



**UNIVERSITY of the
WESTERN CAPE**

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FACULTY OF LAW

Extension of social protection to self-employed workers: Re-considering the need and the possibilities in light of the COVID-19 pandemic

PHANUEL HAMUNAKWADI

(4116118)

A mini-thesis proposal to be submitted in partial fulfilment of the requirements for the degree of Master of Laws in Comparative Labour law degree in the Department of Mercantile and Labour Law, University of the Western Cape.

SUPERVISOR: DR. A. OSIKI

February 2023

PLAGIARISM DECLARATION

I declare that 'Extension of social protection to self-employed workers: Reconsidering the need and possibility in light of the COVID-19 pandemic' is my own work, that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete.

Signed:

 _____ (Student)

Date:

February 2023

Signed:

_____ (Supervisor))

Date:

February 2023



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ABBREVIATIONS

BCEA	Basic Condition of Employment Act 75 of 1997
BFP	Bolsa Familia Programme
C19 TERS	COVID-19 Employee-Employer Temporary Relief Scheme
CCT	Conditional Cash Transfer
CESCR	Committee on Economic, Social and Cultural Rights
CNSS	National Social Service Council
COIDA	Compensation for Occupational Injuries and Diseases Act 130 of 1993
COVID-19	Coronavirus Disease 2019
CSG	Child Support Grant
DSD	Department of Social Development
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisations
INPS	National Social Security Institute
LBA	Brazilian Assistance Legion
LOAS	Organic Law of Social Assistance
MEI	Individual Microentrepreneur
NEDLAC	National Economic Development and Labour Council
SASSA	South African Social Security Agency
SMG	State Maintenance Grant
SRD	Social Relief of Distress
SUAS	Unified system of social assistance
UIA	Unemployment Insurance Act 63 of 2001
UICA	Unemployment Insurance Contributions Act 4 of 2002
UIF	Unemployment Insurance Fund

ABSTRACT

The research examines the implementation of social protection for self-employed workers within the context of South Africa. The paper argues that unlike formal employees, self-employed workers are excluded from accessing many social protection schemes. This exclusion exists despite the entrenchment of social security as a fundamental right in the Constitution. Factors such as legal exclusion and administrative challenges hinder access to social protection for self-employed workers. As a result, many self-employed workers have limited access, if any to social protection schemes. The outbreak of COVID-19 pandemic deepened the negative effects of the lack of coverage for self-employed workers and reaffirmed the need to include them under the ambit of social protection measures. In addressing the lack of social protection for self-employed workers, Brazil provides a model for South Africa to take lessons from. Furthermore, this thesis explores the application of the broad principles, rooted in ILO's social protection standards to ensure the South African social protection system is universal, comprehensive and has adequate coverage. The thesis concludes by providing insights to the shape and form law reform should take for social protection to be extended to self-employed workers in South Africa.



KEYWORDS/PHRASES

Benefits

Contributions

COVID-19 pandemic

Employee

Formal employment

Income

Self-employed workers

Social assistance

Social insurance

Social protection

Social security

Vulnerable



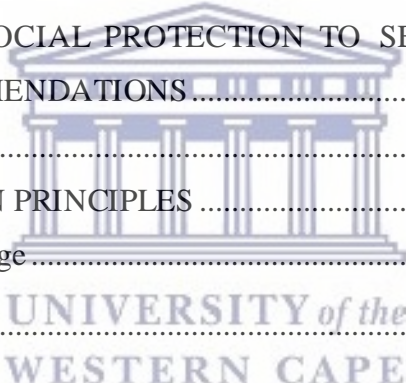
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CHAPTER 1

INTRODUCTION

1.1 BACKGROUND

South Africa, as with many other nations, acted swiftly to curb the spread of the Coronavirus disease (COVID-19) outbreak that originated in China towards the end of 2019. A State of National Disaster was declared in terms of section 27(1) of the Disaster Management Act and a lockdown was imposed in March 2020.¹ Under the lockdown, all individuals were required to remain in their homes unless they provided an essential service, and, similarly, all businesses suspended operations unless they supplied essential services.² However, the self-employed, for whom work is a valuable means to gain daily sustenance, were particularly vulnerable to this sudden stoppage of economic activities.³ Unlike workers in formal employment, who largely enjoyed access to employment-related social protection, which cushioned them from severe economic effects of the lockdown, many self-employed workers were left without any protection.

Indeed, the COVID-19 pandemic exacerbated pre-existing vulnerabilities and highlighted gaps in social protection for many workers. Specifically, before the pandemic, self-employed workers were locked in a vicious cycle of vulnerability, poverty and social exclusion, which constituted an enormous challenge to their welfare and the enjoyment of human rights, including the right to social security.⁴ Furthermore, access to social protection if it exists, was provided in a rather fragmented way. Besides this, a particular challenge for accessing social protection for some self-employed workers, for example, platform workers, is the misclassification of the employment relationship. Thus, making it imperative for an overarching social protection policy to be provided for all workers including the self-employed.

¹ Disaster Management Act 57 of 2002; Disaster Management Act: Declaration of a National State of Disaster 313 GG 43096 15 March 2020.

The lockdown, declared by President Cyril Ramaphosa on 26 March 2020, meant a shutdown of non-essential businesses and services across the country and enforcement of social distancing policies.

² Section 11B of the Disaster Management Act of 2002: Amendment of regulations issued in terms of section 27(2) GN 398 GG 43148 25 March 2020.

³ Beland LP, Fakorede O & Mikola D 'The Short-Term Effect of COVID-19 on Self-Employed Workers in Canada' (2020) Global Labor Organization 9.

⁴ International Labour Organisation *Extending social security to workers in the informal economy Lessons from international experience* 2 ed (2021) Geneva: ILO 2.; Risk M & Dullinger T 'The concept of 'worker' in EU law Status quo and potential for change Report 140' (2018) Brussels: European Trade Union Institute 10 notes that there is noticeable emergence of a growing number of self-employed people world-wide.

To facilitate an inclusive social protection system, there is a need to guarantee access to adequate social protection for all workers, including those in self-employment.⁵ To close these gaps, it is crucial to address key issues that bar access to social protection for self-employed workers. Within this context, implementation of critical principles of social protection such as transparency, universality of coverage and adequacy of benefits are paramount.⁶

Against this backdrop, this research explores the practicalities of extending social protection coverage to self-employed workers in order to reduce their vulnerability to socioeconomic shocks.

1.2 PROBLEM STATEMENT

A self-employed worker means ‘any person, including an independent contractor, who-

- a) has created her or his own employment opportunities and is not accountable to an employer;
- b) works for a company or entity that is not incorporated and not registered for taxation;
- or
- c) in any manner assists in carrying on or conducting the business of an employer in the informal economy’.⁷

Undoubtedly, self-employment is a source of work for many in South Africa. In South Africa, roughly 30 per cent of employment is informal, representing about 5 million workers.⁸ In 2020, it was suggested that self-employment in South Africa constitutes 17 per cent of the workforce which amounts to about 2.4 million people.⁹ While self-employment is a source of income for many South Africans, regulatory gaps mean that many self-employed workers face difficulties in accessing social protection, specifically social insurance schemes. Since these workers are not specifically barred from accessing any of the Republic's several social assistance programs, the study primarily focuses on employment-related social protection. This study focuses on vulnerable self-employed workers, clearly distinguished from professional and highly skilled self-employed workers such as lawyers, doctors and private investigators.

⁵ International Labour Organisation *Ensuring better social protection for self-employed workers* (2020) Geneva: ILO 8.

⁶ Article 3 of the R202 - Social Protection Floors Recommendation, 2012 (No. 202).

⁷ South African Law Reform Commission (Project 143) *Maternity and Parental Benefits for Self-Employed Workers in the Informal Economy* (2021) xxvi.

⁸ Johnson S, Reya R & Ilhardt J ‘Adapting South Africa’s Social Protection System for COVID-19’ (2020) *Centre for Social Science Research* 1.

⁹ Staff Writer ‘New data shows the make-up of South Africans with jobs’ *BusinessTech* 5 November 2020 available at <https://businesstech.co.za/news/business/446214/new-data-shows-the-make-up-of-south-africans-with-jobs/> (accessed 13 January 2021).

Despite the Constitution granting everyone the right to have access to social security, the realisation of social protection for self-employed workers remains a challenge for many reasons. First, self-employed workers are legally excluded from accessing employment-structured social protection. With the exception of the Road Accident Fund, South African social insurance statutes, the Unemployment Insurance Act (UIA) and the Compensation for occupational Injuries and Diseases Act (COIDA) restrict access to social insurance only to workers who fit the definition of the term ‘employee’.¹⁰ Secondly, costs and inadequate financial arrangements present a barrier to social protection for self-employed workers. Without an employer, self-employed workers carry the duty to pay the full contribution, that is, the employer and employee parts.¹¹ This presents a huge challenge for these workers whose earnings are often volatile, irregular and insecure.¹²

Besides the above, many self-employed workers lack the adequate administrative skills required to cope with the administration of social insurance schemes. These workers have limited administrative capacities, mostly due to low education levels, and most often are not sufficiently informed about social protection schemes and registration procedures.¹³ These workers find it daunting to register with social insurance schemes, remit their names for registration and transfer the corresponding sums of money for the employer’s and employees’ contributions.¹⁴

1.3 SIGNIFICANCE OF THE PROBLEM

Self-employment is a source of livelihood for many workers in South Africa.¹⁵ Self-employed workers have been traditionally excluded from social protection and remain susceptible to economic shocks. The COVID-19 pandemic has heightened the need to provide social protection for these vulnerable workers. Yet there is limited research on the realities and practicalities of implementing a social protection system that adequately covers self-employed

¹⁰ Section 3 of Unemployment Insurance Act 63 of 2001 and section 1(xviii) of the Compensation of Occupational Injuries and Diseases Act 130 of 1993 restrict social insurance benefits to employees.

¹¹ International Labour Organization *Extending social security and facilitating transition from the informal to the formal economy: Lessons from international experience* (2019) Geneva: ILO 3.

¹² International Labour Organization *Decent Work and the Informal Economy* (2002) Geneva: ILO 58.

¹³ International Labour Organization *Extending social security and facilitating transition* (2019) 3: Cho Y, Robalino D & Watson S ‘Supporting self-employment and small-scale entrepreneurship: potential programmes to improve livelihoods for vulnerable workers’ (2016) *IZA Journal of Labour Policy* 5 (hereafter Supporting self-employment and small-scale entrepreneurship).

¹⁴ Smit N and Mpedi LG ‘Social protection for developing countries?’ (2010) *Law, Democracy & Development* 20.

¹⁵ Ngwenya M et al ‘Skills related underemployment amongst South Africa’s informally employed and self-employed: A case study of Potchefstroom’ (2020) *SA Journal of Human Resource Management* 1 (hereafter Skills related underemployment amongst South Africa’s informally employed and self-employed).

workers in South Africa. This research is therefore of significance because it adds to the literature toward the development of a legal framework for the extension of social protection system to self-employed workers. Furthermore, the findings and recommendations from this mini-thesis have both legal and practical implications which will be beneficial not only to self-employed workers but other non-standard workers as well as policymakers. Lastly, it is envisaged that civil organisations and other relevant stakeholders in the labour market will find this research useful as an advocacy tool to enhance decent and productive work for all workers including the self-employed.

1.4 RESEARCH QUESTION

The main research question posed is what shape and form should law reform take if social protection is extended to self-employed workers in South Africa? This requires a consideration of the specific questions below.

- (a) Who is protected under existing social protection framework in South Africa and why?
- (b) To what extent does South Africa's legal framework adequately protect the constitutional right to access to social security for self-employed workers?
- (c) To what extent can the legal framework be improved to ensure that independent contractors are covered by social insurance in South Africa?
- (d) What are some of the practical implications of extending the various forms of social protection to self-employed workers and how should they be implemented in South Africa?

1.5 OBJECTIVES OF THE RESEARCH

The overall objective of this research is to critically examine the shape and form law reform should take to facilitate the extension of social protection to self-employed workers in South Africa. The specific objectives of the research are to:

- (a) Explore the concept of social protection and the applicability of its existing regulatory framework in South Africa;
- (b) Provide an overview of how the COVID-19 pandemic has re-affirmed the need to include self-employed workers under the social protection measures;
- (c) Examine some of the trends of self-employment in South Africa;
- (d) Critically analyse the gaps in social protection provision for self-employed workers;

- (e) Provide a comparative analysis between the social protection framework for self-employed workers in South Africa and Brazil in order to identify relevant lessons for South Africa; and,
- (f) Recommend a regulatory framework that facilitates access to social protection for self-employed workers.

1.6 RESEARCH METHODOLOGY

The principal method of research informing this mini-thesis is desk-based analysis. This involves the collection of data or the gathering and analysis of information from existing resources. This mini-thesis relies on relevant primary sources such as national legislation, case law and international social security instruments to investigate the extent to which social protection can be extended to self-employed workers in South Africa. Furthermore, the thesis relies on secondary sources such as textbooks, journal articles, working papers and internet publications. In addition, a comparative study is used to examine the social protection system of Brazil to ascertain whether South Africa can glean salient lessons from the Brazilian social security regime. According to estimates, Brazil is the 13th country in the world to have made the most investments in the battle against poverty and social exclusion.¹⁶ Brazil made these investments in order to reduce income and wealth disparity and achieve more balance in its development.¹⁷ Specifically, Brazil has made progress in offering self-employed employees social insurance programmes.¹⁸

1.7 STRUCTURE OF THE MINI-THESIS

Chapter two explores the concept of social protection and its current applicability in South Africa. The discussion in this chapter will be underpinned by references to relevant international labour standards.

Chapter three discusses the trends and forms of self-employment in South Africa and provides extensive analysis of the gaps in social protection provision for self-employed workers. This will be done within the general context of the implications of the COVID-19 pandemic on self-employed workers.

¹⁶ Lopes MC & Veiga-Neto A 'Policies of social action and inclusion and current Brazilian tensions' (2015) *Sisyphus — Journal of Education* 46.

¹⁷ Lopes MC & Veiga-Neto A 'Policies of social action and inclusion and current Brazilian tensions' (2015) 46.

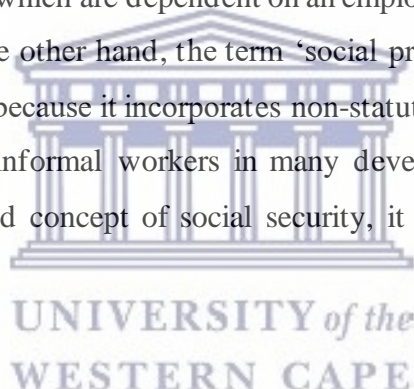
¹⁸ Robles V & Mirosevic V 'Social protection systems in Latin America and the Caribbean: Brazil' (2013) New York: UN Economic Commission for Latin America and the Caribbean 7 (hereafter Social protection systems in Latin America): Article 6 & 7 of the Constitution of Brazil, 1988.

Chapter four provides a critical analysis of social protection provision for self-employed workers in Brazil.

Chapter five discusses options for law reform and practical implications of these options. The chapter makes recommendations based on the findings and concludes the research.

1.8 LIMITATION OF THE STUDY

The term social protection is explained in detail in Chapter 2. The thesis uses the term ‘social protection’ in the broad discussion on protection against socio-economic risks for self-employed workers. However, when discussing specific constitutional and statutory provisions, the term ‘social security’ is used. The current high levels of unemployment and persistent proliferation of informality, together with the changes in the world of work has been argued to be limited because the benefits of social insurance are largely linked to work performed in the formal economy.¹⁹ Furthermore, social security does not provide adequate socio-economic protection in developing countries including South Africa.²⁰ Social security is mostly derived from social insurance schemes which are dependent on an employment relationship in order to gain associated benefits. On the other hand, the term ‘social protection’ is broader and more inclusive than ‘social security’ because it incorporates non-statutory or private measures which are of particular relevance to informal workers in many developing countries.²¹ Instead of relying on the more constrained concept of social security, it is vital to embrace a broader approach to social protection.²²



¹⁹ Smit N & Mpedi LG ‘Social protection for developing countries: Can social insurance be more relevant for those working in the informaleconomy?’ (2010) *Law, Democracy & Development* 1-2 (hereafter Social protection for developing countries).

²⁰ Antonopoulos R ‘Expanding Social Protection in Developing Countries: A Gender Perspective’ (2013) New York: Levy Economics Institute of Bard College 7.

²¹ Bonilla-Garcia A & Gruat JV *Social protection: A life cycle continuum investment for social justice, poverty reduction and sustainable development* (2003) Geneva: ILO 13 (hereafter *Social protection: A life cycle continuum investment*).

²² Olivier MP, Smit N & Kalula ER *Social Security: A legal analysis* (2003) Cape Town: Juta 25.

CHAPTER 2

THE CONCEPT OF SOCIAL PROTECTION IN SOUTH AFRICA

2.1 INTRODUCTION

Successive democratic governments of South Africa have made inroads in addressing issues of poverty, inequality and unemployment caused by years of segregation under the apartheid political system. One of the tools used is the implementation of a more inclusive social security system. However, poverty and inequality remain one of the country's significant challenges, particularly among black and coloured people.²³

South Africa's social protection system does not exist in isolation. It is underpinned by standards set in international social protection standards. South Africa has ratified numerous human rights instruments recognising the right to social security. South Africa ratified the African Charter on Human and Peoples Rights in June 1996 and the ICESCR in January 2015.²⁴ The ICESCR is regarded as the most important international instrument pertaining to social security.²⁵ It is believed the ratification of the ICESCR increases the government's capacity to be one of the leading international advocates for social, economic, and cultural rights.²⁶ South Africa, however, is yet to ratify the Social Security (Minimum Standards) Convention, 1952.²⁷ Regardless, the ILO reaffirmed its confidence that the critical components of South Africa's social security system are compatible with Convention No. 102.²⁸

²³ Roncolato L & Willoughby J 'Job quality complexities: Self-employment within the low-income communities surrounding Cape Town, South Africa' (2017) 49 *Review of Radical Political Economics* 49 (hereafter Job quality complexities).

²⁴ 'African Charter on Human and People's Rights' available at <https://www.justice.gov.za/policy/african%20charter/africancharter.htm#:~:text=A%20number%20of%20international%20and,Rights%20on%209%20July%201996> (accessed 2 February 2023): 'Summary of recommendations for South Africa from the United Nations Committee on Economic, Social and Cultural Rights' available at <https://spii.org.za/summary-of-recommendations-for-south-africa-from-the-united-nations-committee-on-economic-social-and-cultural-rights/#:~:text=South%20Africa%20ratified%20the%20Covenant%20on%2012%20January%202015> (accessed 2 February 2023).

²⁵ Tshoose CI 'Appraisal of Selected Themes on the Impact of International Standards on Labour and Social Security Law in South Africa' (2022) 25 *PER / PELJ* 16.

²⁶ Tshoose CI 'Selected Themes on the Impact of International Standards' (2022) 16.

²⁷ Tshoose CI 'Selected Themes on the Impact of International Standards' (2022) 19: Some of the social security standards ratified by South Africa include the Unemployment Standards, 1919 (No.2), Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42), among others.

²⁸ International Labour Organisation *Republic of South Africa: Report to the Government Assessment of the South African legislation in view of a possible ratification of the Social Security (Minimum Standards) Convention, 1952 (No. 102)* (2017) Geneva: ILO ix.: The Social Security (Minimum Standards) Convention, 1952 (No. 102) provides a standard on the fundamental precepts and standards for progressive and comprehensive social security systems globally.

Against this background, the chapter analyses the concept of social protection in South Africa and its role in reducing economic risk and social vulnerability. It explores South Africa's social assistance and social insurance measures within the context of relevant ILO conventions. Importantly, the chapter examines the extent to which self-employed workers are covered under these measures in South Africa.

The chapter consists of seven major sections. The first section highlights the meaning of social protection. The second section deals with the goals of social protection in South Africa. The third section considers arguments against social protection. The fourth section traces the historical development of social protection globally and locally. The fifth part deals with the regulatory framework of social protection in South Africa. The sixth section explores social protection during the COVID-19 pandemic. The seventh section discusses the types of social protection and their applicability in South Africa.

2.2 MEANING OF SOCIAL PROTECTION

Social protection refers to:

‘public and private initiatives that provide income or consumption transfers to the poor, protect the vulnerable against livelihood risks and enhance the social status and rights of the marginalised; with the overall objective of reducing the economic and social vulnerability of poor, vulnerable and marginalised groups.’²⁹

Comprehensive social protection embraces the conventional social insurance and social assistance measures, but goes further to focus on causality through an integrated policy that includes state-led development efforts.³⁰ Among the benefits of social protection are grants for children and families, maternity, unemployment, employment injury, sickness, old age, disability, and survivors, as well as health protection.³¹ Ideally, a social protection system should be designed to guarantee a minimum level of socioeconomic security for all citizens.³²

²⁹ Carter B et al *Social Protection Topic Guide* (2019) Brighton: Institute of Development Studies 4; International Labour Organization *Social Protection 2017–19 Report: World Social Protection Report 2017-19: Universal social protection to achieve the Sustainable Development Goals* (2017) Geneva: ILO xxix; Kangasniemi M, Knowles M & Karfakis P *The role of social protection in inclusive structural transformation* (2020) Rome: Food and Agriculture Organisation of the United Nations 4.

³⁰ Olivier MP, Smit N & Kalula ER *Social Security: A legal analysis* (2003) Cape Town: Juta 27.

³¹ International Labour Organization *Social Protection 2017–19 Report: World Social Protection Report 2017-19: Universal social protection to achieve the Sustainable Development Goals* (2017) Geneva: ILO 13.

³² ‘The Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa, Transforming the Present – Protecting the Future: Consolidated Report’ available at https://sarpn.org/CountryPovertyPapers/SouthAfrica/march2002/report/Transforming_the_Present_pre.pdf (accessed 26 May 2022).

2.3 THE GOALS OF SOCIAL PROTECTION IN SOUTH AFRICA

South Africa's chequered history demands measures that bridge the inequality gap.³³ This gap became wider during the pandemic because the poor, who are mainly black South Africans, lack adequate socioeconomic security. Therefore, a well-designed social protection system should facilitate social cohesion, equality, social justice and the integration of marginalised groups.³⁴ Within the context of this thesis, it is submitted that providing social protection in the democratic dispensation should in reality provide concrete remedies to assist marginalised groups such as self-employed workers, to cope with vulnerability to economic shocks.

Social protection improves the welfare and security of citizens by safeguarding them against different manifestations of vulnerability.³⁵ First, social protection can be a response to transitory vulnerability. Transitory vulnerability pertains to shocks to livelihoods that affect economically active groups and to which immediate relief and rehabilitative measures are the appropriate responses.³⁶ Secondly, social protection can be a response to chronic vulnerability. Chronic vulnerability is linked to demographic traits or life-cycle occurrences, such as old age, orphanhood, and widowhood, to which social support is the proper reaction.³⁷ Lastly, social protection can be a response to structural vulnerability. This vulnerability occurs as a result of market failures, structural unemployment, political marginalisation and social exclusion, among others which require developmental safety nets.³⁸

The South African National Planning Commission summarised the general goals of social protection in the form of five key functions.³⁹ These are the protective, preventive, promotive,

³³ 'The Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa, Transforming the Present – Protecting the Future: Consolidated Report' available at [https://sarprn.org/CountryPovertyPapers/SouthAfrica/march2002/report/Transforming the Present pre.pdf](https://sarprn.org/CountryPovertyPapers/SouthAfrica/march2002/report/Transforming%20the%20Present%20pre.pdf) 15.

³⁴ United Nations *Why We Need Social Protection* (2016) Bangkok: Social Development Division of United Nations Economic and Social Commission for Asia and the Pacific 11; The ILO Social Security (Minimum Standards) Convention, 1952 (No. 102): The relevance of C102 for trade unions' available at https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_743401.pdf (accessed 7 May 2022).

³⁵ Bonilla-Garcia A & Gruat JV *Social protection: A life cycle continuum investment* (2003) 1.

³⁶ Devereux S *Social protection mechanisms in Southern Africa* (2006) South Africa: Regional Hunger and Vulnerability Programme 3.

³⁷ Devereux S *Social protection mechanisms in Southern Africa* (2006) 3.

³⁸ Devereux S *Social protection mechanisms in Southern Africa* (2006) 3.

³⁹ National Planning Commission (Republic of South Africa) 'National Development Plan 2030: Our Future – Make it Work' available at https://www.gov.za/sites/default/files/gcis_document/201409/ndp-2030-our-future-make-it-workr.pdf (accessed 5 May 2022); The National Planning Commission was established in May 2010 to develop a long term vision and strategic plan for South Africa. Its primary objective is to rally the nation around a common set of objectives and priorities to drive development over the longer term. <https://nationalplanningcommission.wordpress.com/> (accessed 26 May 2022).

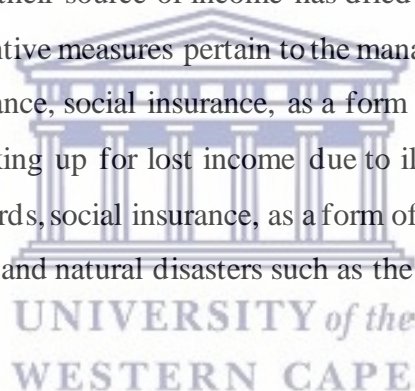
transformative and developmental and generative functions.⁴⁰ The thesis specifically focuses on the protective, preventive, and transformative functions of social protection, being most applicable to the South African context.

2.3.1 Protective function

Social protection provides measures meant to save lives and reduce levels of poverty.⁴¹ Poverty is a result of economic, political, and social dynamics that worsen the plight of those in need.⁴² Protective measures, therefore, provide a mechanism for citizens to meet daily socio-economic needs.⁴³ Examples of these measures include social assistance for the habitually poor, cash transfers such as disability benefits, social pensions and social services for orphanages and reception centres for abandoned children.⁴⁴

2.3.2 Preventive function

Poverty makes people more susceptible to unforeseen negative shocks and makes it harder for them to manage risks.⁴⁵ Social security is a tool that helps people avoid poverty by taking care of their basic necessities when their source of income has dried up, been disturbed, or has not developed sufficiently.⁴⁶ Preventive measures pertain to the management of risks and the ability to cope with shocks.⁴⁷ For instance, social insurance, as a form of preventive measures, limits risks and assists people in making up for lost income due to illness, job loss, or diminished working capacity.⁴⁸ In other words, social insurance, as a form of preventive measure, mitigates the impact of economic shocks and natural disasters such as the hardships emanating from the



⁴⁰ National Planning Commission (Republic of South Africa) 'National Development Plan 2030: Our Future – Make it Work' available at https://www.gov.za/sites/default/files/gcis_document/201409/ndp-2030-our-future-make-it-workr.pdf (accessed 5 May 2022).

⁴¹ National Planning Commission (Republic of South Africa) 'National Development Plan 2030: Our Future – Make it Work' available at https://www.gov.za/sites/default/files/gcis_document/201409/ndp-2030-our-future-make-it-workr.pdf (accessed 5 May 2022).

⁴² Van Ginneken W *Managing risk and minimizing vulnerability: the role of social protection in pro-poor growth* (2005) Geneva: ILO 3.

⁴³ Sabates-Wheeler R and Devereux S 'Social Protection for Transformation' (2007) 38 *Institute of Development Studies* 25.

⁴⁴ Sabates-Wheeler R and Devereux S 'Social Protection for Transformation' (2007) 25.

⁴⁵ Trivelli C, Vargas S & Clausen J Social protection and inclusive rural transformation 2017 11.

⁴⁶ Liffman R et al 'Scope of Application' in Olivier MP et al(eds) *Social security Law: General Principles* (1999) Cape Town: Butterworth Publishers 23 (hereafter *Social Security Law*).

⁴⁷ Kangasniemi M, Knowles M & Karfakis P *The role of social protection* (2020) 6.

⁴⁸ International Labour Organisation *Social Insurance: Enhancing social security right for everyone policy brief* (2015) Geneva: ILO.

COVID-19 induced lockdown. In this way, social protection acts as an economic stabiliser that reduces vulnerability to natural disasters, accidents and illness.⁴⁹

Vulnerable self-employed workers are more likely to be trapped in a cycle of low-paying work and struggling to provide for the needs of their families.⁵⁰ They often find themselves in situations where employment is often precarious and sometimes dangerous.⁵¹ In some instances, they suffer some form of discrimination.⁵² For these workers, vulnerability involves social or cultural isolation, disability and discrimination, poor organisation and representation, and lack of coverage by social security legislation.⁵³ Social protection is, therefore, an indispensable policy response to the impacts of crises.⁵⁴

2.3.3 Transformative function

The fourth role of social protection is the transformational function. The transformative element of social protection addresses historical marginalisation by changing policies that exclude the majority.⁵⁵ Due to South Africa's apartheid past, black and coloured South Africans make up the majority of the chronically impoverished and vulnerable population.⁵⁶ According to research, around 64 per cent of black South Africans are poor.⁵⁷ Therefore, this element of social protection addresses inequities and prejudices by proposing a change in the legal system to make it easier to eliminate historical disadvantages and marginalisation.⁵⁸ It is based on an appreciation of systemic inequalities including an agitation for equity and social rights. It seeks

⁴⁹ National Planning Commission (Republic of South Africa) 'National Development Plan 2030: Our Future – Make it Work' available at https://www.gov.za/sites/default/files/gcis_document/201409/ndp-2030-our-future-make-it-workr.pdf (accessed 5 May 2022).

⁵⁰ International Labour Organisation *World of Work Report 2014 Developing with jobs* (2014) Geneva: ILO 9.

⁵¹ ITC-ILO Curriculum on "Building modern and effective labour inspection systems" Dealing with vulnerable groups of workers available at https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---sro-port_of_spain/documents/genericdocument/wcms_633608.pdf (accessed 7 May 2022).

⁵² ITC-ILO Curriculum on "Building modern and effective labour inspection systems" Dealing with vulnerable groups of workers available at https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---sro-port_of_spain/documents/genericdocument/wcms_633608.pdf (accessed 7 May 2022).

⁵³ ITC-ILO Curriculum on "Building modern and effective labour inspection systems" Dealing with vulnerable groups of workers available at https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---sro-port_of_spain/documents/genericdocument/wcms_633608.pdf (accessed 7 May 2022).

⁵⁴ ILO 'Social protection responses to the COVID-19 crisis: Country responses and policy considerations 2020' available at: <https://www.social-protection.org/gimi/RessourcePDF.action?id=56044> (accessed 11 May 2022).

⁵⁵ National Planning Commission (Republic of South Africa), 'National Development Plan 2030: Our Future – Make it Work' https://www.gov.za/sites/default/files/gcis_document/201409/ndp-2030-our-future-make-it-workr.pdf (accessed 5 May 2022).

⁵⁶ The World Bank *Overcoming Poverty and Inequality in South Africa: An Assessment of Drivers, Constraints and Opportunities* (2018) Washington DC: International Bank for Reconstruction and Development 39.

⁵⁷ South African Human Rights Commission Equality Report: Achieving substantive economic equality through rights-based radical socio-economic transformation in South Africa 2017/18 (2018) 17.

⁵⁸ National Planning Commission (Republic of South Africa) 'National Development Plan 2030: Our Future – Make it Work' available at https://www.gov.za/sites/default/files/gcis_document/201409/ndp-2030-our-future-make-it-workr.pdf (accessed 5 May 2022).

to create a system that responds to the vulnerability of poor citizens and advances the alleviation of destitution.⁵⁹

2.4 ARGUMENTS AGAINST SOCIAL PROTECTION

As discussed above, the goals of social protection point to safeguards against vulnerability. However, social protection measures have been said to harm the economy because they drain public resources and prevent money from being invested in other sectors.⁶⁰ Furthermore, it has been argued that social protection laws weaken work ethics and encourages dependency on government assistance.⁶¹ It is claimed that social grants deter people from working, especially where the benefit amount is closer to or greater than what the recipient could reasonably expect to earn through paid employment.⁶² It is further argued that social grants beneficiaries waste their cash transfers on unworthy goods such as alcohol, tobacco and gambling.⁶³

On the contrary, research conducted in South Africa found no indications that social grants minimise the propensity to work and create dependency.⁶⁴ In fact, it has been demonstrated that spending on social protection lowers poverty and economic disparity in the long and short terms.⁶⁵ Furthermore, research demonstrates that there is no proof of irresponsible expenditure of cash handouts.⁶⁶ Rather, evidence suggests that beneficiaries use cash transfers to raise their investment in self-employment activities.⁶⁷ For instance, a man from Soweto in Johannesburg, established an ice cream shop during South Africa's early lockdown with money saved from the Covid-19 Social Relief of Distress Grant.⁶⁸

2.5 HISTORICAL DEVELOPMENT OF SOCIAL PROTECTION

2.5.1 Global overview

⁵⁹ Sabates-Wheeler R and Devereux S 'Social Protection for Transformation' (2007) 23.

⁶⁰ Bonilla-Garcia A & Gruat JV *Social protection: A life cycle continuum investment* (2003) 1.

⁶¹ Bonilla-Garcia A & Gruat JV *Social protection: A life cycle continuum investment* (2003) 1.

⁶² United Nations Children's Fund *Addressing the myths: Do social protection programs lead to misuse and dependency* (2017) New York: UNICEF 1 (hereafter *Addressing the myths*).

⁶³ United Nations Children's Fund *Addressing the myths* (2017) 1.

⁶⁴ United Nations Children's Fund *Addressing the myths* (2017) 2.

⁶⁵ International Trade Union Confederation 'Investments in social protection and their impacts on economic growth: A New Social Contract for Recovery and Resilience' Brussels: ITCU 9 (hereafter *Investments in social protection*).

⁶⁶ United Nations Children's Fund *Addressing the myths* (2017) 2.

⁶⁷ United Nations Children's Fund *Addressing the myths* (2017) 2.

⁶⁸ Ramalepe P 'This man started his own ice-cream business with R350 grant, and now employs four people' *News24* 18 February 2022 available at <https://www.news24.com/news24/bi-archive/man-opened-ice-cream-business-with-r350-grant-2022-2> (accessed 2 February 2023).

