



**social security**

# ECONOMIC AND SOCIAL RIGHTS

5TH REPORT 2002/3

# **THE RIGHT TO SOCIAL SECURITY**

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**5th Economic and Social Rights Report Series  
2002/2003 Financial Year**

South African Human Rights Commission

21 June 2004

## PREFACE

In this 10th year of our young but thriving democracy, we are all engaged in some way or the other, in critically reflecting on the achievements we have secured over the past years as well as the unfinished work that lies ahead. In the context of the various rights guaranteed by our Constitution, they seek in their totality to ensure that the individual and the society are able to develop to their full potential and indeed that human rights becomes a central feature of our society. In this regard we have made much progress, and in the main, few argue against the notion that civil and political rights are well secured both in law and in practise.

However, the challenge that is situated at the heart of our Constitutional contract is how we advance social and economic rights and in so doing ensure that we advance the interests of the poor and those many who are still to enjoy the full benefits of our democracy. The inclusion of social and economic rights in the Bill of Rights was a clear articulation that democracy was as much about the right to vote, and of free expression and of association as it was about the right to shelter, the right to food, the right to health care, the right to social security, the right to education and the right to a clean and healthy environment.

The Constitution has tasked the Commission with a specific mandate to advance social and economic rights. In particular, section 184(3) requires that: "Each year the Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights, concerning housing, health care, food, water, social security, education and the environment."

A healthy and robust debate exists around these measures that the Constitution requires the State to take. In addition, the human rights discourse sees considerable contestation around issues such as the nature and scope of the right, the adequacy or otherwise of the measures taken and the meaning of the phrase 'progressive realisation of rights.' These are difficult issues and it is not always possible, nor may one say desirable, to always have consensus on them. In some instances the Courts have had to rule on them. We see this Report, however, not only as a contribution to those debates but also as a tool that can assist Government, Parliament and civil society in developing a critical understanding about social and economic rights and their implementation.

The modus operandi of the Commission in discharging its constitutional mandate to monitor and assess the observance of economic and social rights has in the main focussed on requiring organs of state to report to us on measures they have taken. This continues to pose several challenges, namely: to ensure that organs of State submit to the Commission reports that are timeous, accurate and of good quality . We are pleased that good progress has been made on this front over the past year and the process of presenting draft reports to organs of state and civil society for comment has been most valuable to the Commission in finalising this report .

The launch of the 4th Economic and Social Rights report in April 2003 generated considerable interest and much debate and discussion on the Report ensued. We were invited by numerous parliamentary portfolio committees from the National Assembly and National Council of Provinces to present the Report. We certainly found the

engagement with Parliament a very useful and mutually rewarding exercise. It provided the Commission with a unique opportunity to share its thinking and vision around its work with Parliament while it enables us to better understand Parliament's expectation of the Report and its use to them as a tool in their work. There have been numerous valuable recommendations that have emerged from our presentations to Parliament which we are committed to giving effect to from our side.

So as we commence the beginning of the 2nd decade of our democracy the delivery of social and economic rights become crucial to the ongoing success of our nation and the entrenchment of a culture of human rights. It is certainly our hope, and the intention of this Report, to contribute to ensuring that the promise and the vision underpinning our Constitution is shared and enjoyed by all in our country.

Jody Kollapen

Chairperson - South African Human Rights Commission

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## INTRODUCTORY SECTION

The aim of the *Introductory Section* is to provide an outline of the common analytical framework used in the reports, briefly discuss the political and economic context of the year under review, and provide an integrated summary of the key findings and recommendations of all eight reports in the series. Details of the report production process are also included at the end of this introduction.

The 5<sup>th</sup> Economic and Social Rights Report follows a more user friendly format than previous reports. There are now separately bound, less bulky, reports on Land, Water, Environment, Food, Health, Social Security, Education and Housing. Each report has an executive summary to facilitate access to the main findings and recommendations. Issues that connect one right to another are highlighted in the body of each report to emphasise the interrelatedness and interdependence of the rights in the Bill of Rights of the Constitution of the Republic of South Africa Act 108 of 1996 (simply referred to as the Constitution throughout the reports).

