
Social security rights

CHAPTER 11



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KEY WORDS

Access/Accessible	Able to get, have or use, eg access to social security.
Administrative action	When government officials have to make a decision that affects your rights, or have to take an action that will affect your rights. This includes making a decision to grant or reject your application for a social grant. All these actions or decisions must be done within a reasonable time period.
Advocacy	Mobilising and working for change, eg in policy.
Applicant	Person applying for a grant.
Appropriate	Suitable, fitting in with needs and conditions.
Assets	The things you own, eg property.
Beneficiary	A person who benefits from something, eg a grant.
CD4 count	A measure of the strength of your immune system – CD4 cells are white blood cells that organise the body's response to viruses like HIV.
Compliance/Comply	Whether or not you obey legislation, procedures or court judgments.
Contributory	When you have to pay in to a social security fund for when you need help, eg Unemployment Insurance Fund (UIF).
Delegate	When you ask someone else to do something for you.
Discretion/ Discretionary	Having the power to do something, eg to give a Social Relief of Distress Grant.
Eligibility criteria	What you need to qualify for a social grant.
Income	The money that you earn or receive.
Means test	How government decides if you have a right to receive a grant – this depends on how much money or property you have.

Non-contributory	When you can get a social assistance grant without having to pay anything towards a fund for it, eg Disability Grant.
Progressive realisation	Steps to improve people's access to socio-economic rights over a period of time.
Regulations	More detailed legal rules made under Acts.
Sliding-scale	Method used in means tests – the amount of money you get depends on what you earn. The more you earn, the smaller your grant can be.
Social assistance	State social grants that you do not have to contribute to, such as the Old Age Pension or the Child Support Grant.
Social grants	The different kinds of social assistance in South Africa, eg Disability Grants and Child Support Grants.
Social insurance	When you give money to a fund that helps you when you are in need, eg UIF or Compensation for Occupational Injuries and Diseases (COIDA).
Social security	State support system for when you cannot afford to look after yourself, including social assistance and social insurance.
Social security rights	The socio-economic rights in the South African Constitution to social security, and for children, the constitutional right to basic social services.
Social services	The welfare services that the State makes available to assist people in especially difficult circumstances, eg children experiencing abuse.
Socio-economic rights	Rights to goods and services that improve the lives of people, such as the right to a house, to health care and to social security.
Unfair discrimination	A policy, law, condition or situation that unfairly disadvantages you, eg because you are a woman, black, gay, living with a disability, or living with HIV.
Violate	Abuse or not respect, eg violating your right to dignity.
Vulnerable groups	People who need special protection, as they may be open to violence, abuse or discrimination, eg women, children, elderly people, or people living with HIV.

11.1

Why is it important to understand your social security rights?

CASE STUDY



GETTING ACCESS TO SOCIAL GRANTS

Sam is 12 years old. He lives in the North West Province with his mother, grandmother and two younger sisters. His grandmother has some land that she used to farm vegetables on. At that time, his grandfather worked in Johannesburg and would send money home for seeds. In good seasons, Sam's grandmother would produce more vegetables than the family needed, and would sell some to other people in the village.

Then Sam's grandfather died. The family became very hungry, and often would go to sleep not knowing what they would eat the next day. One day when Sam was at school, a visitor from the Department of Social Development came to talk to the school. The visitor told them about social grants that the Government paid to people who did not have much money, and who were old or children. She said that Sam's grandmother could get a pension every month, and that Sam's mother could receive a Child Support Grant for Sam and his sisters every month until they were 14.

When the family began to receive the grants, it made such a difference! Now they knew that they would always have food. Best of all, Sam's grandmother was able to buy new tools for farming, and his mother began to grow vegetables again like his grandmother had done.

When our elected representatives were drafting the Constitution of South Africa after the 1994 democratic elections, they agreed that everybody in South Africa should have access to social security to ensure that their needs were provided for. Social security was seen not as charity, but as a right.



Understanding your social security rights can assist you to claim what you are entitled to receive, or help you to receive other social assistance.

11.1.1 What is social security?

Social security is made up of two parts:

- Social assistance (grants)
- Social insurance.

Social assistance	Social insurance
<i>Examples:</i> Old Age Pension, Disability Grant, Child Support Grant	<i>Examples:</i> Unemployment Insurance Fund (UIF), Compensation for Occupational Injuries and Diseases (COIDA – the old Workmen’s Compensation)
<i>Non-contributory</i> – paid by the State from money collected through taxes, such as Value Added Tax (VAT) and Income Tax	<i>Contributory</i> – the worker, the employer and the State contribute to a national fund that pays out when workers who have contributed are unemployed or injured
Can be targeted or universal: <ul style="list-style-type: none"> • <i>Targeted grants</i> go to specific groups of people, like children living in poverty • <i>Universal grants</i> go to everyone, or to all in a certain category, eg all elderly people, no matter how much they earn 	If you are not employed, or doing casual jobs, you will not be able to pay into the fund – so you will not be able to claim money when you are unemployed or injured
Implemented by the Department of Social Development	Implemented by the Department of Labour

Some people also have private pensions that they pay for through their jobs or to an insurance broker. These include pensions, provident funds and retirement annuities.

People can also have private disability insurance and private burial schemes that they buy directly from an insurance broker or the bank. They pay premiums (regular payments) towards the scheme every month.

There is a link between social assistance and the tax system. In our country, some people are rich, while others are not so rich or just poor. Those who earn a lot of money have to pay Income Tax – a part of their wages that they pay back to the State. The employer deducts this automatically and pays it to the State. How much you pay depends on how much money you earn – the more you earn, the more you pay. This is called a *progressive* tax.