Globally, the first form of social protection to be introduced was social insurance.⁶⁹ Germany was the first nation in the world to adopt into law a compulsory national social insurance programme for workers.⁷⁰ Germany introduced the Health Insurance Law in 1883.⁷¹ The purpose of this Health Insurance Law was to cover sickness and work accidents for the first 13 weeks after injury.⁷² This was followed up by the introduction of social insurance schemes such as the accident insurance and disability insurance introduced in 1884 and 1889 respectively.⁷³ The accident insurance scheme provided for accident prevention measures and covered the costs of medical care.⁷⁴ The old age and disability insurance catered for compensation in the event of occupational disability or upon attaining the age of 70.⁷⁵ Great Britain followed suit by introducing the Workmen's Compensation Act in 1897.⁷⁶ Across the ocean, the United States of America passed the Federal Employers' Liability Act to safeguard railroad workers in 1906.⁷⁷ This was followed up by the promulgation of the Federal Employees' Compensation Act,

⁶⁹ Klitzke J *Beveridge and Bismarck Remodelled: The Positions of British and German Organised Interests on Pension Reform* (Unpublished PhD thesis: University of Mannheim, 2016) 61.

⁷⁰ Boissoneault L 'Bismarck Tried to End Socialism's Grip—By Offering Government Healthcare' available at <https://www.smithsonianmag.com/history/bismarck-tried-end-socialisms-grip-offering-government-healthcare-180964064/> (accessed 13 August 2022).

⁷¹ Boissoneault L 'Bismarck Tried to End Socialism's Grip—By Offering Government Healthcare' available at <https://www.smithsonianmag.com/history/bismarck-tried-end-socialisms-grip-offering-government-healthcare-180964064/> (accessed 13 August 2022); https://www.ilo.org/global/publications/world-of-work-magazine/articles/ilo-in-history/WCMS_120043/lang--en/index.htm (accessed 13 August 2022) The German Chancellor was pushed to implement social insurance in Germany in order to keep the German economy working as efficiently as possible and to quell cries for more extreme socialist options.

⁷² Burriesci JJ 'Historical Summary of Workers' Compensation Laws' available at <https://www.cga.ct.gov/2001/rpt/2001-R-0261.htm> (accessed 22 August 2022).

⁷³ 'Bismarck Tried to End Socialism's Grip—By Offering Government Healthcare' available at <https://www.smithsonianmag.com/history/bismarck-tried-end-socialisms-grip-offering-government-healthcare-180964064/> (accessed 13 August 2022).

⁷⁴ 'A new Insurance Model: legal Entitlement rather than Need' available at <https://www.historyofsocialsecurity.ch/synthesis/1883-1884-1889#:~:text=The%20old%20age%20and%20disability,of%20less%20than%202%2C000%20Reichsmarks> (accessed 3 February 2023).

⁷⁵ Malik JN 'Workmen's Compensation Act and some problems of procedure' 1961 *Journal of the Indian Law Institute* 132; Burriesci JJ 'Historical Summary of Workers' Compensation Laws' available at <https://www.cga.ct.gov/2001/rpt/2001-R-0261.htm> (accessed 22 August 2022).

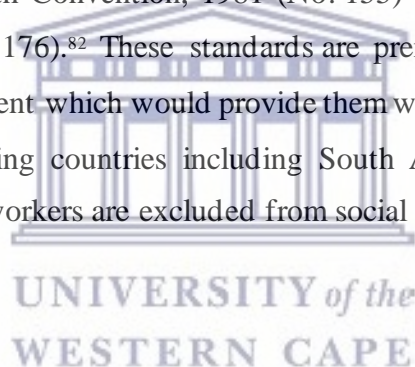
⁷⁶ Malik JN 'Workmen's Compensation Act and some problems of procedure' 1961 *Journal of the Indian Law Institute* 132; Burriesci JJ 'Historical Summary of Workers' Compensation Laws' available at <https://www.cga.ct.gov/2001/rpt/2001-R-0261.htm> (accessed 22 August 2022); According to this law 'an employee was entitled to compensation for any accident, not his fault, even if the employer was not negligent.' <https://www.onlinesafetytrainer.com/the-workmens-compensation-act-of-1897/#:~:text=The%20Workmen's%20Compensation%20Act%20of%201897%20was%20a%20significant%20step,the%20employer%20was%20not%20negligent> (accessed 3 February 2023).

⁷⁷ The Federal Employers Liability Act signalled a change from common law remedies to those based on workers' compensation no-fault statutes. Additionally, it eliminated the use of defenses such as assumption of risk and contributory negligence by an employer.: Burriesci JJ 'Historical Summary of Workers' Compensation Laws' available at <https://www.cga.ct.gov/2001/rpt/2001-R-0261.htm> (accessed 22 August 2022).

enacted in 1908. This statute provided workers' compensation to federal civilian employees in risky positions.⁷⁸

In relation to the development of international social protection instruments, the ILO has placed a high priority on social protection since its inception. The Preamble of the 1919 Constitution of the ILO made references to the protection of workers against sickness, employment-related disease and injury and provision for old age and injury.⁷⁹ It is the 'flagship of all ILO social security Conventions' because it is the only international instrument that provides globally accepted minimum criteria for all nine areas of social security, based on fundamental social security concepts.⁸⁰ These globally accepted minimum standards are medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit, and survivors' benefit.⁸¹

Besides Convention 102, ILO has different standards which deal comprehensively with the provision of social security. These include the Unemployment Convention, 1919 (No. 2), Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42), the Occupational Safety and Health Convention, 1981 (No. 155) and the Safety and Health in Mines Convention, 1995 (No. 176).⁸² These standards are premised on the assumption that people have access to employment which would provide them with income security. However, for many workers in developing countries including South Africa, this is not the case.⁸³ Consequently, self-employed workers are excluded from social insurance coverage.⁸⁴



⁷⁸ Burriesci JJ 'Historical Summary of Workers' Compensation Laws' available at <https://www.cga.ct.gov/2001/rpt/2001-R-0261.htm> (accessed 22 August 2022).

⁷⁹ Preamble of the ILO Constitution, 1919.

⁸⁰ International Labour Organisation 'ILO Social Security (Minimum Standards) Convention, 1952 (No. 102)' available at https://www.ilo.org/secsoc/areas-of-work/legal-advice/WCMS_205340/lang--en/index.htm (accessed 20 April 2023).

⁸¹ The ILO Social Security (Minimum Standards) Convention, 1952 (No. 102).

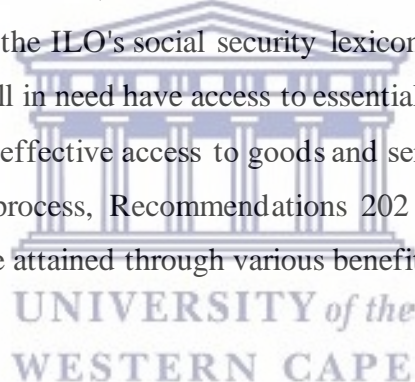
⁸² Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42), Occupational Safety and Health Convention, 1981 (No. 155) and the Safety and Health in Mines Convention, 1995 (No. 176). The Unemployment Convention, 1919 (No. 2) tackles issues regarding preventing unemployment. The Workmen's Compensation Convention establishes guidelines for payments of compensation to employees who are incapacitated by occupational diseases or, in the event of a worker's death due to such diseases, to their dependents. The Occupational Safety and Health Convention targets prevention of accidents and illnesses brought on by factors such as workplace risks. The Safety and Health in Mines Convention prescribes measures to ensure safety and health in mines.

⁸³ 'Extension of Social Security to Informal Sector workers, Self Employed and Atypical Workers Consultative Workshop' Gqeberha: 10 & 11 August 2022 available at https://www.ilo.org/africa/countries-covered/south-africa/WCMS_855417/lang--en/index.htm (accessed 4 February 2023).

⁸⁴ Ortiz I, Schmitt V & De L (eds) *100 years of social protection* (2019) 7.

In 2009, the UN Chief Executives Board launched the Social Protection Floor Initiative (SPFI) in the aftermath of the global financial crisis.⁸⁵ The initiative's goals were to support the development of sound social protection initiatives and to provide technical assistance.⁸⁶ The SPFI, however, only offered 'a basic floor of social protection' and was insufficient for extending social protection to groups previously excluded.⁸⁷ One of the major reasons for this insufficiency is the high levels of labour market informality and the prevalence of precarious employment.⁸⁸ It became important for the ILO to adopt a new, multidimensional strategy that supports the SPFI and promotes social protection for all.⁸⁹

The Social Protection Floors Recommendation, 2012 (No. 202) was subsequently endorsed by the ILO.⁹⁰ Social protection floors guarantee that everyone in need, including children, adults, and the elderly, have access to basic health care and financial stability throughout their lives.⁹¹ Among other things, Recommendation 202 recommended the establishment and maintenance of national social protection floors as a fundamental element of social security systems.⁹² Such social protection floors should enable the extension of social security to as many people as feasible.⁹³ Furthermore, Social Protection Floors Recommendation introduced the concept of "guarantees" to the ILO's social security lexicon.⁹⁴ Article 4 states that 'these guarantees should ensure that all in need have access to essential health care and basic income security which together secure effective access to goods and services defined as necessary'.⁹⁵ Rather than emphasising the process, Recommendations 202 concentrated more on social security outcomes that could be attained through various benefits and schemes.⁹⁶



⁸⁵ 'The Social Protection Floor Initiative (Spf-I)' available at <https://www.social-protection.org/gimi/ShowProject.action?id=2767> (accessed 11 August 2022).

⁸⁶ 'The Social Protection Floor Initiative (Spf-I)' available at <https://www.social-protection.org/gimi/ShowProject.action?id=2767> (accessed 11 August 2022).

⁸⁷ Cichon M 'The Social Protection Floors Recommendation, 2012 (No. 202): Can a six-page document change the course of social history?' (2013) 66 *International Social Security Association* 31 (hereafter 'Can a six-page document change the course of social history?')

⁸⁸ Adaba G 'Financing Social Protection Floors: Discussion paper presented to an Expert Group Meeting of the Inter-agency Task Force on Financing for Development' (2016) New York: Social Justice in Global Development 9.

⁸⁹ Cichon M 'Can a six-page document change the course of social history?' (2013) 31.

⁹⁰ United Nations *Promoting inclusion through social protection Report on the World Social Situation* (2018) New York: Department of Economic and Social Affairs 7.

⁹¹ United Nations *Promoting inclusion through social protection Report on the World Social Situation* (2018) New York: Department of Economic and Social Affairs 7.

⁹² Article 1(a) of the The Social Protection Floors Recommendation, 2012 (No. 202).

⁹³ Article 1(b) of the The Social Protection Floors Recommendation, 2012 (No. 202).

⁹⁴ Cichon M 'Can a six-page document change the course of social history?' (2013) 34.

⁹⁵ Article 4 of the R202 - Social Protection Floors Recommendation, 2012 (No. 202).

⁹⁶ Cichon M 'Can a six-page document change the course of social history?' (2013) 34.

Recommendation 202 has been dubbed the ‘most concrete consensual social protection charter that global society has ever given itself.’⁹⁷ It is, essentially, based on three ideas. The first is that every member of society should have access to some form of social protection.⁹⁸ The second is that social protection is an effective way to lessen the negative effects of crises.⁹⁹ Thirdly, social protection places a strong focus on social dialogue as a means of encouraging the democratic participation in policy making of those most directly affected people.¹⁰⁰

Related to R202 is the adoption of the Recommendation concerning the transition from the Informal to the Formal Economy (Recommendation 204) by the International Labour Conference in 2015. This recommendation is an outcome of the recognition of the severe decent work deficits including lack of access to work-related social protection measures by informal workers including self-employed workers.¹⁰¹ In terms of Article 1, a major objective of Recommendation 204 is to ‘facilitate the transition of workers and economic units from the informal to the formal economy, while respecting workers’ fundamental rights and ensuring opportunities for income security, livelihoods and entrepreneurship’.¹⁰² Recommendation 202 is mentioned in R204 as one of the relevant ILO instruments in the formalisation process of the informal economy. Article 18-20 of R204 are summaries of the provisions of Recommendation 202. Despite these developments in international social security standards, many workers still lack adequate access to social protection.

2.5.2 Evolution of Social Protection in South Africa

2.5.2.1 Pre-democracy

The history of social protection in South Africa is punctuated by exclusion and discrimination of the black majority.¹⁰³ The country’s social protection system has its roots in racially biased

⁹⁷ Cichon M ‘Can a six-page document change the course of social history?’ (2013) 34.

⁹⁸ Article 4 of the ‘ILO Social Protection Floors Recommendation, 2012 (No. 202)’ available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:3065524 (accessed 5 February 2023).

⁹⁹ Article 10 of the ‘ILO Social Protection Floors Recommendation, 2012 (No. 202)’ available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:3065524 (accessed 5 February 2023).

¹⁰⁰ Article 13 of the ‘ILO Social Protection Floors Recommendation, 2012 (No. 202)’ available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:3065524 (accessed 5 February 2023).

¹⁰¹ International Labour Organisation *The Transition from the Informal to the Formal Economy” Report V(1) International Labour Conference 103rd Session* (2014) Geneva: ILO.

¹⁰² ‘R204 - Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204)’ available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204 (accessed 27 February 2023).

¹⁰³ ‘Twenty Year Review South Africa Background Paper: Social Protection 1994 – 2014’ available at <https://www.dpme.gov.za/publications/20%20Years%20Review/20%20Year%20Review%20Documents/20YR%20Social%20Protection.pdf> (12 August 2022).

apartheid labour and welfare policies based on formal employment.¹⁰⁴ Before the post-1994 law reforms, social protection perpetuated social and economic inequality by entrenching the socio-economic privileges of the white population.¹⁰⁵ Blacks and Indians were deliberately excluded under the pretext that their customary extended familial support sufficed as a community safety net for them.¹⁰⁶

The earliest type of social security to be introduced in South Africa was social insurance via the Workmen's Compensation Act of 1907.¹⁰⁷ This piece of legislation established employers' obligations to compensate workers for work-related injury.¹⁰⁸ This law was subsequently amended in 1914, 1917, 1934 and 1941.¹⁰⁹ In addition, the Miners' Phthisis Allowances Act of 1911 established the Miners' Phthisis Fund.¹¹⁰ Mine owners made contributions to this fund meant to provide compensation to mineworkers affected by miners' phthisis and other similar illnesses.¹¹¹ However, these laws covered white workers only and excluded blacks from their scope of coverage.¹¹²

In 1928, means-tested social pensions were introduced.¹¹³ These social pensions were accessible to elderly mixed-race women and white male workers who did not have access to occupational pensions.¹¹⁴ Additionally, the Workmen's Compensation Act of 1934 established

¹⁰⁴ 'The Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa, Transforming the Present – Protecting the Future: Consolidated Report' available at https://sarpn.org/CountryPovertyPapers/SouthAfrica/march2002/report/Transforming_the_Present_pre.pdf 15 (12 August 2022).

¹⁰⁵ 'Twenty Year Review South Africa Background Paper: Social Protection 1994 – 2014' available at <https://www.dpme.gov.za/publications/20%20Years%20Review/20%20Year%20Review%20Documents/20YR%20Social%20Protection.pdf> (12 August 2022).

¹⁰⁶ Liebenberg S & Tilley A 'Poverty and inequality hearings: Social security theme Background paper compiled for the South African National Non-Governmental Organisation (SANGOCO) and the South African Human Rights Commission for Gender Equality' (1998).

¹⁰⁷ Workmen's Compensation Act 36 of 1907.

¹⁰⁸ Workmen's Compensation Act 36 of 1907.

¹⁰⁹ Workmen's Compensation Act 25 of 1914, Act 13 of 1917, Act 59 of 1934, Act 30 of 1941.

¹¹⁰ Section 1 of the Miners' Phthisis Allowances Act 34 of 1911.

¹¹¹ Section 1 of the Miners' Phthisis Allowances Act 34 of 1911.

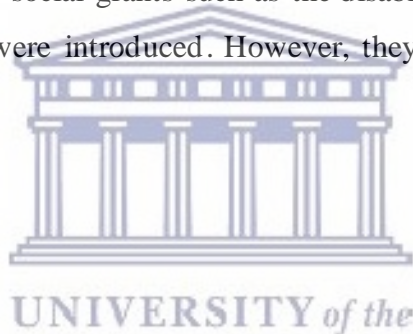
¹¹² Brockerhoff S 'A Review of the Development of Social Security: Monitoring the Progressive Realisation of Socio-Economic Rights Project:' (2013) Johannesburg: Studies in Poverty and Inequality Institute 20 (hereafter A Review of the Development of Social Security).

¹¹³ Means test involves checking databases that may provide information on a prospective beneficiaries' income or other forms of financial aid, as well as confirming their financial status with banks: Nkanjani U 'More people to qualify for SRD grant' *Business Day* 17 August 2022 available at <https://www.businesslive.co.za/bd/national/2022-08-17-more-people-to-qualify-for-srd-grant/#:~:text=Social%20development%20minister%20Lindiwe%20Zulu,not%20qualify%20for%20the%20grant> (accessed 17 August 2022).

¹¹⁴ 'Universal pensions in South Africa' available at <https://www.social-protection.org/gimi/gess/RessourcePDF.action?id=53961#:~:text=Means%20tested%20social%20pensions%20were,over%2060%20years%20of%20age> (accessed 22 August 2022).

compensation for all workers injured in accidents irrespective of race.¹¹⁵ However, black workers received significantly lower compensation than their white counterparts.¹¹⁶

By the late 1930s, South Africa had a social assistance system protecting the elderly, children, disabled persons, and single mothers only from white communities.¹¹⁷ For example, the State Maintenance Grant (SMG) was introduced in the 1930s to protect poor white families.¹¹⁸ The exclusion of blacks was premised on the notion of ‘civilised labour’.¹¹⁹ The assumption was that blacks did not have modern lifestyles and consumption patterns.¹²⁰ They, therefore, did not have a greater need for social protection.¹²¹ This was supported by the Social Security Committee report in 1943 which stated that African men and women do not require elaborate economic benefits necessary for a civilised society.¹²² The Committee, however, conceded that the aged and disabled Africans increasingly required minimal assistance in cash or in kind.¹²³ As a result old-age pensions were extended to the blacks in 1944 in both rural and urban areas.¹²⁴ However, the benefits were much lower for blacks than for white pensioners.¹²⁵ This is because the means test used discriminated against blacks.¹²⁶ It was harsher and stricter on blacks than on whites.¹²⁷ Other social grants such as the disability grant, war veterans grant, grant for large poor families were introduced. However, they again mostly targeted white people.¹²⁸



¹¹⁵ Chawane MH ‘Socio-economic conditions of the black mine workers on the Orange Free State Goldfields, 1947-1957’ (2001) 26 *Southern Journal for Contemporary History* 177 (hereafter Socio-economic conditions of the black mine workers).

¹¹⁶ Chawane MH ‘Socio-economic conditions of the black mine workers’ (2001) 177.

¹¹⁷ Seekings J ‘The Social Question in Pre-apartheid South Africa: Race, Religion and the State’ in Leisering L (ed) *One Hundred Years of Social Protection: The Changing Social Question in Brazil, India, China, and South Africa* (2021) 204 (hereafter The Social Question in Pre-apartheid South Africa)

¹¹⁸ Patel L ‘Child Support Grants’ in Brewka B *Sharing Innovative Experiences: Successful Social Protection Floor Experiences* (2011) New York: UNDP 369 (hereafter Child Support Grants).

¹¹⁹ Van der Berg S ‘South African Social Security under Apartheid and beyond’ (1997) *Development Southern Africa* 486 (hereafter Social Security under Apartheid).

¹²⁰ Van der Berg S ‘Social Security under Apartheid’ (1997) 14 *Development Southern Africa* 486.

¹²¹ Van der Berg S ‘Social Security under Apartheid’ (1997) 486.

¹²² Seekings J ‘The Social Question in Pre-apartheid South Africa’ (2021) 209.

¹²³ Seekings J ‘The Social Question in Pre-apartheid South Africa’ (2021) 209: The Social Security Committee was established to investigate the financial possibilities for establishing an extensive social security system. The Social Security Committee suggested significant public spending to fund a state-sponsored, comprehensive, integrated, and socially sufficient security plan.

¹²⁴ Seekings J ‘The Social Question in Pre-apartheid South Africa’ (2021) 209.

¹²⁵ Seekings J ‘The Social Question in Pre-apartheid South Africa’ (2021) 209.

¹²⁶ Van der Berg S ‘Social Security under Apartheid’ (1997) 487.

¹²⁷ Van der Berg S ‘Social Security under Apartheid’ (1997) 487.

¹²⁸ Van der Berg S ‘Social Security under Apartheid’ (1997) 487.

In 1956, the Pension Funds Act 24 of 1956 established the pension fund system.¹²⁹ This Act outlined procedures for establishing, registering, regulating, and dissolving pension funds.¹³⁰ However, this development also substantially benefited the white South Africans at the expense of the blacks.¹³¹ Therefore, the interests that the law was designed to defend first were those of white participants.¹³²

Around the 1970s, attempts were made to increase inclusivity in the social protection system.¹³³ The apartheid government started accepting the need to incorporate black people into the social protection system.¹³⁴ For instance, the old-age grant amounts for various racial groups were gradually harmonised.¹³⁵ Also, the pension for the black population increased steadily during the 1980s.¹³⁶ Another milestone development was the raising of the income criterion for the black population as a result of the means test being equalised for all individuals by 1993.¹³⁷ A few months just before the dawn of democracy in South Africa, the Compensation for Occupational Injuries And Diseases Act 130 of 1993 came into effect on 1 March 1994. However, domestic workers and those engaged in non-standard kinds of work, such as the self-employed, remained excluded from the scope of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA).¹³⁸

Despite these positive changes, black South Africans remained marginalised. For example, only 0.2 per cent of black children received maintenance grants in 1993 compared to 1.4 per cent of white children, four per cent of Indian children, and five per cent of coloured children.¹³⁹ Even though African homes made up 89.2 per cent of pensioner households in 1993, only 23.7

¹²⁹ Pension Funds Act 24 of 1956.

¹³⁰ Pension Funds Act 24 of 1956.

¹³¹ Van der Berg S 'Issues in South African Social Security' (2002) University of Stellenbosch: Stellenbosch Economic Working Papers 39.

¹³² Liebenberg and Tilley (1998) 'Poverty and inequality hearings' 5.

¹³³ Reddy T and Sokomani A 'Corruption and social grants in South Africa' (2008) Pretoria: Institute for Security Studies 10.

¹³⁴ Reddy T and Sokomani A 'Corruption and social grants in South Africa' (2008) 10.

¹³⁵ Reddy T and Sokomani A 'Corruption and social grants in South Africa' (2008) 10.

¹³⁶ 'Universal pensions in South Africa' available at <https://www.social-protection.org/gimi/gess/RessourcePDF.action?id=53961#:~:text=Means%2Dtested%20social%20pensions%20were,over%2060%20years%20of%20age> (accessed 22 August 2022).

¹³⁷ 'Universal pensions in South Africa' available at <https://www.social-protection.org/gimi/gess/RessourcePDF.action?id=53961#:~:text=Means%2Dtested%20social%20pensions%20were,over%2060%20years%20of%20age> (accessed 22 August 2022).

¹³⁸ 'Transforming the future and the present' available at <https://sarpn.org/CountryPovertyPapers/SouthAfrica/taylor/report1.pdf> (accessed 13 August 2022).

¹³⁹ 'Twenty Year Review South Africa Background Paper: Social Protection 1994 – 2014' available at <https://www.dpme.gov.za/publications/20%20Years%20Review/20%20Year%20Review%20Documents/20YR%20Social%20Protection.pdf> (12 August 2022).

per cent received the old-age pension in 1993.¹⁴⁰ It is, therefore, apparent that a majority of black pensioner households were severely underserved as less than a quarter received old-age pensions in 1993.¹⁴¹

2.5.2.2 Post-democracy

Since the inception of democracy in 1994, the social protection system in South Africa has been expanded to be more inclusive.¹⁴² The ANC-led government has prioritised poverty eradication and adopted social protection as a policy measure to alleviate poverty.¹⁴³

The most significant move made by the post-apartheid government was to entrench social security as a fundamental right per section 27(1) of the Constitution. This section provides that “everyone has a right to have access to social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.”¹⁴⁴ Prior to this constitutional provision, the Lund Committee on Child and Family Support had been set up in 1995 to assess the current social protection system and offer suggestions for its improvement.¹⁴⁵ The committee recommended the introduction of a Child Support Grant (CSG) with wide coverage for children and families.¹⁴⁶ Consequently, the government abandoned the State Maintenance Grant (SMG) in 1998 in favour of the Child Support Grant (CSG) because the SMG had limited coverage to white South Africans.¹⁴⁷ The new system was designed to ‘follow the child.’¹⁴⁸ This meant creating a cash transfer paid directly to the child’s primary caregiver.¹⁴⁹ The cash transfer supported the family’s income so they could care for the child properly.¹⁵⁰

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¹⁴⁰ ‘Twenty Year Review South Africa Background Paper: Social Protection 1994 – 2014’ available at <https://www.dpme.gov.za/publications/20%20Years%20Review/20%20Year%20Review%20Documents/20YR%20Social%20Protection.pdf> (12 August 2022).

¹⁴¹ ‘Twenty Year Review South Africa Background Paper: Social Protection 1994 – 2014’ available at <https://www.dpme.gov.za/publications/20%20Years%20Review/20%20Year%20Review%20Documents/20YR%20Social%20Protection.pdf> (12 August 2022).

¹⁴² Patel L ‘Poverty, Gender and Social Protection: Child Support Grants in Soweto, South Africa’ 2012 *Journal of Policy Practice* 106.

¹⁴³ Makino K ‘Social Security Policy Reform in Post-Apartheid South Africa: A Focus on the Basic Income Grant’ Durban: Centre for Civil Society 8.

¹⁴⁴ Section 27(1) of the Constitution.

¹⁴⁵ ‘Report of the Lund Committee on Child and Family Support’ available at <https://www.gov.za/documents/report-lund-committee-child-and-family-support#EXEC~:~:text=Report%20of%20the%20Lund%20Committee%20on%20Child%20and%20Family%20Support> (accessed 13 August 2022).

¹⁴⁶ Nyenti MAT ‘Role of constitutional principles and values in the development of social protection in South Africa’ (2016) *Global Social Policy* 201.

¹⁴⁷ Patel L ‘Poverty, Gender and Social Protection’ 106.

¹⁴⁸ Patel L ‘Child Support Grants’ (2011) 363-384.

¹⁴⁹ Patel L ‘Child Support Grants’ (2011) 363-384.

¹⁵⁰ Guthrie T *Assessing the Impact of the Child Support Grant on the Well-Being of Children in South Africa: A Summary of available evidence* (2002) Cape Town: Children’s Institute 4.

Following the recognition of social security as a right in the Constitution, the draft White Paper for Social Welfare of 1997 was adopted. This paper suggested the establishment of a social security system designed to assist citizens by enabling them to participate in and contribute to the expansion and development of their communities.¹⁵¹ Indeed, the White Paper signalled the government's intention to provide a comprehensive national social security system.

In 2002, the Committee of Inquiry into Comprehensive Social Security for South Africa Report (The Taylor Committee), published its report on comprehensive social security in South Africa.¹⁵² The Taylor Committee recommended the adoption of an approach that:

‘seeks to provide the basic means for all people living in the country to effectively participate and advance in social and economic life, and in turn to contribute to social and economic development.’¹⁵³

To bridge the huge gaps in social protection, the Committee suggested, among other things, implementing a basic income grant.¹⁵⁴ Furthermore, the Taylor Report influenced the centralisation of the administration of social assistance and the creation of the South African Social Security Agency (SASSA).¹⁵⁵ SASSA became the sole national agency to oversee the applications and payments of grants.¹⁵⁶ These legislative changes led to many of these developments on the social protection landscape. For example, the Social Assistance Act was promulgated in 2004 to repeal the Social Assistance Act 13 of 1993.¹⁵⁷ These developments were not only confined to the legislative framework but were evident in practice. For instance, over 18 million social grants were distributed monthly by SASSA in 2020, up from 4 million in 1993.¹⁵⁸ Similarly, the gaps that existed in unemployment insurance coverage for formal workers were addressed by the introduction of the Unemployment Insurance Act 63 of 2001 and the Unemployment Insurance Contributions Act 4 of 2002.

¹⁵¹ White Paper for Social Welfare (GG 18166 of 8 August 1997).

¹⁵² ‘Transforming the future and the present’ available at <https://sarpn.org/CountryPovertyPapers/SouthAfrica/taylor/report1.pdf> (accessed 13 August 2022).

¹⁵³ ‘Transforming the future and the present’ available at <https://sarpn.org/CountryPovertyPapers/SouthAfrica/taylor/report1.pdf> (accessed 13 August 2022).

¹⁵⁴ ‘Transforming the future and the present’ available at <https://sarpn.org/CountryPovertyPapers/SouthAfrica/taylor/report1.pdf> (accessed 13 August 2022).

¹⁵⁵ The Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa, Transforming the Present – Protecting the Future: Consolidated Report [https://sarpn.org/CountryPovertyPapers/SouthAfrica/march2002/report/Transforming the Present pre.pdf](https://sarpn.org/CountryPovertyPapers/SouthAfrica/march2002/report/Transforming%20the%20Present%20pre.pdf).

¹⁵⁶ Section 2(2) Social Assistance Act 13 of 2004.

¹⁵⁷ Social Assistance Act 13 of 2004.

¹⁵⁸ Bassier I et al ‘Locked down and locked out: Repurposing social assistance as emergency relief to informal workers’ (2020) University of Cape Town: Southern Africa Labour and Development Research Unit (hereafter ‘Locked down and locked out’) 5.

Regardless of the reforms made in the extension of social protection, South Africa's social protection system still excludes many South Africans.¹⁵⁹ The majority of social insurance schemes remain contribution-based and tied largely to formal employment.¹⁶⁰ This is despite the entrenchment of the constitutional right to access social security. The next section explores the implications of social security being entrenched as a constitutional right.

2.6 REGULATORY FRAMEWORK OF SOCIAL PROTECTION IN SOUTH AFRICA

2.6.1 Constitutional right to access social security

As stated above, the exclusionary social security system instituted by the apartheid government posed a challenge to the democratic government of South Africa. Consequently, the new government facilitated the drafting of a new Constitution.¹⁶¹ The Constitution sought to establish a society based on democratic values, social justice and fundamental human rights.¹⁶² According to Sachs, in *Ngalo v South African Social Security Agency*, 'in the case of South Africa, the new constitution arises out of the need to escape the profound humiliation and oppressions created by apartheid, which includes denial of access to social protection for blacks.'¹⁶³ The court also pointed out in *Soobramoney v Minister of Health, KwaZulu-Natal* that inadequate social security 'already existed when the Constitution was adopted and a commitment to address them and to transform our society into one in which there will be human dignity, freedom and equality, lies at the heart of our new constitutional order.'¹⁶⁴

Through the Constitution, South Africa has embraced a social security system based on human rights.¹⁶⁵ The use of the word 'everyone' in the Constitution implies that the right to social security is available to all South African citizens, permanent residents and refugees.¹⁶⁶ To

¹⁵⁹ 'Twenty Year Review South Africa Background Paper: Social Protection 1994 – 2014' available at <https://www.dpme.gov.za/publications/20%20Years%20Review/20%20Year%20Review%20Documents/20YR%20Social%20Protection.pdf> (13 August 2022).

¹⁶⁰ Nyenti MAT 'Role of constitutional principles and values in the development of social protection in South Africa' (2016) Global Social Policy 201; 'Twenty Year Review South Africa Background Paper: Social Protection 1994 – 2014' available at <https://www.dpme.gov.za/publications/20%20Years%20Review/20%20Year%20Review%20Documents/20YR%20Social%20Protection.pdf> (12 August 2022).

¹⁶¹ Constitution of the Republic of South Africa, 1996.

¹⁶² *Ngalo v South African Social Security Agency (SASSA)* (2740/11) [2013] ZAECMHC 4; [2013] 2 All SA 347 (ECM) (14 February 2013) at para 26 (hereafter *Ngalo v South African Social Security Agency*); Nyenti MAT 'Role of constitutional principles and values in the development of social protection in South Africa' (2016) Global Social Policy 201.

¹⁶³ *Ngalo v South African Social Security Agency* at para 1.

¹⁶⁴ *Soobramoney v Minister of Health, KwaZulu-Natal* 1998(1) SA 765 (CC).

¹⁶⁵ Chapter 2 of the Constitution of the Republic of South Africa, 1996.

¹⁶⁶ *Khosa v Minister of Social Development, Mahlaule v Minister of Social Development* 2004 (6) SA 505 (CC) at para 49: 'Social Security Programs Throughout the World: Africa, 2019' available at

ensure everyone has access to this right, section 27(2) compels the state to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right. In emphasising the importance of this right, the Constitutional Court stated in *Glenister v President of the Republic of South Africa* that the obligation to fulfil the rights in the Bill of Rights-

‘... goes beyond a mere negative obligation not to act in a manner that would infringe or restrict a right. Rather, it entails positive duties on the state to take deliberate, reasonable measures to give effect to all of the fundamental rights contained in the Bill of Rights.’¹⁶⁷

This was reaffirmed in *Ngalo v South African Social Security Agency*, where the court took a firm view that treating human beings with dignity requires the state to act reasonably by providing social security rights, such as the right to social grants to those that need it.¹⁶⁸ Furthermore, section 27(2) of the Constitution aligns with article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which provides that member States take steps, individually and through international assistance and cooperation, to achieve progressively the full realisation of the rights recognised in the Covenant by all appropriate means, including the adoption of legislative measures.¹⁶⁹

The application of the constitutional right of access to social security is not without limitations. In terms of section 27(2) of the Constitution, the state is implored to strive towards the progressive realisation of the right to access social security. In interpreting this, the Constitutional Court held that legal, administrative, operational and financial hurdles concerning the provision of social security should be appraised and minimised.¹⁷⁰ Such hurdles stand as impediments to accessing social protection, especially social insurance. This is the case for self-employed workers whose access to social protection is hindered by legal, administrative and financial hurdles. Despite the challenges inherent in implementing social security measures for the self-employed, this duty is essential.¹⁷¹

<https://www.ssa.gov/policy/docs/progdsc/ssptw/2018-2019/africa/south-africa.html> (accessed 27 February 2023).

¹⁶⁷ *Glenister v President of the Republic of South Africa* at para 105.

¹⁶⁸ *Ngalo v South African Social Security Agency (SASSA)* (2740/11) [2013] ZAECMHC 4; [2013] 2 All SA 347 (ECM) (14 February 2013) at para 26.

¹⁶⁹ Article 2(1) of the International Covenant on Civil and Political Rights 1966. South Africa ratified the Covenant in 2015.

¹⁷⁰ *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19 at para 45.

