, children or perhaps mother) will get a pension. The dependent widow or widower will get a pension for life. Children (up to 3 children) under 18 years of age will get a pension (included as part of the parent/guardian's pension) which will stop when they reach 18 years, unless they are still studying at school or University.

Compensation under this legislation replaces the normal civil remedies a worker would have against his or her employer e.g. for the negligent causing of injury or disease.

Those excluded from coverage under the Act, include members of the Defence and Police Forces, independent contractors, and domestic workers in private households.

It is estimated that there are approximately 860 000 domestic workers in paid employment in South Africa, servicing roughly one million households.⁴⁷ The majority of these workers are black women. Despite the size of the sector, domestic workers are excluded from the provisions of the Compensation for Occupational Injuries and Diseases Act, 1993 (COIDA). Due to their exclusion from these provisions, if a domestic worker is injured, contracts an occupational disease, or has a fatal accident during the course of her duties, she or her dependants are not able to claim any of the above benefits from the Compensation Fund.

⁴⁵ Industrial Health Research Group, *Guide to the Compensation for Occupational Injuries and Diseases Act* (1996).

⁴⁶ Industrial Health Research Group, note 46; Limbrick & Associates, note 41.

⁴⁷ Meth, Naidoo and Shipman, note 43.

The only other partial option available to a domestic worker who is injured or who contracts an occupational disease, is to sue the employer for the wrongful causing of harm. This is only possible if the domestic worker is injured as a result of an employer's negligence or specific instruction. However, an employer is not liable if it can be proved that all reasonable steps were taken to prevent the accident which caused the injury; that the actions leading to the accident were outside the normal scope of the domestic worker's duties or that the action was done without the employer's knowledge or permission.⁴⁸ This option is hardly feasible, given the expense of such legal action.

The exclusion of domestic workers from the provisions of the COIDA denies them access to critical social security rights. Their exclusion is not in harmony with the human rights commitments expressed in the Labour Ministry's Programme of Action.

(iii) Occupational Retirement Insurance

Many governments, particularly in the north, are concerned with the ageing of their populations. There is much emphasis world wide on looking at how people can be encouraged to start making personal provisions for their retirement. Governments hope that by introducing tax benefits and other incentives, personal provision will increase and reduce the financial strain placed on government in the area of old age social assistance.

Private insurance companies find that the challenge that faces them is to devise new and innovative schemes to extend coverage people who are not in permanent formal employment.

The large insurance industry in South Africa plays a crucial role in mobilising contractual savings for investment, much of it as occupational retirement insurance. Assets of retirement funds alone amounted to 73% of GDP in 1993 (Smith Committee, 1995: D2.16). Occupational retirement insurance has expanded its coverage to most industries, and it is usually mandatory for employees in such industries to join their pension or provident fund. Organised labour's involvement in this sector is a healthy challenge to management's power in this area. Workers and employers typically contribute 7.5% of the monthly wage to a retirement fund, and workers can then claim benefits upon retirement. The 16 000 retirement funds are regulated through The Pensions Funds Act of 1956 with the aim of safeguarding members' interests.

Van der Berg notes that

*“Coverage is still low in agriculture; trade, catering and accommodation (mainly employees of small traders and shopkeepers), and domestic service. Coverage amongst men is probably much higher than among women, who are disproportionately present in services, including both trade and domestic service”*⁴⁹

Although coverage of those in formal employment is high (about 73%), the large extent of

⁴⁸ Gilfillan in *Masisebenzisane - Let Us Work Together* (1990).

⁴⁹ van der Berg, note 9, p. 489.

unemployment means that only some 40% of the labour force is covered.⁵⁰

There are a host of underlying policy issues that need urgent attention and that are currently being debated. The recently created National Retirement Consultative Forum (NRCF) which was recommended by the Mouton Commission (1992) is currently looking at many policy issues related to retirement provision. These are discussed in more detail in Part 5.