In South Africa, we also have Value Added Tax (VAT). This is a flat rate tax of 14% on everything that is not exempt from VAT. This is called a *regressive* tax because everyone has to pay the same amount of VAT on things they buy, however rich or poor they are.

The Government pays for social assistance from these taxes that we pay back to the State. This is known as *redistribution*, because it is mostly paid by rich people to people with less money to make things more equal in our country.

11.1.2 History and current context

During the last 100 years, almost every country in the world has introduced some type of social security to help look after the people living in it. Some countries give more benefits. The countries with the most generous benefits are known as 'welfare states', like Sweden and Norway.

The idea was that everybody would have jobs. Thus social security would only need to be available for people who were not working, either because they had retired (and needed a pension), or they were sick, or temporarily unemployed, but would find a new job within about six months.

The development of social security and social welfare services in South Africa was originally mostly for white people. White people were already advantaged by apartheid. They were more likely to have jobs and did not need pensions from the Government, because they received pensions from their employers.

In 1993, social grants were finally equalised across all race groups, but still not everybody received them. Black African mothers and children in general did not receive grants for children (the old State Maintenance Grant), even though they were often very poor. The Child Support Grant (that paid less money a month) replaced the State Maintenance Grant from 1 April 1998.

While the State Maintenance Grant was available to children up to 18, the Child Support Grant is only paid to children under 14. The Child Support Grant is now received by far more children than the previous State Maintenance Grant. The Child Support Grant was initially only payable for children up to the age of 7, but this has been progressively increased so that children now qualify until they are 14.

Under apartheid, there were many different welfare offices – for each province and old 'homeland', and for each different race group. Not all offices gave the same level of service. Under our new *Constitution (Act 108 of 1996)*, this changed and everybody fell under one national department, although the different provinces administered the grants and other welfare services. The administration of grants in some provinces (eg the Eastern

Cape) has been poor, and this has led to numerous court applications being brought to improve grant administration.

However, from 2006 onwards, all grants will be gradually administered under one national agency called the South African Social Security Agency that will be part of the Ministry of Social Development. Hopefully this will help to resolve some of the problems in the administration of grants at provincial level.

COURT CASE



LEGISLATIVE AND ADMINISTRATIVE MEASURES NOT ENOUGH

In the 2006 case of *Member of the Executive Council: Welfare v Kate* (Kate case), the Supreme Court of Appeal said:

"The establishment by the State of a legislative and administrative structure for the making of social grants and the appropriation of moneys for that purpose together go a long way to fulfilling the State's constitutional obligation but by themselves they are not enough. What is required in addition are reasonable measures to make the system effective. On that score there has been conspicuous and endemic failure in the Eastern Cape for a considerable time ... What is particularly distressing is that there seems to be no end in sight."

Paragraphs 2 and 4 of judgment

The *Chronic Poverty Report* sums up the role of social protection in this way:

“There is now significant evidence that social protection – in combination with other policies and interventions – can enable persistently poor people to escape poverty. It can shore up consumption so potentially irreversible welfare effects (reducing nutrition, avoiding essential medical expenditures or withdrawing children from school) do not occur. It can prevent the erosion of savings and other assets, and help poor people avoid becoming trapped in debt. It also provides the security that permits very poor households to invest in economic activities and human capital... There is emerging evidence that social protection measures can also achieve a more gender neutral distribution of benefits than other development initiatives.” *Chronic Poverty Report 2004–5*, 51

This chapter highlights important aspects of the right of everyone to have access to social security and the right of children to basic social services. Having these rights in the Constitution means that they can be used as a tool to improve the quality of people’s lives. Understanding these rights is the first step in the journey to make them real in people’s lives.

11.2

Your social security rights in the Constitution

Section 27(1)(c) of the Constitution covers the right to social security:

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

Section 27(2) says “The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation” of this right.

Sections 28(1)(b) and (c) of the Constitution say:

“Every child has the right...
(b) to family care or parental care, or to appropriate alternative care when removed from the family environment;
(c) to basic nutrition, shelter, basic health care services and social services.”

11.3

Guides to interpreting your social security rights

11.3.1 Reasonable measures and progressive realisation within available resources

To understand what our constitutional social security rights mean, we need to see how the Constitutional Court has interpreted these rights in exploring the meaning of socio-economic rights. Although they do not refer directly to the rights under section 27(1)(c), because other rights (such as housing and health care rights) are worded in the same way, we can use the Court’s judgments on these other rights to understand the right to social security too.

For more information on these cases and the meaning of the State's obligations, see Chapter 1 on pages 31–32.

The cases also set out how children's rights under Section 28 of the Constitution can be interpreted.

The main cases are:

- The 2000 case of *Government of the Republic of South Africa and Others v Grootboom and Others* (Grootboom case).
- The 2002 case of *Minister of Health and Others v Treatment Action Campaign and Others* (TAC case).

In the Grootboom case, the Constitutional Court said that the State has an obligation to develop a comprehensive and workable plan to meet its constitutional duties. However, the Constitution has three qualifications:

1. The State has to take *reasonable* legislative and other *measures*
2. To achieve the *progressive realisation* of the right
3. *Within* the State's available resources.

11.3.2 Children's rights

The rights of children in Section 28 of our Constitution are different from the other socio-economic rights in two ways:

- The right is phrased more directly – it does not say that “children have the right of access to”, but that they have “the right to”.
- It does not mention “progressive realisation” of the right “within available resources” – originally people thought this meant that children could claim all of the rights at once.

In the Grootboom case, the Constitutional Court decided that the Constitution should be interpreted in this way:

- The main people who should provide for the needs of any child are that child's parents and family.
- Only if the child is removed from the family setting, must the State then provide for the child's needs.