¹⁷¹ Smit N & Mpedi LG ‘Social protection for developing countries’ (2010) 24.

Furthermore, progressive realisation of rights does not envision the immediate realisation of a right. Rather it implies that the state must take decisive steps to achieve this goal.¹⁷² In practice, the progressive realisation of social security implies that the state should increase the level of coverage and benefits.¹⁷³ This, in fact, means that the state should not only increase the funds allocated to the realisation of a particular right but should focus on the actual number of people awarded the benefit.¹⁷⁴ Nevertheless, the right of access to social security is subject to availability of resources. If the state demonstrates that it is unable to deliver on social security commitments due to a lack of resources, then the limitation of social security rights is deemed justifiable.¹⁷⁵ However, merely asserting a lack of resources is not enough to relieve the state of its duty to provide social security.¹⁷⁶ It was held in *Khosa v Minister of Social Development* that the allocation of existing resources should be compatible with the Bill of Rights in general.¹⁷⁷ This means that the allocation of resources itself can be interrogated to determine whether the limitation of the right to social security is justifiable.

In many ways, the South African social protection system is based on universal standards. It recognises the right to social security as recognised in the Universal Declaration of Human Rights (UDHR). The UDHR affords every worker the right to just and favourable remuneration supplemented by social protection.¹⁷⁸ The right to social security, a component of social protection, is recognised in international conventions. The International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right of everyone to social security, including social insurance.¹⁷⁹ Article 11 further implores member states to recognise the right of everyone to an adequate standard of living.¹⁸⁰

2.7 SOCIAL PROTECTION DURING THE COVID-19 PANDEMIC

Despite the entrenchment of the right to access social security as a constitutional right, self-employed workers remain marginalised from coverage. The result is that people who live in households that depend on income from self-employment experience extreme

¹⁷² *Government of the Republic of South Africa and Others v Grootboom and Others* at para 45.

¹⁷³ Basson Y 'The Compliance of the South African Social Security System with the International Covenant on Economic, Social and Cultural Rights' 2020 *Obiter* 854 (hereafter *The Compliance of the South African Social Security System*).

¹⁷⁴ Basson Y 'The Compliance of the South African Social Security System' 2020 854.

¹⁷⁵ Basson Y 'The Compliance of the South African Social Security System' 2020 854.

¹⁷⁶ Basson Y 'The Compliance of the South African Social Security System' 2020 854.

¹⁷⁷ *Khosa v Minister of Social Development, Mahlaule v Minister of Social Development* 2004 (6) SA 505 (CC) at para 45.

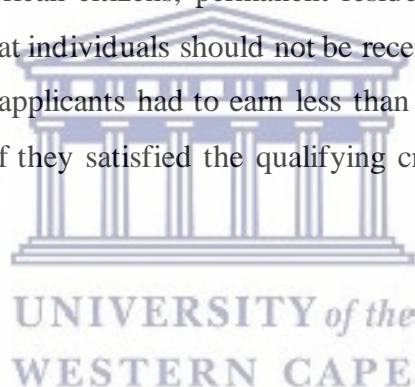
¹⁷⁸ Article 23 of the Universal Declaration of Human Rights, 1948.

¹⁷⁹ Article 9 of the International Covenant on Economic, Social and Cultural Rights, 1966: R202 - Social Protection Floors Recommendation, 2012 (No. 202).

¹⁸⁰ Articles 11 of the International Covenant on Economic, Social and Cultural Rights, 1948.

poverty as a result of significant economic shocks such as the COVID-19 pandemic.¹⁸¹ This is because the South African social protection system, particularly social assistance, is premised on assisting only dependent groups, such as the older persons, primary caregivers and persons with disability.¹⁸² Against this backdrop, self-employed workers remained inadequately covered despite the measures put in place by the government to combat poverty arising from the COVID-19 pandemic.

To cushion citizens from the suffering worsened by the COVID-19 outbreak, the government announced an additional R500 monthly cash transfer to recipients of the child support grants and an additional R250 monthly cash pay-out to recipients of all other grants.¹⁸³ Additionally, the Department of Social Development partnered with Non-Governmental Organisations (NGOs) and community-based organisations to distribute 250,000 food parcels across the country to poor communities.¹⁸⁴ Moreover, the government introduced the COVID-19 Social Relief of Distress (SRD) grant of R350 a month guaranteed for six months in 2020.¹⁸⁵ The SRD grant is the first large-scale digitally implemented social security measure in South Africa.¹⁸⁶ It targeted unemployed South African citizens, permanent residents or refugees.¹⁸⁷ One of the criteria to access the grant is that individuals should not be receiving any other social grant or UIF payment.¹⁸⁸ Furthermore, applicants had to earn less than R350 per month to qualify as having insufficient means.¹⁸⁹ If they satisfied the qualifying criteria, self-employed workers were eligible for this reward.



¹⁸¹ Bassier I et al 'Locked down and locked out' 5.

¹⁸² Bassier I et al 'Locked down and locked out' 6.

¹⁸³ 'Statement by President Cyril Ramaphosa on further economic and social measures in response to the COVID-19 epidemic' <https://www.thepresidency.gov.za/speeches/statement-president-cyril-ramaphosa-further-economic-and-social-measures-response-covid-19> (accessed 15 August 2022).

¹⁸⁴ 'Statement by President Cyril Ramaphosa on further economic and social measures in response to the COVID-19 epidemic' <https://www.thepresidency.gov.za/speeches/statement-president-cyril-ramaphosa-further-economic-and-social-measures-response-covid-19> (accessed 15 August 2022).

¹⁸⁵ Rogan M & Skinner C 'The Covid-19 crisis and the South African informal economy' 'Locked out' of livelihoods and employment' (2020) National Economic Dynamic Study 10.

¹⁸⁶ Department of Social Development 'The Rapid Assessment of the Implementation and Utilisation of the Special Covid-19 Social Relief of Distress Grant' <https://www.dsd.gov.za/index.php/latest-news/21-latest-news/410-the-rapid-assessment-of-the-implementation-and-utilisation-of-the-special-covid-19-social-relief-of-distress-grant#:~:text=In%20response%2C%20the%20government%20of,initial%20period%20of%20six%20months> (accessed 31 May 2022).

¹⁸⁷ 'Statement by President Cyril Ramaphosa on further economic and social measures in response to the COVID-19 epidemic' <https://www.thepresidency.gov.za/speeches/statement-president-cyril-ramaphosa-further-economic-and-social-measures-response-covid-19> (accessed 15 August 2022).

¹⁸⁸ South African Government 'Social grants – Corona virus COVID-19' <https://www.gov.za/covid-19/individuals-and-households/social-grants-coronavirus-covid-19> (accessed 25 December 2022).

¹⁸⁹ Regulations relating to COVID-19 Social Relief of Distress GN 2042 GG 46271 of 22 April 2022.

Additionally, the government committed to compensating contributors to the UIF who lost income as a result of the COVID-19 pandemic.¹⁹⁰ The government introduced the COVID-19 Employee-Employer Temporary Relief Scheme (C19 TERS).¹⁹¹ This fund enabled employers who closed operations for up to three months as a direct result of the COVID-19 pandemic to claim funding to cover salary costs.¹⁹² These benefits only included the costs of salary for the employees during the temporary closure of business.¹⁹³ Self-employed workers were not eligible to use this fund because they do not pay into the UIF.¹⁹⁴ Nonetheless, the above measures were put in place to minimise the effects of the COVID-19 pandemic and are additional to South Africa's structured social protection system.

2.8 TYPES OF SOCIAL PROTECTION AND THEIR APPLICABILITY

The country's social security system consists of two main categories; social assistance and social insurance.¹⁹⁵ This system embraces the nine life-course contingencies of social security in ILO's Convention No. 202. These contingencies are 'child and family benefits, sickness and health-care benefits, maternity benefits, disability benefits, old-age benefits, survivors' benefits, unemployment benefits and employment guarantees, and employment injury benefits'.¹⁹⁶

Social assistance

Social assistance 'means a social grant including social relief of distress'.¹⁹⁷ South Africa's social assistance system represents a major intervention by the legislature in addressing deprivation amongst the country's population.¹⁹⁸ The key elements of social assistance are that it involves non-contributory interventions and specifically targets individuals and households

¹⁹⁰ 'Statement by President Cyril Ramaphosa on further economic and social measures in response to the COVID-19 epidemic' <https://www.thepresidency.gov.za/speeches/statement-president-cyril-ramaphosa-further-economic-and-social-measures-response-covid-19> (accessed 15 August 2022).

¹⁹¹ COVID-19 Temporary Employee / Employer Relief Scheme (C19 TERS) GN 215 GG 43161 of 2020.

¹⁹² COVID-19 Temporary Employee / Employer Relief Scheme (C19 TERS) GN 215 GG 43161 of 2020.

¹⁹³ COVID-19 Temporary Employee / Employer Relief Scheme (C19 TERS) GN 215 GG 43161 of 2020.

¹⁹⁴ COVID-19 Temporary Employee / Employer Relief Scheme (C19 TERS) GN 215 GG 43161 of 2020; Rogan M & Skinner C 'The Covid-19 crisis and the South African informal economy' Locked out' of livelihoods and employment' (2020) National Economic Dynamic Study 10.

¹⁹⁵ The World Bank *South Africa Social Assistance Programs and Systems Review* (2021) Washington, DC: The International Bank for Reconstruction and Development vii.

¹⁹⁶ Article 9 of the 'ILO Social Protection Floors Recommendation, 2012 (No. 202)' available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:3065524 (accessed 5 February 2023).

¹⁹⁷ Section 1 of the Social Assistance Act 13 of 2004.

¹⁹⁸ The World Bank *South Africa Social Assistance Programs and Systems Review* (2021) Washington, DC: The International Bank for Reconstruction and Development vii.

that grapple with poverty, and vulnerability.¹⁹⁹ Taxpayers are typically the ones who contribute, and the benefits are not based on what the beneficiaries put in.²⁰⁰

Social assistance in South Africa is regulated by the Social Assistance Act.²⁰¹ Essentially, the Act provides for the administration of social assistance and payment of social grants.²⁰² Furthermore, the Act determines the qualification requirements and ensures that minimum norms and standards are prescribed for the delivery of Social Assistance.²⁰³ The South African Social Security Agency Act, on the other hand, provides the legal framework that guides the administration of social assistance.²⁰⁴ It established SASSA to ensure efficient and effective administration and payment of social assistance benefits.²⁰⁵ SASSA is the vehicle through which the funds made available by the state are dispersed to the beneficiaries.²⁰⁶

SASSA is the sole agent that oversees the administration of social grants.²⁰⁷ Social grants are the linchpin of the South African social assistance programme and are arguably the largest social assistance programme in Africa, in respect of their coverage.²⁰⁸ It has been argued that because such a significant number of people get social grants, South Africa's social assistance system complies with Article 9 of the ICESCR, in terms of coverage.²⁰⁹ They have been credited with lowering inequality and poverty as well as lessening the effects of high levels of poverty in developing countries.²¹⁰ Social grants in South Africa, consist of the child support grant, care dependency grant, foster child grant, disability grant, older person's grant, war veteran's grant and grant in aid.²¹¹

Generally, an applicant has no right to receive the grant until he or she has satisfied the criteria for the grant and submitted an application.²¹² These grants are not universal but are granted subject to the means test.²¹³ Means testing implies 'the evaluation, by the responsible agency,

¹⁹⁹ Carter B et al *Social Protection Topic Guide Revised Edition K4D Emerging Issues Report* 18 (2019) 13.

²⁰⁰ Bonilla-Garcia A & Gruat JV *Social protection: A life cycle continuum investment* (2003) 18.

²⁰¹ The Social Assistance Act 13 of 2004.

²⁰² Section 3(a) of the Social Assistance Act 13 of 2004.

²⁰³ Section 3(b) – c of the Social Assistance Act 13 of 2004.

²⁰⁴ Section 3 of the South African Social Security Agency Act 9 of 2004.

²⁰⁵ Section 3 of the South African Social Security Agency Act 9 of 2004.

²⁰⁶ Section 3 of the South African Social Security Agency Act 9 of 2004.

²⁰⁷ Section 3 of the South African Social Security Agency Act 9 of 2004.

²⁰⁸ Mpedi LG 'Social Protection Law in the Republic of South Africa' (2017) 20 *Law in Africa* 20 (hereafter Social Protection Law) 43.

²⁰⁹ Basson Y 'The Compliance of the South African Social Security System' 2020 (*Obiter*) 861.

²¹⁰ Malherbe K 'Social Grant Payments – a Crisis Averted?' (2017) 4 *Revue de droit comparé du travail et de la sécurité sociale* 224.

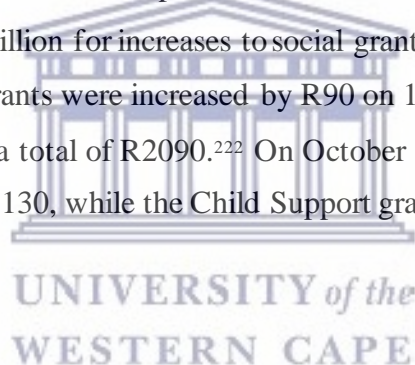
²¹¹ Section 4 (a)-(g) of the Social Assistance Act 13 of 2004.

²¹² Jordaan B, Kalula E & Strydom E *Understanding Social Security Law* (2009) Cape Town: Juta 78.

²¹³ Section 5(2)(b) of the Social Assistance Act 13 of 2004.

of the income and assets of the person applying for the social grant so as to establish whether the person's means are below a stipulated amount.²¹⁴ For each social grant, a different means test is used.²¹⁵ The requirements and conditions in terms of the income thresholds and means test are prescribed by the Minister of Social Development from time to time.²¹⁶ In determining the incomes of applicants, SASSA considers payments made to the applicant, spouse or dependent child such as; compensation, profits derived from a business, payment from a trust or inheritance, payments from property rights, pension or annuity, ex gratia amount, maintenance payable.²¹⁷ To determine assets of the applicant, in the case of an older person's grant, disability grant and a war veteran's grant, SASSA considers; the municipal value of any property owned but not occupied by the applicant and the spouse, property rights held by the applicant, any lump sum invested by the applicant or the spouse in a company or a financial institution.²¹⁸ For instance, as of 1 April 2023, applicants for the Older Persons Grant must not have assets valued at over R1 372 800 if they are single or R2 745 600 if they are married.²¹⁹

The requirements and conditions in terms of the income thresholds and means test are prescribed by the Minister of Social Development from time to time.²²⁰ On 22 February 2023, the government allocated R30 billion for increases to social grants in South Africa.²²¹ The Older Persons Grant and Disability grants were increased by R90 on 1 April 2023 and a further R10 on 1 October 2023 to result in a total of R2090.²²² On October 1, 2023, the Foster Care Grant will increase from R1070 to R1130, while the Child Support grant rises from R480 to R510.²²³



²¹⁴ Jordaan B, Kalula E & Strydom E *Understanding Social Security Law* (2009) Cape Town: Juta 70.

²¹⁵ Jordaan B, Kalula E & Strydom E *Understanding Social Security Law* (2009) Cape Town: Juta 70.

²¹⁶ Section 5(2)(a)-(b) of the Social Assistance Act 13 of 2004.

²¹⁷ Regulation 19(1) of the Regulations Relating to the Application for and Payment of Social Assistance and the Requirements or Conditions in Respect of Eligibility for Social Assistance in GN 898 GG 31356 of 22 August 2008.

²¹⁸ Regulation 19(3) of the Regulations Relating to the Application for and Payment of Social Assistance and the Requirements or Conditions in Respect of Eligibility for Social Assistance in GN 898 GG 31356 of 22 August 2008.

²¹⁹ Department of Social Development 'Requirements for the SASSA Older Persons Grant' available at <https://www.sassagrants.co.za/types-of-sassa-grants/older-persons-grant/> (accessed 23 April 2023).

²²⁰ Section 5(2)(a)-(b) of the Social Assistance Act 13 of 2004.

²²¹ Department of National Treasury 'Budget Speech delivered by Enoch Godongwana Minister of Finance 22 February 2023' available at <https://www.treasury.gov.za/documents/National%20Budget/2023/speech/speech.pdf> (accessed 23 April 2023).

²²² Department of National Treasury 'Budget Speech delivered by Enoch Godongwana Minister of Finance 22 February 2023' available at <https://www.treasury.gov.za/documents/National%20Budget/2023/speech/speech.pdf> (accessed 23 April 2023).

²²³ Department of National Treasury 'Budget Speech delivered by Enoch Godongwana Minister of Finance 22 February 2023' available at <https://www.treasury.gov.za/documents/National%20Budget/2023/speech/speech.pdf> (accessed 23 April 2023).

These social grants have greatly mitigated the effects of poverty among Africans than any other race.²²⁴ They are a significant source of income for low-income households and have helped to reduce poverty.²²⁵ However, despite the importance of grants, the amounts remain insufficient to cater for the needs of the recipients. Grant amounts have consistently lagged behind the rise in the costs of essential commodities for many years.²²⁶ For instance, when the rate of food price inflation peaked to 12 per cent in 2016, the increase in the child support grant was 6 per cent.²²⁷

Despite its expansive nature, the South African social assistance system is not without its challenges. Firstly, the ambit of coverage of the scheme is sparse. Social grants do not cover impoverished applicants who do not fit in the bracket of being too young or too old or disabled.²²⁸ Those excluded are either left to rely on those receiving the grant or have to fend for themselves. The second challenge with social grants is the administrative component of the grants which is problematic for both the state and the beneficiaries.²²⁹ For instance, in *Allpay Consolidated Investment Holdings (Allpay) and others v The South African Social Security Agency (SASSA)*, the Constitutional Court found that SASSA's decision to award R10-billion tender to a private company, Cash Paymaster Services (CPS) was procedurally flawed and constitutionally invalid.²³⁰ In addition, the decommissioning of more than 8000 pay points for SASSA beneficiaries in 2018 and the failure to communicate and consult with grants beneficiaries greatly reduced access to monthly grants pay-outs, especially for rural and per-urban beneficiaries.²³¹ Thirdly, there is no social assistance programme in South Africa that specifically targets self-employed workers, taking their unique circumstances and needs into consideration. As previously stated, access to social assistance is means-tested and does not

²²⁴ Satumba T, Bayat A & Mohamed S (2017) 'The Impact of Social Grants on Poverty Reduction in South Africa' (2017) *Journal of Economics* 48.

²²⁵ Mackett O 'Social Grants as a Tool for Poverty Reduction in South Africa? A Longitudinal Analysis Using the NIDS Survey' (2020) 19 *African Studies Quarterly* 44.

²²⁶ Webb C & Vally N 'South Africa has raised social grants: why this shouldn't be a stop-gap measure' *The Conversation* 7 May 2020 available at <https://theconversation.com/south-africa-has-raised-social-grants-why-this-shouldnt-be-a-stop-gap-measure-138023> (accessed 6 February 2023).

²²⁷ 'Food inflation deeped below headline inflation in 2015 and 2018' available at <http://www.statssa.gov.za/wp-content/uploads/2018/07/img2.png> (accessed 6 February 2023); Webb C & Vally N 'South Africa has raised social grants: why this shouldn't be a stop-gap measure' *The Conversation* 7 May 2020 available at <https://theconversation.com/south-africa-has-raised-social-grants-why-this-shouldnt-be-a-stop-gap-measure-138023> (accessed 6 February 2023).

²²⁸ Mpedi LG 'Social Protection Law' (2017) 43.

²²⁹ Reddy T & Sokomani A *Corruption and social grants in South Africa* (2008) 61.

²³⁰ *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC); 2014 (1) BCLR 1 (CC) (29 November 2013).

²³¹ Ormellas A & Zastrau E 'Researching and Engaging the Decommissioning of SASSA Paypoints' (2020) Cape Town: Black Sash 33.

guarantee access for self-employed workers unless the criteria specifically target self-employed workers.

2.8.1 Social insurance

Social insurance schemes are ‘schemes in which social contributions are paid by employees or others, or by employers on behalf of their employees, to secure entitlement to social insurance benefits.’²³² It refers to formalised systems of pensions, health insurance, maternity benefit and unemployment benefits, usually financed by employers, employees and the state.²³³ Social insurance programmes are contributory and are designed to help individuals manage sudden changes in income because of old age, sickness, disability, maternity, or natural disasters.²³⁴

Social insurance schemes in South Africa are primarily geared towards providing unemployment benefits, loss of income due to occupational injuries and retirement. These social insurance schemes are regulated under several Acts. The main social insurance Acts are; the Pension Funds Act 24 of 1956, which provides retirement benefits, the National Health Act 61 of 2003, which regulates the national health system, the Unemployment Insurance Act 63 of 2001 (UIA), as amended, which establishes an unemployment insurance fund, and the Compensation for Occupational Injuries and Diseases Act 130 of 1993, which provides for compensation for disablement caused by occupational injuries or diseases.

Unemployment insurance is regulated under the Unemployment Insurance Act. The purpose of the Unemployment Insurance Act is to provide an:

‘unemployment insurance fund to which employers and employees contribute and from which employees who become unemployed or their beneficiaries, as the case may be, are entitled to benefits and in so doing to alleviate the harmful economic and social effects of unemployment.’²³⁵

The fund provides short-term relief to beneficiaries and is reliant on contributions made by both the employee and employer.²³⁶ UIF benefits are only accessible to those that contributed to the fund when they were working.²³⁷ The benefits are, therefore, individualised as they are dependent on earnings. A contributor’s entitlement to benefits accrues at a rate of one day’s

²³² ‘Social insurance schemes’ available at <https://stats.oecd.org/glossary/detail.asp?ID=2490> (accessed 25 December 2022).

²³³ Sabates-Wheeler R and Devereux S ‘Social Protection for Transformation’ (2007) 38 25.

²³⁴ The World Bank *The State of Social Safety Nets 2018* (2018) Washington, DC: International Bank for Reconstruction and Development 5.

²³⁵ Section 2 of the Unemployment Insurance Act 63 of 2001.

²³⁶ Section 2 of the Unemployment Insurance Act 63 of 2001.

²³⁷ Liffman R et al ‘Scope of Application’ in Olivier MP et al (eds) *Social security Law* (1999) 41.

benefit for every completed five days of employment as a contributor.²³⁸ This is subject to a maximum accrual of 365 days benefit in the four-year period immediately preceding the day after the date of ending of the period of employment.²³⁹ Self-employed workers are not registered for UIF; therefore, they have no access to benefits.²⁴⁰ This is because the application of this law is restricted to individuals who are classified as contributors.²⁴¹ For instance, UIA regards any person employed in any business or any specified area, as a contributor.²⁴²

The Act defines an employee as ‘any natural person who receives remuneration or to whom remuneration accrues in respect of services rendered or to be rendered by that person, but excludes any independent contractor’.²⁴³ This definition of the term employee excludes self-employed workers from the scope UIF coverage. Section 3(1) of the UIA also excludes the following people from its scope. These are employees employed for less than 24 hours a month, members of parliament, cabinet ministers, deputy ministers, members of provincial executive councils, members of provincial legislatures and municipal councillors.²⁴⁴ In *Wyeth SA (Pty) Ltd v Manqele & Others*, the court held that an employee:

‘is only an employee when such person actually works for another person. The employee must therefore have rendered a service to another which service are not that of an independent contractor. In addition to working for another the employee must also “receive” or “be entitled to receive” remuneration.’²⁴⁵

Independent contractors are, therefore, excluded from claiming benefits under the UIA. The court in *Munengani and Others v Bob Cuts Hair Saloon and Others* ruled that being employed and making contributions are compulsory requirements for eligibility to UIF benefits.²⁴⁶ The applicant’s claim for UIF benefits in this case was dismissed for lack of these requirements, among other reasons.²⁴⁷

On the issue of contributions, the practice in South Africa is generally aligned to global trends where both employees and employers contribute to the fund.²⁴⁸ Employers are responsible for

²³⁸ Section 5 of the Unemployment Insurance Act 10 of 2016.

²³⁹ Section 5 of the Unemployment Insurance Act 10 of 2016.

²⁴⁰ Rogan M & Skinner C ‘The Covid-19 crisis and the South African informal economy’ Locked out’ of livelihoods and employment’ (2020) National Economic Dynamic Study 10.

²⁴¹ Section 2 of the Unemployment Insurance Act 63 of 2001.

²⁴² Section 69 of the Unemployment Insurance Act 63 of 2001.

²⁴³ Section 1(1) of the Unemployment Insurance Act 63 of 2001.

²⁴⁴ Section 3(1)-(2) of the Unemployment Insurance Act 10 of 2016.

²⁴⁵ *Wyeth SA (Pty) Ltd v Manqele & others* (2005) 26 ILJ 749 (LAC) at para 38.

²⁴⁶ *Munengani and Others v Bob Cuts Hair Saloon and Others* (J 507/20) [2020] ZALCJHB 101 (23 June 2020) at paragraph 17.

²⁴⁷ *Munengani and Others v Bob Cuts Hair Saloon and Others* (J 507/20) [2020] ZALCJHB 101 (23 June 2020).

²⁴⁸ Asenjo A & Pignatti C *Unemployment insurance schemes around the world: Evidence and policy options* (2019) Geneva: ILO 15.

the deduction of unemployment insurance contributions and remitting them to the Unemployment Insurance Fund (UIF) or the South African Revenue Services (SARS).²⁴⁹ The employer deducts one per cent from the employee's total earnings and adds a further contribution of one per cent.²⁵⁰ Thus, the total contribution paid to the unemployment fund is two per cent.²⁵¹

Similarly, the COIDA provides 'compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment, or for death resulting from such injuries or diseases; and to provide for matters connected therewith.'²⁵² If an employee is involved in an accident that leaves them disabled or dead, they or their dependents are entitled to the benefits that are outlined in the Act.²⁵³ In other words, the compensation scheme under COIDA aims to protect employees from income shocks resulting from incapacitation and inability to work, whether temporarily or permanently.²⁵⁴ The fund pays out occupational injuries or diseases compensation only to individuals that fall within the scope of COIDA, that is, employees.²⁵⁵ Section 1 of the Act defines an employee as 'a person who has entered into or works under a contract of service or of apprenticeship or learnership, with an employer, whether the contract is express or implied, oral or in writing, and whether the remuneration is calculated by time or by work done'.²⁵⁶

The Act also further indicates individuals that are considered employees. These are casual employees, directors of corporates and workers under labour brokers.²⁵⁷ The Act, however, excludes certain category of workers such as employees of the state, workers in military service, members of the Permanent Force of the South African, members of the South African Police Force and independent contractors from COIDA coverage.²⁵⁸

Recently, the court held in *Mahlangu and Another v Minister of Labour and Others* that the exclusion of domestic workers from the protections under COIDA resulted in a situation where domestic workers have to bear work-related injuries or death without compensation.²⁵⁹ The

²⁴⁹ Section 5 of the Unemployment Insurance Contributions Act 4 of 2002.

²⁵⁰ Section 5 of the Unemployment Insurance Contributions Act 4 of 2002.

²⁵¹ Section 5 of the Unemployment Insurance Contributions Act 4 of 2002.

²⁵² Short title of the Compensation for Occupational Injuries and Diseases Act 130 of 1993.

²⁵³ Section 22 of the Compensation for Occupational Injuries and Diseases Act 130 of 1993.

²⁵⁴ Compensation for Occupational Injuries and Diseases Act 130 of 1993.

²⁵⁵ Compensation for Occupational Injuries and Diseases Act 130 of 1993.

²⁵⁶ Section 1 of the Compensation for Occupational Injuries and Diseases Act 130 of 1993.

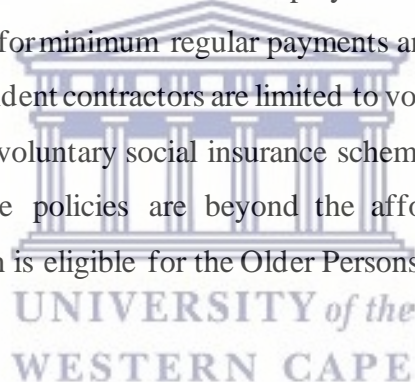
²⁵⁷ Section 1 of the Compensation for Occupational Injuries and Diseases Act 130 of 1993.

²⁵⁸ Section 1 of the Compensation for Occupational Injuries and Diseases Act 130 of 1993.

²⁵⁹ *Mahlangu and Another v Minister of Labour and Others* [2020] ZACC 24 at para 107.

court ruled that the exclusion of domestic workers from deriving benefits under COIDA unjustifiably limits their rights to equality before the law.²⁶⁰ It ordered the inclusion of domestic workers in the definition of ‘employee’ under COIDA.²⁶¹ This is consistent with the ILO’s guidance that nations should create, maintain, develop gradually, and periodically review national systems for occupational safety and health.²⁶² The *Mahlangu* case ruling has not been extended to self-employed workers who remain outside the reach of COIDA. Even though the court did not proffer a definition of the term ‘employee’, the judge expressed hope that the inclusion of domestic workers under the definition of ‘employee’ in the COIDA will alleviate systematic disadvantage and break the cycle of poverty.²⁶³

Besides the above, other social insurance schemes include pension funds, health funds and maternity funds. Pension funds are regulated under the Pension Funds Act 24 of 1956. This Act provides for the ‘registration, incorporation, regulation and dissolution of pension funds’.²⁶⁴ This area of social insurance is administered by multiple public and private actors. In 2015, South Africa had 5143 retirement funds, including both public and numerous private entities.²⁶⁵ However, occupational retirement funds for self-employed workers remain elusive due to restrictions such as the demand for minimum regular payments and high administration costs.²⁶⁶ Unlike formal workers, independent contractors are limited to voluntary and privately managed retirement plans that fall under voluntary social insurance schemes.²⁶⁷ However, the high costs of private individual insurance policies are beyond the affordability of vulnerable self-employed workers.²⁶⁸ A woman is eligible for the Older Persons Grant if she attains the age of



²⁶⁰ *Mahlangu and Another v Minister of Labour and Others* at para 107.

²⁶¹ *Mahlangu and Another v Minister of Labour and Others* at para 128.

²⁶² ‘C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)’ available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C187 (accessed 18 August 2022).

²⁶³ *Mahlangu and Another v Minister of Labour and Others* at para 135.

²⁶⁴ Pension Funds Act 24 of 1956.

²⁶⁵ Sagan M ‘Monitoring the right of access to social security and appropriate social assistance IN South Africa: An analysis of the policy effort, resource allocation and expenditure and enjoyment of the right to social security’ (2012) Johannesburg: Studies in Poverty and Inequality Institute 37 (hereafter *Monitoring the right of access to social security*).

²⁶⁶ National Treasury Republic of South Africa ‘Retirement Fund Reform: A discussion Paper’ <http://www.treasury.gov.za/public%20comments/Retirement%20Fund%20Reform%20A%20Discussion%20Paper.pdf> available at (accessed 22 September 2022).

²⁶⁷ National Treasury Republic of South Africa ‘Retirement Fund Reform: A discussion Paper’ <http://www.treasury.gov.za/public%20comments/Retirement%20Fund%20Reform%20A%20Discussion%20Paper.pdf> available at (accessed 22 September 2022).

²⁶⁸ Twenty Year Review South Africa Background Paper: Social Protection 1994 – 2014’ available at <https://www.dpme.gov.za/publications/20%20Years%20Review/20%20Year%20Review%20Documents/20YR%20Social%20Protection.pdf> (5 March 2022).

60 years²⁶⁹ A male is eligible for the Older Persons Grant if he turned 63 after 1 April 2008, or 61 after 1 April 2009, or turned 60 after 1 April 2010.²⁷⁰

Health funds in South Africa consist of medical aid schemes, and generally cover formal employees making regular contributions.²⁷¹ Medical aid schemes in South Africa are currently regulated under the Medical Schemes Act 131 of 1998. This Act establishes mechanisms for the coordination of medical schemes and protects the interests of medical scheme members.²⁷² It also sets provisions for the registration and control of the operations of medical schemes.²⁷³ Vulnerable self-employed employees are typically prohibited from enrolling in medical assistance programmes because of the high costs of contributions, which they must pay out of pocket, as well as the difficulties in administering the contributions.²⁷⁴ However, a National Health Insurance Bill has been proposed and is currently undergoing parliamentary processes.²⁷⁵ This Bill, if passed into law, will ensure that ‘everyone has access to a defined comprehensive package of healthcare services.’²⁷⁶

The term ‘employee’, therefore, plays a key role in preventing self-employed workers from being eligible to participate in social insurance schemes. In contrast, the term ‘worker’ guarantees protections, including social protection, to vulnerable self-employed persons.²⁷⁷ A wider application of the term ‘worker’ addresses the difficulties in regulating working relationships that do not come within the parameters of the employment relationship as defined by a rigid understanding of the term.²⁷⁸ In adapting the term ‘worker’, it is important to

²⁶⁹ National Treasury Republic of South Africa ‘Retirement Fund Reform: A discussion Paper’ <http://www.treasury.gov.za/public%20comments/Retirement%20Fund%20Reform%20A%20Discussion%20Paper.pdf> available at (accessed 22 September 2022).

²⁷⁰ Section 10 of the Social Assistance Act 13 of 2004.

²⁷¹ White Paper on National Health Insurance for South Africa GN 1230 GG 39506 of 11 December 2015.

²⁷² Medical Schemes Act 131 of 1998.

²⁷³ Medical Schemes Act 131 of 1998.

²⁷⁴ Section 26(7) of the Medical Schemes Act 131 of 1998: <https://medicalaidinsouthafrica.co.za/medical-aid-for-self-employed.php> (accessed 27 February 2023).

²⁷⁵ ‘The National Health Insurance (NHI) Bill’ available at <https://www.parliament.gov.za/project-event-details/54> (accessed 27 February 2023).

²⁷⁶ Department of Health *National Health Insurance in South Africa Policy Paper* (2021) Pretoria: Department of Health Republic of South Africa 15.

²⁷⁷ Risak M & Dullinger T ‘The concept of ‘worker’ in EU law Status quo and potential for change’ (2018) Brussels: European Trade Union Institute 7, 16.

²⁷⁸ Ludera-Ruszel A ‘The Concept of “Worker” Under the Principle of Free Movement of Workers and its Implications for the Protection of Workers in the European Union’ (2020) 27 *Studies on Labour Law and Social Policy* 169.

introduce particular legislative measures that grant the most disadvantaged self-employed workers access to a variety of employment rights.²⁷⁹

2.9 CONCLUSION

This chapter explored the concept of social protection and its current applicability in South Africa. The state of social protection in the apartheid past was examined as well as the development in the democratic era. The chapter discussed the meaning of social security and interrogated the broad functions of social protection. The chapter further discussed the two main categories of social security in South Africa, that is, social assistance and social insurance. Importantly, the chapter highlighted the exclusion of self-employed workers from the scope of the application of social security measures in South Africa. The depth and breadth of self-employment in South Africa, particularly pertaining to social protection coverage, is examined in the next chapter.