3.3 PRIVATE INSURANCE PROVISION

People also make provision against certain contingencies such as retirement, ill-health, death and unemployment through private insurance schemes. A detailed examination of this area is beyond the scope of this paper. However, the proper regulation of the private insurance industry to prevent abuses and forms of unfair discrimination is clearly warranted - for example, the exclusion of persons with HIV/AIDS from many medical aid schemes.⁵¹ The Bill of Rights specifically prohibits private individuals and institutions from discriminating unfairly on grounds such as race, gender, sexual orientation, disability etc. (s. 9(4)). Anti-discrimination legislation to give effect to this right is currently being prepared under the auspices of the SA Human Rights Commission. This legislation should also include more effective remedies against unfair discrimination in private insurance schemes .

4. THE RIGHT TO SOCIAL SECURITY: THE CONSTITUTION AND RELEVANT INTERNATIONAL STANDARDS

4.1 The Constitutional framework

The Constitution is the supreme law of South Africa (s 2), and sets out the fundamental goals and values that must guide the construction of a new democracy society in society.⁵² These goals of the constitutional order include -

- redressing the injustices of the past;
- establishing a society based on social justice
- improving people's quality of life and freeing the potential of each person [the Preamble].

These commitments are particularly reflected in the socio-economic rights included in the Bill of Rights.⁵³ One of the socio-economic rights included in the Bill of Rights is the right to social security.

Section 27(1)(c) reads as follows:

“Everyone has the right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.”

⁵⁰ *Id.*

⁵¹ See, the press report entitled, *AIDS patients' rights may be tested in court*, Business Day, 4 May 1998.

⁵² All references to the Constitution in this paper are to the 1996 Constitution of the Republic of South Africa (Act 108 of 1996).

⁵³ *Soobramoney v Minister of Health, KwaZulu-Natal* 1997(12) BCLR 1696 (CC) at paras. 8 and 9.

In order to give effect to this right, the state is required to -

“...take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of [this] right.” [s. 27(2)].

In addition, every child has the right -

“to basic nutrition, shelter, basic health care services and social services.” [s. 28(1)(c)].

The state must “respect, protect, promote and fulfil” these rights [s. 7(1)]. This means that it must both refrain from conduct which unreasonably deprives people of access to social security, as well as taking positive measures to improve and advance access to social security by all in South Africa. Other rights which are highly relevant to social security are:

- the right to equality which prohibits direct or indirect unfair discrimination on a number of grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth [s. 9]; and
- the right to administrative action that is lawful, reasonable and procedurally fair, including the right to written reasons for decisions adversely affecting a person’s rights [s. 33].

The right of access to social security is guaranteed to “everyone” and is not expressly restricted to citizens. Any limitation of this right to citizens would have to pass the test of the general limitations clause [s. 36]. In other words, the limitation must be “reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.”

This is the framework within which welfare policy should be formulated and operate. All legislative and policy initiatives in the field of social security should strive to give effect to these rights, and make them real and meaningful in the lives of ordinary people.

4.2 Relevant international standards

In addition to these constitutional obligations, South Africa has assumed obligations under various international human rights treaties in relation to the right to social security. These include -

- *Convention on the Elimination of All Forms of Discrimination against Women (1979) [CEDAW]* - articles 11(1)(e), 11(2)(b). and 14(2)(c).
- *Convention on the Rights of the Child (1989) [CRC]* - articles 26 and 27.
- *The African Charter on Human and Peoples’ Rights (1981)* - article 18(4).

South Africa will shortly become a party to the following international treaties which also protect social security rights:

- *International Covenant on Economic, Social and Cultural Rights (1966) [ICESCR]* - articles 9, 10 and 11.

- *International Convention on the Elimination of All Forms of Racial Discrimination* (1966) - articles 5(e)(i) and 5(e)(iv).

Other international treaties which protect social security rights include -

- *International Labour Organisation No. 102 Concerning Minimum Standards of Social Security*;
- *European Social Charter (1961)* - articles 12, 13, 16;
- *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the Protocol of San Salvador) (1988 - yet in force)* - article 9;
- *The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990 - not yet in force)* - articles 27 and 54.

Although South Africa is not a party to these treaties, they may nonetheless be used as a guide to interpreting the right to social security in the Constitution.⁵⁴ *The Universal Declaration of Human Rights (1948)* which was adopted “as a common standard of achievement for all peoples and all nations” also recognises the right to social security and assistance (articles 22 and 25).