However, the Court in the Grootboom case did mention that this does not mean that the State has no obligations towards children who are being cared for by their families. This point was confirmed in the TAC case, where the Constitutional Court decided that, while parents are the main providers for children in a family setting, if the parents are unable to provide for implementing their children's rights, the State must ensure that the right is protected. This is slightly confusing, especially in South Africa where so many children live in poor households.

Children's rights in general were supposed to be strengthened through a new *Children's Act 38 of 2005*, partly passed by Parliament in December 2005. The original

COURT CASE



THE RIGHT TO WARM BEDDING AND SOCIAL WORK SUPPORT

In the 2006 case of *Centre for Child Law and Others v The MEC for Education and Others*, the Witwatersrand High Court decided that, for children who had been removed from their families and sent to a school of industries, social services included the right to be provided with warm bedding and with social work support.

idea was that the new law would pull together a number of rights, including the legal status of children, their rights to social security and their rights to social services. But the Parliamentary Portfolio Committee insisted on splitting the financial aspects of the law from other aspects of children's law. The final version does not refer to social grants at all.

The precise meaning of *children's rights to social services* in the Constitution has to date not been explained in detail by any court.

11.3.3 International human rights law

We can also use international human rights agreements to guide our understanding of the right to have access to social security. Subsection (2) of sections 26 and 27 of our Constitution is based on Article 2 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) of 1966. South Africa signed the ICESCR in October 1994, but has not yet ratified it.

Article 2 says:

“Each State party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, 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.”

There is a difference between this wording and the wording of our Constitution. The Constitution says that the State must take “take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation” of this right, instead of saying that the State must use “the maximum of its available resources” as the ICESCR says.

This means that, under the ICESCR, a State would have to prove that it does not have any more resources to devote towards the progressive realisation of the right. In South Africa, the Government just needs to say that it is doing as much as it can, and does not have to prove that it does not have any more resources.

This is a tricky area for the Constitutional Court, since they do not want to be seen dictating to government how it should use its money by commenting on the economic and tax policies of the State. Many civil society groups argue that, instead of cutting the amount of Income Tax that people have to pay on their salaries, the State should keep taxes higher to give it more money for social spending. This will speed up realising socio-economic rights and improve the lives of people who are poor.

11.4

Policies and programmes to implement your social security rights

This part deals with key social security policies and programmes, while the next part (11.5) will cover social security legislation in a practical way when discussing the detail of *How can you receive social security?*

For more on the meaning of signing and ratifying agreements, see Chapter 3 on page 93.

11.4.1 Policy guiding social security

The policy framework of the Department of Social Development is set out in the 1997 *White Paper for Social Welfare*. This policy document was used to draft the *10-Point Plan* of the Department, adopted in 2000 for its work until 2005.

<p>1. Rebuilding of family, community and social relations</p>	<p>“ We will restore the ethics of care and human development in all welfare programmes. This requires an urgent rebuilding of family, community and social relations in order to promote social integration.</p>
<p>2. Integrated poverty eradication strategy</p>	<p>We will design an integrated poverty eradication strategy that provides direct benefits to those in greatest need, especially women, youth and children in rural areas and informal settlements.</p>
<p>3. Comprehensive social security system</p>	<p>We will develop a comprehensive social security system that builds on existing contributory and non-contributory schemes and prioritises the most vulnerable households.</p>
<p>4. Violence against women and children, older persons and other vulnerable groups</p>	<p>We must respond to brutal effects of all forms of violence against women, children, older persons and other vulnerable groups, as well as design effective strategies to deal with perpetrators.</p>
<p>5. HIV/AIDS</p>	<p>Our programmes will include a range of services to support the community-based care and assistance for people living with HIV/AIDS. Particular attention will be given to orphans and children living with and affected by HIV/AIDS.</p>
<p>6. Youth development</p>	<p>We will develop a national strategy to reduce the number of youth in conflict with the law and promote youth development within the framework of the National Crime Prevention Strategy and in partnership with the National Youth Commission.</p>
<p>7. Accessibility of social security services</p>	<p>We will make social welfare services accessible and available to people in rural, peri-urban and informal settlements, and ensure equity in service provision.</p>
<p>8. Services to people with disabilities</p>	<p>We will redesign services to people with disabilities in ways that promote their human rights and economic development. We will work with people with disabilities to ensure that their needs are met without further marginalising them.</p>
<p>9. Commitment to cooperative governance</p>	<p>All our work must be based on a commitment to cooperative governance that includes working with different spheres of government and civil society.</p>
<p>10. Train, educate, re-deploy and employ a new category of workers in social development</p>	<p>We must train, educate, re-deploy and employ a new category of workers in social development. This includes the re-orientation of social service workers to meet the challenges of South Africa and link these to regional and global demands.”</p>

11.4.2 Current priorities

Each year, the Department of Social Development adopts a set of priorities, flowing from its constitutional mandate and guided by Cabinet. Based on the 10-Point Plan, these are the priorities and strategic goals for the period 2004–5 to 2006–7:

- *Social security*: Develop a comprehensive system of social security through finalising social security policies and improving service delivery by establishing a national agency for social security grant administration and payments.
- *Transformation*: Transform other welfare services.
- *HIV and AIDS*: Expand the Home-Based Care/Community-Based Care and Support Programme.
- *Poverty reduction and integrated development*: Implement and roll out the Expanded Public Works Programme.
- *Social integration*: Rebuild families and communities through policies and programmes empowering the young, the old, women and people with disabilities.

For an update on new three-year priority areas, visit the website of the Department of Social Development.

11.4.3 Towards a comprehensive social security system

In March 2002, the Department published the *Transforming the Present – Protecting the Future* Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa, a committee appointed by the Minister of Social Development.