²⁷⁹ Risak M & Dullinger T 'The concept of 'worker' in EU law Status quo and potential for change' (2018) Brussels: European Trade Union Institute 5.

CHAPTER 3

SELF-EMPLOYMENT IN SOUTH AFRICA

3.1 INTRODUCTION

Chapter two explored the theoretical perspectives and characteristics of the concept of social protection in South Africa, underpinned by references to international social protection standards. It was shown that access to adequate social protection measures for self-employed workers in South Africa is limited.

Undoubtedly, self-employment provides a means of earning a livelihood for many South Africans.²⁸⁰ However, a myriad of challenges confronts those involved in self-employment. As mentioned in the previous chapter, one of the greatest challenges faced by self-employed workers is the exclusion from the social insurance component of the social protection system. This marginalisation has existed for decades in the South African social security system.²⁸¹ Due to this segregation, self-employment has been described as a “poverty trap.”²⁸² This is a result of structural constraints that prevent the provision of social protection to the self-employed.²⁸³

This chapter provides an analysis of self-employment in South Africa. It investigates the extent to which self-employed workers are protected under the South African social protection system by analysing statutory provisions regulating social security. The chapter consists of three main sections. The first section discusses the size and trends of self-employment in South Africa. The second section explores the role and importance of self-employment in South Africa. The last section examines the obstacles to the inclusion of self-employed workers in the social protection system. In discussing these issues, reference will be made to the impact of the outbreak of the COVID-19 pandemic on self-employed workers.

²⁸⁰ ‘South Africa Economic Update: South Africa’s Labour Market Can Benefit from Young Entrepreneurs, Self-Employment’ available at <https://www.worldbank.org/en/country/southafrica/publication/south-africa-economic-update-south-africa-s-labor-market-can-benefit-from-young-entrepreneurs-self-employment> (accessed 6 September 2022).

²⁸¹ ‘Twenty Year Review South Africa Background Paper: Social Protection 1994 – 2014’ available at <https://www.dpme.gov.za/publications/20%20Years%20Review/20%20Year%20Review%20Documents/20YR%20Social%20Protection.pdf> (5 March 2022).

²⁸² Philip K ‘Inequality and Economic Marginalisation: How the Structure of the Economy Impacts on Opportunities on the Margins’ (2010) 14 *Law, Democracy and Development* 14.

²⁸³ Philip K ‘Inequality and Economic Marginalisation: How the Structure of the Economy Impacts on Opportunities on the Margins’ (2010) 14 *Law, Democracy and Development* 14.

3.2 SIZE AND TRENDS OF SELF-EMPLOYMENT IN SOUTH AFRICA

Self-employed workers create their own employment opportunities and exercise, in some cases, autonomy over their unincorporated businesses.²⁸⁴ These workers seek their own work opportunities rather than being provided with work by an employer.²⁸⁵ An independent contractor is also classified as a self-employed worker.²⁸⁶ The majority of these workers are vulnerable and operate small businesses run without any employees.²⁸⁷ These vulnerable self-employed workers are classified within the survivalist tier of the broader informal economy, often termed ‘improvisatory strategies of survival’.²⁸⁸ For instance, a participant in a fieldwork study in South Africa claimed that her company selling sheep skulls wasn't particularly profitable and was more of a survival strategy.²⁸⁹

According to the ILO, seven in ten workers are self-employed worldwide.²⁹⁰ Research shows that in South Africa, 17 per cent of the workforce were self-employed in 2020.²⁹¹ Examples of self-employed workers include own-account workers and platform workers.²⁹² Own-account workers are those workers who work on their own account but may engage one or more people on a non-continuous basis.²⁹³ Platform workers engage in work that is coordinated and handled by online-web based or app-based platforms such as Uber.²⁹⁴

²⁸⁴ South African Law Commission Discussion Paper 153 (Project 143) *Maternity and Parental Benefits for Self-Employed Workers in the Informal Economy* (2021) xxvi; Platform workers are examples of self-employed workers who do not exercise autonomy in their business.

²⁸⁵ Kumalo SN & Kaseeram I ‘The determinants of self-employment of black entrepreneurs in Ladysmith, KwaZulu-Natal’ 2019 *Acta Commercii* 2 (hereafter The determinants of self-employment of black entrepreneurs).

²⁸⁶ South African Law Commission Discussion Paper 153 (Project 143) *Maternity and Parental Benefits for Self-Employed Workers in the Informal Economy* (2021) xxvi.

²⁸⁷ Tunio MN ‘The study of self-employment at SMEs Level with Reference to Poverty in Developing Countries’ (2017) 6 *Business and Management Research* 36.

²⁸⁸ Makaluzo N & Burger R ‘Job-seeker entry into the two-tiered informal sector in South Africa’ in Fourie FCVN (ed) *The South African informal sector: Creating jobs, reducing poverty* (2018) Cape Town: Human Sciences Research Council Press 179 (hereafter Job-seeker entry); Ranyane KA ‘Survivalist Entrepreneurship: An Income Generating Alternative for the Unemployed populace’ (2015) 6 *Mediterranean Journal of Social Sciences* 301: A survivalist enterprise is a business that is considered not to have the capacity to make money and create jobs.

²⁸⁹ Zizzamia RMA ‘Is employment a panacea for poverty in South Africa? A mixed-methods investigation’ (2018) University of Cape Town: Southern Africa Labour and Development Research Unit 13.

²⁹⁰ ILO ‘Small businesses and self-employed provide most jobs worldwide, new ILO report says’ available at https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_723409/lang--en/index.htm (accessed 6 September 2022).

²⁹¹ Moshikaro L ‘Employment trends in the South African economy’ (2020) Pretoria: Trade & Industrial Policy Strategies 2.

²⁹² South African Law Commission Discussion Paper 153 (Project 143) *Maternity and Parental Benefits for Self-Employed Workers in the Informal Economy* (2021) xxiv.

²⁹³ ‘Resolution concerning the International Classification of Status in Employment (ICSE) Adopted by the Fifteenth International Conference of Labour Statisticians (January 1993)’ available at https://www.ilo.org/global/statistics-and-databases/standards-and-guidelines/resolutions-adopted-by-international-conferences-of-labour-statisticians/WCMS_087562/lang--en/index.htm (accessed 9 September 2022).

²⁹⁴ Fredman S et al ‘Thinking Out of the Box: Fair Work for Platform Workers’ (2020) 31 *King’s Law Journal* 2.

3.3 CHARACTERISTICS OF SELF-EMPLOYMENT IN SOUTH AFRICA

3.3.1 Lack of infrastructure and unsafe work spaces

Indisputably, self-employment offers a way out for unemployed South Africans affected by the endemic socio-economic problems of poverty, inequality and unemployment.²⁹⁵ These workers brave the harsh working conditions, accept the low incomes and the absence of prospects of upward mobility inherent in the self-employment sector in order to earn an income.²⁹⁶

Vulnerable self-employed workers lack proper infrastructure and rely on temporary infrastructure or open spaces to conduct business.²⁹⁷ This is primarily because they launch their businesses out of desperation without adequate resources.²⁹⁸ This lack of proper infrastructure and unfavourable weather conditions often disrupts their business activities, preventing them from earning an income.²⁹⁹

Safety also remains an issue for self-employed workers. Vulnerable self-employed workers are easy targets for criminals due to inadequate security measures.³⁰⁰ They often suffer financial losses or property damage owing to crimes such as theft and robbery.³⁰¹ In a study conducted in Cape Town, 45 per cent of the self-employed workers interviewed expressed concern for their safety because of crime.³⁰²

3.3.2 Vulnerability of self-employed workers

Unlike self-employed professionals, the majority of self-employed workers in South Africa are engaged in precarious work. Precarious work 'is a multi-dimensional concept referring to objective job characteristics that involve insecurity, such as a low level of regulatory protection, low wages, high employment insecurity and a low level of employee control over wages, hours

²⁹⁵ Kumalo SN & Kaseeram I 'The determinants of self-employment of black entrepreneurs' (2019) 1.

²⁹⁶ Makaluza N & Burger R 'Job-seeker entry' (2018) 179.

²⁹⁷ Pieterse M 'Rights, Regulation and Bureaucratic Impact: The Impact of Human Rights Litigation on the Regulation of Informal Trade in Johannesburg' (2017) 20 *PER / PELJ* 7 (hereafter Rights, Regulation and Bureaucratic Impact).

²⁹⁸ Gamielien F & van Niekerk L 'Street vending in South Africa: An entrepreneurial occupation' (2017) 47 *South African Journal of Occupational Therapy* 24 (hereafter Street vending in South Africa).

²⁹⁹ Gamielien F & van Niekerk L 'Street vending in South Africa' (2017) 27.

³⁰⁰ The impact of crime on small businesses in South Africa: A study commissioned by the South African Presidency' https://www.gov.za/sites/default/files/gcis_document/201409/impactcrimesb1.pdf (accessed 18 September 2022).

³⁰¹ 'The impact of crime on small businesses in South Africa: A study commissioned by the South African Presidency' https://www.gov.za/sites/default/files/gcis_document/201409/impactcrimesb1.pdf (accessed 18 September 2022); Grabruker K & Grimm M 'Does Crime Deter South Africans from Self-Employment?' (2018) 413.

³⁰² Roncolato L & Willoughby J 'Job Quality Complexities' (2017) 49.

and working conditions.³⁰³ These workers mostly engage in low-earning activities for basic survival to meet their immediate material needs in their households.³⁰⁴

The COVID-19 crisis exposed and exacerbated the deep-rooted vulnerability of self-employed workers.³⁰⁵ Among other things, the restricted mobility of people impacted negatively on the low earnings realised by self-employed workers.³⁰⁶ The majority of vulnerable self-employed workers reported zero earnings in April 2020 in South Africa.³⁰⁷ In contrast to formal workers, who were either furloughed and benefited from COVID-19 Temporary Employee Relief Scheme (TERS) or were retrenched and benefited from the UIF pay-outs, self-employed workers struggled to support themselves and their family members.³⁰⁸ Stats SA reported that formal non-agricultural sector lost 648 000 jobs in the second quarter of 2020.³⁰⁹ For instance, a study conducted in KwaZulu Natal showed that over 75 per cent of participants in KwaDukuza Municipality and over 80 per cent in eThekweni Municipality reported having trouble affording to buy food, pay for daily living expenditures, and pay their rent as a result of the pandemic's effects on self-employed workers' livelihoods.³¹⁰

3.3.3 Lack of protection and decent work deficits

Many self-employed workers work outside the protective scope of legal or formal arrangements. As a result, these workers experience decent work deficits.³¹¹ In other words, many self-employed have limited rights at work, lack work-related social protection measures

³⁰³ Campbell I & Price R 'Precarious work and precarious workers: Towards an improved conceptualisation' (2017) 27 *The Economic and Labour Relations Review* 315.

³⁰⁴ Lloyd N & Leibbrandt M Entry and exit from informal enterprise ownership in South Africa in Fourie FCVN (ed) *The South African informal sector: Creating jobs, reducing poverty* (2018) 172.

³⁰⁵ International Labour Organisation *World Social Protection Report 2020–22: Social protection at the crossroads – in pursuit of a better future* (2021) Geneva: ILO 19.

³⁰⁶ Thulare MH & Moyo M 'COVID-19 and street traders in the City of uMhlatuze, KwaZulu-Natal, South Africa: On responses and adaptation mechanisms' (2021) *Cogent Social Sciences* 7.

³⁰⁷ Rogan M & Skinner C 'The Covid-19 crisis and the South African informal economy' Locked out' of livelihoods and employment' (2020) National Economic Dynamic Study 22.

³⁰⁸ Thulare MH & Moyo M 'COVID-19 and street traders in the City of uMhlatuze, KwaZulu-Natal, South Africa: On responses and adaptation mechanisms' (2021) *Cogent Social Sciences* 7: Department of National Treasury 'Unemployment Insurance Fund (UIF) and COVID-19' available at https://www.gov.za/sites/default/files/gcis_document/202005/UIF%20and%20COVID-19.pdf (accessed 3 January 2023).

³⁰⁹ Stats SA 'SA loses more than 600K formal sector jobs during COVID-19 lockdown' available at <https://www.statssa.gov.za/?p=13690> (accessed 15 April 2023).

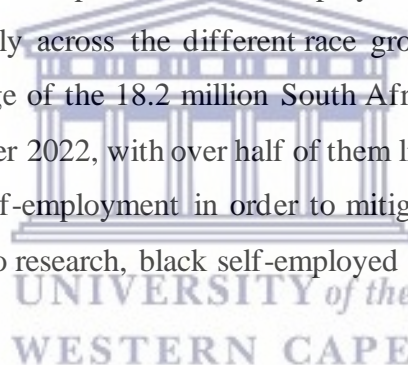
³¹⁰ 'COVID-19 and the informal economy in South Africa' available at <https://www.wits.ac.za/media/wits-university/research/coe-human/documents/COVID-19-and-the-informal-economy-in-South-Africa.pdf> (accessed 7 February 2023).

³¹¹ ILO defines decent work as 'involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for all, better prospects for personal development and social integration, freedom for people to express their concerns, organise and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.' See 'Decent Work' available at <https://www.ilo.org/global/topics/decent-work/lang--en/index.htm> (accessed 08 August 2020).

and do not participate in social dialogue. The absence of work rights has allowed exploitative working conditions for these workers.³¹² For instance, self-employed workers endure exploitative working conditions such as lengthy working hours as a result of entrepreneurial competition.³¹³ Similarly, the misclassification of self-employed workers, for example platform workers, has aided in denying them social security and labour protection. Misclassification attempts to hide or alter the employment relationship, either by renaming it or giving it a different legal description that affords the worker less protection.³¹⁴ Within this context, employers wilfully misclassify workers to escape their obligations under labour or social security legislation.³¹⁵ As discussed in detail in chapter two, South African social security legislation only affords protection to employees who fall within the definition of an employee.³¹⁶ This misclassification, coupled with the limitations imposed by the definitions of the term employee in the relevant social insurance legislation, results in ineligibility to social insurance schemes for self-employed workers.³¹⁷

3.3.4 Race, age and gender segmentation

In South Africa, there is a relationship between self-employment, race, age and gender. Self-employment differs dramatically across the different race groups.³¹⁸ Black South Africans constitute the greater percentage of the 18.2 million South Africans estimated to be living in extreme poverty as of September 2022, with over half of them living below the poverty line.³¹⁹ As a result, they engage in self-employment in order to mitigate the effects of poverty and unemployment.³²⁰ According to research, black self-employed workers are disproportionately



³¹² Fourie ES 'Non-Standard Workers: The South African Context, International Law and Regulation by the European Union' (2008) 4 *PER / PELJ* 2008 111.

³¹³ Boissevain J et al 'Ethnic entrepreneurs and ethnic strategies' in Waldinger R, Aldrich H & Ward R (eds) *Ethnic entrepreneurs: Immigrant business in industrial societies* (1990) London: Sage 145.

³¹⁴ International Labour Organisation *The scope of the employment relationship* (2003) Geneva: ILO 25.

³¹⁵ Osiki AE *The interdependence of human rights: a case study with recommendations for law reform to promote decent work in the informal economy and street vending sector in Nigeria* (unpublished PHD thesis, University of Cape Town, 2018) 68.

³¹⁶ McGregor M et al *Labour Law Rules!* (2017) Cape Town: Siber Ink CC 20.

³¹⁷ Carre F '(In)Dependent contractor misclassification' (2015) Washington, DC: Economic Policy Briefing 2.

³¹⁸ Fairlie RW & Meyer BD 'Ethnic and Racial Self-Employment Differences and Possible Explanations' (1996) 31 *The Journal of Human Resources* 757.

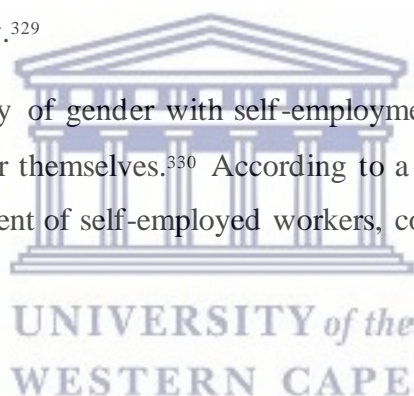
³¹⁹ Statista 'Number of people living in extreme poverty in South Africa from 2016 to 2025' <https://www.statista.com/statistics/1263290/number-of-people-living-in-extreme-poverty-in-south-africa/#:~:text=Sep%209%2C%202022%20As%20of%202022%2C%20around%2018.2,wast%20forecast%20to%20increase%20in%20the%20coming%20years> (accessed 14 September 2022); Chutel L 'Post-apartheid South Africa is failing the very people it liberated' <https://qz.com/africa/1061461/post-apartheid-south-africa-is-failing-the-very-people-it-liberated/> (accessed 14 September 2022).

³²⁰ Ranyane KA 'Survivalist Entrepreneurship' (2015) 302.

clustered in the vulnerable self-employed category when compared to white self-employed workers, who typically operate in high-skilled self-employment.³²¹

Similarly, another consideration for self-employment is age. However, there are conflicting views on how age affects self-employment.³²² The first view suggests that the rate of participation in self-employment rises as age increases.³²³ In this context, self-employment is a destination for workers who become unemployed, depending on factors such as previous work and life experiences.³²⁴ Thus, older adults constantly have significant rates of self-employment than their younger counterparts.³²⁵ The second view argues that self-employment is quite likely to be undertaken by younger individuals.³²⁶ A major reason for this is that government incentives encourage youth self-employment.³²⁷ For example, the Gauteng Provincial Government sought to provide 500 000 unemployed young people in Gauteng with entrepreneurial skills to cope with self-employment through the Tshepo 500 000 programme.³²⁸ Nonetheless, research indicates that very few young people view self-employment as a realistic career option, majority prefer more stable formal employment because of its links to social mobility and economic stability.³²⁹

In terms of the intersectionality of gender with self-employment, men are reportedly more likely than women to work for themselves.³³⁰ According to a study conducted in KwaZulu Natal, men make up 59.6 per cent of self-employed workers, compared to women who make



³²¹ Casale D 'What has the feminisation of the labour force 'bought' women in South Africa? Trends in labour force participation, employment and earnings, 1995-2001' (2004) University of Cape Town: Development Policy Research Unit 20-21.

³²² Kumalo SN & Kaseeram I 'The determinants of self-employment of black entrepreneurs' (2019) 3.

³²³ Halvorsen CJ & Morrow-Howel N 'A Conceptual Framework on Self-Employment in Later Life: Toward a Research Agenda' (2017) 3 *Work, Aging and Retirement* 313 (hereafter A Conceptual Framework on Self-Employment in Later Life).

³²⁴ Halvorsen CJ & Morrow-Howel N 'A Conceptual Framework on Self-Employment in Later Life' (2017) 321.

³²⁵ Halvorsen CJ & Morrow-Howel N 'A Conceptual Framework on Self-Employment in Later Life' (2017) 313.

³²⁶ Kumalo SN & Kaseeram I 'The determinants of self-employment of black entrepreneurs' (2019) 3.

³²⁷ Kumalo SN & Kaseeram I 'The determinants of self-employment of black entrepreneurs' (2019) 3.

³²⁸ 'Gauteng Township Economy Revitalisation Strategy 2014-2019' available at <https://www.gep.co.za/wp-content/uploads/2018/12/Gauteng-Township-Economy-Revitalisation-Strategy-2014-2019.pdf> (accessed 10 September 2022); Tshepo 500 000 is a Gauteng Provincial Government initiative designed to provide 500 000 jobless women, youth, and those with disabilities with chances for entrepreneurship and employment.

³²⁹ Dawson HJ 'Here's a look at what the unemployed youth in SA is up to' *The Conversation* 2 March 2022 available <https://www.thesouthafrican.com/lifestyle/youth-unemployment-south-africa-informal-business/> (accessed 10 September 2022).

³³⁰ Kumalo SN & Kaseeram I 'The determinants of self-employment of black entrepreneurs' (2019) 3; Magidimisha HH & Gordon S 'Profiling South African gender inequality' (2015) *Journal of Gender Studies* 278.

up 40 per cent.³³¹ This is likely a result of patriarchal expectations placed on women in South African society, which limit their role to that of home minders.³³²

3.3.5 Location of workplaces

Self-employed workers mostly operate out of private residences, cars, public places such as streets pavements, taxi ranks, street corners, and at traffic lights, among other places.³³³ The workplaces of self-employed workers has been subject to criticism from both the public and the authorities.³³⁴ For instance, in Johannesburg a privately-owned company sought an interdict against street traders claiming their presence increased the spread of COVID-19.³³⁵ The imposition and enforcement of legislative limitations on the type of temporary structure that self-employed workers may use is another challenge they encounter.³³⁶ For example, Western Cape Provincial By-Laws for the Supervision and Control of Business of Street Vendor, Pedlar and Hawker in Western Cape, stipulate that any structure erected by street traders for business must be 'aesthetically acceptable to the local authority.'³³⁷ The implication of this law is that if the structure fails the aesthetic test, then the city authorities have the legal right to take appropriate action.

3.3.6 Low Literacy levels

Studies have shown that a major characteristic of vulnerable self-employment is the low literacy rate of these workers.³³⁸ In 2020, the Department of Higher Education and Training reported that there were 3.7 million illiterate adults in South Africa.³³⁹ This illiteracy is higher among self-employed workers, most of whom are black.³⁴⁰ The lack of understanding of basic



³³¹ Kumalo SN & Kaseeram I 'The determinants of self-employment of black entrepreneurs' (2019) 3.

³³² Magidimisha HH & Gordon S 'Profiling South African gender inequality' (2015) 282.

³³³ Smit N and Mpedi LG 'Social protection for developing countries' (2010) *Law, Democracy & Development*. Alcock GG 'Hawker hotspots & table top traders' available at https://www.supermarket.co.za/SR_Downloads/S&R%202021-3%20Informal%20sector_hawker%20hotspots.pdf (accessed 18 September 2022).

³³⁴ Pieterse M 'Rights, Regulation and Bureaucratic' (2017) 10; Gamielien F & van Niekerk L 'Street vending in South Africa' (2017) 25.

³³⁵ 'Punished for their poverty: Street traders in South Africa' available at <https://www.wiego.org/punished-their-poverty-street-traders-south-africa> (accessed 24 July 2022).

³³⁶ Matzikama Municipality: By-law for the Supervision and Control of Business of Street Vendor, Pedlar and Hawker Published in Western Cape PN 96 *Provincial Gazette* 5996 4 April 2003, as amended. Matzikama is a municipality in the West Coast District that governs the northernmost part of the Western Cape province of South Africa.

³³⁷ Section 3(1)(a)(iii) of the Matzikama Municipality: By-law for the Supervision and Control of Business of Street Vendor, Pedlar and Hawker Published in Western Cape PN 96 *Provincial Gazette* 5996 4 April 2003.

³³⁸ Cho Y, Robalino D & Watson D 'Supporting self-employment and small-scale entrepreneurship: potential programs to improve livelihoods for vulnerable workers' (2016) *IZA Journal of Labour Policy* 5.

³³⁹ Khuluvhe M *Adult Illiteracy in South Africa* (2022) Pretoria: Department of Higher Education and Training 4.

³⁴⁰ Smit N and Mpedi LG 'Social protection for developing countries' (2010) *Law, Democracy & Development* 18.

mathematics and low literacy among self-employed workers hinders the ability to establish, run and sustain a business.³⁴¹ Indeed these workers are vulnerable to business malpractices, such as incorrect pricing, poor recordkeeping, ineffective inventory control and improper cash flow management.³⁴² In reality, because of literacy issues, self-employed workers are less able to participate in social insurance administration tasks such as remitting contributions.³⁴³

3.3.7 Ease of entry into self-employment

Self-employment can be started by workers with minimal levels of competence and does not require significant amounts of capital.³⁴⁴ The majority of self-employed workers rely on their own funds or support from family or friends for initial funding.³⁴⁵ As stated in paragraph 2.4 above, research indicates that some beneficiaries of grants use their cash transfers to start up self-employment initiatives.³⁴⁶ In any event, self-employed workers don't typically operate their business from commercial venues but rather from their homes, parks, and sidewalks.³⁴⁷ This enables them to set up their self-employment activities without experiencing many complex administrative hurdles and incurring heavy costs. Furthermore, there aren't many professional bodies regulating self-employment because this sector is unstable and precarious.³⁴⁸ Therefore, self-employed workers do not need to comply with pre-set requirements and they can by-pass government's requirements in the formal economy.

3.4 THE IMPORTANCE OF SELF-EMPLOYMENT IN SOUTH AFRICA

In South Africa, self-employment fulfils revenue-generating and employment-creating purposes.³⁴⁹ These purposes contribute to preventing poverty for the families of poor South Africans.³⁵⁰

³⁴¹ Cho Y, Robalino D & Watson D 'Supporting self-employment and small-scale entrepreneurship (2016) 5.

³⁴² Cho Y, Robalino D & Watson D 'Supporting self-employment and small-scale entrepreneurship (2016) 5.

³⁴³ International Labour Organisation *Ensuring better social protection for self-employed workers* (2020) Geneva: ILO 7.

³⁴⁴ Arias J 'Informal Vendors in Johannesburg, South Africa' 2019 Philadelphia: Penn Institute for Urban research 2.

³⁴⁵ Cichello et al 'Perceived Barriers to Entry into Self-employment in Khayelitsha, South Africa: Crime, Risk, and Start-up Capital Dominate Profit Concerns' (2011) University of Cape Town: Centre for Social Science Research 23.

³⁴⁶ United Nations Children's Fund *Addressing the myths* (2017) 2.

³⁴⁷ Fundie AMS, Chisoro C & Karodia AM 'The challenges facing informal traders in the Hillbrow area of Johannesburg' (2015) 4 *Kuwait Chapter of Arabian Journal of Business and Management Review* 51.

³⁴⁸ Goldman T 'Organizing in South Africa's Informal Economy: An Overview of Four Sectoral Case Studies' (2003) Geneva: International Labour Organisation 1.

³⁴⁹ Ranyane KA 'Survivalist Entrepreneurship (2015) 305.

³⁵⁰ Ranyane KA 'Survivalist Entrepreneurship (2015) 305.

3.4.1 Employment generation

Fields states that in many developing countries, people often create their own employment opportunities due to scarce employment possibilities.³⁵¹ Survivalist self-employment is a source of income and employment for unemployed persons.³⁵² Significant worldwide economic crises have reduced South Africa's growth potential, making it more challenging to find employment in the formal sector.³⁵³ The Quarterly Labour Force Survey reports that the official unemployment rate stood at 32,9 per cent in the first quarter of 2023.³⁵⁴ As a result of the lack of suitable employment opportunities, many South Africans are forced into self-employment as a last resort.³⁵⁵ Indeed, for the majority of South Africans affected by poverty and unemployment, the most obvious option is to start small business initiatives such as selling fruit and vegetables, clothes, fast food, and operating 'spaza' shops among others.³⁵⁶ For instance, waste picking has created jobs for more than 60,000 people in South Africa.³⁵⁷

In 2020, it was estimated that around 16.31 million South Africans were living in extreme poverty, with the poverty line set at about R33 per day.³⁵⁸ For the majority of these South Africans, self-employment produces some levels of income.³⁵⁹ Most workers consequently turn to self-employment as a means of living and generating an income after losing their jobs.³⁶⁰

3.4.2 Revenue generation

Besides contributing to family income, self-employment contributes to the broader economy through revenue generation. In industrialised nations, informal trade makes up between 10 and 20 per cent of the Gross Domestic Product (GDP), whereas in developing nations, it can reach

³⁵¹ Fields GS 'Self-employment and poverty in developing countries' 2019 *IZA World of Labour* 2.

³⁵² Ranyane KA 'Survivalist Entrepreneurship' (2015) 305.

³⁵³ Kumalo SN & Kaseeram I 'The determinants of self-employment of black entrepreneurs' (2019) 1.

³⁵⁴ Quarterly Labour Force Survey (QLFS) – Q1:2023 available at <https://www.statssa.gov.za/publications/P0211/Presentation%20QLFS%20Q1%202023.pdf> (accessed on 30 May 2023).

³⁵⁵ Wilmans G & Rashied N 'Self-employment through ride-hailing: Drivers' experiences in Johannesburg, South Africa' (2021) 21 *Acta Commercii* 1; Gamielien F & van Niekerk L 'Street vending in South Africa' (2017) 25.

³⁵⁶ Fundie AMS, Chisoro C & Karodia AM 'The challenges facing informal traders in the Hillbrow area of Johannesburg' (2015) 4 *Kuwait Chapter of Arabian Journal of Business and Management Review* 51 (hereafter *The challenges facing informal traders*).

³⁵⁷ Godfrey L 'Quantifying economic activity in the informal recycling sector in South Africa' (2021) 117 *South African Journal of Science* 1; Tebogo Maleka and Petronella DeWet 'Helping South Africa's waste pickers face the COVID-19 crisis and beyond' available at <https://www.unido.org/stories/helping-south-africas-waste-pickers-face-covid-19-crisis-and-beyond> (accessed 9 September 2022).

³⁵⁸ Galal S 'Number of people living in extreme poverty in South Africa 2016-2025' available at <https://www.statista.com/statistics/1263290/number-of-people-living-in-extreme-poverty-in-south-africa/#:~:text=As%20of%202020%2C%20around%2016.31,increase%20in%20the%20coming%20years> (accessed 8 September 2022).

³⁵⁹ Magidimisha HH & Gordon S 'Profiling South African gender inequality' (2015) 288.

³⁶⁰ Rogan M & Skinner C 'The Covid-19 crisis and the South African informal economy' *Locked out' of livelihoods and employment* (2020) National Economic Dynamic Study 6.

up to 60 per cent.³⁶¹ For instance, in South Africa, informal traders are estimated to contribute 6 per cent to the GDP.³⁶² The economy of South Africa has long included informal trade, with Gauteng accounting for 30 per cent of such trade.³⁶³

3.5 CHALLENGES TO THE INCLUSION OF SELF-EMPLOYED WORKERS IN SOCIAL PROTECTION

Over the past 28 years, South Africa has built an advanced social protection system with wide coverage.³⁶⁴ Securing the constitutional right to access social security through the provision of social insurance and social assistance for those in need has been a significant accomplishment for South Africa since 1994.³⁶⁵ However, self-employed workers do not fully enjoy the right to have access to social security due to exclusion from social insurance.³⁶⁶ These workers have a limited safety net as they are not eligible for employment related social security benefits.³⁶⁷ This creates a two-tier social security system where workers in formal employment have access to most social insurance schemes coverage, whilst the self-employed, on the other hand, are stripped of the constitutional right to have access to social security, specifically social insurance. This section examines the difficulties that self-employed workers face while trying to access social protection.

3.5.1 Legal exclusion

Due to the focus on salaried workers in most social security legislation, self-employed workers are essentially excluded from social protection coverage.³⁶⁸ Generally, employment-related social insurance schemes in South Africa are only available to those who qualify as employees in terms of the UIA and the COIDA. The social security gaps for self-employed workers are a result of such legislative exclusion.³⁶⁹ A particular challenge is the proper classification of an

³⁶¹ Raniga T & Ringson J 'The Implications of COVID-19 on Informal Trading in Gauteng, South Africa' (2022) 11 *African Journal of Governance and Development* 310.

³⁶² Raniga T & Ringson J 'The Implications of COVID-19 on Informal Trading in Gauteng, South Africa' (2022) 11 *African Journal of Governance and Development* 310.

³⁶³ Raniga T & Ringson J 'The Implications of COVID-19 on Informal Trading in Gauteng, South Africa' (2022) 11 *African Journal of Governance and Development* 311.

³⁶⁴ 'Twenty Year Review South Africa Background Paper: Social Protection 1994 – 2014' available at <https://www.dpme.gov.za/publications/20%20Years%20Review/20%20Year%20Review%20Documents/20YR%20Social%20Protection.pdf> (5 March 2022).

³⁶⁵ Triegaardt JD 'Accomplishments and challenges for partnerships in development in the transformation of social security in South Africa' (2009) *Development Bank of Southern Africa* 6 (hereafter Accomplishments and challenges for partnerships).

³⁶⁶ Triegaardt JD 'Accomplishments and challenges for partnerships' (2009) 4.

³⁶⁷ Triegaardt JD 'Accomplishments and challenges for partnerships' (2009) 4.

³⁶⁸ International Labour Organization *Extending social protection to workers in the formal economy: Lessons from international experience* (2021) 2.

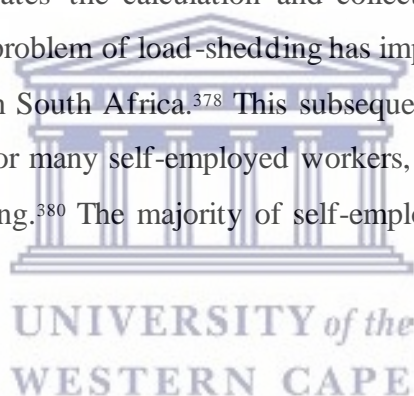
³⁶⁹ International Labour Organization *Extending social protection to workers in the formal economy: Lessons from international experience* (2021) 2.

employment relationship in circumstances where an employment relationship is vague or ambiguous.³⁷⁰ As a result, the misclassified workers are ineligible for social insurance benefits.³⁷¹

3.5.2 Costs and inadequate financial arrangements

Besides legal exclusion, financial costs also prevent self-employed workers from accessing social protection.³⁷² As mentioned above, this is because most social insurance programmes in South Africa, such as the UIF and occupational pensions, are work-related and only accessible to employees that make regular contributions to the fund.³⁷³ Even though some voluntary schemes such as voluntary pensions are available to self-employed workers, it is difficult for them to participate because they do not have the means to afford paying both the employees' and the employers' contribution.³⁷⁴ Therefore, unless the mechanisms are adapted, self-employed workers cannot afford to pay social security contributions due to poor incomes.³⁷⁵

In addition, their self-employed workers earnings tend to fluctuate depending on varied circumstances.³⁷⁶ This complicates the calculation and collection of contributions.³⁷⁷ More recently, the ongoing national problem of load-shedding has implications on the operations of some self-employed workers in South Africa.³⁷⁸ This subsequently has a ripple effect on the earnings of these workers.³⁷⁹ For many self-employed workers, their tools of the trade are not operational during load shedding.³⁸⁰ The majority of self-employed workers do not have the



³⁷⁰ International Labour Organization *Extending social protection to workers in the formal economy: Lessons from international experience* (2021) 2.