Finally (although not legally binding) South Africa has made certain international commitments through its participation in the World Summit for Social Development (6-12 March 1995). Relevant commitments in terms of the *Copenhagen Declaration and Programme of Action* include “strengthening and expanding programmes targeting those in need, programmes providing universal basic protection, and social security insurance programmes.” [para. 38].

4.3 The scope of the right to social security

It is clear from the drafting of section 27(1)(c) that social security includes both contributory forms of social insurance, and needs-based assistance received from public funds (social assistance). A broad interpretation of the right is in line with international trends to develop comprehensive forms of social protection in response to factors such as the increased mobility of labour and changing global work patterns, including the growth of the informal sector and the prevalence of home-based work, temporary work and self-employment.⁵⁵

The White Paper for Social Welfare in South Africa (February 1997) defines the scope of social security to cover -

“a wide range of public and private measures that provide cash or in-kind benefits or both, first, in the event of an individual’s earning power permanently ceasing, being interrupted, never developing, or being exercised only at unacceptable social cost and such person being unable to avoid poverty. An secondly, in order to maintain children.” [Ch. 7, para. 1]

⁵⁴ In terms of section 39(1)(b) of the Bill of Rights a court, tribunal or forum must consider international law when interpreting the Bill of Rights.

⁵⁵ Krause, note 37, pp. 4 - 5.

The four major components of the social security system in South Africa identified in the White Paper are:

- a) Private savings;
- b) Social insurance;
- c) Social assistance;
- d) Social relief. [Ch. 7, para. 2].

This paper argues that the right of access to social security, including social assistance for those who are unable to support themselves and their dependants should consist of the following key elements:

(i) *Comprehensiveness*: the social security system as a whole should provide comprehensive coverage against all contingencies and life circumstances that threaten their income-earning ability and ability to support themselves and their dependants - unemployment, ill-health, disability maternity, old age; child support for impoverished care-givers; death benefits etc;

(ii) *Universality*: all those in need of social security should be able to gain access to it;

(iii) *Adequacy and appropriateness*: the level of benefits provided under the various schemes should meet a defined minimum standard. The benefit provided will depend on the type of social security scheme and its rules (e.g. contributory occupational retirement insurance). However, with regard to needs-based social assistance the benefit provided should at least be sufficient to ensure that the recipient does not fall below an accepted poverty line/minimum subsistence level in South Africa. The kind of benefits provided should also be appropriate to the kind of risk or contingency faced (e.g. maternity benefits should be paid for a period appropriate to the demands of child-birth and infant-care)

(iv) *Equality and administrative justice*: the social security system must not unfairly discriminate (directly or indirectly) against person.⁵⁶ In addition, the system must respect the administrative justice rights set out in section 33 of the Constitution. If social security is to be regarded as a right as opposed to mere charity subject to the discretion of government officials, it is imperative that the rules governing eligibility for, and the termination of, benefits are reasonable and procedurally fair.

4.4 The state's duties in relation to the right

What are the Ministry and Department of Welfare and Population Development's specific duties in relation to the right as defined above?

Progressive realisation

It is clear that the full realisation of the right cannot be achieved overnight. The Bill of Rights expressly allows the state to realise the right "progressively" (gradually) and "within its

⁵⁶ The exclusion of permanent residents from being eligible for social grants in terms of the Social Assistance Act is questionable in the light of the Constitutional Court's decision in *Larbi-Odam and others v Member of the Executive Council for Education (North West Province) and another* 1997(12) BCLR 1655 (CC).

available resources.” In order to give effect to the right the state must adopt reasonable legislation and other measures (e.g. financial, administrative and educational measures) that clearly and directly advance and improve access to social security.

If progress is to be measured, the Ministry should put in place a transparent *plan of action* for realising the right. This plan of action should include benchmarks (concrete standards of achievement) tied to specific time-frames.⁵⁷ Without this plan of action, there is a real risk that the commitments in the White Paper will simply remain noble sentiments on paper.