This report has many suggestions for policy changes to ensure that more people receive social security. It refers to the idea of *social protection* as a broader concept than *social security*. The Committee suggested that, in order to ensure people's well being, especially vulnerable people, the State needs to adopt programmes that address these social protection needs of people:

- *Income needs* – for example, through social grants.
- *Asset needs* – there is a need to ensure poor people have access to property to ensure their well being, such as houses, and that can also be used to generate an income, such as a business.
- *Capabilities* – the need for people to have access to basic services that enable them to improve their lives, such as education, health, water and transport.
- *Special needs* – some people need additional special care, such as people living with disabilities.

A Basic Income Grant?

The Committee also recommended that the Government consider introducing a general income grant. This would not have a means test and would ensure that everybody can afford at least the basics, such as food and transport money. This recommendation is known today in South Africa as a *Basic Income Grant (BIG)*.

A broad civil society campaign has been built around a call by the BIG Coalition, including COSATU, for the Government to introduce a BIG to help end poverty in South Africa. The Coalition is calling for an amount of R100 to be paid to everyone, whatever their income or age. A family of four would thus be able to receive R400 a month.

CASE STUDY



LOBBYING AND ADVOCACY AROUND THE BASIC INCOME GRANT

The Basic Income Grant Coalition mobilises people to understand what the BIG is, and to get their support. The Coalition has persuaded Members of Parliament about the benefits of a BIG, and held marches to various government offices.

The Government has said that it will not introduce a BIG because it is not affordable and it would undermine the dignity of people to receive a 'handout' that they have not worked for.

The Coalition argues that:

- Government has reduced the amount of money it could use for social spending by cutting Income Tax. A BIG would be affordable for the country if some of the tax cuts of the last few years were reversed.
- There are no jobs for about 41% of South Africans. If everyone had a BIG, then they could eat. They could buy food, and this could create jobs for the people who grow and produce food.

Changes in social security policy take time, because you have to persuade decision-makers about the real needs of people living in poor and rural communities. Poor people often struggle to make their needs heard. This is how the *Chronic Poverty Report* sees the role of social assistance:

"Both the coverage and value of social assistance programmes are affected by how social protection is perceived by the non-poor. There is a need to point out to national and international policy-makers, the middle classes and the general public, how transfers are often used not only for current consumption, but also for saving, investment and further redistribution within the household. Social assistance is not about 'doles' (handouts). Pensioners support grandchildren's schooling; public works schemes provide the savings for small scale business start-ups."

Chronic Poverty Report, 2004–5, 57

11.5

How can you receive social security?

11.5.1 Social assistance

There are about 45 million people living in South Africa today. About half of them – 22 million – live in poverty. Of these people, just over 10 million received one of the State social assistance grants in August 2005.

The Government does not give grants to all people, and not even to all poor people. It has decided that certain groups, seen as the most vulnerable, should receive the grants. There are two main conditions for qualifying for grants – age and a means test (the amount of money and property that you have).

The main laws providing for social grants are the *Social Assistance Act 13 of 2004* and the *South African Social Security Agency Act 9 of 2004*.

The table running over pages 390–391 gives details about qualifying for and receiving these seven social assistance grants:

- a) Old Age Pension
- b) War Veteran's Grant
- c) Disability Grant
- d) Child Support Grant
- e) Foster Child Grant
- f) Care Dependency Grant
- g) Grant-in-Aid

After the table, in part h), we discuss the Social Relief of Distress Grant separately, as it is not a compulsory grant.



Grant	Who qualifies?
a) OLD AGE PENSION	<p>Women – 60 or older. Men – 65 or older. South African citizen or permanent resident with a 13-digit bar-coded Identity Document (ID). Not receiving another grant. Not permanently cared for in a State institution. Must be resident in South Africa at time of application.</p>
b) WAR VETERAN'S GRANT	<p>A person, who is 60 or older, or who is unable to provide for his/her maintenance because of any physical or mental disability, and served in the First or Second World War or the Korean War. South African citizen or permanent resident. Not receiving another grant. Not permanently cared for in a State institution. Must be resident in South Africa at time of application.</p>
c) DISABILITY GRANT	<p>A person, who is between 18 and 59 (woman), or 18 and 65 (man). Must submit a medical assessment report confirming disability. Payable for permanent or temporary disability. Must meet the means test. South African citizen or permanent resident with a 13-digit bar-coded ID. Not receiving another grant for him/herself. Not permanently cared for in a State institution. Must be resident in South Africa at time of application.</p>
d) CHILD SUPPORT GRANT	<p>Primary (main) caregiver must be South African citizen or permanent resident. Applicant must be primary caregiver of child. Child must be under 14. Applicant and spouse must meet the means test. Child must have 13-digit Birth Certificate. Applicant must have a 13-digit ID. Cannot apply for more than 6 biological children. Must be resident in South Africa at time of application.</p>
e) FOSTER CHILD GRANT	<p>Applicant must have a 13-digit bar-coded ID. Court order indicating foster care status. Valid South African or non-South African 13-digit Identity Number for each child. Foster child must pass the means test. Applicant and child must be resident in South Africa at time of application.</p>
f) CARE DEPENDENCY GRANT	<p>Applicant must be a South African Citizen, except for foster parents. Child must be a South African citizen or a permanent resident. Child must be between 1 and 18. Must submit a medical assessment report confirming disability. Applicant, spouse and child must meet the means test (income of foster parents not taken into account for means test). Care dependent child must not be permanently cared for in a State institution. Applicant must have a 13-digit bar-coded ID. Child must have a 13-digit Birth Certificate. Applicant and child must be resident in South Africa at time of application.</p>
g) GRANT-IN-AID	<p>Must need full-time help by someone else due to physical or mental disabilities. Must receive a social grant. Must not be cared for in an institution that receives a subsidy from the State for the care/housing of the beneficiary.</p>