³⁷¹ Carre F '(In)Dependent contractor misclassification' (2015) Washington, DC: Economic Policy Briefing 2.

³⁷² Mpedi LG 'Social Protection Law' (2017) 45.

³⁷³ Mpedi LG 'Social Protection Law' (2017) 45.

³⁷⁴ Nguyen QA & da Cunha NMS *Extension of social security to workers in informal employment in the Asean region* (2019) 42.

³⁷⁵ International Labour Organization *Extending social security and facilitating transition* (2019) 3.

³⁷⁶ International Labour Organization *Better social protection* (2020) 6.

³⁷⁷ International Labour Organization *Better social protection* (2020) 6.

³⁷⁸ Sibiya N, Dlamini P & Koka M 'Eskom cuts slash earning power of Joburg's self-employed' *Sowetan Live* 20 September 2022 <https://www.sowetanlive.co.za/news/south-africa/2022-09-20-eskom-cuts-slash-earning-power-of-joburgs-self-employed/> (accessed 26 September 2022)

³⁷⁹ 'Impact of load shedding on small growing business' available at <https://tmmbbs.co.za/impact-of-load-shedding-on-small-growing-businesses/> (accessed 22 September 2022).

³⁸⁰ 'Small business survival in an age of load shedding' available at <https://www.fanews.co.za/article/views-letters-interviews-comments/18/all/1102/small-business-survival-in-an-age-of-load-shedding/28334> (accessed 2 August 2022).

privilege of an alternate power supply.³⁸¹ Therefore, they do not earn any income during the periods of loads shedding.³⁸²

3.5.3 Administrative arrangements

Apart from inadequate financial capacity, lack of administrative skills is another barrier that restricts access to social insurance for self-employed workers.³⁸³ As alluded to earlier, most workers are forced into self-employment by the harsh economic conditions.³⁸⁴ They lack the critical skills needed in effective business management, such as sales and marketing, customer relations, accounts, and information and communication technologies.³⁸⁵ For instance, a study conducted in Cape Town showed that many self-employed workers struggle to provide reports on their monthly earnings.³⁸⁶ In the same study, some self-employed respondents had difficulties in differentiating between revenue and earnings.³⁸⁷ This is partially symptomatic of the deficiency of administrative skills among the self-employed.³⁸⁸

Self-employed people face even greater administrative hurdles when it comes to contributing to communal social insurance funds.³⁸⁹ This is because they do not have a specific employer to serve as an intermediary in the collection and remittance of contributions.³⁹⁰ For instance, self-employed workers cannot cope with the complex and time-consuming registration and payment procedures in the administration of social insurance.³⁹¹ This is worsened by the fact that self-employed workers have unstable revenues, making it difficult to calculate their social insurance contributions as a proportion of their monthly salary.³⁹²

3.5.4 Lack of information

Most self-employed workers are not sufficiently informed about social protection to make solid decisions and firm commitments to make regular contributions.³⁹³ More often than not, they do

³⁸¹ <https://tmmbs.co.za/impact-of-load-shedding-on-small-growing-businesses/> (accessed 18 July 2022).

³⁸² 'Small business survival in an age of load shedding' available at <https://www.fanews.co.za/article/views-letters-interviews-comments/18/all/1102/small-business-survival-in-an-age-of-load-shedding/28334> (accessed 2 August 2022).

³⁸³ Smit N & Mpedi LG 'Social protection for developing countries' (2010) 20.

³⁸⁴ Cho Y, Robalino D & Watson D 'Supporting self-employment and small-scale entrepreneurship (2016) 5.

³⁸⁵ Ngwenya M et al 'Skills related underemployment amongst South Africa's informally employed and self-employed (2020) 1.

³⁸⁶ Roncolato L & Willoughby J 'Job Quality Complexities' (2017) 40.

³⁸⁷ Roncolato L & Willoughby J 'Job Quality Complexities' (2017) 40.

³⁸⁸ Roncolato L & Willoughby J 'Job Quality Complexities' (2017) 40.

³⁸⁹ Smit N & Mpedi LG 'Social protection for developing countries' (2010) 20.

³⁹⁰ Nguyen QA & da Cunha NMS *Extension of social security to workers* (2019) 42.

³⁹¹ International Labour Organisation *Social Protection Spotlight: Extending social security to workers in the informal economy: Key lessons learned from international experience* (2021) Geneva: ILO 3 (hereafter *Social Protection Spotlight*).

³⁹² International Labour Organisation *Social Protection Spotlight* (2021) 129.

³⁹³ International Labour Organisation *Social Protection Spotlight* (2021) 62.

not know the legal rules governing access to social insurance because they lack exposure to documentary and electronic sources of information pertaining to social security.³⁹⁴ Knowledge about the current social security programmes, particularly concerning registration, contributions and accessing benefits is crucial for self-employed workers.³⁹⁵

Also, the lengthy periods of making contributions discourage many self-employed workers because they mostly focus on meeting immediate economic needs and not on long-term financial projections.³⁹⁶ Where benefits do not appear to meet their priority needs, they are unwilling to contribute to social insurance.³⁹⁷

3.5.5 Lack of integration and policy coherence

South Africa lacks a unified legislative foundation for social security that applies to all workers, whether they are self-employed or formally employed.³⁹⁸ The provision of social security by the private sector, for instance, still poses a significant obstacle to a comprehensive and integrated structure.³⁹⁹ The most obvious flaw in South Africa's social security system is the lack of a formal framework for mandatory insurance and pensions regardless of form or structure of work.⁴⁰⁰ Both membership in a pension or provident fund is currently optional for employees.⁴⁰¹ The self-employed worker, unlike formal employees, largely depend on the older person's grant for survival after retirement because they lack formal retirement savings.⁴⁰²

Despite this lack of integration, efforts have been made by the National Economic Development and Labour Council (NEDLAC) to embrace Comprehensive Social Security and Retirement Reforms by engaging the business community, labour and the community at

³⁹⁴ International Labour Organisation *Social Protection Spotlight* (2021) 4.

³⁹⁵ International Labour Organisation *Social Protection Spotlight* (2021) 97.

³⁹⁶ International Labour Organisation *Extension of Social Protection* (Date Unknown) Geneva: ILO 4.

³⁹⁷ International Labour Organisation *Social Protection Spotlight* (2021) 3.

³⁹⁸ Katiyatiya LM & Lubisi N 'Part B: The Role of Substantive Equality in Shaping Transformative Social Protection in South Africa into the Digital Platform Work' (2021) 25 *Journal of Poverty* 26.

³⁹⁹ 'Twenty Year Review South Africa Background Paper: Social Protection 1994 – 2014' available at <https://www.dpme.gov.za/publications/20%20Years%20Review/20%20Year%20Review%20Documents/20YR%20Social%20Protection.pdf> (5 March 2022).

⁴⁰⁰ Inter-Departmental Task Team on Social Security and Retirement Reform 'Comprehensive social security in South Africa' available at https://static.pmg.org.za/161128Comprehensive_Social_Security_in_South_Africa.pdf (accessed 22 September 2022).

⁴⁰¹ Inter-Departmental Task Team on Social Security and Retirement Reform 'Comprehensive social security in South Africa' available at https://static.pmg.org.za/161128Comprehensive_Social_Security_in_South_Africa.pdf (accessed 22 September 2022).

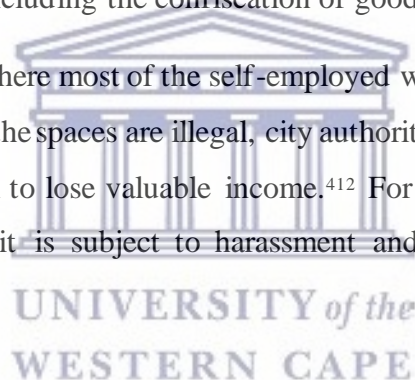
⁴⁰² Inter-Departmental Task Team on Social Security and Retirement Reform 'Comprehensive social security in South Africa' available at https://static.pmg.org.za/161128Comprehensive_Social_Security_in_South_Africa.pdf (accessed 22 September 2022).

large.⁴⁰³ In 2014, the Task Team engaged and reflected on the possibility of a policy to implement statutory social insurance coverage for workers that fall outside the category of the term employee.⁴⁰⁴ It was recommended that the state must put in place tools to accommodate irregular contributions and provide contribution subsidies if informal workers, self-employed included are to be covered.⁴⁰⁵

3.5.6 Negative perceptions of self-employment

Government officials sometimes hold negative perceptions of self-employed workers. Street vendors, for instance, are portrayed as having a detrimental impact on the aesthetic quality of the cities by local authorities.⁴⁰⁶ The sheer scope and complexity of self-employment livelihood practices in the inner city, has also been argued to overwhelm the already overburdened urban infrastructure.⁴⁰⁷ In addition, most of the spaces they use are regarded as illegal since they are not set aside for trade specifically.⁴⁰⁸ Even in spaces where they are permitted to trade, the spaces are regarded as temporary and the self-employed workers may be evicted at the will of the authorities.⁴⁰⁹ City authorities often subject self-employed workers, especially traders in open markets, to harassment, including the confiscation of goods as well as assault.⁴¹⁰

The majority of the locations where most of the self-employed workers operate are not allotted by the government.⁴¹¹ Because the spaces are illegal, city authorities often disrupt their workday without warning, causing them to lose valuable income.⁴¹² For example, a street vendor who does not have a trading permit is subject to harassment and disciplinary actions by city



⁴⁰³ National Economic Development And Labour Council 'NEDLAC Report Of The Comprehensive Social Security And Retirement Reform Task Team' available at <https://nedlac.org.za/wp-content/uploads/2021/08/Nedlac-report-on-Comprehensive-Social-Security-and-Retirement-Reforms.pdf> (accessed 1 May 2023).

⁴⁰⁴ National Economic Development And Labour Council 'NEDLAC Report Of The Comprehensive Social Security And Retirement Reform Task Team' available at <https://nedlac.org.za/wp-content/uploads/2021/08/Nedlac-report-on-Comprehensive-Social-Security-and-Retirement-Reforms.pdf> (accessed 1 May 2023).

⁴⁰⁵ National Economic Development And Labour Council 'NEDLAC Report Of The Comprehensive Social Security And Retirement Reform Task Team' available at <https://nedlac.org.za/wp-content/uploads/2021/08/Nedlac-report-on-Comprehensive-Social-Security-and-Retirement-Reforms.pdf> (accessed 1 May 2023).

⁴⁰⁶ Forkuor JB et al "Negotiation and management strategies of street vendors in developing countries: A narrative review" 2017 *SAGE* 3 (hereafter Negotiation and management strategies of street vendors).

⁴⁰⁷ Pieterse M 'Rights, Regulation and Bureaucratic' (2017) 5.

⁴⁰⁸ Fundie AMS, Chisoro C & Karodia AM 'The challenges facing informal traders' (2015) 49.

⁴⁰⁹ Fundie AMS, Chisoro C & Karodia AM 'The challenges facing informal traders' (2015) 49.

⁴¹⁰ Fundie AMS, Chisoro C & Karodia AM 'The challenges facing informal traders' (2015) 50.

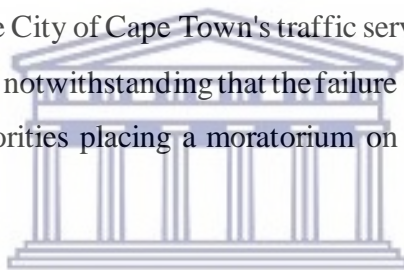
⁴¹¹ Fundie AMS, Chisoro C & Karodia AM 'The challenges facing informal traders' (2015) 49.

⁴¹² Fundie AMS, Chisoro C & Karodia AM 'The challenges facing informal traders' (2015) 49.

authorities, including seizure of products.⁴¹³ During the harassment, traders lose their commodities, with some closing down business after losing their capital assets.⁴¹⁴

Confiscation of self-employed workers' commodities poses a serious threat to their livelihood.⁴¹⁵ In some cases, they even shut their businesses down when they lose stock.⁴¹⁶ A good example is the seizure of street vendors' goods conducted in the city of Johannesburg under Operation Clean Sweep in 2013.⁴¹⁷ The city authorities forcibly removed over 6,000 street vendors from the city's central business district.⁴¹⁸ These self-employed workers lost their jobs overnight, and the local government had no clear plans to help them regain their economic means.⁴¹⁹ However, the Constitutional Court in *South African Informal Traders Forum and Others v City of Johannesburg and Others; South African National Traders Retail Association v City of Johannesburg and Others*, condemned the arbitrary eviction of traders from their stalls.⁴²⁰ The court noted that a fundamental component of human dignity is the ability of independent contractors to earn a living.⁴²¹

The plight of self-employed workers is further highlighted by the impoundment of almost 2,000 e-hailing vehicles in 2022 by the City of Cape Town's traffic services because they did not have operational permits.⁴²² This was notwithstanding that the failure to secure the operating licences was the result of the local authorities placing a moratorium on the granting of new permits to the drivers.⁴²³



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⁴¹³ Fundie AMS, Chisoro C & Karodia AM 'The challenges facing informal traders' (2015) 49.

⁴¹⁴ Fundie AMS, Chisoro C & Karodia AM 'The challenges facing informal traders' (2015) 49.

⁴¹⁵ Fundie AMS, Chisoro C & Karodia AM 'The challenges facing informal traders' (2015) 50.

⁴¹⁶ Fundie AMS, Chisoro C & Karodia AM 'The challenges facing informal traders' (2015) 50.

⁴¹⁷ Operation Clean Sweep was initiated by the government in October 2013 where members of the South African Police Services, the South African Revenue Service, and the Johannesburg Metropolitan Police Department launched a joint operation meant to rid the city of disorderly trading areas: Arias J 'Informal Vendors in Johannesburg' (2019) 2.

⁴¹⁸ Arias J 'Informal Vendors in Johannesburg, South Africa' 2019 Philadelphia: Penn Institute for Urban research (hereafter *Informal Vendors in Johannesburg*) 2.

⁴¹⁹ Arias J 'Informal Vendors in Johannesburg' (2019) 2.

⁴²⁰ *South African Informal Traders Forum and Others v City of Johannesburg and Others; South African National Traders Retail Association v City of Johannesburg and Others* [2014] ZACC. The court additionally ruled that a fundamental component of human dignity is the ability of independent contractors to earn a living.

⁴²¹ *South African Informal Traders Forum and Others v City of Johannesburg and Others; South African National Traders Retail Association v City of Johannesburg and Others* [2014] ZACC at para 31.

⁴²² Human L 'Uber, Bolt drivers' two-day strike highlights permit challenges, dangerous working conditions' *The Daily Maverick* 19 August 2022 available at <https://www.dailymaverick.co.za/article/2022-08-19-uber-bolt-drivers-two-day-strike-highlights-permit-challenges-dangerous-working-conditions/> (accessed 22 September 2022).

⁴²³ Human L 'Uber, Bolt drivers' two-day strike highlights permit challenges, dangerous working conditions' *The Daily Maverick* 19 August 2022 available at <https://www.dailymaverick.co.za/article/2022-08-19-uber-bolt-drivers-two-day-strike-highlights-permit-challenges-dangerous-working-conditions/> (accessed 22 September 2022).

Self-employed workers also have to contend with unfavourable public perceptions.⁴²⁴ The public views self-employed workers, especially those operating in city centres, as a symbol of anarchy and unrest.⁴²⁵ They also attribute the congestion in the streets and pavements to vendors.⁴²⁶ When vendors in Johannesburg's De Villiers Street were granted an order by the High Court to return to their stalls after being evicted, they were threatened with violence by angry members of the community.⁴²⁷ In addition to negative public perceptions, crime is also a major obstacle to self-employment.⁴²⁸ A study conducted in the township of Khayelitsha, Cape Town, concluded that according to public perception, crime is a barrier to self-employment.⁴²⁹ Furthermore, vulnerable self-employed workers are often viewed as dishonest people who deceive members of the public by working with criminals and drug traffickers.⁴³⁰

Furthermore, established and registered business owners harbour negative perceptions of the self-employed. In some instances, the business owners regard the self-employed as unfairly competing with them by selling pirated and counterfeit goods and commodities at reduced prices.⁴³¹ A survey conducted in Philippi, Cape Town, for instance, found that vendors of fruits, vegetables, and snacks are indeed in direct competition with supermarkets.⁴³² The researchers discovered evidence of established supermarkets competing directly with braaied meat and cooked food traders for the cultural food takeaway market.⁴³³

All these negative perceptions of self-employed workers threaten the viability of self-employed workers' economic activities, compromising their capacity to make voluntary social insurance contributions. Frequent disruptions of their economic activities lead to loss of income for self-employed workers, creates uncertainties over their financial future and greatly reduces their propensity to participate in social insurance schemes. For instance, the Johannesburg traders,

⁴²⁴ Gamielien F & van Niekerk L 'Street vending in South Africa' (2017) 25.

⁴²⁵ Forkuor JB et al 'Negotiation and management strategies of street vendors' 2017 *SAGE* 3.

⁴²⁶ Pieterse M 'Rights, Regulation and Bureaucratic' (2017) 5.

⁴²⁷ Mutandiro K 'Joburg traders fear for their future after their lawyers get death threats' *Groundup* 4 August 2022 available at <https://www.groundup.org.za/article/we-are-being-chased-away-by-the-very-same-person-who-is-collecting-rent-from-us-says-de-villiers-street-trader/> (accessed 24 September 2022).

⁴²⁸ Cichello at al 'Perceived Barriers to Entry into Self-employment' (2011) 27.

⁴²⁹ Cichello at al 'Perceived Barriers to Entry into Self-employment' (2011) 27.

⁴³⁰ Forkuor JB et al 'Negotiation and management strategies of street vendors (2017) 3.

⁴³¹ Forkuor JB et al 'Negotiation and management strategies of street vendors (2017) 6.

⁴³² Charman A, Bacq S & Brown K 'Supermarkets, street traders and spaza shops: spatial determinants of formal retailers' impact on informal micro-enterprises in Philippi, Cape Town' (2019) Wynberg: Department of Science and Technology – National Research Foundation 34 (hereafter Supermarkets, street traders and spaza shops).

⁴³³ Charman A, Bacq S & Brown K 'Supermarkets, street traders and spaza shops' (2019) 34.

evicted and later granted permission to return to their stalls by the High Court, lost income during their period of economic inactivity.⁴³⁴

3.6 CONCLUSION

Chapter three discussed the context of self-employment in South Africa. The chapter also examined factors that determine entry into self-employment and its main characteristics. Furthermore, the chapter explored some constraints associated with the provision of social protection for self-employed workers. The chapter recognised the need to provide social protection, in the form of social insurance for self-employed workers. The next chapter studies social protection in Brazil, particularly the coverage of self-employed workers.



⁴³⁴ Mutandiro K 'Joburg traders fear for their future after their lawyers get death threats' *Groundup* 4 August 2022 available at <https://www.groundup.org.za/article/we-are-being-chased-away-by-the-very-same-person-who-is-collecting-rent-from-us-says-de-villiers-street-trader/> (accessed 24 September 2022).

CHAPTER 4

SOCIAL PROTECTION IN BRAZIL

4.1 INTRODUCTION

A study of the scope and developments of South Africa's self-employment was presented in chapter three. The chapter highlighted the importance of self-employed workers and further explored characteristics of self-employment. Furthermore, the chapter discussed the vulnerability of self-employed workers that reduces their ability to take part in social insurance activities.

This chapter examines the context of social protection for self-employed workers in Brazil. Brazil is a middle income South American country with a population of around 190 million people.⁴³⁵ Over the last few decades, the Brazilian government has demonstrated its commitment to providing access to social protection for its citizens, including vulnerable groups such as the self-employed.⁴³⁶ In 2009, Brazil became one of the seven nations to accept all nine branches of the Social Security Convention.⁴³⁷

The chapter consists of five major sections. First, the chapter provides an overview of self-employment trends in Brazil. Secondly, the chapter explores the historical development of social protection in Brazil. The third section examines the Brazilian Constitution of 1988. The fourth section discusses the structure of the social security regime in Brazil. The fifth and last section analyses the structure of the Brazilian social security regime.

4.2 OVERVIEW OF SELF-EMPLOYMENT IN BRAZIL

Self-employed workers are:

‘ - those who habitually carry out, and on their own account, paid professional activity; those who provide services to several companies, grouped or not in a union, including stevedores, checkers and the like; who provides, without an employment relationship, a service of an occasional nature to one or more companies; the one who renders paid service upon receipt, on an occasional basis, whatever the duration of the task.’⁴³⁸

⁴³⁵ Paes-Sousa R, de Teixeira Soares ARD & Kleiman F ‘Broadening Social Protection and Integrating Social Policies’ in United Nations Development Programme *SHARING Innovative Experiences: Successful Social Protection Floor Experiences* (2011) 63 – 8 (hereafter *Broadening Social Protection*).

⁴³⁶ Campello T, Falcão T & DA Costa PV *Brazil Without Extreme Poverty* (2015) Rio de Janeiro: Ministry of Social Development and Fight Against Hunger 16.

⁴³⁷ ‘Extending social protection by anchoring rights in law’ available at [https://www.social-protection.org/gimi/RessourcePDF.action?ressource.ressourceId=53852#:~:text=Among%20the%2096%20ILO%20Conventions,102\)%2C%20in%20June%202009](https://www.social-protection.org/gimi/RessourcePDF.action?ressource.ressourceId=53852#:~:text=Among%20the%2096%20ILO%20Conventions,102)%2C%20in%20June%202009) (accessed 6 February 2023).

⁴³⁸ Article 4(c) of Law 3.807/60, 1960.

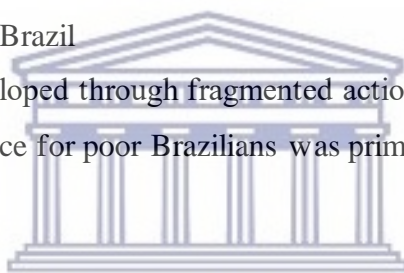
Self-employment offers an alternative to traditional employment for Brazilians.⁴³⁹ Nearly 25 per cent of the Brazilian economically active population were engaged in self-employment in 2020.⁴⁴⁰ In 2022, there were 25.9 million self-employed workers in Brazil.⁴⁴¹ In the same year, Brazil had about 99.6 million formally employed workers. Unemployed workers constituted 8.7 million workers during the same period.⁴⁴²

The majority of self-employed workers in Brazil are vulnerable and impoverished workers.⁴⁴³ This distinguishes them from the economically better-positioned self-employed professionals.⁴⁴⁴ Most of the vulnerable self-employed workers conduct their business without proper registration.⁴⁴⁵ They are forced to enter self-employment as a means of survival because there is no alternative employment.⁴⁴⁶ Furthermore, self-employment is generally characterised by a lack of education as compared to workers in formal employment in Brazil.⁴⁴⁷ Due to vulnerability, their businesses often face possible closures in times of crises such as the COVID-19 pandemic.⁴⁴⁸

4.3 BACKGROUND TO SOCIAL PROTECTION IN BRAZIL

4.3.1 Early social protection in Brazil

Brazil's social policy was developed through fragmented actions.⁴⁴⁹ From colonial times into the 19th century, social assistance for poor Brazilians was primarily seen as Christian charity,



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⁴³⁹ França MTA, Frio GS & Korzeniewicz MBDV 'Self-employment and wage difference an analysis for Brazil' (2022) 47 *International Journal of Social Economics* 726.

⁴⁴⁰ Nicoli PAG 'Centralizing informal work, complexifying inclusion, decolonizing labour law' (2020) 11 *Rev. Direito e Práx* 2708 (hereafter Centralizing informal work).

⁴⁴¹ <https://www.globaldata.com/data-insights/macroeconomic/number-of-self-employed-in-brazil-2137680/> (accessed 6 February 2022).

⁴⁴² 'Brazil employed persons' available at <https://tradingeconomics.com/brazil/employed-persons> (accessed 6 February 2023).

⁴⁴³ Nicoli PAG 'Centralizing informal work' (2020) 11 *Rev. Direito e Práx* 2708.

⁴⁴⁴ Nicoli PAG 'Centralizing informal work' (2020) 11 *Rev. Direito e Práx* 2708.

⁴⁴⁵ 'The Individual Micro Entrepreneur (MEI)' available at <https://www.oecd.org/regional/leed/43966002.pdf> (accessed 6 December 2022); Staff Reporters 'Brazil ends 2021 with 25.9 million self-employed people -FGV' *The Rio Times* April 2022 available at <https://www.riotimesonline.com/brazil-news/brazil/brazil-ends-2021-with-25-9-million-self-employed-people-fgv/> (accessed 4 December 2022).

⁴⁴⁶ Costanzi RN, Barbosa ED & da Silva Bichara J 'Extending Social Security Coverage to Self-Employed Workers in Brazil' (2013) *International Labour Review* 555 (hereafter Social Security Coverage).

⁴⁴⁷ Bargain O & Kwenda P 'Earnings structures, informal employment, and self-employment: new evidence from Brazil, Mexico, and South Africa' 2011 *Review of Income and Wealth* 106.

⁴⁴⁸ Richter JI & Patel PC 'Impact of the COVID-19 pandemic on the hours lost by self-employed racial minorities: evidence from Brazil' (2022) 58 *Small Bus Eco* 790.

⁴⁴⁹ Júnior FA 'The evolution of social policies in Brazil: the period from 1930 to 2010' available at https://iussp.org/sites/default/files/event_call_for_papers/THE%20EVOLUTION%20OF%20SOCIAL%20POLI%20CIES%20IN%20BRAZIL-%20the%20period%20from%201930%20to%202010.pdf (accessed 5 December 2022).

run by charitable hospitals.⁴⁵⁰ A shift from a society based on forced labour to one based on working for salaries took place in 1888.⁴⁵¹ During this transition, concern for the impoverished was not prioritised.⁴⁵² In subsequent years, social assistance was reduced ‘to a scheme of local poverty management with patronising characteristics’.⁴⁵³ In addition, these schemes lacked continuity and were dependent on the whims of politicians. Even up to the early part of the 21st century, social assistance was viewed as primarily the responsibility of the First Lady.⁴⁵⁴

The shift in social policy began to emerge in the 1920s as the country experienced industrialisation and urbanisation.⁴⁵⁵ In 1923, the Eloy Chaves Law was passed.⁴⁵⁶ This decree entitled railroad workers to a fully paid pension.⁴⁵⁷ The state sought to appease the dissatisfaction of the striking railway employees.⁴⁵⁸ The decree was later extended to workers in docks and ships.⁴⁵⁹ In terms of this decree, companies were ordered to participate in this scheme which was funded by contributions from employers, employees and railway users.⁴⁶⁰ The state's engagement in these social security programmes was restricted to mediating disputes between parties.⁴⁶¹

4.3.2 Period 1930 to 1964

A new structure of the Brazilian social protection system emerged in the 1930s as a result of social regulation and official state intervention.⁴⁶² At first, only a small group of organised urban workers were eligible for social insurance programmes.⁴⁶³ Employers, workers, and the government all contributed one-third each to the cost of social security.⁴⁶⁴ In 1933, the Maritime Retirement and Pensions Institute established the first national retirement and pension system in Brazil.⁴⁶⁵ During the 1940s, social insurance was coordinated by individual sector-specific

⁴⁵⁰ Schwarze H & Querino AC *Non-contributory pensions in Brazil: The impact on poverty reduction* (2002) Geneva: ILO 2 (hereafter *Non-contributory pensions in Brazil*).

⁴⁵¹ Schwarze H & Querino AC *Non-contributory pensions in Brazil* (2002) 2.

⁴⁵² Schwarze H & Querino AC *Non-contributory pensions in Brazil* (2002) 2.

⁴⁵³ Schwarze H & Querino AC *Non-contributory pensions in Brazil* (2002) 2.

⁴⁵⁴ Schwarze H & Querino AC *Non-contributory pensions in Brazil* (2002) 2.

⁴⁵⁵ Dos Santos MPG ‘The Brazilian social protection system: history and present configuration’ in Midgley J (ed) *Social protection, economic growth and social change* (2013) 131-52 (The Brazilian social protection system).

⁴⁵⁶ Dos Santos MPG ‘The Brazilian social protection system’ (2013) 131-52.

⁴⁵⁷ Dos Santos MPG ‘The Brazilian social protection system’ (2013) 131-52.

⁴⁵⁸ De Carvalho G ‘The Health Care System in Brazil’ (2020) *Social Policy Country Briefs* 4.

⁴⁵⁹ De Carvalho G ‘The Health Care System in Brazil’ (2020) *Social Policy Country Briefs* 4.

⁴⁶⁰ Dos Santos MPG ‘The Brazilian social protection system’ (2013) 131-52.

⁴⁶¹ Dos Santos MPG ‘The Brazilian social protection system’ (2013) 131-52.

⁴⁶² Grin EJ ‘Social welfare in Brazil: Three historical periods and differences from the European social democratic model’ (2013) *Cadernos Gestão Pública e Cidadania* 190.

⁴⁶³ Paes-Sousa R, de Teixeira Soares ARG & ‘Broadening Social Protection’ (2011) 63 – 8.

⁴⁶⁴ Dos Santos MPG ‘The Brazilian social protection system’ (2013) 131-52.

⁴⁶⁵ Miranda HP ‘Spotlight on Retirement: Brazil 2019’ 2020 LL Global, Inc. and Society of Actuaries 24 (hereafter *Spotlight on Retirement*).

'institutes'.⁴⁶⁶ However, in 1960, when the Social Security Organic Law was enacted, the separate institutes were brought under one funding and benefit structure.⁴⁶⁷ Self-employed workers were not covered under these social insurance schemes.⁴⁶⁸

Likewise, important developments within the area of social assistance also took place during this period. The National Social Service Council (CNSS) was established by Decree Law 525 in 1938.⁴⁶⁹ The Decree Law 525 was the first national legislation on social assistance.⁴⁷⁰ Through this law, the CNSS established the foundations for the management of social services.⁴⁷¹ The major roles of the CNSS included undertaking studies on the poor and developing a national plan for organising social services.⁴⁷² It also served as an advisory body to provide input on grant applications.⁴⁷³ The CNSS was followed by the creation of the Brazilian Assistance Legion (LBA) in 1942 by a former First Lady, Darcy Vargas.⁴⁷⁴ The LBA assisted poor families across the majority of the Brazilian municipalities.⁴⁷⁵ However, the private sector dominated the provision of social assistance services.⁴⁷⁶

4.3.3 Period 1965 to 1988

Standardisation and unification of the administration and delivery of social security services was ushered in by the establishment of the National Social Security Institute (INPS) in 1966.⁴⁷⁷ The INPS replaced the old institutes previously responsible for the administration of social security.⁴⁷⁸ Pensions, work accident insurance, paid sick leave, and health care services made up the social security benefits package.⁴⁷⁹ Social insurance coverage was less than 50 per cent for formal employees, and not higher than 10 per cent for self-employed workers.⁴⁸⁰ Even

⁴⁶⁶ De Oliveira FEB & Beltrao KI 'The Brazilian social security system' (2000) Rio de Janeiro: Research at Institute for Applied Economic Research 1 (hereafter The Brazilian social security system).

⁴⁶⁷ De Oliveira FEB & Beltrao KI 'The Brazilian social security system' (2000) 1.

⁴⁶⁸ Schwarze H & Querino AC *Non-contributory pensions in Brazil* (2002) 3.

⁴⁶⁹ Dos Santos MPG 'The Brazilian social protection system' (2013) 131-52.

⁴⁷⁰ Decree Law 525 of 1 July 1938.

⁴⁷¹ Jaccoud L, Hadjab PD & Chaibub JR 'The Consolidation of Social Assistance in Brazil and Its Challenges, 1988?2008' (2010) Brasilia: International Policy Centre for Inclusive Growth 3 (hereafter Consolidation of Social Assistance in Brazil).

⁴⁷² Serbin KP 'State subsidization of catholic institutions in Brazil, 1930-1964: A Contribution to the Economic and Political History of the Church' (1992) South Bend: The Hellen Kellogg Institute for International Studies.

⁴⁷³ Jaccoud L, Hadjab PD & Chaibub JR 'Consolidation of Social Assistance in Brazil' (2010) 3.

⁴⁷⁴ De Farias PCL 'Social security in Brazil: Problems and trends' available at <https://www2.gwu.edu/~ibi/minerva/Fall1998/pedro.farias.pdf> (accessed 20 December 2022).

⁴⁷⁵ De Farias PCL 'Social security in Brazil: Problems and trends' available at <https://www2.gwu.edu/~ibi/minerva/Fall1998/pedro.farias.pdf> (accessed 20 December 2022).

⁴⁷⁶ Jaccoud L, Hadjab PD & Chaibub JR 'Consolidation of Social Assistance in Brazil' (2010) 33.

⁴⁷⁷ Dos Santos MPG 'The Brazilian social protection system' (2013) 131-52.

⁴⁷⁸ De Oliveira FEB & Beltrao KI 'The Brazilian social security system' (2000) 1.

⁴⁷⁹ Dos Santos MPG 'The Brazilian social protection system' (2013) 131-52.

⁴⁸⁰ De Oliveira FEB & Beltrao KI 'The Brazilian social security system' (2000) 1.

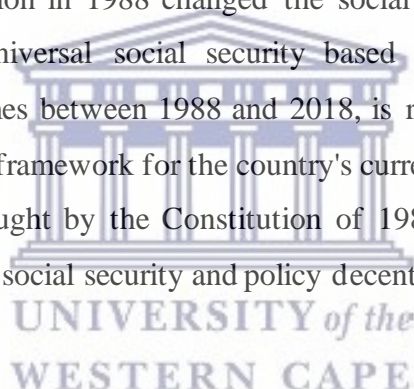
though the self-employed were not specifically targeted, they benefited from the establishment of the INPS. However, this inclusion was dependent on contributions paid.⁴⁸¹ For instance, under the Lifetime Monthly Income, created in 1974, beneficiaries either paid at least one year of social security contributions or made a single contribution if paid after reaching the age of 65.⁴⁸²

Institutions providing social security services were restructured from 1978 to 1988.⁴⁸³ Benefit payments and cash social assistance benefits were handled by INPS.⁴⁸⁴ Oversight, and management of contributions fell within the purview of the Institute for the Financial Administration of Social Security and Assistance Collection (IAPAS).⁴⁸⁵ Provision of social assistance services to the needy became the responsibility of the LBA.⁴⁸⁶

These developments in social protection ultimately contributed to the development of the Constitution of 1988 which set the stage for the advancement of Brazil's social policies.⁴⁸⁷

4.3.3.1 The Brazilian Constitution of 1988

The approval of the Constitution in 1988 changed the social security landscape in Brazil, ushering in a paradigm of universal social security based on citizenship rights.⁴⁸⁸ This Constitution, amended 105 times between 1988 and 2018, is renowned for its protection of social rights.⁴⁸⁹ It provides the framework for the country's current social protection system.⁴⁹⁰ Some of the key changes brought by the Constitution of 1988 include establishing social security as a right, expansion of social security and policy decentralisation. These are discussed below.