Progressive realisation also implies that the state should in general avoid retrogressive measures which reduce the coverage, universality (the number of people who have access to social security) or level of benefits provided under the social security system.⁵⁸

Minimum core duty

The UN Committee on Economic, Social and Cultural Rights has emphasised that there is a ‘minimum core obligation’ on states parties to the ICESCR “to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights”. This minimum core obligation has a priority claim on the state’s resources.⁵⁹ In relation to the right to social security in South Africa this should include at least that the most disadvantaged and vulnerable groups are provided with basic levels of social security. These groups include the elderly, people with disabilities, poor children, and victims of natural disasters or violence. This basic minimum duty of the state is the foundation for the progressive improvement in the social security system until the right is fully realised.

5. CURRENT POLICY INITIATIVES

5.1 The White Paper for Social Welfare

The primary social security policy document is the White Paper for Social Welfare which was released by the Ministry for Welfare and Population Development in 1997. The context of this document as outlined in the chapter 1 is that there is “extreme inequality in the distribution of income... among racial groups and households. The poorest 40% of households in South Africa earn less than 6 % of total national income whilst the richest 10% earn more than half of the national income”⁶⁰

In the White Paper, a national developmental social welfare strategy is set out. It includes a vision in which “the welfare system which facilitates the development of human capacity and self-reliance within a caring and enabling social economic environment”.⁶¹ The basic principles of developmental social welfare policies are stated as: securing basic welfare rights, equity, non-discrimination, democracy, improved quality of life, human rights, people-centered policies, investment in human capital, sustainability, partnership,

⁵⁷ The plan of action provides the SA Human Rights Commission with a tangible tool to evaluate progress in the realisation of the relevant rights (section 184(3) read with section 184(1)(c) of the Constitution).

⁵⁸ General Comment No. 3 of the UN Committee on Economic, Social and Cultural Rights (which monitors states parties duties under the ICESCR), para. 9. Krause, note 37.

⁵⁹ General Comment No. 3, para. 10.

⁶⁰ White Paper for Social Welfare, February 1997, p. 1.

⁶¹ *Id.*

intersectoral collaboration, decentralisation of services delivery, quality services, transparency and accountability, accessibility, appropriateness and *ubuntu*.

In chapter 7, dealing specifically with social security, government commits itself to the building of a “comprehensive national social security system” [para.26(a)]. According to the White Paper, this system will require comprehensive social assistance to those without other means of support, “such as a general means tested social assistance scheme” [para. 26(b)] Secondly, it will require the restructuring of social insurance including the retirement industry, the unemployment insurance and health insurance. The ultimate goal of the system is to ensure that -

“There will be universal access to an integrated and sustainable social security system. Every South African should have a minimum income, sufficient to meet basic subsistence needs, and should not have to live below minimum acceptable standards. The social security system will also work intersectorally to alleviate poverty.” [para. 27]

The White Paper is supported by the Social Welfare Action Plan which has set a period of five years to implement the policies contained in the White Paper

5.2 The Committee for the Restructuring of Social Security (“Chikane Commission”)

In 1996 a report was commissioned from the Committee for the Restructuring of Social Security (CRSS). The brief to the CRSS was to review current social security systems especially information and payment systems and technology, to investigate and make recommendations regarding the restructuring of the management systems in human resources development, and to evaluate information regarding fraud and corruption.⁶²

The CRSS described the social security system as in crisis:

“The segregation of the social security system of the past put into place 14 separate systems each with its own management and information systems, rules and procedures, led to loop holes which could easily be exploited by unscrupulous officials and members of the public”⁶³.

The major recommendations of the CRSS were:

- A nationally organised social security system should be established.
- The Department of welfare should develop a national human resources strategy.
- Management systems should be standardised and integrated.
- A focused communication plan should be developed
- No contract should be awarded for finger-print identification systems at the time of the report.
- Legislation and rules relating to internal discipline should be simplified.
- A uniform approach to the payment of disability grants should be addressed as a matter of urgency.
- A costing system must be developed

⁶² CRSS (December 1996), p. 5

⁶³ *Id.*

- A specific budget for the administration of the social security at national and provincial levels must be developed.