What is the means test?	How much?	How long can you get it for?
Single person – net income (income after tax) less than R20 232 a year. Married persons – combined income less than R37 512 a year.	R820 a month.	For the rest of the aged person's life, unless they get more income than the means test.
Single person – net income (income after tax) less than R20 232 a year. Married persons – combined income less than R37 512 a year.	Maximum monthly amount: R820 Old Age Pension plus R18 = R838.	For the rest of the person's life, unless they get more income than the means test.
Single person – net income (income after tax) less than R20 232 a year. Married persons – combined income less than R37 512 a year.	R820 a month.	A temporary Disability Grant is usually for 6 months or 12 months – then it ends and people have to apply again. A permanent Disability Grant ends when a man or woman is old enough to get an Old Age Pension. It is the same amount of money every month, but it is then called a Pension not a Disability Grant.
The household income of the primary caregiver is: – R9 600 a year, or – R13 200 a year, and the child and the primary caregiver either: – live in a rural area, or – live in an informal dwelling (no brick, concrete or asbestos walls).	R190 a month for each child.	Until: – Child's 14th birthday, or – Death of child or primary caregiver, or – Child no longer in custody of primary caregiver.
Income of child cannot be more than R14 160 a year.	R590 a month.	Until: – Foster child turns 18 (can be extended to 21 if at school) or – Child no longer in custody of foster parent.
Income of parent not more than R48 000 a year, and income of child must not be more than R19 680 a year.	Maximum monthly amount: R820 for each child.	Until: – Child is 18 (can then apply for a Disability Grant), or – Parent or child dies, or – Child admitted to a State institution for care, or – Death of beneficiary.
No means test, but grant not given when applicant is cared for in an institution that receives a subsidy from the State for his/her care/housing.	R180 a month.	Until death of beneficiary.

h) **Social Relief of Distress Grant**

In the past, some provinces paid the discretionary Social Relief of Distress Grant to people in desperate circumstances for a limited period of time. It was not implemented in all provinces.

However, section 13 of the Social Assistance Act of 2004 (effective from 1 April 2006) provides that the Minister may make monies available to cover social relief of distress.

Draft Regulations under the Social Assistance Act, published in the Government Gazette in February 2005, also refer to social relief of distress. They provide that a person in need of temporary material assistance may qualify for a Social Relief of Distress Grant, if:

- The person is waiting for permanent aid, or
- A breadwinner has died or been admitted to prison, and there are insufficient means available, or
- The person has been affected by a disaster.

The Draft Regulations say that the Social Relief of Distress Grant can only be paid for a maximum period of three months. They also set out how to apply for the grant, and the amount of money that can be paid:

- For an adult, the amount may not be more than the amount payable for an Old Age Pension, War Veteran's Grant or a Disability Grant.
- For a child, the amount may not be more than the amount payable as a Child Support Grant.

GUIDELINES



EFFECT OF THE DRAFT REGULATIONS

While the Social Assistance Act of 2004 was effective from 1 April 2006, at the time of writing its Draft Regulations have not been finalised by Parliament. This grant will now be payable only if the Minister chooses to make money available to the South African Social Security Agency (SASSA) and subject to the provisions of the Act. The Act itself gives the Minister a discretion (choice) whether to give SASSA money for this grant. If Social Relief of Distress Grants become available, they should be available to people in all provinces.

Unlike other compulsory grants, it seems that there will be no right to a Social Relief of Distress Grant. It is also possible that the amount and the period of time for which the grant is paid may be less than the maximum set out in the Draft Regulations.

Until these new Regulations are finalised, the old Regulations under the 1992 Social Assistance Act will continue to be applied.



11.5.2 Barriers to receiving social grants.

There are a number of reasons why people struggle to enjoy their rights to social assistance. These include:

- Grants only being available for specific groups of people.
- Accessing Birth Certificates and Identity Documents.
- The means test.
- Administrative delays.
- Barriers experienced by refugees.
- Barriers experienced by people living with HIV or AIDS.
- Lack of knowledge about grants.

a) Grants for specific groups of people

Although the Constitution says that everyone has the right of access to social security, the Government feels that it cannot afford to give grants to everyone. They say that grants are only for people who cannot work, such as children, elderly people and people living with disabilities.

In some countries, everyone has the right to social assistance, whether they are rich or poor. This is known as a *universal grant*. Sometimes richer people effectively pay it back because they have to pay more Income Tax once they get the social assistance grants.

The problem with having limited rights to social security in South Africa is that we have a very high level of unemployment. So if you cannot get a job and you are between 15 and 60 (for women) or between 15 and 65 (men), even if you can show that you have tried to get a job, you cannot get a grant and so have no income.

For an example of challenging this approach, see the case study of the campaign for a Basic Income Grant (BIG) on page 388.

b) Accessing Birth Certificates and Identity Documents

According to the Regulations under the old Social Assistance Act (still in force at the time of writing), everyone who applies for a social grant has to have an ID. Sometimes people struggle to get their IDs. This is usually because people were not registered at birth and have no Birth Certificate. They then have problems proving their age and that they are South African citizens. Other people have difficulty getting enough money to go to the office of the Department of Home Affairs (Home Affairs) to apply for an ID.

The Department of Social Development has met with civil society organisations to try to see how this barrier to accessing grants could be solved in another way. The Department said that, without the requirement of an ID and Birth Certificate, they are faced with people getting grants fraudulently. So this remains a major barrier for many people.

GUIDELINES



NO BIRTH CERTIFICATE

Go to Home Affairs with a document to prove what your name is and the year that you were born. This can be:

- An affidavit (sworn statement) from your mother or father, or
- A letter from your grade 1 teacher at school to Home Affairs.

c) The means test

We have seen that only certain groups have access to a grant. The means test further limits access to grants by age, property and money:

- You cannot get a grant if you have a monthly income of more than the amounts set out in the table on pages 390 and 391.
- You also cannot get a grant if your assets (for example, your house and savings) are more than:
 - For a single person: R266 400
 - For a married person, jointly: R532 800.