### A) Analytical Structure and Framework

Each report in this series follows a basic structure:

1. **Introduction:** a discussion of the meaning and content of the right with reference to the Constitution, case law and relevant international human rights instruments.
2. **Progress in the realisation of the right:** a factual description of measures instituted by government during the period under review and their impact, especially on vulnerable groups.
3. **Challenges for the realisation of the right:** a description of key challenges that hamper the realisation of the right, and in some cases, government's response to these challenges.
4. **Critique of measures instituted:** a consideration of some of the shortcomings of the measures instituted by government.
5. **Recommendations:** a set of recommendations that may encourage progressive realisation of the right as expeditiously as possible.<sup>1</sup>

Each report consolidates information from various sources including: relevant government protocol responses, government Annual Reports and Strategic Plans, the Intergovernmental Fiscal Review, as well as research funded by government, international donors or other agencies.

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<sup>1</sup> Some reports in the series end with a conclusion.



All reports employ the standard of reasonableness as laid down in the *Grootboom*<sup>2</sup> and *TAC*<sup>3</sup> judgements of the Constitutional Court, in conjunction with relevant international human rights instruments.

The constitutional provisions pertaining to socio-economic rights require the State to “take reasonable legislative and other measures within its available resources, to achieve the progressive realisation of [these rights]”.<sup>4</sup> This requirement, read with the provision on the obligation of the State to “respect<sup>5</sup>, protect<sup>6</sup>, promote<sup>7</sup> and fulfil<sup>8</sup> the rights in the Bill of rights” in section 7(2) of the Constitution ensures an effective guarantee of socio-economic rights in South Africa. The judicial enforcement of these rights by the courts and the constitutional mandate of the South African Human Rights Commission to monitor and assess the observance of the rights by the State<sup>9</sup> and non-State entities also contribute to the effectiveness of the constitutional guarantee of these rights.

The Constitutional Court has played a significant role in ensuring the effective guarantee of socio-economic rights in our country. On the obligation of the State, Judge Yacoob held in the *Grootboom* case:

*The State is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing.*<sup>10</sup>

On the effective guarantee of basic necessities of life for the poor, Judge Yacoob further said:

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2 Government of the Republic of South Africa and Others v Grootboom and Others 2000(11) BCLR 1169 (CC)

3 Minister of Health and Others v Treatment Action Campaign and Others (1) 2002 (10) BCLR 1033 (CC)

4 See sections 26(2), 27(2) and 29(2) of the Constitution.

5 Respect is a negative obligation, which requires the State to refrain from denying or limiting equal access for all persons to the enjoyment of the rights. This also means that the State should abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure which violates the integrity of the individual or which in any way interferes or limits his/her right to pursue the enjoyment of the rights in the Bill of Rights.

6 The obligation to protect places a positive obligation on the State to prevent the violation of any individual's rights by a third party.

7 The obligation to promote places a positive obligation on the State to create a conducive atmosphere in which people can exercise their rights and freedoms by promoting awareness of their rights through public education.

8 The duty to fulfil places a positive obligation on the State to institute active measures that enable each individual to access entitlements to the right and which cannot be secured through exclusively personal efforts. State parties are also obliged to provide a specific right when an individual or group is unable, for reasons beyond their control, to realise the right themselves by the means at their disposal. e.g. people in disaster situations or those in dire need.

9 See sections 184(1) and (3) of the Constitution.

10 Government of the Republic of South Africa and Others v Grootboom and Others 2000(11) BCLR 1169 (CC) [24]

*This case shows the desperation of hundreds of thousands of people living in deplorable conditions throughout the country. The Constitution obliges the State to act positively to ameliorate these conditions. The obligation is to provide access to housing, health-care, sufficient food and water, and social security to those unable to support themselves and their dependants. The State must also foster conditions to enable citizens to gain access to land on an equitable basis. Those in need have a corresponding right to demand that this be done.<sup>11</sup>*

On the role of the courts in ensuring that the State fulfils its role in giving effect to these rights and thus ensuring that there is an effective guarantee of these rights, Judge Yaccob said:

*I am conscious that it is an extremely difficult task for the State to meet these obligations in the conditions that prevail in our country. This is recognised by the Constitution which expressly provides that the State is not obliged to go beyond available resources or to realise these rights immediately. I stress however, that despite all these qualifications, these are rights, and the Constitution obliges the State to give effect to them. This is an obligation that Courts can, and in appropriate circumstances, must enforce.<sup>12</sup>*

A similar position was taken by the Constitutional Court in another seminal judgment, *Minister of Health and Others v Treatment Action Campaign and Others*, where the Court held:

*The state is obliged to take reasonable measures progressively to eliminate or reduce the large areas of severe deprivation that afflicts our society. The courts will guarantee that the democratic processes are protected so as to ensure accountability, responsiveness and openness, as the Constitution requires in section 1. As the Bill of Rights indicates, their function in respect of socio-economic rights is directed towards ensuring that legislative and other measures taken by the state are reasonable.<sup>13</sup>*