⁴⁸¹ Dos Santos MPG 'The Brazilian social protection system' (2013) 131-52.

⁴⁸² Da Silva de Paiva LH & Ansiliero G 'The Brazilian Old-Age Social Protection System' (available at https://www.researchgate.net/publication/344083669_Old_Age_Pension_within_Brazil's_social_protection_system_Universal_Social_Protection) (accessed 5 December 2022).

⁴⁸³ De Oliveira FEB & Beltrao KI 'The Brazilian social security system' (2000) 3.

⁴⁸⁴ De Oliveira FEB & Beltrao KI 'The Brazilian social security system' (2000) 3.

⁴⁸⁵ De Oliveira FEB & Beltrao KI 'The Brazilian social security system' (2000) 3.

⁴⁸⁶ De Oliveira FEB & Beltrao KI 'The Brazilian social security system' (2000) 3.

⁴⁸⁷ Júnior FA 'The evolution of social policies in Brazil: the period from 1930 to 2010' available at https://iussp.org/sites/default/files/event_call_for_papers/THE%20EVOLUTION%20OF%20SOCIAL%20POLICY%20IN%20BRAZIL-%20the%20period%20from%201930%20to%202010.pdf (accessed 5 December 2022).

⁴⁸⁸ Paes-Sousa R, de Teixeira Soares ARG & 'Broadening Social Protection' (2011) 63 – 866.

⁴⁸⁹ Benvindo JZ 'Brazil's Frenetic Pace of Constitutional Change under Bolsonaro: Why and What Next?' available at <https://constitutionnet.org/news/brazils-frenetic-pace-constitutional-change-under-bolsonaro-why-and-what-next> (accessed 20 December 2022); Ortiz I, Schmitt V & De L (eds) *100 years of social protection* (2019) 26.

⁴⁹⁰ Ortiz I, Schmitt V & De L (eds) *100 years of social protection* (2019) 26.

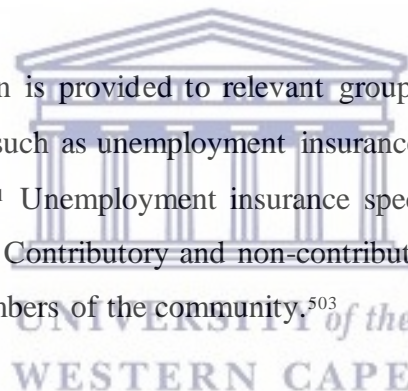
4.3.3.1.1. Social security as a right

The 1988 Constitution entrenches social security as a right in Brazil.⁴⁹¹ The Constitution promises a guarantee of social security rights.⁴⁹² The right to social security is recognised as a human right and is enforceable in Brazil.⁴⁹³ It created the framework for the implementation of a human rights-based social security system.⁴⁹⁴ Additionally, it recognised the government's duty to provide social services and unemployment benefits.⁴⁹⁵

4.3.3.1.2. Expansion of social security

The state's obligation to provide social welfare for everyone, regardless of contributions, was one of the notable new developments in the social protection system.⁴⁹⁶ The definition of social security was expanded by the new constitutional text beyond its previous definition of 'social insurance.'⁴⁹⁷ In terms of Article 194, 'social security includes an integrated set of initiatives by public authorities and society, to ensure the rights to health, welfare and social assistance.'⁴⁹⁸ Thus, a new system emerged in alignment with ILO's definition of social security.⁴⁹⁹ In terms of this definition, social security serves as a safety net for everyone who needs it, irrespective of contribution status.⁵⁰⁰

Consequently, social protection is provided to relevant groups through social insurance or social assistance programmes such as unemployment insurance, the old age grant, disability grant, and the Bolsa Familia.⁵⁰¹ Unemployment insurance specifically targeted workers who lost their jobs involuntarily.⁵⁰² Contributory and non-contributory old age programmes were ushered in to assist elderly members of the community.⁵⁰³



⁴⁹¹ Article 6 & 7 of the Constitution of Brazil, 1988.

⁴⁹² Article 227(3)(II) of the Constitution of Brazil, 1988.

⁴⁹³ 'Extending social protection by anchoring rights in law' available at [https://www.social-protection.org/gimi/RessourcePDF.action?ressource.ressourceId=53852#:~:text=Among%20the%2096%20ILO%20Conventions,102\)%2C%20in%20June%202009](https://www.social-protection.org/gimi/RessourcePDF.action?ressource.ressourceId=53852#:~:text=Among%20the%2096%20ILO%20Conventions,102)%2C%20in%20June%202009) (accessed 6 February 2023).

⁴⁹⁴ Robles V & Mirosevic V 'Social protection systems in Latin America and the Caribbean: Brazil' (2013) New York: UN Economic Commission for Latin America and the Caribbean 7: Article 6 & 7 of the Constitution of Brazil, 1988.

⁴⁹⁵ Robles V & Mirosevic V 'Social protection systems in Latin America' (2013) 7: Article 194(I) of the Constitution of Brazil, 1988.

⁴⁹⁶ Dos Santos MPG 'The Brazilian social protection system' (2013) 131-52.

⁴⁹⁷ Dos Santos MPG 'The Brazilian social protection system' (2013) 131-52.

⁴⁹⁸ Article 194 of the Constitution of Brazil, 1988.

⁴⁹⁹ Dos Santos MPG 'The Brazilian social protection system' (2013) 131-52.

⁵⁰⁰ Dos Santos MPG 'The Brazilian social protection system' (2013) 131-52.

⁵⁰¹ Robles V & Mirosevic V 'Social protection systems in Latin America' (2013) 139.

⁵⁰² Article 201 of the Constitution of Brazil, 1988.

⁵⁰³ Article 201 of the Constitution of Brazil, 1988: 'Universal Social Protection: Universal old-age pensions in Brazil' available at <https://www.social-protection.org/gimi/gess/RessourcePDF.action?id=53951> (accessed 8 December 2022).

4.3.3.1.3. Policy decentralisation

The Constitution created public institutions responsible for administering social policies.⁵⁰⁴ The Union, States and Federal District were given concurrent powers to legislate on social security.⁵⁰⁵ It was decided that the federal government, the member states, and the municipalities would jointly operate and finance the social protection system at that time.⁵⁰⁶

As a result of the Constitution of 1988, a social security system built on the pillars of social insurance and social assistance was developed.⁵⁰⁷ Social insurance relies on contributions whilst social assistance is non-contribution based.

4.3.3.2 Social insurance

The two broad categories of social insurance as provided by the Constitution of Brazil are the general social security regime and the private social regime.

4.3.3.2.1. General social security regime

Under this regime, every worker in the formal labour market is compelled to pay contributions that amount to 11 per cent of their wages. Employers are obliged to pay 22 per cent of their total payroll.⁵⁰⁸ The minimum value of benefits, as defined by the 1988 Constitution, is equal to the minimum salary, while the maximum value is determined by parliament.⁵⁰⁹ Furthermore, according to the Constitution, social security 'shall provide for, as defined by law:

- I. coverage of the events of illness, disability, death and advanced age;
- II. maternity protection, especially for pregnant women;
- III. protection for the involuntarily unemployed;
- IV. family allowance and confinement aid for dependents of insured persons with low incomes;
- V. a pension for the death of an insured man or woman, for the spouse or companion, and dependents.⁵¹⁰

⁵⁰⁴ Robles V & Mirosevic V 'Social protection systems in Latin America' (2013) 139.

⁵⁰⁵ Article 24(XII) of the Constitution of Brazil, 1988.

⁵⁰⁶ Robles V & Mirosevic V 'Social protection systems in Latin America' (2013) 139.

⁵⁰⁷ Paes-Sousa R, de Teixeira Soares ARG & 'Broadening Social Protection' (2011) 63 – 866.

⁵⁰⁸ Dos Santos MPG 'The Brazilian social protection system' (2013) 131-52.

⁵⁰⁹ Dos Santos MPG 'The Brazilian social protection system' (2013) 131-52.

⁵⁰⁹ Article 194 of the Constitution of Brazil, 1988.

⁵¹⁰ Article 201 of the Constitution of Brazil, 1988.

Under the social security general regime, employees, domestic workers, independent contractors, individual taxpayers, and rural labourers are eligible for social insurance.⁵¹¹ Every employee with an employment contract is automatically enrolled in the social security general regime.⁵¹² However, self-employed workers are required to apply first and to make contributions to be eligible for benefits.⁵¹³

4.3.3.2.2. Private social security regime

The private social security regime is deemed supplementary to the general regime and is optional.⁵¹⁴ An example of private social security in Brazil is the Private Pension Regime.⁵¹⁵ Under this regime, closed pension funds and insurance companies offer pension plans that are not necessarily linked to employment.⁵¹⁶ Thus, self-employed workers have access to private social insurance.

4.3.3.3 Social assistance

In terms of the Constitution, social assistance is given to individuals in need regardless of their social security contributions.⁵¹⁷ The Constitution has ‘the following objectives:

- I. protection of the family, maternity, childhood, adolescence and old age;
- II. support of needy children and adolescents;
- III. promotion of integration into the labour force;
- IV. training and rehabilitation of the handicapped and promotion of their integration into the community;
- V. guarantee of a monthly benefit of one minimum wage to the handicapped and elderly who prove that they are without means to provide for their own support or having it provided by their family, as provided by law.’⁵¹⁸

The Brazilian Constitution provides for a social security budget used by the government to carry out its social assistance policies.⁵¹⁹ The funding is distributed according to a decentralised

⁵¹¹ Miranda HP ‘Spotlight on Retirement’ (2020) 24.

⁵¹² Miranda HP ‘Spotlight on Retirement’ (2020) 24.

⁵¹³ Miranda HP ‘Spotlight on Retirement’ (2020) 24.

⁵¹⁴ Article 203 of the Constitution of Brazil, 1988.

⁵¹⁵ ‘The Brazilian pension system’ available at https://www.abrapp.org.br/wp-content/uploads/2020/09/InformacoesGerais_06_2014_Ingles.pdf (accessed 21 December 2022).

⁵¹⁶ ‘The Brazilian pension system’ available at https://www.abrapp.org.br/wp-content/uploads/2020/09/InformacoesGerais_06_2014_Ingles.pdf (accessed 21 December 2022).

⁵¹⁷ Article 202 of the Constitution of Brazil, 1988.

⁵¹⁸ Article 202 of the Constitution of Brazil, 1988.

⁵¹⁹ Article 204 of the Constitution of Brazil, 1988.

political and administrative system.⁵²⁰ The coordination and execution of the relevant programmes is the responsibility of the state and municipalities, including non-profit and social aid organisations.⁵²¹

Despite this laudable constitutional redesign, the process of decentralisation made it difficult to establish a holistic and effective social protection system. In this sense, the social assistance model in the country consisted of various initiatives developed in a ‘complementary, compensatory fashion.’⁵²² Organisation of social assistance initiatives lacked consistent planning and provision of services varied as per emerging needs.⁵²³ Furthermore, coordination between government and private actors was poor.⁵²⁴ A different approach was, therefore, necessary to unify the different policies and to allow coordination between the government and private actors.⁵²⁵ This led to the establishment of two important policies that sought to unify the different components of social assistance.

4.3.3.3.1. Organic Law of Social Assistance (LOAS)

The Organic Act of Social Assistance (LOAS) was promulgated in 1993 to establish social assistance as a universal policy.⁵²⁶ The LOAS was in response to the disjointed social assistance policy in the country.⁵²⁷ In addition, the LOAS established the roles and responsibilities of the federal, state, and municipal levels with regards to social assistance policymaking and implementation.⁵²⁸

4.3.3.3.2. Unified system of social assistance (SUAS)

The SUAS was introduced in 2005. It strengthened the decentralised management approach to social assistance by fostering collaboration among the three levels of the Brazilian government.⁵²⁹ In addition, the SUAS funded and coordinated social assistance services in Brazil and sought to guarantee social protection even for those in vulnerable or risky

⁵²⁰ Article 204 of the Constitution of Brazil, 1988.

⁵²¹ Article 204 of the Constitution of Brazil, 1988.

⁵²² Paes-Sousa R, de Teixeira Soares ARD & Kleiman F ‘Broadening Social Protection’ (2011) 63-9.

⁵²³ Paes-Sousa R, de Teixeira Soares ARD & Kleiman F ‘Broadening Social Protection’ (2011) 63-9.

⁵²⁴ Paes-Sousa R, de Teixeira Soares ARD & Kleiman F ‘Broadening Social Protection’ (2011) 63-9.

⁵²⁵ Paes-Sousa R, de Teixeira Soares ARD & Kleiman F ‘Broadening Social Protection’ (2011) 63-9.

⁵²⁶ Lopes MC & Veiga-Neto A ‘Policies of social action and inclusion and current Brazilian tensions’ (2015) *Sisyphus — Journal of Education* 40 (hereafter Policies of social action and inclusion).

⁵²⁷ Lopes MC & Veiga-Neto A ‘Policies of social action and inclusion’ (2015) 40.

⁵²⁸ Lopes MC & Veiga-Neto A ‘Policies of social action and inclusion’ (2015) 40.

⁵²⁹ United Nations Children's Fund ‘Social Protection Consultant, Brasilia, Brazil’ available at <https://untalent.org/jobs/social-protection-consultant-brasilia-brazil> (accessed 22 December 2022).

situations.⁵³⁰ The SUAS introduced basic and specialised social assistance models.⁵³¹ The basic model provides social assistance services to vulnerable members of society.⁵³² The specialised approach caters for families and people at risk or those whose rights have been violated.⁵³³

To make the social assistance envisioned in the Constitution and the policies outlined above a reality, several social assistance programmes were established starting from around the 1990s.

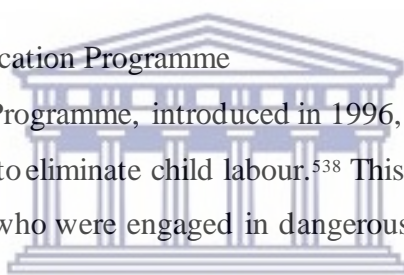
4.3.4 Period 1990 to 2000

4.3.4.1 The Continuous Cash Benefit Programme

The Continuous Cash Benefit Programme introduced in 1993 is an unconditional cash payment to the elderly or to poor people living with disabilities.⁵³⁴ It is a non-contributory, poverty-targeted pension designed to provide economic stability for disabled people or those above 65 years. These individuals qualified only if they were unable to work or live independently.⁵³⁵ Selection for this fund required registration with the National Social Security, passing a means test and disability verification.⁵³⁶

4.3.4.2 The Child Labour Eradication Programme

The Child Labour Eradication Programme, introduced in 1996, was the first Conditional Cash Transfer (CCT).⁵³⁷ Its goal was to eliminate child labour.⁵³⁸ This CCT was intended for children aged between seven to fifteen who were engaged in dangerous jobs.⁵³⁹ Its conditionality was



⁵³⁰ United Nations Children's Fund 'Social Protection Consultant, Brasilia, Brazil' available at <https://untalent.org/jobs/social-protection-consultant-brasilia-brazil> (accessed 22 December 2022).

⁵³¹ United Nations Children's Fund 'Social Protection Consultant, Brasilia, Brazil' available at <https://untalent.org/jobs/social-protection-consultant-brasilia-brazil> (accessed 22 December 2022).

⁵³² United Nations Children's Fund 'Social Protection Consultant, Brasilia, Brazil' available at <https://untalent.org/jobs/social-protection-consultant-brasilia-brazil> (accessed 22 December 2022).

⁵³³ United Nations Children's Fund 'Social Protection Consultant, Brasilia, Brazil' available at <https://untalent.org/jobs/social-protection-consultant-brasilia-brazil> (accessed 22 December 2022).

⁵³⁴ Medeiros M, Diniz D & Squinca F 'Cash benefits to disabled persons in Brazil: an analysis of BPC – continuous Cash Benefit Programme' (2015) Brasilia: United Nations Development Programme 7.

⁵³⁵ United Nations Economic Commission for Latin America and the Caribbean 'Benefício de Prestação Continuada (Continuous Benefit Programme) (1996-)' available at <https://dds.cepal.org/bpsnc/programme?id=43> (accessed 6 October 2022).

⁵³⁶ United Nations Economic Commission for Latin America and the Caribbean 'Benefício de Prestação Continuada (Continuous Benefit Programme) (1996-)' available at <https://dds.cepal.org/bpsnc/programme?id=43> (accessed 6 October 2022); Means tests check whether an individual's or household's actual financial resources fall below a set threshold to establish eligibility for social assistance programs. (Kidd S, Gelders B & Bailey-Athias D 'Exclusion by design: An assessment of the effectiveness of the proxy means test poverty targeting mechanism' (2017) Geneva: International Labour Organization and Development Pathways ix).

⁵³⁷ Soares S et al 'Conditional Cash Transfers in Brazil, Chile and Mexico: Impacts Upon Inequality' Brasilia: International Poverty Centre (2007) 3.

⁵³⁸ Robles V & Mirosevic V 'Social protection systems in Latin America' (2013) 141.

⁵³⁹ Soares S et al 'Conditional Cash Transfers' (2007) 3.

that children under 16 years of age should not form part of the labour force.⁵⁴⁰ Rather, they were compelled to maintain a 75 per cent attendance rate in school.⁵⁴¹

4.3.5 Period 2001 - 2010

4.3.5.1 Conditional Cash Transfers post 2000

Three other conditional cash transfer programmes were introduced between the years 2000 and 2010. Both the Federal Bolsa Escola and the Bolsa Alimentaco programmes were established in 2001.⁵⁴² The Federal Bolsa Escola required beneficiaries to comply with school attendance for children of school age.⁵⁴³ Its conditionality included immunisation of small children, breastfeeding for mothers, and prenatal check-ups for pregnant women.⁵⁴⁴ The Carto Alim Entaço, introduced in 2003, provided cash transfers to families whose monthly per capita income was less than half the minimum wage.⁵⁴⁵

4.3.5.2 Bolsa Familia Programme (Family Allowance Programme)

The Bolsa Familia Programme (BFP) was a conditional cash transfer programmes created in 2003.⁵⁴⁶ Its objectives were to break the cycle of poverty by making income transfers conditional.⁵⁴⁷ Families were compelled to fulfil some core responsibilities in order to benefit.⁵⁴⁸ These core responsibilities included taking their children for medical check-ups and ensuring regular school attendance.⁵⁴⁹ By enforcing health and education, the BFP provided the right circumstances for the development of human capital to eradicate poverty.⁵⁵⁰ This would eliminate the need for social assistance in the future.⁵⁵¹ Self-employed workers were eligible for BFP benefits only if they belonged to families earning less than the threshold prescribed.⁵⁵²

⁵⁴⁰ Soares S et al 'Conditional Cash Transfers' (2007) 3.

⁵⁴¹ Soares S et al 'Conditional Cash Transfers' (2007) 3.

⁵⁴² Soares S et al 'Conditional Cash Transfers' (2007) 3: 'Bolsa Alimentação (Bolsa Alimentação food grant) (2001-2003)' available at <https://dds.cepal.org/bpsnc/programme?id=9> (accessed 22 December 2022).

⁵⁴³ Soares S et al 'Conditional Cash Transfers' (2007) 3.

⁵⁴⁴ Soares S et al 'Conditional Cash Transfers' (2007) 3.

⁵⁴⁵ Soares S et al 'Conditional Cash Transfers' (2007) 3.

⁵⁴⁶ Haddad MA & Hellyer J 'Decent Work and Social Protection in Belo Horizonte, Brazil' (2017) *Journal of Planning Education and Research* 2.

⁵⁴⁷ 'Bolsa familia in Brazil' available at <https://www.centreforpublicimpact.org/case-study/bolsa-familia-in-brazil> (accessed 10 December 2022).

⁵⁴⁸ 'Bolsa familia in Brazil' available at <https://www.centreforpublicimpact.org/case-study/bolsa-familia-in-brazil> (accessed 10 December 2022).

⁵⁴⁹ 'Bolsa familia in Brazil' available at <https://www.centreforpublicimpact.org/case-study/bolsa-familia-in-brazil> (accessed 10 December 2022).

⁵⁵⁰ Stampini M & Tomarolli L 'The growth of conditional cash transfers in Latin America and the Caribbean: Did they go too far?' (2012) 31 Bonn: IZA Paper Serie.

⁵⁵¹ Stampini M & Tomarolli L 'The growth conditional of cash transfers' (2012) 31 Bonn: IZA Paper Serie.

⁵⁵² Women in Informal Employment: Globalizing and Organizing 'Social Protection for Informal Workers: Trends and Changes Bolsa Família: past and future of the Brazilian cash-grant programme' (2021) WIEGO pages not indicated.

4.3.6 Period 2011 - 2022

4.3.6.1 Brazil without Extreme Poverty (Brasil Sem Miséria)

The Bolsa Familia programme was strengthened in 2011 with the introduction of the Brazil without Extreme Poverty initiative (BWEF).⁵⁵³ It provided cash transfers to large families and expectant mothers.⁵⁵⁴ The Brazil without Extreme Poverty programme targeted approximately 16.2 million Brazilians, self-employed workers included, earning below R\$70 (about R272.30 South African rands) and living in extreme poverty.⁵⁵⁵ Under this programme, the government actively sought out needy families not enrolled on the Single Registry and provided them with an income guarantee.⁵⁵⁶ The state established an extreme poverty line to prioritise the inclusion of those in severe poverty.⁵⁵⁷

4.3.6.2 Emergency Aid (Auxílio Emergencial)

The government formally ended the Bolsa Familia in August 2021.⁵⁵⁸ In responding to the suffering brought by the COVID-19 pandemic, the Brazilian government launched several steps to safeguard its citizens from the impact of the COVID-19 pandemic.⁵⁵⁹ In place of the Bolsa Familia, the government introduced the Emergency Aid, a form of social assistance, in urgent response to the suffering brought by the outbreak of COVID-19.⁵⁶⁰ One of the world's largest social aid initiatives, the Emergency Aid also catered for self-employed workers.⁵⁶¹

4.4 SELF-EMPLOYMENT AND SOCIAL PROTECTION IN BRAZIL

As aforementioned, self-employed workers were not specifically targeted under the national social assistance schemes.⁵⁶² However, the Brazilian government has made efforts over the past

⁵⁵³ Ortiz I, Schmitt V & De L (eds) *100 years of social protection: The road to universal social protection systems and floors Volume I: 50 country cases* (2019) 26.

⁵⁵⁴ Ortiz I, Schmitt V & De L (eds) *100 years of social protection* (2019) 26.

⁵⁵⁵ 'Plano Brasil Sem Miséria Brazil Without Extreme Poverty Plan' available at https://www.mds.gov.br/webarquivos/publicacao/brasil_sem_miseria/mds_revista_ingles.pdf (accessed 12 December 2022).

⁵⁵⁶ Robles V & Mirosevic V 'Social protection systems in Latin America' (2013) 17.

⁵⁵⁷ Campello T, Falcão T & da Costa PV *Brazil Without Extreme Poverty* (2015) 26.

⁵⁵⁸ Official Diary of the Union 'Provisional Measure No. 1.061, Of August 9, 2021' available at <https://www.in.gov.br/en/web/dou/-/medida-provisoria-n-1.061-de-9-de-agosto-de-2021-337251007> (accessed 14 May 2023).

⁵⁵⁹ Souza AP *Social Protection Response to COVID-19 in Brazil* (2020) New York: UNDP 10.

⁵⁶⁰ Official Diary of the Union 'Provisional Measure No. 1.061, Of August 9, 2021' available at <https://www.in.gov.br/en/web/dou/-/medida-provisoria-n-1.061-de-9-de-agosto-de-2021-337251007> (accessed 14 May 2023).

⁵⁶¹ Article 7 of the Official Diary of the Union 'Provisional Measure No. 1.061, Of August 9, 2021' available at <https://www.in.gov.br/en/web/dou/-/medida-provisoria-n-1.061-de-9-de-agosto-de-2021-337251007> (accessed 14 May 2023).

⁵⁶² Costanzi RN, Barbosa ED & da Silva Bichara J 'Social Security Coverage' (2013) 549.

two decades to improve self-employed workers' access to social security.⁵⁶³ By hosting the National Social Security Forum in 2007, the Brazilian government showed that it is possible to continue an ongoing transparent conversation among the stakeholders on social protection issues and concerns.⁵⁶⁴ This conference sought to create new social agreements around the long-term sustainability of the social security system.⁵⁶⁵ It included employees from both urban and rural areas as well as self-employed workers.⁵⁶⁶

4.4.1 Administration of social security

The Brazilian government has made inroads in eradicating barriers to social security for self-employed workers. Some of the strategies used include the implementation of the Single Register and the digitalisation of the social protection system.

4.4.2 The Single Registry

The Single Register is a portal system that serves as the system's primary reference registry for social protection measures.⁵⁶⁷ Created in 2001, the Single Registry keeps a record of Brazil's vulnerable population.⁵⁶⁸ Vulnerable persons are defined as 'households earning half of the minimum wage per capita.'⁵⁶⁹ The Single Register is crucial for promoting the social inclusion of low-income population.⁵⁷⁰ One of the features of the Single Registry is a database of households earning less than the national minimum wage in Brazil.⁵⁷¹ Close to 36 per cent of the Brazilian population, are listed in the Single Registry.⁵⁷² This registry provides important details such as each family member's name, address, income, gender, race and age, updated every two years.⁵⁷³

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⁵⁶³ Bosch M, Fernandes D & Villa JM 'Nudging the Self-employed into Contributing to Social Security: Evidence from a Nationwide Quasi Experiment in Brazil' (2015) Brasília: Inter-American Development Bank 6.

⁵⁶⁴ International Labour Organization *Brazilian Good Practices in Social Security* (2013) 93.

⁵⁶⁵ International Labour Organization *Brazilian Good Practices in Social Security* (2013) 93.

⁵⁶⁶ International Labour Organization *Brazilian Good Practices in Social Security* (2013) 93.

⁵⁶⁷ Langenhove T et al *Brazil Cadastro Único - Operating a registry through a national public bank* (2014) Geneva: ILO 1; Campello T, Falcão T & da Costa PV *Brazil Without Extreme Poverty* (2015) 38 (hereafter *Cadastro Único*).

⁵⁶⁸ Langenhove T et al *Brazil Cadastro Único - Operating a registry through a national public bank* (2014) Geneva: ILO 1.

⁵⁶⁹ Langenhove T et al *Brazil Cadastro Único - Operating a registry through a national public bank* (2014) Geneva: ILO 1.

⁵⁷⁰ Ministry of Social and Agrarian Development 'Unified Registry for social programs - Main Registration Form' available at <https://socialprotection.org/discover/publications/unified-registry-social-programs-main-registration-form#:~:text=The%20Unified%20Registry%20for%20Social,policies%20geared%20towards%20such%20famil ies> (accessed 29 September 2022).

⁵⁷¹ Paes-Sousa R, de Teixeira Soares ARD & Kleiman F 'Broadening Social Protection' 63 – 8.

⁵⁷² Campello T, Falcão T & da Costa PV *Brazil Without Extreme Poverty* (2015) 39.

⁵⁷³ Campello T, Falcão T & da Costa PV *Brazil Without Extreme Poverty* (2015) 39.

Self-employed workers benefit from the creation and implementation of the Single Registry.⁵⁷⁴ They are entitled to submit comprehensive details regarding household composition and sources of income to determine eligibility for benefits.⁵⁷⁵

4.4.3 Digitalisation of social security

The establishment of My INSS (Meu INSS) by the National Institute for Social Security (INSS) in 2016 was another landmark milestone for Brazil's social security system. The My INSS is a mobile and internet platform created for citizens to have easy access to social security services.⁵⁷⁶ Its main goal 'is to provide Brazilian social security services to citizens wherever they are and whenever they need them.'⁵⁷⁷ The digital platform minimises in-person interactions, queues, and travel by offering services to users directly over the Internet.⁵⁷⁸ This approach generated more savings for people in vulnerable financial situations.⁵⁷⁹ It brought vulnerable people closer to care, affording them the same conditions and facilities of access as people in urban centres.⁵⁸⁰ This made it possible for persons who previously couldn't access services because of a physical restriction to have their rights acknowledged and provided.⁵⁸¹

4.4.4 The Simplified Plan for Social Security Inclusion

The Simplified Plan for Social Security Inclusion was developed by the Brazilian government in 2006.⁵⁸² It was created to extend social protection to self-employed workers and other workers falling outside the ambit of formal employment.⁵⁸³ The Simplified Plan for Social Security Inclusion targeted self-employed workers due to their low earnings.⁵⁸⁴ This plan categorised self-employed workers as individual contributors.⁵⁸⁵ They have the option of contributing the minimum amount, set at 20 per cent of the minimum monthly wage, or the

⁵⁷⁴ Campello T, Falcão T & da Costa PV *Brazil Without Extreme Poverty* (2015) 38.

⁵⁷⁵ Fruttero A, Leichsenring AR & Paiva LH *Social Programs and Formal Employment: Evidence from the Brazilian Bolsa Família Program* 7.

⁵⁷⁶ 'Meu INSS A success story in the digital transformation policy of the Brazilian State' available at <https://www.issa.int/gp/198205#:~:text=Created%20in%202016%20to%20bring,or%20services%20from%20the%20Institute>, (accessed 16 December 2022).

⁵⁷⁷ Empresa de Tecnologia de Previdência Social 'Meu INSS Evaluation Report of the Brazilian Government Social Security Project' (2019) Rio Di Janeiro: Empresa de Tecnologia de Previdência Social-DataPrev 5 (hereafter Meu INSS Evaluation Report).

⁵⁷⁸ Empresa de Tecnologia de Previdência Social *Meu INSS Evaluation Report of the Brazilian Government Social Security Project* (2019) 5.

⁵⁷⁹ Empresa de Tecnologia de Previdência Social 'Meu INSS Evaluation Report' (2019) 5.

⁵⁸⁰ Empresa de Tecnologia de Previdência Social 'Meu INSS Evaluation Report' (2019) 5.

⁵⁸¹ Empresa de Tecnologia de Previdência Social 'Meu INSS Evaluation Report' (2019) 6.

⁵⁸² International Labour Organization 'Brazilian Good Practices' (2013) 40.

⁵⁸³ International Labour Organization 'Brazilian Good Practices' (2013) 40.

⁵⁸⁴ International Labour Organization 'Brazilian Good Practices' (2013) 40.

⁵⁸⁵ International Labour Organization *Innovations in extending social insurance coverage to independent workers Experiences from Brazil, Cape Verde, Colombia, Costa Rica, Ecuador, Philippines, France and Uruguay* (2013) 5 Geneva: ILO (hereafter *Innovations in extending social insurance coverage*).

minimum contribution fee, set at 11 per cent.⁵⁸⁶ The consequence of the second option is that the contributor is not entitled to a pension benefit unlike those that contribute 20 per cent.⁵⁸⁷ However, contributors are permitted to either increase or decrease their contribution rate whenever necessary.⁵⁸⁸ The benefits of this contributory scheme to self-employed workers include access to; old age pension, pension by term of contribution, disability pension, health assistance, compensation for occupational accidents, assistance in case of imprisonment, special retirement, maternity benefit and survival pension.⁵⁸⁹

4.4.5 The Individual Micro-Entrepreneur Law

The Individual Microentrepreneur (MEI) is an extension of the Simplified Plan for Social Security Inclusion.⁵⁹⁰ The Complementary Law 128 was created in 2008 specifically to provide legal guidelines for the function of the MEI.⁵⁹¹ The Mei aimed at facilitating the transition from informal self-employment to formalised business ownership.⁵⁹² Among other benefits, the MEI ensured social security coverage for self-employed workers.⁵⁹³ The social security benefits included sickness allowance, pension and retirement schemes.⁵⁹⁴ Launched in 2009, its objective is to increase social security coverage for self-employed workers.⁵⁹⁵ The MEI formalised more than one million small and unregistered entrepreneurs from the Single Registry.⁵⁹⁶ The MEI significantly decreased the costs for complying with tax and social security authorities for self-employed workers.⁵⁹⁷ It combined all social security contributions and local, state, and federal taxes into a single payment.⁵⁹⁸ Through this system, small businesses file a single simplified annual tax declaration rather than eight monthly tax filings.⁵⁹⁹ To increase the number of contributors, contribution rates were further decreased from eleven

⁵⁸⁶ International Labour Organization *Innovations in extending social insurance coverage* (2013) 5.

⁵⁸⁷ International Labour Organization 'Innovations in extending social insurance coverage' (2013) 5.

⁵⁸⁸ International Labour Organization 'Innovations in extending social insurance coverage' (2013) 5.

⁵⁸⁹ International Labour Organization 'Brazilian Good Practices' (2013) 40.

⁵⁹⁰ International Labour Organization *Brazilian Good Practices in Social Security* (2013) 40.

⁵⁹¹ The Complementary Law 128, of 12/19/2008.

⁵⁹² De Sousa EMT & de Carvalho HA 'Individual Micro Entrepreneur: Why Formalize?' (2019) 4 *Revista de Empreendedorismo e Gestão de Micro e Pequenas Empresas* 132.

⁵⁹³ De Sousa EMT & de Carvalho HA 'Individual Micro Entrepreneur: Why Formalize?' (2019) 4 *Revista de Empreendedorismo e Gestão de Micro e Pequenas Empresas* 132.

⁵⁹⁴ De Sousa EMT & de Carvalho HA 'Individual Micro Entrepreneur: Why Formalize?' (2019) 4 *Revista de Empreendedorismo e Gestão de Micro e Pequenas Empresas* 132.

⁵⁹⁵ Bosch M, Fernandes D & JM 'Nudging the Self-employed into Contributing' (2015) 6.

⁵⁹⁶ Campello T, Falcão T & da Costa PV *Brazil Without Extreme Poverty* (2015) Rio De Janeiro: Ministry of Social Development and Fight Against Hunger 18.