Sometimes people struggle to prove that their assets are worth less than these amounts or that they do not earn enough income, and so they cannot get the grant. The best way to prove it is to go to a police station and make an affidavit in which you write down all this information and sign it.

The problem with means testing is that if you earn R1 over the limit, you lose your right to the grant. This can stop people from trying to earn a little more money for themselves and their families, if they believe that they will lose the monthly income from the grant. This is called an 'employment trap' or 'poverty trap'.

CASE STUDY



MEANS TESTING

Martha does piece work. She cleans for some people for a few days a month. She earns about R9 500 a year, sometimes earning R800 a month, sometimes less. One of the employers that she cleans for offers her another day's cleaning every second week – this would give her another R80 a month and would mean an extra R960 a year. But Martha is currently receiving Child Support Grants for her two children, aged 6 and 8. This comes to R380 a month for both children, and R4 560 a year.

If Martha takes this extra job, she would lose the two Child Support Grants, and the household would have R 3 600 less every year.

CASE STUDY



A CHALLENGE TO THE DIFFERENT AGE ELIGIBILITY CRITERIA BETWEEN OLDER MEN AND WOMEN

In the 2005 case of *Christian Roberts and Others v The Minister of Social Development and Others*, four male applicants are challenging several parts of laws and regulations that discriminate against men on the grounds of their age and gender in the Pretoria High Court. They argue that the eligibility criteria for a social grant for aged persons at 60 years of age for women and 65 years of age for men fundamentally violates their constitutional right to equality, social security and dignity.

In response, the Department of Social Development argues that it is reasonable to have different ages because:

- It serves the purpose of progressively realising the rights of everyone in South Africa to social assistance and it is within what the Government can afford.
- It aims at redressing the socio-economic inequalities that arose from previous unfair discrimination based on sex and gender – it is designed to advance and protect women as a class of people disadvantaged by unfair discrimination in the past.
- It is based on the relative needs of elderly men and women for social assistance – that men and women are not similarly situated in society.

Department of Social Development's answering affidavit, paragraphs 1–173

At the time of writing, the case had not been heard by the Pretoria High Court.

d) Administrative delays

Sometimes you wait for many months before you get the grant that you applied for. The average length of time for the processing of a grant from date of application is three months. Remember that you have a right to back pay from the date that you applied, however long the Department takes to process your application.

COURT CASE



BACKPAY WITH INTEREST

In the 2006 Kate case, Kate applied for a disability grant on 16 April 1996. It took 40 months for her grant application to be processed, and it was only approved in August 1999. By that date, she was entitled to backpay from the date of her application.

However, this backpay was eventually only partly paid, and she had to go to court to claim the remainder of her backpay with interest owing from the date that each monthly payment had been due. The Supreme Court of Appeal confirmed judgment in her favour in March 2006.

For more on getting reasons for decisions or delays, see Chapter 2 on page 60.

The type of administrative delay experienced by Kate violates the right to “just administrative action” under section 32 of the Constitution. Parliament passed the *Promotion of Administrative Justice Act 3 of 2000*. This Act sets out all the details about how to enforce this right, and the duties that rest on government officials.

GUIDELINES



TAKING ACTION ON DELAYS WITH GRANTS

- If the delay is unreasonable, you can go to an advice office and ask them to demand from government that your application is processed without any further delay.
- If government still does not process your application, the advice office will help you go to court so that a magistrate can order government to process your application with no further delays.
- You must be given proper reasons if your grant application is not successful.

COURT CASE



PROPER REASONS IN AN UNSUCCESSFUL GRANT APPLICATION

In the 2005 case of *Vumazonke and Others v MEC for Social Development and Welfare for Eastern Cape* (Vumazonke case), Vumazonke applied for a Disability Grant on 29 July 2003. She was informed that her grant would take approximately three months to process. She was supplied with a receipt containing an official stamp and record of the type of grant she had applied for.

However, after three months no answer from the provincial department had been received, so she made enquiries on the outcome of her application. Eventually she consulted a lawyer who wrote letters on her behalf. No answer was received and she had to go to court to force the department to take a decision.

On 13 February 2004 she was made aware of the fact that a letter existed, dated September 2003, saying that the medical officer had not recommended that she get a Disability Grant. She claims she did not receive this letter. All that the letter said was that the doctor had recommended refusal of her application, but it did not tell her what the basis for this recommendation was – in other words, no proper explanation for coming to that decision was given.

The High Court decided:

- This letter did not provide her with sufficient reasons for her grant being refused.
- The delay in dealing with her application was unreasonable.

The South African Social Security Agency

The Government has recently introduced SASSA as a single national agency to administer grant applications. SASSA will have provincial offices to administer the grants. These offices are still being set up, and were expected to be ready during 2006.

Once SASSA is effectively running, everyone should be able to get the same high standard of service, wherever you may be in South Africa. This is because the Department of Social Development is planning a *National Norms and Standards Policy*. One of the most important standards for beneficiaries is that all social grants should be processed within 21 days as part of SASSA's Operation Isidima (Operation Dignity).

e) Refugees

Although the Constitution says that "everyone" has a right to social security, including social assistance, the Social Assistance Act limits the right to people who are South African citizens.

In March 2004, the Constitutional Court decided that people who are permanent residents in South Africa also have a right to social assistance. This was in the 2003 case of *Khosa and Others v Minister of Social Development and Others; Mahlaule and Another v Minister of Social Development and Others* (Khosa case).