In outlining the role of the courts, the Court also stated:

*The primary duty of courts is to the Constitution and the law...Where state policy is challenged as inconsistent with the Constitution, courts have to consider whether in formulating and implementing such policy the state has given effect to its constitutional obligations. If it should hold in any given case that the state has failed to do so, it is obliged by the Constitution to do so.<sup>14</sup>*

While there might be some criticism directed at the Constitutional Court pertaining to the determination of when there are no available resources for the State to fulfil its obligation pertaining to socio-economic rights, the courts, particularly the Constitutional Court, have and will continue to play an important role in ensuring that the provisions in the Bill of Rights are effectively guaranteed for our people.

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<sup>11</sup> Ibid., [93]

<sup>12</sup> Ibid., [94]

<sup>13</sup> *Minister of Health and Others v Treatment Action Campaign and Others* (1) 2002 (10) BCLR 1033 (CC) [36]

<sup>14</sup> Ibid., [99]

## **B) The Political and Economic Context of the Year Under Review**

The period under review, 1 April 2002 to 31 March 2003, followed the 11 September 2001 attacks and a 24% depreciation of the South African currency (Rand) near the end of 2001. Consumer Price Inflation, especially for goods and services bought predominantly by the poor, increased sharply to the highest level since 1994. Concerns were signalled to the Competition Commission about the impact of import parity pricing in several sectors of the economy, most notably in food production, processing and retailing as well as metals and engineering. Interest rates were raised in an attempt to curb inflation, with a subsequent dampening effect on the rate of economic growth in the latter part of the financial year. According to the Reserve Bank Quarterly Bulletin for March 2003, economic growth stood at a robust 3% in 2002.

As a result of prudent fiscal management, the government introduced a more expansionary Budget in February 2002. Total government expenditure increased from R262,6 billion in 2001/2002 to R291,8 billion in 2002/2003. Overall, the budget directed more resources towards reducing poverty and vulnerability, improving education and training, developing skills amongst the youth, building and enhancing physical infrastructure and basic municipal services, as well as making communities safer places to live, work and play.

It is also important to note that the February 2003 Budget provided for significantly greater expenditure than the previous year. Total expenditure was R331,7 billion for 2003/2004. The additional allocations accommodated substantial policy changes for all three spheres of government and also provided for *higher than anticipated inflation in 2002*.

By the end of the reporting period in March 2003, the Rand had appreciated by 18%. This created concern about the job losses that could arise out of an increase in import competition. Therefore, during the period under review, the goals of progressively realising economic and social rights took place in the context of significant macro-economic volatility, inflation and an expanding government budget.

## **C) Key Interrelationships Amongst Economic and Social Rights**

### *The Right to Land*

The State was responsible for achieving progressive realisation of the right to land during the reporting period. The Commission demonstrates that there was a year on year improvement in land delivery performance by the State, especially through the Land Restitution and Land Redistribution sub-programmes. Improvements in rural tenure reform were less noticeable.

Between 2000 and 2001 there were 12 094 settled Restitution claims, while in February 2002 there were approximately 32 000 settled claims. By March 2003, there were 36 488 settled claims recorded. Although the majority of these claims were in the urban areas, settled rural claims show a substantial increase. The people working on the Land Redistribution for Agricultural Development sub-programme delivered 103 682 ha against a target of 81 555 ha for the year under review. Whereas the Department had targeted to benefit 3 601 people, the programme ended up benefiting 6 170. Concerning

tenure reform, the State initially delivered 30 000 ha of land through 201 projects. Beyond that, the State is working towards bringing the Extension of Security of Tenure Act (ESTA) and Labour Tenants Act (LTA) together in the Consolidated ESTA/Labour Tenants Bill.

Throughout the report, the Commission reflects on the demand, voiced by landless people and others, that the pace of land redress is too slow and inattentive to vulnerable groups. The report recommends accelerating land reform to meet its new targets by relieving budgetary constraints and the associated problems of personnel shortages, lack of quality training and understandable communication; land acquisition; and improvements in monitoring and evaluation.

The Commission would also like to highlight that it was informed by the Department of Land Affairs that it was impossible to represent the racial and gender composition of land purchase transactions and repossessions, according to the size and value of land parcels.

### *The Right to Education*

The right to education is analysed as a continuum of three bands of schooling- General Education and Training, Further Education and Training and Higher Education and Training. The State instituted measures to respect, protect, promote and fulfil the right to General Education and Training, and in the Commission's overall assessment, it succeeded in achieving progressive realisation of this right.