⁵⁹⁷ Bosch M, Fernandes D & JM 'Nudging the Self-employed into Contributing to Social Security: Evidence from a Nationwide Quasi Experiment in Brazil' (2015) 6.

⁵⁹⁸ Bosch M, Fernandes D & JM 'Nudging the Self-employed into Contributing' (2015) 6.

⁵⁹⁹ Razavi S 'Making the Right to Social Security a Reality for All Workers' (2022) *The Indian Journal of Labour Economics* 282.

to five per cent of the minimum wage in April 2011.⁶⁰⁰ In addition, structured small businesses were exempted from paying federal taxes.⁶⁰¹ Instead they only paid a limited amount of state taxes.⁶⁰²

Between 2002 and 2012, there was a substantial increase in the number of contributors under the MEI programme and the Simplified Plan.⁶⁰³ This is a definite indication that the programmes were successful in increasing participation by self-employed workers in the social security system.⁶⁰⁴

4.4.6 Social security awareness and online payments

To raise awareness of the Individual Micro-Entrepreneur Law, the Ministry of Social Security delivered a brochure to registered self-employed workers in 2014. The purpose of the brochure was to remind affiliated self-employed workers of the need to participate in contributory social security.⁶⁰⁵ It gave an outline of a simplified payment process to all self-employed workers already affiliated with MEI.⁶⁰⁶ Furthermore, it emphasised the significance of meeting the minimum number of payments to qualify for benefits.⁶⁰⁷

Distribution of the pamphlet streamlined payment processes and reminded self-employed workers to make the required contributions.⁶⁰⁸ All MEI beneficiaries had to go online and pay the contributions either through the online banking system or by printing a voucher recognised by all Brazilian banks.⁶⁰⁹ In addition, the pamphlet urged the self-employed workers to seek information on combating fraud before making payments.⁶¹⁰ Distribution of the pamphlet, which streamlined payment processes and reminded independent contractors to contribute, enhanced compliance in making contributions among self-employed workers.⁶¹¹

4.5 CONCLUSION

The chapter explored the different aspects of the Brazilian social protection system. It is evident that Brazil has a comprehensive social protection system and provides a healthy model for

⁶⁰⁰ Bosch M, Fernandes D & JM 'Nudging the Self-employed into Contributing' (2015) 7.

⁶⁰¹ International Labour Organization Brazilian Good Practices in Social Security (2013) 40.

⁶⁰² International Labour Organization Brazilian Good Practices in Social Security (2013) 40.

⁶⁰³ Costanzi RN, Barbosa ED & da Silva Bichara J 'Social Security Coverage' (2013) 552.

⁶⁰⁴ Costanzi RN, Barbosa ED & da Silva Bichara J 'Social Security Coverage' (2013) 549.

⁶⁰⁵ Bosch M, Fernandes D & JM 'Nudging the Self-employed into Contributing' (2015) 8.

⁶⁰⁶ Bosch M, Fernandes D & JM 'Nudging the Self-employed into Contributing' (2015) 8.

⁶⁰⁷ Bosch M, Fernandes D & JM 'Nudging the Self-employed into Contributing' (2015) 8.

⁶⁰⁸ Bosch M, Fernandes D & JM 'Nudging the Self-employed into Contributing' (2015) 9.

⁶⁰⁹ Bosch M, Fernandes D & JM 'Nudging the Self-employed into Contributing' (2015) 9.

⁶¹⁰ Bosch M, Fernandes D & JM 'Nudging the Self-employed into Contributing' (2015) 9.

⁶¹¹ Bosch M, Fernandes D & JM 'Nudging the Self-employed into Contributing' (2015) 23.

South Africa to follow. It has built a social protection system that encompasses social insurance and social assistance that caters for vulnerable groups such as the self-employed. The Constitution of 1988 played a huge role in formally establishing institutions necessary to support robust social assistance and insurance programs. This justifies why Brazil was better equipped to provide comprehensive social protection during pandemics such as COVID-19 as compared to South Africa. The next chapter investigates potential legal reform options for South Africa's social protection system. The implications of these reforms in practice will be explored.



CHAPTER 5

TOWARDS EXTENDING SOCIAL PROTECTION TO SELF-EMPLOYED WORKERS: PRINCIPLES AND RECOMMENDATIONS

5.1 INTRODUCTION

This study has shown the existence of gaps in the social protection system in South Africa particularly with regards to protection of self-employed workers. Chapter 4 specifically examined Brazil's efforts to provide social protection to self-employed workers. This chapter explores the alternatives for changing South African social protection system to ensure the inclusion of self-employed workers.

This chapter has three broad sections. The first section discusses the key principles for an inclusive social protection system. The second section offers recommendations on extending social protection to self-employed workers. The third section concludes this mini-thesis. While by no means exhaustive, these suggestions are intended to serve as a starting point for further study.

5.2 SOCIAL PROTECTION PRINCIPLES

As previously noted in chapter 2, the ILO suggests principles that should guide the development and implementation of an inclusive social protection system. These principles, in terms of article 3 of Recommendation 202, include: universality of coverage, adequacy of benefits, transparency and social dialogue among others.⁶¹² The principles which are discussed briefly below are relevant for South Africa to have an inclusive social protection system.

5.2.1 Universality of coverage

The study has indicated previously that social insurance schemes in South Africa applies mainly to formal employees. The COVID-19 outbreak heightened the need for all workers, irrespective of employment status, to be legally protected under social protection.⁶¹³ Consequently, universal coverage guarantees access to adequate social protection for all workers regardless of employment status.⁶¹⁴ Universal social protection includes adequate cash transfers for everyone who needs them, especially children, as well as benefits or assistance for

⁶¹² Article 3 of the International Covenant on Economic, Social and Cultural Rights, 1966: R202 - Social Protection Floors Recommendation, 2012 (No. 202).

⁶¹³ Green Paper on Comprehensive Social Security and Retirement Reform regulations in GN 741 GG 45006 of 18 August 2021 47.

⁶¹⁴ Behrendt C, Nguyen QA & Rani U 'Social protection systems and the future of work: Ensuring social security for digital platform workers' (2019) 72 *International Social Security Review* 26 (hereafter Social protection systems and the future of work).

people of working age in the event of maternity, disability, work injury, or for those who are unemployed, as well as pensions for all older people.⁶¹⁵ This means that social protection will be accessible to previously excluded workers such as the self-employed.⁶¹⁶

Generally, all countries have the capacity to achieve universal social protection by creating appropriate fiscal spaces.⁶¹⁷ This can be achieved by combining contributory and non-contributory systems to ensure full coverage of all people across the life cycle.⁶¹⁸ Some of the ways to achieve universal protection include immediate universal coverage or the adoption of a gradual and progressive approach.⁶¹⁹ Furthermore, as the case in South Africa, countries can embed universalism in national constitutions, provide publicly-financed social benefits to all and use cash transfers for the poor and vulnerable.⁶²⁰ But in reality, this universalism must be translated into actual application.

5.2.2 Adequacy of benefits

Universal social protection should be accompanied by the provision of benefits that adequately meet the needs of the beneficiaries. The social protection benefits should be provided in an effective and timely manner.⁶²¹ In essence, social protection should provide appropriate income replacement equitably, in a sustainable manner.⁶²² The consequence is that sustainable financing should be provided by the state to develop and implement a social protection system

⁶¹⁵ Article 9(2) of the R202 - Social Protection Floors Recommendation, 2012 (No. 202); 'A Shared Mission for Universal Social Protection' available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/--dcomm/documents/genericdocument/wcms_378996.pdf (accessed 6 February 2023).

⁶¹⁶ 'USP2030' <https://usp2030.org/#why> (accessed 26 November 2022).

⁶¹⁷ 'Universal Social Protection for Shared Prosperity and Recommendation 202 Social Protection Floors' <https://www.social-protection.org/gimi/gess/RessourcePDF.action?id=54051#:~:text=Universal%20Social%20Protection%20to%20Leave%20No%20One%20Behind&text=For%20the%20World%20Bank%2C%20ILO,the%20poor%20and%20the%20vulnerable> (accessed 6 February 2023).

⁶¹⁸ 'Universal Social Protection for Shared Prosperity and Recommendation 202 Social Protection Floors' <https://www.social-protection.org/gimi/gess/RessourcePDF.action?id=54051#:~:text=Universal%20Social%20Protection%20to%20Leave%20No%20One%20Behind&text=For%20the%20World%20Bank%2C%20ILO,the%20poor%20and%20the%20vulnerable> (accessed 6 February 2023).

⁶¹⁹ 'Universal Social Protection for Shared Prosperity and Recommendation 202 Social Protection Floors' <https://www.social-protection.org/gimi/gess/RessourcePDF.action?id=54051#:~:text=Universal%20Social%20Protection%20to%20Leave%20No%20One%20Behind&text=For%20the%20World%20Bank%2C%20ILO,the%20poor%20and%20the%20vulnerable> (accessed 6 February 2023).

⁶²⁰ 'Universal Social Protection for Shared Prosperity and Recommendation 202 Social Protection Floors' <https://www.social-protection.org/gimi/gess/RessourcePDF.action?id=54051#:~:text=Universal%20Social%20Protection%20to%20Leave%20No%20One%20Behind&text=For%20the%20World%20Bank%2C%20ILO,the%20poor%20and%20the%20vulnerable> (accessed 6 February 2023).

⁶²¹ International Labour Organisation *A World Social Protection Report 2020–22* (2022) Geneva: ILO 11.

⁶²² Behrendt C, Nguyen QA & Rani U 'Social protection systems and the future of work' (2019) 26.

with adequate coverage of benefits.⁶²³ This will necessitate material increase in public spending on social protection.⁶²⁴

5.2.3 Transparency

Transparency helps in ensuring that all participants involved with social protection are aware of their rights and obligations.⁶²⁵ The legal system should provide unambiguous and predictable entitlements to social protection.⁶²⁶ Furthermore, administrative procedures must be easy to understand, digital technology-based, and comply with the protection of privacy and personal information.⁶²⁷ Transparency in social protection makes it easier for applicants to appeal against selection decisions.⁶²⁸

Information should be readily available, easily accessible, and widely shared among the populace in order to effectively guarantee transparency.⁶²⁹ Transparency is essential for preventing or reducing corruption, favouritism, and inefficiency.⁶³⁰ Social protection rights holders' capacity to identify violations and raise concerns will be hampered if they are unaware of government regulations and, in fact, are unable to observe how social protection programmes are implemented in compliance with those regulations.⁶³¹

5.2.4 Social dialogue

Social dialogue involving government, employers and workers' organisations, civil society and other stakeholders is important in facilitating social protection reforms.⁶³² This dialogue guarantees the representation and participation of self-employed workers.⁶³³ Similarly, dialogue is important in generating social protection financing options and the adoption of public policies for social protection.⁶³⁴ For instance, the National Social Security Forum hosted by

⁶²³ International Labour Organisation *A World Social Protection Report 2020–22* (2022) 33.

⁶²⁴ International Labour Organisation *A World Social Protection Report 2020–22* (2022) 35.

⁶²⁵ Behrendt C, Nguyen QA & Rani U 'Social protection systems and the future of work' (2019) 27.

⁶²⁶ Behrendt C, Nguyen QA & Rani U 'Social protection systems and the future of work' (2019) 27.

⁶²⁷ Barrett S & Kidd S 'The design and management of cash transfer programmes: an overview' (2015) Frankfurt: KfW Development Bank 6.

⁶²⁸ Barrett S & Kidd S 'The design and management of cash transfer programmes: an overview' (2015) 6.

⁶²⁹ 'Ensure Transparency and Access to Information' available at <https://socialprotection-humanrights.org/framework/principles/ensure-transparency-and-access-to-information/> (accessed 6 February 2023).

⁶³⁰ 'Ensure Transparency and Access to Information' available at <https://socialprotection-humanrights.org/framework/principles/ensure-transparency-and-access-to-information/> (accessed 6 February 2023).

⁶³¹ 'Ensure Transparency and Access to Information' available at <https://socialprotection-humanrights.org/framework/principles/ensure-transparency-and-access-to-information/> (accessed 6 February 2023).

⁶³² International Labour Organisation *A World Social Protection Report 2020–22* (2022) 35.

⁶³³ Behrendt C, Nguyen QA & Rani U 'Social protection systems and the future of work' (2019) 37.

⁶³⁴ International Labour Organisation *A World Social Protection Report 2020–22* (2022) 35.

the Brazilian government in 2007, as mentioned in chapter 4, serves as a model for facilitation of social security dialogue among the various stakeholders.⁶³⁵ In South Africa, specifically, the recommendations made by NEDLAC to embrace Comprehensive Social Security and Retirement Reforms by engaging different stakeholders such as the business community, labour and the community at large evidences efforts to embrace comprehensive social security.⁶³⁶

5.2.5 Transferability of entitlements

Social protection in South Africa must allow for the portability of social security entitlements to permit workers to remain insured when switching from formal employment to self-employment or even across sectors.⁶³⁷ This addresses the loss of social protection benefits that occurs when formal workers switch to self-employment. A practical consequence of the portability of entitlements across sectors is the necessity for coordinated information and technology solutions to enable the flow of information between the various sectors.⁶³⁸ However, portability of social security entitlements will only be possible subject to the creation of a mandatory and universal social insurance system.⁶³⁹ This is because portability requires setting out a framework to harmonise payments, monitoring and enforcement across the different social insurance schemes.⁶⁴⁰

5.3 RECOMMENDATIONS

Having outlined the principles of social protection, the study makes the following recommendations.

5.3.1 Adapting legislative framework

As previously discussed, social insurance programmes need to be strengthened and modified in order to adequately protect all workers across the different employment sectors.⁶⁴¹ In line

⁶³⁵ International Labour Organization *Brazilian Good Practices in Social Security* (2013) 93.

⁶³⁶ National Economic Development And Labour Council 'NEDLAC Report Of The Comprehensive Social Security And Retirement Reform Task Team' available at <https://nedlac.org.za/wp-content/uploads/2021/08/Nedlac-report-on-Comprehensive-Social-Security-and-Retirement-Reforms.pdf> (accessed 1 May 2023).

⁶³⁷ International Labour Organization *Extending social protection to workers in the formal economy: Lessons from international experience* (2021) 114 Geneva: ILO.

⁶³⁸ International Labour Organization *Lessons from international experience* (2021) 115.

⁶³⁹ Mpedi LG 'Financial Services and Arrangements to Facilitate the (Ex)Portability of Social Security Benefits in the Southern African Development Community' (2022) *PER / PELJ* 2022(25) 12.

⁶⁴⁰ Mpedi LG 'Financial Services and Arrangements to Facilitate the (Ex)Portability of Social Security Benefits in the Southern African Development Community' (2022) *PER / PELJ* 2022(25) 12.

⁶⁴¹ International Labour Organization 'Beyond COVID-19: Towards more inclusive and resilient social protection systems' available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---ddg_p/documents/publication/wcms_791889.pdf (accessed 7 February 2023).

with the principle of universal social protection coverage, the regulatory framework must be adapted to bring self-employed workers under the ambit of social protection in South Africa.⁶⁴² As mentioned in paragraph 2.8.2, the term ‘worker’ is more inclusive and must be adapted to provide self-employed persons social protection measures similar to traditional employees.⁶⁴³ The rights to access social insurance benefits would be applicable to self-employed workers if the term ‘employee’ is substituted by the term ‘worker’ which guarantees protections, including social protection, to vulnerable self-employed persons.⁶⁴⁴ Besides adapting the term ‘worker’, specific legislative measures that grant the most vulnerable self-employed workers access to a variety of social security rights should be introduced.⁶⁴⁵ A noteworthy example is the Brazilian government, which established the Individual Micro-Entrepreneur Law, a new legal category of independent micro entrepreneurs.⁶⁴⁶

5.3.2 Unified system of social protection

It was noted that South Africa lacks a unified legislative foundation for social security. A legal framework for a mandatory social protection system that applies to both self-employed and formally employed must be established.⁶⁴⁷ There is need to unite the different components of social protection and merge the administration of the isolated funds such as the UIF and the COIDA. This minimises administrative hurdles and guarantees protection for self-employed workers.

5.3.3 Adapting social insurance schemes for self-employed workers

There is a need to introduce social insurance measures that also cover self-employed workers. Such measures should address the specific needs and circumstances of self-employed workers.⁶⁴⁸ While tax-financed social protection measures are important for ensuring a basic level of protection for self-employed workers, they do not cover the needs of self-employed workers adequately.⁶⁴⁹ Well-coordinated contributory social insurance programmes,

⁶⁴² International Labour Organization *Social Protection Spotlight* (2021) 4.

⁶⁴³ Risak M & Dullinger T ‘The concept of ‘worker’ in EU law Status quo and potential for change’ (2018) Brussels: European Trade Union Institute 5.

⁶⁴⁴ Risak M & Dullinger T ‘The concept of ‘worker’ in EU law Status quo and potential for change’ (2018) Brussels: European Trade Union Institute 7, 16.

⁶⁴⁵ Risak M & Dullinger T ‘The concept of ‘worker’ in EU law Status quo and potential for change’ (2018) Brussels: European Trade Union Institute 5.

⁶⁴⁶ International Labour Organization *Social Protection Spotlight* (2021) 5.

⁶⁴⁷ Katiyatiya LM & Lubisi N ‘Part B: The Role of Substantive Equality in Shaping Transformative Social Protection in South Africa into the Digital Platform Work’ (2021) 25 *Journal of Poverty* 26: ‘Comprehensive social security in South Africa’ available at https://static.pmg.org.za/161128Comprehensive_Social_Security_in_South_Africa.pdf (accessed 22 September 2022).

⁶⁴⁸ International Labour Organisation *Social Protection Spotlight* 6.

⁶⁴⁹ Behrendt C, Nguyen QA & Rani U ‘Social protection systems and the future of work’ (2019) 33.

complemented by non-contributory schemes, should be accessible to self-employed workers to ensure adequate social protection coverage.⁶⁵⁰ It is advisable for South Africa to follow the approach used by Brazil, where self-employed workers can apply for social insurance programmes.⁶⁵¹ Mandatory unemployment benefit fund, compensation for occupational injury and retirement packages should be made accessible to self-employed workers.

It is further suggested that appropriate procedures should be built into the social security system to allow portability of benefits.⁶⁵² This feature of social protection allows workers to carry over their social security entitlements when they move from formal work to self-employment.⁶⁵³ This flexibility reduces vulnerability for workers that lose formal work and enter into self-employment.⁶⁵⁴

5.3.4 Simplified administrative procedures

Undoubtedly, simplified administrative procedures grant easier access to social protection benefits for self-employed workers.⁶⁵⁵ Administrative hurdles should be minimised to facilitate access to social protection for self-employed workers.⁶⁵⁶

Simple social protection procedures are key to preventing the exclusion of self-employed workers.⁶⁵⁷ As noted previously, self-employed workers have fluctuating and irregular incomes. Innovative simplified contribution mechanisms with flexible payment schedules that allow for interruptions to contributions are recommended for self-employed workers.⁶⁵⁸ Furthermore, under a unified system, self-employed workers make single payments for different funds without compromising their entitlements.

To build social protection administrative and financial systems that self-employed workers can access easily, digital innovation needs to be integrated with the social protection system.⁶⁵⁹ Creative payment methods, such as the use of mobile phones, make it easier for self-employed

⁶⁵⁰ Behrendt C, Nguyen QA & Rani U 'Social protection systems and the future of work' (2019) 29.

⁶⁵¹ Miranda HP 'Spotlight on Retirement' (2020) 24.

⁶⁵² International Labour Organization *Extending social security and facilitating transition* (2019) 92.

⁶⁵³ International Labour Organisation *Social Protection Spotlight* (2021) 129.

⁶⁵⁴ Williams CC & Lapeyre F *Dependent self-employment: Trends, challenges and policy responses in the EU Employment* (2017) Geneva: ILO 39.

⁶⁵⁵ Inter-Departmental Task Team on Social Security and Retirement Reform 'Comprehensive social security in South Africa' available at <https://www.gov.za/documents/comprehensive-social-security-south-africa-discussion-document-25-nov-2016-0000-0> (accessed 24 October 2022).

⁶⁵⁶ International Labour Organization *Extending social protection to workers in the formal economy* (2021) 96.

⁶⁵⁷ International Labour Office *Building social protection systems: International standards and human rights instruments* (2021) Geneva: ILO 94.

⁶⁵⁸ Williams CC & Lapeyre F *Dependent self-employment: Trends, challenges and policy responses in the EU* (2017) Geneva: ILO 39.

⁶⁵⁹ Behrendt C, Nguyen QA & Rani U 'Social protection systems and the future of work' (2019) 31.

workers to access social protection.⁶⁶⁰ For instance, during the applications for the SRD grant, even though a certain percentage of applicants was deterred from applying due to a lack of smartphones, most respondents to a survey agreed that cellphones played a huge part in SRD applications.⁶⁶¹ However, physical stations for applications and administration of social security must still be accessible to accommodate those without access to smartphones or other electronic gadgets. In addition, cutting-edge technology such as smart cards, and phone applications, among others, can also bring access to social protection within the ambit of vulnerable self-employed workers.⁶⁶²

It was noted in chapter 3 that self-employed workers may find it difficult to complete complicated registration procedures, mostly due to illiteracy.⁶⁶³ It is submitted that registration and other administrative procedures should be simplified to make them accessible to self-employed workers. Furthermore, relevant forms and documents should, where necessary, be made available in several languages to reach more self-employed workers.⁶⁶⁴

The COVID-19 dilemma has made a national single registry for social protection even more necessary in South Africa.⁶⁶⁵ The single registry should categorise vulnerable citizens, including the self-employed, into various socioeconomic groups for the purposes to provide appropriate social protection.⁶⁶⁶ The registry should maintain accurate data about the beneficiaries and provides crucial information on their socioeconomic status.⁶⁶⁷ To register, applicants provide personal information, which will be verified for accuracy and evaluated for compliance with the programme's eligibility requirements.⁶⁶⁸

Extending social protection coverage to self-employed individuals requires facilitating access to information on social protection programmes including benefits and the registration

⁶⁶⁰ Brimblecombe S et al *Handbook on the extension of social security coverage to self-employed* (2012) Geneva: International Social Security Association 28.

⁶⁶¹ Department of Social Development ‘‘ The Rapid Assessment of the Implementation and Utilisation of the Special COVID-19 SRD Grant (2021) Pretoria: Department of Social Development 28, 29.

⁶⁶² Behrendt C, Nguyen QA & Rani U ‘Social protection systems and the future of work’ (2019) 31.

⁶⁶³ International Labour Organization *Lessons from international experience* (2021) 99.

⁶⁶⁴ International Labour Organization *Lessons from international experience* (2021) 100.

⁶⁶⁵ Green Paper on Comprehensive Social Security and Retirement Reform regulations in GN 741 GG 45006 of 18 August 2021 80.

⁶⁶⁶ Ministry of Social and Agrarian Development ‘Unified Registry for social programs - Main Registration Form’ available at <https://socialprotection.org/discover/publications/unified-registry-social-programs-main-registration-form#:~:text=The%20Unified%20Registry%20for%20Social,policies%20geared%20towards%20such%20famil ies> (accessed 29 September 2022).

⁶⁶⁷ Green Paper on Comprehensive Social Security and Retirement Reform regulations in GN 741 GG 45006 of 18 August 2021 80.

⁶⁶⁸ Barrett S & Kidd S *The design and management of cash transfer programmes: an overview* (2015) 3.

processes.⁶⁶⁹ It is important to provide appropriate education and public awareness with regard to access to social security schemes.⁶⁷⁰ The Brazilian government's establishment of the Social Security Education Programme to educate citizens on their social security rights and obligations serves as a model to South Africa.⁶⁷¹ The need for appropriate social protection education is greater for self-employed South Africans given that they often have limited formal education.⁶⁷² Outreach efforts such as a variety of media, including TV and radio commercials, newspaper articles, pamphlets, and media campaigns can be used to raise awareness of crucial information on social protection to self-employed workers.⁶⁷³

Monitoring and enforcement are crucial to alleviating the exclusion of self-employed workers from accessing social protection programmes.⁶⁷⁴ For example, to comply with monitoring standards under the Committee on Economic, Social and Cultural Rights (CESCR), states are obliged to effectively monitor the implementation of the right to social security and should set up the relevant institutions and procedures to accomplish this.⁶⁷⁵ Similarly, Recommendation 202 emphasises the importance of monitoring social protection floors implementation progress using appropriate, nationally defined mechanisms that involve both employer and employee organisations.⁶⁷⁶ One of the purposes of establishing this regulatory body is to include workers previously excluded from social protection based on employment status.⁶⁷⁷

5.3.5 Participation of Relevant Stakeholders

Equally important in extending social security to self-employed workers is the participation by stakeholders in national social dialogue.⁶⁷⁸ There is need to conduct informational campaigns, especially through social dialogue, to increase knowledge of social protection floors and their extension methods.⁶⁷⁹ Social dialogue encourages the democratic involvement of those most directly affected in the formulation of public policy.⁶⁸⁰ This contributes to ensuring that social

⁶⁶⁹ International Labour Organization *Lessons from international experience* (2021) 100.

⁶⁷⁰ Article 49 of the UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 19: The right to social security (Art. 9 of the Covenant)*, 4 February 2008.

⁶⁷¹ International Labour Organization *Brazilian Good Practices in Social Security* (2013) 108.

⁶⁷² Brimblecombe S et al *Handbook on the extension of social security* (2012) 40.

⁶⁷³ International Labour Organization *Lessons from international experience* (2021) 101.

⁶⁷⁴ Bonilla-Garcia A & Gruat JV *Social protection: A life cycle continuum investment* (2003) 48.

⁶⁷⁵ Article 74 of the UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 19: The right to social security (Art. 9 of the Covenant)*, 4 February 2008.

⁶⁷⁶ Social Protection Floors Recommendation, 2012 (No. 202).

⁶⁷⁷ Green Paper on Comprehensive Social Security and Retirement Reform regulations in GN 741 GG 45006 of 18 August 2021 11.

⁶⁷⁸ Article 13(1) of the Social Protection Floors Recommendation, 2012 (No. 202).

⁶⁷⁹ Article 14 of the Social Protection Floors Recommendation, 2012 (No. 202).

⁶⁸⁰ 'ILO Social Protection Floors Recommendation, 2012 (No. 202)' available at <https://www.social-protection.org/gimi/RessourcePDF.action?id=56900#:~:text=National%20social%20protection%20floors%20should,or%20non%20contributory%20social%20transfers> (accessed 7 February 2023).

partners are involved and that social protection measures are valid, equitable, and tailored to the actual needs and interests of the workers.⁶⁸¹

5.4 CONCLUDING REMARKS

This mini thesis has argued for the need to extend social protection to South Africa's to self-employed workers. Chapter two noted that the working conditions of self-employed workers in South Africa are precarious and mostly indecent. Yet, these workers are denied access to social protection by factors such as legal exclusion, costs and inadequate financial arrangements and complex administrative arrangements among others.

Chapter 3 explored how social protection in South Africa has changed over time, from separate eras of racial exclusion of blacks to the current social protection system, which excludes certain categories of workers, including the self-employed. This current social protection model in South Africa consists of social assistance and social insurance. Social assistance is tax-financed and includes different kinds of social grants such as child support grant, care dependency grant, foster child grant, disability grant, older person's grant, war veteran's grant and grant in aid administered under SASSA. Social insurance, on the other hand, is contributory based and is biased towards formal employees, excluding self-employed workers.

Chapter 4 examined the approach adopted by Brazil to adequately cover self-employed workers under social protection. Besides the Constitution of 1988 that entrenches social protection as a human right, Brazil has set up several social grants to cater for vulnerable citizens such as the Bolsa Familia and conditional cash transfers, among others. In addition, Brazil has taken initiatives such as the single registry, digitalisation of social security and Individual Micro-Entrepreneur law which are specifically targeted at self-employed workers.

Chapter 5 of this study discussed universal coverage, adequacy of benefits, transparency and social dialogue as principles that must underpin the development of an inclusive social protection system. The research made recommendations for law reform in South Africa in order to facilitate the inclusion of vulnerable self-employed workers. These include; adapting simplified administrative procedures, amending the legislative framework, switching to a unified system of social protection and adapting social insurance schemes that accommodate self-employed workers. Consequently, it is hoped that the discussion in this thesis would

⁶⁸¹ 'ILO Social Protection Floors Recommendation, 2012 (No. 202)' available at <https://www.social-protection.org/gimi/RessourcePDF.action?id=56900#:~:text=National%20social%20protection%20floors%20should,or%20non%2Dcontributory%20social%20transfers> (accessed 7 February 2023).

inspire additional research into the other facets of social protection for self-employed employees.

(32224 Words)



BIBLIOGRAPHY

BOOKS

Mcgregor M et al *Labour Law Rules!* (2017) Cape Town: Siber Ink CC

Jordaan B, Kalula E & Strydom E *Understanding Social Security Law* (2009) Cape Town: Juta

Olivier MP, Smit N & Kalula ER *Social Security: A legal analysis* (2003) Cape Town: Juta

CASE LAW

Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC); 2014 (1) BCLR 1 (CC) (29 November 2013)

Glenister v President of the Republic of South Africa 2011 (3) SA 347 (CC)

Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000)

Khosa and Others v Minister of Social Development and Others, Mahlaule and Another v Minister of Social Development (CCT 13/03, CCT 12/03) [2004] ZACC 11; 2004 (6) SA 505 (CC); 2004 (6) BCLR 569 (CC) (4 March 2004)

Mahlangu and Another v Minister of Labour and Others [2020] ZACC 24

Ngalo v South African Social Security Agency (SASSA) (2740/11) [2013] ZAECMHC 4; [2013] 2 All SA 347 (ECM) (14 February 2013)

Soobramoney v Minister of Health, KwaZulu-Natal 1998(1) SA 765 (CC)

Wyeth SA (Pty) Ltd v Manqele & others (2005) 26 ILJ 749 (LAC)

CHAPTERS IN BOOKS

Boissevain J et al 'Ethnic entrepreneurs and ethnic strategies' in Waldinger R, Aldrich H & Ward R (eds) *Ethnic entrepreneurs: Immigrant business in industrial societies* (1990) London: Sage

Dos Santos MPG 'The Brazilian social protection system: history and present configuration' in Midgley J (ed) *Social protection, economic growth and social change: goals, issues and trajectories in China, India, Brazil and South Africa* (2013) Cheltenham: Edward Elgar Publishing

Liffman R et al 'Scope of Application' in Olivier MP et al (eds) *Social security Law: General Principles* (1999) Cape Town: Butterworth Publishers

Lloyd N & Leibbrandt M 2018 Entry and exit from informal enterprise ownership in South Africa in Fourie FCVN (ed) *The South African informal sector: Creating jobs, reducing poverty* (2018) Cape Town: Human Sciences Research Council Press

Makaluza N & Burger R 'Job-seeker entry into the two-tiered informal sector in South Africa' in Fourie FCVN (ed) *The South African informal sector: Creating jobs, reducing poverty* (2018) Cape Town: Human Sciences Research Council Press

Paes-Sousa R, de Teixeira Soares ARD & Kleiman F 'Broadening Social Protection and Integrating Social Policies' in Brewka B (ed) *SHARING Innovative Experiences: Successful Social Protection Floor Experiences* (2011) New York: UNDP

Patel L 'Child Support Grants' in Brewka B (ed) *SHARING Innovative Experiences: Successful Social Protection Floor Experiences* (2011) New York: UNDP

Seekings J 'The Social Question in Pre-apartheid South Africa: Race, Religion and the State' in Leisering L (ed) *One Hundred Years of Social Protection: The Changing Social Question in Brazil, India, China, and South Africa* (2021) Switzerland: Palgrave Macmillan

CONFERENCE PROCEEDINGS, REPORTS AND POLICY

International Labour Organisation

Asenjo A & Pignatti C *Unemployment insurance schemes around the world: Evidence and policy options* (2019) Geneva: ILO

Bonilla-Garcia A & Gruat JV *Social protection: A life cycle continuum investment for social justice, poverty reduction and sustainable development* (2003) Geneva: ILO

International Labour Office *Building social protection systems: International standards and human rights instruments* (2021) Geneva: ILO

International Labour Organisation *Ensuring better social protection for self-employed workers* (2020) Geneva: ILO

International Labour Organisation *Extension of Social Protection* (Date Unknown) Geneva: ILO

International Labour Organisation *Republic of South Africa: Report to the Government Assessment of the South African legislation in view of a possible ratification of the Social Security (Minimum Standards) Convention, 1952 (No. 102)* (2017) Geneva: ILO

International Labour Organisation *Social Insurance: Enhancing social security right for everyone policy brief* (2015) Geneva: ILO

International Labour Organisation *Social Protection Spotlight: Extending social security to workers in the informal economy: Key lessons learned from international experience* (2021) Geneva: ILO

International Labour Organisation *The impact of the COVID-19 pandemic on jobs and incomes in G20 economies: ILO-OECD paper prepared at the request of G20 Leaders Saudi Arabia's G20 Presidency 2020* (2020) Geneva: ILO

International Labour Organisation *The scope of the employment relationship* (2003) Geneva: ILO

International Labour Organisation *World of Work Report 2014 Developing with jobs* (2014) Geneva: ILO

International Labour Organisation *World Social Protection Report 2020–22: Social protection at the crossroads – in pursuit of a better future* (2021) Geneva: ILO 19

International Labour Organization *Brazilian Good Practices in Social Security* (2013) Brasilia: ILO

International Labour Organization *Decent Work and the Informal Economy* (2002) Geneva: ILO

International Labour Organization *Extending social protection to workers in the formal economy: Lessons from international experience* (2021) ILO: Geneva

International Labour Organization *Extending social security and facilitating transition from the informal to the formal economy: Lessons from international experience* (2019) Geneva: ILO

International Labour Organization *Innovations in extending social insurance coverage to independent workers Experiences from Brazil, Cape Verde, Colombia, Costa Rica, Ecuador, Philippines, France and Uruguay* (2013) ILO: Geneva

International Labour Organization *Social Protection 2017–19 Report: World Social Protection Report 2017-19: Universal social protection to achieve the Sustainable Development Goals* (2017) Geneva: ILO

Langenhove T et al *Brazil Cadastro Único - Operating a registry through a national public bank* (2014) Geneva: ILO

Nguyen QA & da Cunha NMS *Extension of social security to workers in informal employment in the Asean region* (2019) Japan: ILO

Ortiz I, Schmitt V & De L (eds) *100 years of social protection: The road to universal social protection systems and floors Volume I: 50 country cases* (2019) Geneva: ILO