5.3 The Public Service Commission's Investigation into Social Security Services

Once the CRSS report had been handed to the government, the Public Service Commission was requested to look into the process of creating such a national system. The Public Service Commission returned from their investigations in the provinces with a recommendation that the welfare system not be run from a national level, but through a hybrid system. The Public Service Commission's main proposals as summarised in its *Presentation on an Investigation into Social Security Services* (February 1998), were -

- the existing functional process relating to the consideration and payment of grants to be upgraded and amended;
- the social system to be computerized and a central information technology (IT) data base maintained;
- the organisational structures of the national department of welfare be restructured to provide for: coordination and allocation of the total budget for social grants, coordination and rendering of support in respect of the system of payment of grants, human resources, provision and administration, IT, and the establishment of an evaluation unit;
- the organisation and staffing of provincial administrations be restructured with a view to eliminate fraud and corruption.

The process of re-registering grant beneficiaries in many provinces to eliminate "ghost-recipients" has been highly problematic with many needy old age pensioners and disability grant recipients being arbitrarily cut off from state support. The procedure of placing a freeze on so-called "questionable grants" (e.g. in the Northern Province) is contrary to the whole ethos of a rights-based approach to social security.⁶⁴

5.4 Occupational Retirement Insurance

The issues that are most pressing in the policy debate on occupational retirement insurance are:

- (i) whether there should be a statutory restriction placed on the withdrawal of pension and provident fund benefits before retirement age
- (ii) whether or not a Compulsory National Retirement Scheme (CNRS) should be established in South Africa.

(i) Statutory restrictions on withdrawal of benefits from pension or provident funds.

An attempt to introduce such restrictions in 1981 (the Preservation of Pension Interests Bill) sparked off a wave of industrial unrest in the country which led to the proposal being hastily withdrawn. The essential elements of the proposal were that contributions to a fund had to be preserved when an employee left a job, by either leaving the contributions in the fund or

⁶⁴ See the press report entitled, *MEC 'has blood on her hands*, Mail & Guardian, February 27 to March 5 1998.

transferring them to any new fund the member joined, or transferring them to a financial institution. No withdrawal of the money would be permitted until the retirement age of 65 year was reached. Labour's opposition to the Bill was based on the fact that long-term benefits such a pensions were a luxury that poor workers struggling to meet their immediate needs could not afford. Workers regarded this as an attempt to deny them access to their own money, and that it was the duty of the state to assist them with old-age pensions.

Any analysis of the merits and demerits of preservation must take into consideration the following factors:

- Preservation only applies to people who find themselves in formal employment and does not address the question of people who are unemployed.
- For preservation to work, other social security mechanisms such as the Unemployment Insurance must be improved. The trend in SA has been for people to use retirement funds for non-retirement purposes simply because there is no other adequate social security system to turn to. Any justification of preservation must come with an alternative security system which "catches" people in their time of need.
- Both Mouton and the Smith Commissions recommended that if preservation were introduced, that it should contain a "Hardships Benefit" which would allow for members to get loans for education, major medical expenses, housing etc.

(ii) Compulsory Contributory National Pension Scheme (CCNPS).

A CCNPS usually means the following:

- All economically active persons are compelled to contribute a portion of their income to the scheme.
- Pensions are calculated based on the number of years of contributions.
- A national pension scheme is established with its own infrastructure which manages the money.

The following arguments are used in favour of introducing a CCNPS:

- People are often irresponsible and fail to provide for themselves even if they have the means which leads to unnecessary expenditure for the State when people resort to the social assistance system for help.
- Employers should be compelled to contribute to pension provision for their employees.
- Members would get a much better deal from a national scheme as opposed to private pension schemes such as not being penalised when switching jobs and the funds would be more secure.
- If controlled by the State, administration costs would be lower and the investments of the funds would contribute to more beneficial social and economic development.

The following is some of the reasons that a CCNPS has not found favour in South Africa.

- The only people that can be drawn into such a scheme are those that are in formal employment (apparently, no other country has been ever successfully managed to collect contributions from non-formal sectors).
- Over 65% of the formally employed people in SA contribute to a retirement fund. The people who need to be encouraged and targeted for joining retirement funds are those

earning low incomes, employed in the informal sector or workers in very small firms.