But in reality, refugees are still not able to claim social assistance. This is inconsistent with the Constitution, as well as section 27(b) of the *Refugees Act 130 of 1998* that says:

"A refugee enjoys full legal protection, which includes the rights set out in Chapter 2 of the Constitution and the right to remain in the Republic in accordance with the provisions of this Act."

Not providing assistance to refugees also goes against international agreements that South Africa has signed, such as Article 24(1)(b) of the United Nations 1951 *Convention Relating to the Status of Refugees*. South Africa ratified this Convention in January 1996, meaning it has a duty to give refugees the same social security rights as citizens.

f) People living with HIV/AIDS

More than 6 million people in South Africa are living with HIV/AIDS. There is thus a great concern that there is no special grant for people living with HIV/AIDS. All people with weaker immune systems need to eat healthily. When on antiretroviral (ARV) treatment, you should continue to eat enough to strengthen your body. If you do not have enough money, you may not be able to buy enough food.

Currently some doctors recommend to the Department of Social Development that people with a CD4 count of less than 200 should get a temporary Disability Grant. This is normally valid for six months or a year. Other doctors, however, do not do this.

There is also a related problem that when people are able to afford to eat better and have access to ARVs, their CD4 count increases because they are healthier. They then cannot get another temporary Disability Grant, and so risk getting ill again or having to stop treatment because they do not have the

For more on the Khosa case, see Chapter 1 on page 33.

right food. In the interests of ensuring ongoing access to ARV treatment, the Government should urgently address this situation.

g) **Lack of knowledge about grants**

Some people may have a right to receive a grant, but do not know this. The Department of Social Development has tried to ensure that everyone knows about grants, and has put up posters in clinics and schools. Churches and non-governmental organisations (NGOs) also try to raise people's awareness about the different grants and who may receive them. We should all learn this so that we can tell people who do not know.

GUIDELINES



INFORMATION ON GETTING GRANTS

1. If you have any enquiries about social grants, and other available assistance, you can call the National Help Line on 0800 6010111.
2. If you have a complaint about getting grants, you can submit it in writing to the Minister or the Director General of Social Development, who will investigate your complaint. You can write to: The Minister or The Director General for Social Development, Private Bag X901, Pretoria 0001.



11.5.3 Assessing access to social security

What do the rulings in the Grootboom and TAC cases on the right to shelter and to basic health care mean for the right to social security?

Based on the existing system of social grants and the barriers experienced in accessing them, we have reached these conclusions:

- There is no clear and accessible national plan for the progressive realisation of social security for everyone in South Africa. The State could argue that extending the age of qualifying for the Child Support Grant from children below the age of 7 to children under 14 indicates progressive realisation. Instead, we call for an immediate and long-term reasonable plan setting out how everyone will eventually have access to social security.
- Before extending the Child Support Grant, 11.8 million of the 23.8 poor people living in South Africa lived in households that had no access to social assistance – a significant number of vulnerable people for whom there was no access to the right to social security. This appears to violate the Constitutional Court's ruling that any plan or policy adopted by the State towards realising a constitutional socio-economic right must provide for the immediate needs of a significant number of desperate people.
- The Constitutional Court ruled that programmes and policies have to be reasonable in their aims as well as in their implementation. Activists on social security issues should consider whether providing short-term

assistance (eg for 6–12 months) to poor people is a reasonable policy if the life conditions of these people have not changed since they applied for assistance.

- Problems in the administration of the grant system need to be systematically addressed by the new SASSA to avoid the many court cases that have had to be launched to get provincial departments to fulfil their administrative duties and to ensure effective implementation of the right to social assistance. As pointed out in the Kate case, these problems have included:
 - Failure to give prompt consideration to applications for social grants.
 - Not paying money that is due to beneficiaries.
 - Ignoring court orders against the Department.

For more on the Kate case, see pages 382 and 396.

COURT CASE



COMPLYING WITH COURT ORDERS

In the 2006 case of *Magidimisi N.O. v The Premier of the Eastern Cape* (Magidimisi case), the applicant had to return to court to force the provincial authorities to obey a 2002 court order that had awarded his mother money owed for a Disability Grant. While his mother had subsequently died, the money was due to her estate.

The Court noted that it was very clear that only full compliance with the original court order was a proper fulfilment of the province's constitutional and legal obligations.

11.5.4 Social insurance

a) Compensation for Occupational Injuries and Diseases

Compensation for Occupational Injuries and Diseases (COIDA) used to be called 'Workmen's Compensation'. The *Compensation for Occupational Injuries and Diseases Act 130 of 1993* covers all casual and full-time workers, who as a result of a workplace accident or work-related disease are injured, disabled or killed, or they become ill.

COIDA does not include any of these workers:

- Workers who are totally or partially disabled for less than three days.
- Domestic workers.
- Anyone receiving military training.
- Members of the South African National Defence Force or the South African Police Service.
- Any worker guilty of wilful misconduct, unless they are seriously disabled or killed.
- Anyone employed outside the country for 12 or more continuous months.

GUIDELINES



DELAYS WITH COIDA APPLICATIONS

If you experience a delay in applying for a benefit:

- Phone the Compensation Commissioner on 012 3199111, or
- Go to your local advice office for help.

Benefits include payment for medical costs, as well as replacement of wages, depending on the seriousness of the injury or illness.

However, there is a serious administrative backlog in processing applications. In 2003–4, 217 680 accidents were reported, but only 53 781 payments were made, and 2 453 claims were rejected.

COIDA gives workers the right to claim compensation if they were injured or became ill as a result of an accident at work or dangerous working conditions that

harmed them, for example, through exposing workers to harmful substances.

GUIDELINES



HOW TO CLAIM FROM THE COMPENSATION FUND IF YOU ARE A WORKER

1. Fill in the form

Report your injury or disease to your supervisor or employer immediately. Your employer must report it to the Compensation Fund and send in the necessary forms.