Schwarze H & Querino AC *Non-contributory pensions in Brazil: The impact on poverty reduction* (2002) Geneva: ILO

Van Ginneken W *Managing risk and minimizing vulnerability: the role of social protection in pro-poor growth* (2005) Geneva: ILO

Williams CC & Lapeyre F *Dependent self-employment: Trends, challenges and policy responses in the EU* (2017) Geneva: ILO

Other

Brimblecombe S et al *Handbook on the extension of social security coverage to self-employed* (2012) Geneva: International Social Security Association

Department of Health *National Health Insurance in South Africa Policy Paper* (2021) Pretoria: Department of Health Republic of South Africa

Khuluvhe M *Adult Illiteracy in South Africa* (2022) Pretoria: Department of Higher Education and Training

United Nations

Kangasniemi M, Knowles M & Karfakis P *The role of social protection in inclusive structural transformation* (2020) Rome: Food and Agriculture Organisation of the United Nations

Medeiros M, Diniz D & Squinca F *Cash benefits to disabled persons in Brazil: an analysis of BPC – continuous Cash Benefit Programme* (2015) Brasilia: United Nations Development Programme

Robles V & Mirosevic V *Social protection systems in Latin America and the Caribbean: Brazil* (2013) New York: UN Economic Commission for Latin America and the Caribbean

Souza AP *Social Protection Response to COVID-19 in Brazil* (2020) New York: UNDP

United Nations Children's Fund *Addressing the Myths: Do social protection programs lead to misuse and dependency* (2017) New York: UNICEF

United Nations *Promoting inclusion through social protection: Report on the World Social Situation* (2018) New York: Department of Economic and Social Affairs

United Nations *Why We Need Social Protection* (2016) Bangkok: Social Development Division of United Nations Economic and Social Commission for Asia and the Pacific

The World Bank

The World Bank *Overcoming Poverty and Inequality in South Africa: An Assessment of Drivers, Constraints and Opportunities* (2018) Washington DC: International Bank for Reconstruction and Development

The World Bank *South Africa Social Assistance Programs and Systems Review* (2021)
Washington, DC: The International Bank for Reconstruction and Development
The World Bank *The State of Social Safety Nets 2018* (2018) Washington, DC: International
Bank for Reconstruction and Development

INTERNATIONAL CONVENTIONS AND TREATIES

International Labour Organisation

Occupational Safety and Health Convention, 1981 (No. 155)
Safety and Health in Mines Convention, 1995 (No. 176)
Social Protection Floors Recommendation, 2012 (No. 202)
Social Security (Minimum Standards) Convention, 1952 (No. 102)
Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)

United Nations

International Covenant on Civil and Political Rights, 1966
International Covenant on Economic, Social and Cultural Rights, 1966
UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 19:
The right to social security (Art. 9 of the Covenant)*, 4 February 2008
Universal Declaration of Human Rights, 1948

JOURNAL ARTICLES

Bargain O & Kwenda P 'Earnings structures, informal employment, and self-employment: new evidence from Brazil, Mexico, and South Africa' 2011 *Review of Income and Wealth* 100-122
Basson Y 'The Compliance of the South African Social Security System with the International Covenant on Economic, Social and Cultural Rights' 2020 *Obiter* 850 – 870
Behrendt C, Nguyen QA & Rani U 'Social protection systems and the future of work: Ensuring social security for digital platform workers' (2019) 72 *International Social Security Review* 17-41
Campbell I & Price R 'Precarious work and precarious workers: Towards an improved conceptualisation' (2017) 27 *The Economic and Labour Relations Review* 314–332
Chawane MH 'Socio-economic conditions of the black mine workers on the Orange Free State Goldfields, 1947-1957' (2001) 26 *Southern Journal for Contemporary History* 170-85

Cho Y, Robalino D & Watson D 'Supporting self-employment and small-scale entrepreneurship: potential programs to improve livelihoods for vulnerable workers' (2016) *IZA Journal of Labour Policy* 1-26

Cichon M 'The Social Protection Floors Recommendation, 2012 (No. 202): Can a six-page document change the course of social history?' (2013) 66 *International Social Security Association* 21 - 43

Costanzi RN, Barbosa ED & da Silva Bichara J 'Extending Social Security Coverage to Self-Employed Workers in Brazil' 2013 *International Labour Review* 549-558

De Sousa EMT & de Carvalho HA 'Individual Micro Entrepreneur: Why Formalize?' (2019) 4 *Revista de Empreendedorismo e Gestão de Micro e Pequenas Empresas* 128-147

Fairlie RW & Meyer BD 'Ethnic and Racial Self-Employment Differences and Possible Explanations' (1996) *The Journal of Human Resources* 757-793

Fields GS 'Self-employment and poverty in developing countries' (2019) *IZA World of Labour* 1-10

Forkuor JB et al "Negotiation and management strategies of street vendors in developing countries: A narrative review" (2017) 7(1) *SAGE* 3 1-13

Fourie ES 'Non-Standard Workers: The South African Context, International Law and Regulation by the European Union'(2008) 4 *PER/PELJ* 2008 109 - 184

França MTA, Frio GS & Korzeniewicz MBDV 'Self-employment and wage difference an analysis for Brazil' (2022) 47 *International Journal of Social Economics* 727-745

Fredman S et al 'Thinking Out of the Box: Fair Work for Platform Workers' (2020) *King's Law Journal* 1-14

Fundie AMS, Chisoro C & Karodia AM 'The challenges facing informal traders in the Hilbrow area of Johannesburg' (2015) *Kuwait Chapter of Arabian Journal of Business and Management Review* 46-75

Gamieldien F & van Niekerk L 'Street vending in South Africa: An entrepreneurial occupation' (2017) *South African Journal of Occupational Therapy* 24-9

Godfrey L 'Quantifying economic activity in the informal recycling sector in South Africa' 2021 *South African Journal of Science* 1-7

Grabrucker K & Grimm M 'Does Crime Deter South Africans from Self-Employment?' 2018 *Journal of Comparative Economics* 413-35

Grin EJ 'Social welfare in Brazil: Three historical periods and differences from the European social democratic model' (2013) *Cadernos Gestão Pública e Cidadania* 186-204

Haddad MA & Hellyer J 'Decent Work and Social Protection in Belo Horizonte, Brazil' (2017) *Journal of Planning Education and Research* 1-37

Halvorsen CJ & Morrow-Howel N 'A Conceptual Framework on Self-Employment in Later Life: Toward a Research Agenda' (2017) *Work, Aging and Retirement* 313–24

Johnson S, Reya R & Ilhardt J 'Adapting South Africa's Social Protection System for COVID-19' (2020) *Centre for Social Science Research* 1 – 118

Katiyatiya LM & Lubisi N 'Part B: The Role of Substantive Equality in Shaping Transformative Social Protection in South Africa into the Digital Platform Work' (2021) *Journal of Poverty* 23-42

Kumalo SN & Kaseeram I 'The determinants of self-employment of black entrepreneurs in Ladysmith, KwaZulu-Natal' 2019 *Acta Commercii* 1–10

Lopes MC & Veiga-Neto A 'Policies of social action and inclusion and current Brazilian tensions' (2015) *Sisyphus — Journal of Education* 38-59

Ludera-Ruszel A 'The Concept of "Worker" Under the Principle of Free Movement of Workers and its Implications for the Protection of Workers in the European Union' (2020) 27 *Studies on Labour Law and Social Policy* 167–174

Mackett O 'Social Grants as a Tool for Poverty Reduction in South Africa? A Longitudinal Analysis Using the NIDS Survey' (2020) 19 *African Studies Quarterly* 41-64

Magidimisha HH & Gordon S 'Profiling South African gender inequality in informal self-employment' (2015) *Journal of Gender Studies* 275-92

Malherbe K 'Social Grant Payments – a Crisis Averted?' (2017) 4 *Revue de droit comparé du travail et de la sécurité sociale* 224-227

Malik JN 'Workmen's Compensation Act and some problems of procedure' 1961 *Journal of the Indian Law Institute* 131-60

Mpedi LG 'Financial Services and Arrangements to Facilitate the (Ex)Portability of Social Security Benefits in the Southern African Development Community' (2022) *PER/PELJ* 1-18

Mpedi LG 'Social Protection Law in the Republic of South Africa' (2017) *Law in Africa* 33-57

Ngwenya M et al 'Skills related underemployment amongst South Africa's informally employed and self-employed: A case study of Potchefstroom' (2020) *SA Journal of Human Resource Management* 1 - 12

Nicoli PAG 'Centralizing informal work, complexifying inclusion, decolonizing labour law' (2020) 11 *Rev. Direito e Práx* 2696-2724

Nyenti MAT 'Role of constitutional principles and values in the development of social protection in South Africa' (2016) *Global Social Policy* 201-17

Patel L 'Poverty, Gender and Social Protection: Child Support Grants in Soweto, South Africa' 2012 *Journal of Policy Practice* 106 – 20

Philip K 'Inequality and Economic Marginalisation: How the Structure of the Economy Impacts on Opportunities on the Margins' (2010) 14 *Law, Democracy and Development* 1-27

Pieterse M 'Rights, Regulation and Bureaucratic Impact: The Impact of Human Rights Litigation on the Regulation of Informal Trade in Johannesburg' (2017) *PER / PELJ* 1-28

Raniga T & Ringson J 'The Implications of COVID-19 on Informal Trading in Gauteng, South Africa' (2022) 11 *African Journal of Governance and Development* 307 – 327

Ranyane KA 'Survivalist Entrepreneurship: An Income Generating Alternative for the Unemployed populace' (2015) *Mediterranean Journal of Social Sciences* 301-06

Razavi S 'Making the Right to Social Security a Reality for All Workers' (2022) *The Indian Journal of Labour Economics* 269–94

Roncolato L & Willoughby J 'Job quality complexities: Self-employment within the low-income communities surrounding Cape Town, South Africa' (2017) *Review of Radical Political Economics* 30-53

Sabates-Wheeler R and Devereux S 'Social Protection for Transformation' (2007) 38 *Institute of Development Studies* 23-8

Satumba T, Bayat A & Mohamed S (2017) 'The Impact of Social Grants on Poverty Reduction in South Africa' (2017) *Journal of Economics* 33-49

Smit N & Mpedi LG 'Social protection for developing countries: Can social insurance be more relevant for those working in the informal economy?' (2010) *Law, Democracy & Development* 1-33

Triegaardt JD 'Accomplishments and challenges for partnerships in development in the transformation of social security in South Africa' (2009) *Development Bank of Southern Africa*

Tshoose CI 'Appraisal of Selected Themes on the Impact of International Standards on Labour and Social Security Law in South Africa' (2022) 25 *PER / PELJ* 1 - 43

Tunio MN 'The study of self-employment at SMEs Level with Reference to Poverty in Developing Countries' 2017 *Business and Management Research* 33-9

Van der Berg S 'Social Security under Apartheid' (1997) 14 *Development Southern Africa* 481-503

Wilmans G & Rashied N 'Self-employment through ride-hailing: Drivers' experiences in Johannesburg, South Africa' (2021) *Acta Commercii* 1-9

LAW COMMISSION PAPERS

South African Human Rights Commission *Equality Report: Achieving substantive economic equality through rights-based radical socio-economic transformation in South Africa 2017/18* (2018)

South African Law Commission Discussion Paper 153 (Project 143) *Maternity and Parental Benefits for Self-Employed Workers in the Informal Economy* (2021)

LEGISLATION: BRAZIL

Complementary Law 128, of 12/19/2008

Constitution of Brazil, 1988

Decree Law 525 of 1 July 1938

Law 3.807/60, 1960

LEGISLATION: SOUTH AFRICA

Acts of Parliament

Compensation for Occupational Injuries and Diseases Act 130 of 1993

Constitution of the Republic of South Africa, 1996

Disaster Management Act 57 of 2002

Medical Schemes Act 131 of 1998

Miners' Phthisis Allowances Act 34 of 1911

Pension Funds Act 24 of 1956

Social Assistance Act 13 of 2004

South African Social Security Agency Act 9 of 2004

Unemployment Insurance Act 63 of 2001

Unemployment Insurance Contributions Act 4 of 2002

Unemployment Insurance Act 10 of 2016

Workmen's Compensation Act 36 of 1907

By-laws

Matzikama Municipality: By-law for the Supervision and Control of Business of Street Vendor, Pedlar and Hawker Published in Western Cape PN 96 *Provincial Gazette* 5996 4 April 2003



Delegated legislation

COVID-19 Temporary Employee / Employer Relief Scheme (C19 TERS) GN 215 GG 43161 of 2020

Disaster Management Act: Declaration of a National State of Disaster 313 GG 43096 15 March 2020.

Disaster Management Act of 2002: Amendment of regulations issued in terms of section 27(2) GN 398 GG 43148 25 March 2020

Green Paper on Comprehensive Social Security and Retirement Reform regulations in GN 741 GG 45006 of 18 August 2021

Regulations relating to COVID-19 Social Relief of Distress GN 2042 GG 46271 of 22 April 2022

White Paper on National Health Insurance for South Africa GN 1230 GG 39506 of 11 December 2015

INTERNET REFERENCES

‘A Shared Mission for Universal Social Protection’ available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/genericdocument/wcms_378996.pdf (accessed 6 February 2023)

‘Addis Ababa Action Agenda of the Third International Conference on Financing for Development’ available at https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_69_313.pdf (accessed 11 August 2022)

‘Bolsa Alimentação (Bolsa Alimentação food grant) (2001-2003)’ available at <https://dds.cepal.org/bpsnc/programme?id=9> (accessed 22 December 2022)

‘Bolsa familia in Brazil’ available at <https://www.centreforpublicimpact.org/case-study/bolsa-familia-in-brazil> (accessed 10 December 2022)

‘C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)’ available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C187 (accessed 18 August 2022)

‘Comprehensive social security in South Africa’ available at https://static.pmg.org.za/161128Comprehensive_Social_Security_in_South_Africa.pdf (accessed 22 September 2022)

‘COVID-19 and the informal economy in South Africa’ available at <https://www.wits.ac.za/media/wits-university/research/coe-human/documents/COVID-19-and-the-informal-economy-in-South-Africa.pdf> (accessed 7 February 2023)

‘Decent Work’ available at <https://www.ilo.org/global/topics/decent-work/lang--en/index.htm> (accessed 08 August 2020)

‘Ensure Transparency and Access to Information’ available at <https://socialprotection-humanrights.org/framework/principles/ensure-transparency-and-access-to-information/> (accessed 6 February 2023)

‘Extension of Social Security to Informal Sector workers, Self Employed and Atypical Workers Consultative Workshop’ available at https://www.ilo.org/africa/countries-covered/south-africa/WCMS_855417/lang--en/index.htm (accessed 4 February 2023)

‘Food inflation deeped below headline inflation in 2015 and 2018’ available at <http://www.statssa.gov.za/wp-content/uploads/2018/07/img2.png> (accessed 6 February 2023)

‘Gauteng Township Economy Revitalisation Strategy 2014-2019’ available at <https://www.gep.co.za/wp-content/uploads/2018/12/Gauteng-Township-Economy-Revitalisation-Strategy-2014-2019.pdf> (accessed 10 September 2022)

‘ILO Social Protection Floors Recommendation, 2012 (No. 202)’ available at <https://www.social-protection.org/gimi/RessourcePDF.action?id=56900#:~:text=National%20social%20protection%20floors%20should,or%20non%2Dcontributory%20social%20transfers> (accessed 7 February 2023)

‘ILO Social Protection Floors Recommendation, 2012 (No. 202)’ available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:3065524 (accessed 5 February 2023).

‘Meu INSS A success story in the digital transformation policy of the Brazilian State’ available at <https://www.issa.int/gp/198205#:~:text=Created%20in%202016%20to%20bring,or%20services%20from%20the%20Institute.> (accessed 16 December 2022)

‘Plano Brasil Sem Miséria Brazil Without Extreme Poverty Plan’ available at https://www.mds.gov.br/webarquivos/publicacao/brasil_sem_miseria/mds_revista_ingles.pdf (accessed 12 December 2022)

‘Report of the Lund Committee on Child and Family Support’ available at <https://www.gov.za/documents/report-lund-committee-child-and-family->

[support#EXEC::~text=Report%20of%20the%20Lund%20Committee%20on%20Child%20and%20Family%20Support](#) (accessed 13 August 2022)

‘Resolution concerning the International Classification of Status in Employment (ICSE) Adopted by the Fifteenth International Conference of Labour Statisticians’ (January 1993) available at https://www.ilo.org/global/statistics-and-databases/standards-and-guidelines/resolutions-adopted-by-international-conferences-of-labour-statisticians/WCMS_087562/lang--en/index.htm (accessed 9 September 2022)

‘Small business survival in an age of load shedding’ available at <https://www.fanews.co.za/article/views-letters-interviews-comments/18/all/1102/small-business-survival-in-an-age-of-load-shedding/28334> (accessed 2 August 2022)

‘Social insurance schemes’ available at <https://stats.oecd.org/glossary/detail.asp?ID=2490> (accessed 25 December 2022)

‘South Africa Economic Update: South Africa’s Labour Market Can Benefit from Young Entrepreneurs, Self-Employment’ available at <https://www.worldbank.org/en/country/southafrica/publication/south-africa-economic-update-south-africa-s-labor-market-can-benefit-from-young-entrepreneurs-self-employment> (accessed 6 September 2022)

‘Statement by President Cyril Ramaphosa on further economic and social measures in response to the COVID-19 epidemic’ <https://www.thepresidency.gov.za/speeches/statement-president-cyril-ramaphosa-further-economic-and-social-measures-response-covid-19> (accessed 15 August 2022)

‘Summary of recommendations for South Africa from the United Nations Committee on Economic, Social and Cultural Rights’ available at <https://spii.org.za/summary-of-recommendations-for-south-africa-from-the-united-nations-committee-on-economic-social-and-cultural-rights/#::~text=South%20Africa%20ratified%20the%20Covenant%20on%2012%20January%202015> (accessed 2 February 2023)

‘The ILO Social Security (Minimum Standards) Convention, 1952 (No. 102)’ https://www.ilo.org/secsoc/areas-of-work/legal-advice/WCMS_205340/lang--en/index.htm available at (accessed 3 February 2023).

‘The impact of crime on small businesses in South Africa: A study commissioned by the South African Presidency’ https://www.gov.za/sites/default/files/gcis_document/201409/impactcrimesb1.pdf (accessed 18 September 2022)

‘The Individual Micro Entrepreneur (MEI)’ available at <https://www.oecd.org/regional/leed/43966002.pdf> (accessed 6 December 2022)

‘The National Health Insurance (NHI) Bill’ available at <https://www.parliament.gov.za/project-event-details/54> (accessed 27 February 2023)

‘The Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa, Transforming the Present – Protecting the Future: Consolidated Report’ available at https://sarpn.org/CountryPovertyPapers/SouthAfrica/march2002/report/Transforming_the_Present_pre.pdf (accessed 26 May 2022)

‘The Social Protection Floor Initiative (Spf-I)’ available at <https://www.social-protection.org/gimi/ShowProject.action?id=2767> (accessed 11 August 2022)

‘Transforming the future and the present’ available at <https://sarpn.org/CountryPovertyPapers/SouthAfrica/taylor/report1.pdf> (accessed 13 August 2022)

‘Twenty Year Review South Africa Background Paper: Social Protection 1994 – 2014’ available at <https://www.dpme.gov.za/publications/20%20Years%20Review/20%20Year%20Review%20Documents/20YR%20Social%20Protection.pdf> (12 August 2022)

‘Universal pensions in South Africa’ available at <https://www.social-protection.org/gimi/gess/RessourcePDF.action?id=53961#:~:text=Means%2Dtested%20social%20pensions%20were,over%2060%20years%20of%20age> (accessed 22 August 2022)

‘Universal Social Protection for Shared Prosperity and Recommendation 202 Social Protection Floors’ <https://www.social-protection.org/gimi/gess/RessourcePDF.action?id=54051#:~:text=Universal%20Social%20Protection%20to%20Leave%20No%20One%20Behind&text=For%20the%20World%20Bank%2C%20ILO,the%20poor%20and%20the%20vulnerable> (accessed 6 February 2023)

‘USP2030’ <https://usp2030.org/#why> (accessed 26 November 2022)

Benvindo JZ ‘Brazil’s Frenetic Pace of Constitutional Change under Bolsonaro: Why and What Next?’ available at <https://constitutionnet.org/news/brazils-frenetic-pace-constitutional-change-under-bolsonaro-why-and-what-next> (accessed 20 December 2022)

Boissoneault L ‘Bismarck Tried to End Socialism’s Grip—By Offering Government Healthcare’ available at <https://www.smithsonianmag.com/history/bismarck-tried-end-socialisms-grip-offering-government-healthcare-180964064/> (accessed 13 August 2022)

Burriesci JJ 'Historical Summary of Workers' Compensation Laws' available at <https://www.cga.ct.gov/2001/rpt/2001-R-0261.htm> (accessed 22 August 2022)

Da Silva de Paiva LH & Ansiliero G 'The Brazilian Old-Age Social Protection System' available at https://www.researchgate.net/publication/344083669_Old_Age_Pension_within_Brazil's_social_protection_system_Universal_Social_Protection (accessed 5 December 2022)

De Farias PCL 'Social security in Brazil: Problems and trends' available at <https://www2.gwu.edu/~ibi/minerva/Fall1998/pedro.farias.pdf> (accessed 20 December 2022)

Department of National Treasury 'Budget Speech delivered by Enoch Godongwana Minister of Finance 22 February 2023' available at <https://www.treasury.gov.za/documents/National%20Budget/2023/speech/speech.pdf> (accessed 23 April 2023)

Department of National Treasury 'Unemployment Insurance Fund (UIF) and COVID-19' available at https://www.gov.za/sites/default/files/gcis_document/202005/UIF%20and%20COVID-19.pdf (accessed 3 January 2023)

Department of Social Development 'The Rapid Assessment of the Implementation and Utilisation of the Special Covid-19 Social Relief of Distress Grant' <https://www.dsd.gov.za/index.php/latest-news/21-latest-news/410-the-rapid-assessment-of-the-implementation-and-utilisation-of-the-special-covid-19-social-relief-of-distress-grant#:~:text=In%20response%2C%20the%20government%20of,initial%20period%20of%20six%20months> (accessed 31 May 2022)

<https://medicalaidsinsouthafrica.co.za/medical-aid-for-self-employed.php> (accessed 27 February 2023)

<https://tmbs.co.za/impact-of-load-shedding-on-small-growing-businesses/> (accessed 18 July 2022)

<https://www.arrivealive.mobi/the-road-accident-fund-and-road-safety> (accessed 29 May 2022)

Inter-Departmental Task Team on Social Security and Retirement Reform 'Comprehensive social security in South Africa' available at <https://www.gov.za/documents/comprehensive-social-security-south-africa-discussion-document-25-nov-2016-0000-0> (accessed 24 October 2022)

ITC-ILO Curriculum on “Building modern and effective labour inspection systems” Dealing with vulnerable groups of workers available at https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---sro-port_of_spain/documents/genericdocument/wcms_633608.pdf

Júnior FA ‘The evolution of social policies in Brazil: the period from 1930 to 2010’ available at

https://iussp.org/sites/default/files/event_call_for_papers/THE%20EVOLUTION%20OF%20SOCIAL%20POLICIES%20IN%20BRAZIL-%20the%20period%20from%201930%20to%202010.pdf (accessed 5 December 2022)

Ministry of Social and Agrarian Development ‘Unified Registry for social programs - Main Registration Form’ available at <https://socialprotection.org/discover/publications/unified-registry-social-programs-main-registration-form#:~:text=The%20Unified%20Registry%20for%20Social,policies%20geared%20towards%20such%20families> (accessed 29 September 2022)

National Economic Development And Labour Council ‘NEDLAC Report Of The Comprehensive Social Security And Retirement Reform Task Team’ available at <https://nedlac.org.za/wp-content/uploads/2021/08/Nedlac-report-on-Comprehensive-Social-Security-and-Retirement-Reforms.pdf> (accessed 1 May 2023)

National Planning Commission (Republic of South Africa) ‘National Development Plan 2030: Our Future – Make it Work’ available at https://www.gov.za/sites/default/files/gcis_document/201409/ndp-2030-our-future-make-it-workr.pdf (accessed 5 May 2022)

Official Diary of the Union ‘Provisional Measure No. 1.061, Of August 9, 2021’ available at <https://www.in.gov.br/en/web/dou/-/medida-provisoria-n-1.061-de-9-de-agosto-de-2021-337251007> (accessed 14 May 2023)

‘Punished for their poverty: Street traders in South Africa’ available at <https://www.wiego.org/punished-their-poverty-street-traders-south-africa> (accessed 24 July 2022)

Quarterly Labour Force Survey (QLFS) – Q1:2023 available at <https://www.statssa.gov.za/publications/P0211/Presentation%20QLFS%20Q1%202023.pdf> (accessed on 30 May 2023)

South African Government ‘Social grants – Coronavirus COVID-19’ <https://www.gov.za/covid-19/individuals-and-households/social-grants-coronavirus-covid-19> (accessed 25 December 2022)

Statista ‘Number of people living in extreme poverty in South Africa from 2016 to 2025’ <https://www.statista.com/statistics/1263290/number-of-people-living-in-extreme-poverty-in-south-africa/#:~:text=Sep%209%2C%202022%20As%20of%202022%2C%20around%2018.2,was%20forecast%20to%20increase%20in%20the%20coming%20years> (accessed 14 September 2022)

United Nations Children's Fund ‘Social Protection Consultant, Brasilia, Brazil’ available at <https://untalent.org/jobs/social-protection-consultant-brasilia-brazil> (accessed 22 December 2022)

United Nations Economic Commission for Latin America and the Caribbean ‘Benefício de Prestação Continuada (Continuous Benefit Programme) (1996-)’ available at <https://dds.cepal.org/bpsnc/programme?id=43> (accessed 6 October 2022)

NEWS ARTICLES

‘Small business survival in an age of load shedding’ *Fanews 20 February 2020* available at <https://www.fanews.co.za/article/views-letters-interviews-comments/18/all/1102/small-business-survival-in-an-age-of-load-shedding/28334> (accessed 2 August 2022)

Dawson HJ ‘Here’s a look at what the unemployed youth in SA is up to’ *The Conversation* 2 March 2022 available <https://www.thesouthafrican.com/lifestyle/youth-unemployment-south-africa-informal-business/> (accessed 10 September 2022)

Human L ‘Uber, Bolt drivers’ two-day strike highlights permit challenges, dangerous working conditions’ *The Daily Maverick* 19 August 2022 available at <https://www.dailymaverick.co.za/article/2022-08-19-uber-bolt-drivers-two-day-strike-highlights-permit-challenges-dangerous-working-conditions/> (accessed 22 September 2022)

Mutandiro K ‘Joburg traders fear for their future after their lawyers get death threats’ *Groundup* 4 August 2022 available at <https://www.groundup.org.za/article/we-are-being-chased-away-by-the-very-same-person-who-is-collecting-rent-from-us-says-de-villiers-street-trader/> (accessed 24 September 2022)

Nkanjeni U ‘More people to qualify for SRD grant’ *Business Day* 17 August 2022 available at <https://www.businesslive.co.za/bd/national/2022-08-17-more-people-to-qualify-for-srd-grant/#:~:text=Social%20development%20minister%20Lindiwe%20Zulu,not%20qualify%20for%20the%20grant> (accessed 17 August 2022)

Ramalepe P ‘This man started his own ice-cream business with R350 grant, and now employs four people’ *News24* 18 February 2022 available at <https://www.news24.com/news24/bi-archive/man-opened-ice-cream-business-with-r350-grant-2022-2> (accessed 2 February 2023)

Sibiya N, Dlamini P & Koka M ‘Eskom cuts slash earning power of Joburg's self-employed’ *Sowetan Live* 20 September 2022 <https://www.sowetanlive.co.za/news/south-africa/2022-09-20-eskom-cuts-slash-earning-power-of-joburgs-self-employed/> (accessed 26 September 2022)

Staff Reporters ‘Brazil ends 2021 with 25.9 million self-employed people -FGV’ *The Rio Times* April 2022 available at <https://www.riotimesonline.com/brazil-news/brazil/brazil-ends-2021-with-25-9-million-self-employed-people-fgv/> (accessed 4 December 2022)

Staff Writer ‘New data shows the make-up of South Africans with jobs’ *BusinessTech* 5 November 2020 available at <https://businesstech.co.za/news/business/446214/new-data-shows-the-make-up-of-south-africans-with-jobs/> (accessed 13 January 2021)

Webb C & Vally N ‘South Africa has raised social grants: why this shouldn’t be a stop-gap measure’ *The Conversation* 7 May 2020 available at <https://theconversation.com/south-africa-has-raised-social-grants-why-this-shouldnt-be-a-stop-gap-measure-138023> (accessed 6 February 2023)

THESIS

Klitzke J *Beveridge and Bismarck Remodelled: The Positions of British and German Organised Interests on Pension Reform* (Unpublished PhD thesis: University of Mannheim, 2016)

Osiki AE *The interdependence of human rights: a case study with recommendations for law reform to promote decent work in the informal economy and street vending sector in Nigeria* (unpublished PHD thesis, University of Cape Town, 2018)

WORKING PAPERS AND CONFERENCE PAPERS

Adaba G ‘Financing Social Protection Floors: Discussion paper presented to an Expert Group Meeting of the Inter-agency Task Force on Financing for Development’ (2016) New York: Social Justice in Global Development

Arias J ‘Informal Vendors in Johannesburg, South Africa’ (2019) Philadelphia: Penn Institute for Urban research

Barrett S & Kidd S ‘The design and management of cash transfer programmes: an overview’ (2015) Frankfurt: KfW Development Bank

Bassier I et al 'Locked down and locked out: Repurposing social assistance as emergency relief to informal workers' (2020) University of Cape Town: Southern Africa Labour and Development Research Unit

Beland LP, Fakorede O & Mikola D 'The Short-Term Effect of COVID-19 on Self-Employed Workers in Canada' (2020) Global Labor Organization

Bosch M, Fernandes D & Villa JM 'Nudging the Self-employed into Contributing to Social Security: Evidence from a Nationwide Quasi Experiment in Brazil' Villa (2015) Brasilia: Inter-American Development Bank

Brockerhoff S 'A Review of the Development of Social Security: Monitoring the Progressive Realisation of Socio-Economic Rights Project:' (2013) Johannesburg: Studies in Poverty and Inequality Institute

Campello T, Falcão T & DA Costa PV *Brazil Without Extreme Poverty* (2015) Rio de Janeiro: Ministry of Social Development and Fight Against Hunger

Carre F '(In)Dependent contractor misclassification' (2015) Washington, DC: Economic Policy Briefing

Carter B et al *Social Protection Topic Guide* (2019) Brighton: Institute of Development Studies

Casale D 'What has the feminisation of the labour force 'bought' women in South Africa? Trends in labour force participation, employment and earnings, 1995-2001' (2004) University of Cape Town: Development Policy Research Unit

Charman A, Bacq S & Brown K 'Supermarkets, street traders and spaza shops: spatial determinants of formal retailers' impact on informal micro-enterprises in Philippi, Cape Town' (2019) Wynberg: Department of Science and Technology – National Research Foundation

Cichello at al 'Perceived Barriers to Entry into Self-employment in Khayelitsha, South Africa: Crime, Risk, and Start-up Capital Dominate Profit Concerns' (2011) University of Cape Town: Centre for Social Science Research

De Oliveira FEB & Beltrao KI 'The Brazilian social security system' (2000) Rio de Janeiro: Research at Institute for Applied Economic Research

Empresa de Tecnologia de Previdência Social 'Meu INSS Evaluation Report of the Brazilian Government Social Security Project' (2019) Rio Di Janeiro: Empresa de Tecnologia de Previdência Social-DataPrev

International Trade Union Confederation 'Investments in social protection and their impacts on economic growth: A New Social Contract for Recovery and Resilience' Brussels: ITCU

Jaccoud L, Hadjab PD & Chaibub JR 'The Consolidation of Social Assistance in Brazil and Its Challenges, 1988?2008' (2010) Brasilia: International Policy Centre for Inclusive Growth

Liebenberg S & Tilley A 'Poverty and inequality hearings: Social security theme. Background paper compiled for the South African National Non-Governmental Organisation (SANGOCO) and the South African Human Rights Commission for Gender Equality' (1998)

Makino K 'Social Security Policy Reform in Post-Apartheid South Africa: A Focus on the Basic Income Grant' (2003) Durban: Centre for Civil Society

Miranda HP 'Spotlight on Retirement: Brazil 2019' (2020) LL Global, Inc. and Society of Actuaries

Moshikaro L 'Employment trends in the South African economy' (2020) Pretoria: Trade & Industrial Policy Strategies

Ornellas A & Zastrau E 'Researching and Engaging the Decommissioning of SASSA Paypoints' (2020) Cape Town: Black Sash

Reddy T and Sokomani A 'Corruption and social grants in South Africa' (2008) Pretoria: Institute for Security Studies

Risak M & Dullinger T 'The concept of 'worker' in EU law Status quo and potential for change'(2018) Brussels: European Trade Union Institute

Rogan M & Skinner C 'The Covid-19 crisis and the South African informal economy' Locked out' of livelihoods and employment' (2020) National Economic Dynamic Study

Sagan M 'Monitoring the right of access to social security and appropriate social assistance in South Africa: An analysis of the policy effort, resource allocation and expenditure and enjoyment of the right to social security' (2012) Johannesburg: Studies in Poverty and Inequality Institute

Serbin KP 'State subsidization of catholic institutions in Brazil, 1930-1964: A Contribution to the Economic and Political History of the Church' (1992) South Bend: The Hellen Kellogg Institute for International Studies

Soares S et al 'Conditional Cash Transfers in Brazil, Chile and Mexico: Impacts Upon Inequality' (2007) Brasilia: International Poverty Centre

Stampini M & Tornarolli L 'The Growth of Conditional Cash Transfers in Latin America and the Caribbean: Did They Go Too Far?' (2012) Bonn: IZA Policy Paper Series

Van der Berg S 'Issues in South African Social Security' (2002) University of Stellenbosch: Stellenbosch Economic Working Papers

Women in Informal Employment: Globalizing and Organizing 'Social Protection for Informal Workers: Trends and Changes Bolsa Família: past and future of the Brazilian cash-grant programme' (2021) WIEGO

Zizzamia RMA 'Is employment a panacea for poverty in South Africa? A mixed-methods investigation' (2018) University of Cape Town: Southern Africa Labour and Development Research Unit