- Benefits are related to the contributions that have been made during the period immediately prior to retirement. This means that the advantages for the elderly in the short term will be minimal and will not relieve the burden on the state.

There is a need for further research on what system of retirement provision would be appropriate for South Africa.

In conclusion, many problems present themselves when people attempt to claim from their private pension schemes. These include difficulty in contacting fund administrators, files getting lost or misplaced, processing of claims being held up because documents which are necessary are not asked for, Survival Certificates not always getting to the offices even if sent via registered mail, pension payments deposited into the incorrect bank account and huge backlogs.

6. BUDGETARY ISSUES AND THE IMPACT OF GEAR ON ACCESS TO SOCIAL SECURITY

The welfare budget increased 62% in real terms from 1990 to 1997, an annual real growth of 7.3%. This increase was mainly due to the equalisation in the level of old age pensions for all races. Racial parity was achieved in the budget in 1994, although access to the SMG and disability grants still reflects racial disparities. In 1997/97 social security constituted approximately 85% of the total welfare budget. Social security payments represent about 16% of the provincial budget and a little over 2% of GDP.⁶⁵

The maximum values of the grant are determined by the overall size of the welfare vote determined historically by the Minister of Finance in consultation with the Minister of Welfare. As the FFC puts it,

“The fiscal decision has enjoyed primacy over welfare policy in relation concerning the level of the grant.”⁶⁶

Grant levels constitute national norms and standards, binding on the Provinces although provinces retain the power to allocate their own budgets, including the equitable share of revenue raised nationally. The FFC Report highlights provincial inequities in grant expenditure. Addressing these inequities requires additional spending in the Northern Province, Mpumalanga, North West and Gauteng. However, it is pointed out that the budgets for 1995/1996 - 1997/98 do not reflect this shift in spending. The Northern Province and Mpumalanga have a declining budget while the Northern Cape continues to grow:

“There appears to be a continued widening of inequity rather than a convergence towards equity.”
[p. 91].

The Eastern Cape pensions crisis demonstrates how inadequacies in provincial planning and budgeting can undermine the social security rights of the poorest members of our society.

⁶⁵ FFC Report, note 15, p. 88

⁶⁶ Id., p. 89.

The introduction of the new child support grant is the area of grant spending which reflects the impact of GEAR most graphically. As has been noted above, the minimalist parameters of the new grant were dictated by the acceptance that there would be no significant increase in the welfare budget to accommodate equalisation at the levels of the old SMG. It was openly acknowledged by the Lund Committee on Child and Family Support that GEAR adopted by government in June 1996 would have the effect of placing tight constraints on social spending:

“The policy directives [to government Departments] have been: do not ask for too much more; save money through more effective management and through downsizing the bureaucracy; and *redistribute within the present envelope*...Economically, equalising the grant upwards to its present level, or anything approaching such a level, is not possible.” [authors’ emphasis, Lund Report, pp. 23 - 24; and p. 84].

Instead a process of ‘equalising-down’ occurred:

- The grant level was reduced from a maximum of R700 (in respect of the parent and child allowance components of the SMG) to R100 per child (initially the level was set at R75, but increased after public pressure);
- The eligible age group was reduced from 0 - 18 years to 0 - 7 years (a positive feature of the CSG is to drop the maximum limit of 2 children on whose behalf the grant may be claimed);
- A targeting rate of 48% (initially set at 30%) which does not correspond with poverty levels among children in this age group (it is promised that R3 million children will be reached in 5 years time as compared with the approximately 203 262 children receiving the child allowance portion of the SMG).

The Ministry has announced that the new CSG will cost an additional R2,7 billion in 1997 rand once it is fully operational in 5 years time. However, researchers have estimated that during the current fiscal year the Department will spend R300 - R500 million less on children in poverty if it intends to pay out the grant to a maximum of 170 000 children in the first year.⁶⁷ Apparently, more children might be allowed to register for the grant, but would not receive payment during the current fiscal year. At the same time, the present recipients of the SMG’s will receive in real terms about 1/3 less than their previous payments as a first step towards completely phasing out these grants over 3 years.