2. Get forms from the doctor

Get the W.Cl.2 or W.Cl.1 form from your employer and take it to the doctor when you go for a visit. After the doctor has filled in the form, take it back to your employer. Take any other forms the doctor gives you to your employer.

3. Keep in touch with the employer

Let your employer know when your address changes and keep in touch with your employer. Your money will be sent to your employer's address, so it is important that your employer can find you.

4. Get help if you have problems

If your employer does not send in the forms or the claim takes too long, contact the nearest labour centre and report it.

Information from Department of Labour website

b) Unemployment Insurance Fund

The Unemployment Insurance Fund (UIF) falls under the *Unemployment Insurance Act 63 of 2001*. The Act covers all workers except:

- Workers working less than 24 hours a month for an employer.
- Learners.
- Public servants.
- Foreigners working on contract.
- Workers who get a monthly State/Old Age Pension.
- Workers who only earn commission.

The Act has included domestic employers and workers since 1 April 2003.

Unemployed workers must apply for benefits at their nearest labour centre in person. They must be registered as work-seekers and take the necessary documents with them.

GUIDELINES



HOW TO CLAIM UNEMPLOYMENT BENEFITS

1. *Get the documents ready*

Before you can claim, you must get all these documents ready:

- 13-digit bar-coded ID or passport
- Form UI-2.8 for banking details
- Form UI-19 to show that you are no longer working for your employer
- Proof of registration as a work-seeker.

2. *Go to the nearest labour centre*

Unemployed workers must go to the nearest labour centre themselves and hand in the documents. Staff at the labour centre will assist you with all the processes and give you more information.

3. *Follow all the instructions of the staff at the labour centre*

Staff at the labour centre may ask unemployed workers to go for training or advice, or to visit the labour centre at certain times. You should do what they ask, or you may not be able to claim.

4. *Get help if you have problems*

If you experience a delay in applying for a benefit:

- Contact your local labour centre, or
- Phone the National UIF office on 012 3371680, or
- Go to your local advice office for help.

Information from Department of Labour website

11.6

Protecting and advancing your social security rights

11.6.1 Contact your government office

You can ensure that you receive social security if you:

- Go to your local Social Development office, or
- Go to your nearest labour centre, or
- Phone the Department of Social Development (social assistance) or the Department of Labour (social insurance), or
- When it is operational, contact the offices of SASSA.

11.6.2 Use advice offices and constituency offices

Sometimes you may need help to take up your social security rights – you can then:

- Go to your local advice office, or
- Go to the constituency offices of political parties in or near your community.

11.6.3 Advocate and campaign

You can join existing campaigns or organisations, or develop your own campaign or organisation to take up social security issues and to help claim your social security rights.

GUIDELINES



TAKING ACTION

1. Find out about your social security rights and try to claim them.
2. Pass this information on and help other people to claim their social security rights.
3. Collect information about why people need to have access to these rights.
4. Collect stories in your community about hardships people are experiencing and suggest ways to do something about these.
5. Write to the Minister of Social Development with your suggestions.

CASE STUDY



INCREASING THE AGE FOR QUALIFYING FOR CHILD SUPPORT GRANTS

One of the most successful social security campaigns has been about the age limitation of the Child Support Grant. When the grant was introduced, it was only available to children under the age of 7. People said that this was not fair, as older children also had to eat. A number of NGOs and community-based organisations began a campaign to increase the age limit.

Because of this campaign, the Government increased the age first to children under 12, and then to children under 14. This is an example of how we can persuade the Government to progressively realise the rights in the Constitution.

See also the case study of advocacy around the Basic Income Grant on page 388.

To find more detail on strategies for advancing social security rights, see Chapter 2.

Discussion ideas



Discuss these issues in one discussion group or in small groups in a workshop:

TALKING POINT 1

The Department of Social Development has now agreed in its policy review to consider extending the age of the Child Support Grant to 18. This is a campaign that everyone can get involved in.

1. *How can you build up a convincing case to lobby the Minister of Social Development?*
2. *How can you use the Constitution to support your case?*
3. *How can you collect stories about why older children need the grant?*
4. *What other activities do you think would help to persuade the Government?*

TALKING POINT 2

Paypoints often have poor conditions such as no chairs, shade, toilets and running water.

1. *How do these conditions violate people's access to social assistance in the Constitution?*

TALKING POINT 3

Government says that if it pays everyone R100 as a Basic Income Grant every month, this would encourage people to become lazy and stop working. Split into two smaller groups:

- *One group must work out five points that support this view.*
- *The other group must come up with five points disagreeing with this point.*

Then get back together and try to persuade each other.

TALKING POINT 4

1. *What provisions do you think that the Department of Social Development can put in place to make it easier for people to get IDs and Birth Certificates?*
2. *Do you think that the concern about fraud in getting grants is serious?*

TALKING POINT 5

There are many refugees coming into South Africa from other countries. Many of them are poor, and some of them are ill. The Constitution says that “everybody”, not just citizens, should be able to access social security, but the Social Assistance Act does not provide for this.

1. *Do you think that refugees should be allowed access to social assistance?*
2. *Are there any other documents or agreements that you can use to support your view, besides the Constitution and the Social Assistance Act?*

TALKING POINT 6

Imagine you are a paralegal in an advice office. A number of clients living with HIV have reported that they no longer get temporary Disability Grants because their CD4 counts are now higher than 200 after they have been on ARVs. Losing the grant is making it hard for them to buy enough food.

1. *How can you help these clients individually?*
2. *How can your advice office help start a campaign to lobby the Department of Social Development to stop discontinuing temporary Disability Grants in these circumstances?*

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Department of Social Development: www.socdev.gov.za.

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South African Government (copies of laws and bills): www.info.gov.

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