Having regard to the medium-term expenditure framework, the increase from the 1998/1999 overall welfare budget of R19 billion to the 2000/01 budget of R21 billion only keeps pace with predicted inflation rates. It is difficult to see how this budget will accommodate the additional expenditure on the child support grant if the promised 3 million children are to be reached.

While the government concedes that old age pensions constitute one of its most powerful tools in poverty alleviation, pensions and disability grants have only been increased by 4.3%

⁶⁷ Dirk and Claudia Haarmann. There is some confusion regarding the numbers of children to be targeted in the 1998/99 financial year. In the Minister’s press statement of 9 February 1998, she announced it would be 390 000 children. However, on the radio-programme, *AM-Live*, on 12 March 1998, the Minister apparently referred to an intended target of 170 000 children.

in the current fiscal year. This is 2-3% less than the prevailing inflation rate, meaning that pensioners are in fact worse off than they were a year ago. In addition, the Ministry has recently announced that pension “back-pay” will be severely restricted. The maximum period for which the regulations allow back-pay to accumulate is 3 months.⁶⁸ This is in contrast to the previous regulations which provided that a grant accrued from the date that the applicant attested his or her application for the grant.⁶⁹ This meant, for example, that if a pensioner waited a year from the date of her application to be paid her pension (not an uncommon situation), she would receive back-pay for the whole period from the date of application. It is hard to see how the new measure will encourage a more efficient bureaucracy as the Minister claims it was designed to do. In fact, just the opposite result is likely: the more inefficient the processing of grant applications, the more money will be saved for the state. The net effect of this measure will be to drastically reduce the amount first-time pensioners receive from the state. This clearly represents a retrogressive as opposed to a progressive measure.

These examples of the child-support grant and the pensions clearly demonstrate the impact of GEAR in the welfare arena.

7. CRITICAL AREAS FOR ACTION

The central challenge is to develop a comprehensive social security system in the context of the rigid, narrow fiscal parameters set by GEAR and high levels of structural unemployment. The HIV/AIDS epidemic also represents a severe threat to the whole grants system. There is also not an insubstantial risk of collapse in the face of bureaucratic delays and the lack of key middle management human resources in the sector. Although key policy commitments have been made, there is a need to draw all role-players together to develop a coherent and rights-based strategy through which we can reach our stated goal of social security for all.

Critical areas for action include -

- On the most basic level, there should be consistent reliable and efficient delivery of grants to beneficiaries.
- A coherent and integrated system should be developed from the current patchwork of grants to ensure that all vulnerable and disadvantaged groups has access to a basic minimum income. As the White Paper says, no-one should have “to live below minimum acceptable standards.”
- There needs to be further investigation into the links between social insurance and social assistance especially with regard to retirement provision. A crucial issue is how the means test for social pensions interacts with occupational or private insurance and with the tax system.
- Restructuring aimed at a comprehensive national social security system should not take place in a piecemeal fashion, but should be part of a detailed plan of action to implement the White Paper’s commitments.

⁶⁸ This change was introduced with effect from 1 April 1998 through Regulations No. R.418, reg. 11(1). Also see Cape Argus, *Pension back-pay crackdown - ‘Efficiency’ move likely to reduce payments* (16 April 1998).

⁶⁹ Regulations No. R. 373, 1 March 1996, Reg. 10(1).

- Key norms and standards for a comprehensive social security system should be enshrined in legislation and not relegated to the discretion of administrative officials.
- There should be further investigation into appropriate mechanisms for guaranteeing social security beneficiaries' administrative justice rights e.g. in relation to hearings before suspension of benefits, appeals etc.

In conclusion, the concept of developmental social welfare should not be interpreted to mean that poverty-alleviation in the short term should be neglected in favour of long-term developmental programmes. The danger is that the concept of developmental social welfare can be used as a justification to cut back on social security spending. In addition, poverty alleviation measures such as grants should not be stigmatised as "hand-outs", particularly in the context of the deep poverty and inequality inherited as the legacy of apartheid. Social security should be seen as an integral and vitally important part of developmental social welfare.