The Department of Education succeeded in ensuring that all targeted Early Childhood Development sites for children between the ages of five and six were operating. However, the Department acknowledges the challenge, which has budgetary implications, that only 13% of all children have access to the programme. In the context of a substantial increase in the rate of student enrolment in primary schools between 1994 and 2001, the National Department focused on further increasing access to General Education and Training through reviewing public school financing and the system of school fee exemptions. The report highlights the shortcoming that some schools and Provincial Departments of Education failed to make parents aware of the school fee exemption.

While progress was made in eliminating instances where learners are forced to receive education in environments that are not conducive to teaching and learning, the report emphasises that more needs to be done to address infrastructure backlogs, especially when it comes to water and sanitation. The Department also made progress in developing a redistribution model for personnel and operating expenditure that would achieve equality of teaching quality and equality of learning outcomes in the schooling system from 2003/2004 onwards. All stakeholders in education, including the SAHRC need to explore and come up with a definition of quality basic education which could be measurable and relatively easy to monitor.

Conditions in farm schools were identified as hinderance to progress in the realisation of the right to General Education and Training. The issue of street-children also has to be given some serious attention by all the relevant stakeholders. Amongst other recommendations to further observance of the right to General Education and Training,

the report calls for better-published medium term strategies and improved spending on Adult Basic Education and Training. In the 2001 Census, 4,5 million people aged 20 years and older did not have a formal education and 4 million people had primary schooling only.

Most of the developments in the Further Education and Training band met the Constitutional requirement to respect, protect, promote and fulfil the right. *Dinaledi*, the programme that seeks to improve participation and performance of learners from historically disadvantaged backgrounds in Mathematics, Science and Technology (MST), reportedly surpassed its target of 10% of students enrolling for MST in its first two years of implementation. The development of Recognition of Prior Learning (RPL) is another development that contributes to the realisation of the right to Further Education and Training. RPL recognises non-formal and/or non-academic education. RPL also stands to maximise learning opportunities for those without formal and/or academic qualifications to acquire formal qualifications in Further Education and Training institutions, which must all be registered with the State.

Areas where the State fell short of its obligations to progressively realise the right to Further Education and Training include: insufficient public education on school fee exemptions and insufficient Learner Support Materials and/or their late delivery. The report also highlights that participation rates in education by girl learners were being negatively affected by girls' involvement in income generating activities.

While Higher Education and Training is not explicitly recognised as a right in the Constitution, it obviously depends on the learning outcomes achieved in General and Further Education and Training. Here, there seems to be room for improvement as the average graduation rate for university and technikon students is 15%; less than half the ideal average of 33%.

Key challenges associated with the Higher Education and Training band include assisting potential students with subject selection choices and career guidance at school and university level, as well as lowering the high costs of accessing higher education and applying to different tertiary institutions. The report recommends ensuring that admission requirements to tertiary institutions are transparent and fair, promoting indigenous languages as academic/scientific/legal languages, mobilising funds for bridging courses and improving access for mature and post-graduate students, including part time students.

### *The Right to Water*

Ever since 2001 and the introduction of Regulations Relating to Compulsory National Standards and Measures to Conserve Water, the State instituted a national measure to fulfil the right to water by supplying 6000 litres of free, clean water, per household per month, otherwise known as Free Basic Water.

During the reporting period, approximately 1,6 million people gained access to improved piped water supplies through Department of Water Affairs and Forestry's Community Water Supply and Sanitation Programme. Approximately 65 thousand toilets facilities were constructed during the reporting period under the same programme, but it should be noted that these figures exclude the large number of

sanitation facilities that were delivered as part of the State's housing programmes. Less than 530 000 households also benefited from water and sanitation projects through the Department of Provincial and Local Government's Consolidated Municipal Infrastructure Programme. Although the above indicates that the roll-out of water and sanitation infrastructure is proceeding towards the Department's medium delivery targets, the report raises concerns about the level of dysfunctional infrastructure and projects, especially in rural areas.

At the end of the reporting period in March 2003, access to Free Basic Water by poor people stood at 38% or approximately 12,2 million people. Access to Free Basic Water by non-poor households stood at close to 100% or approximately 14,2 million people. A large number of poor people (19,6 million) were still to receive their Free Basic Water allocation. Where Free Basic Water was not available, the average cost of 6 kilolitres (kl) was approximately R13 per month. The price for 6kl of life-line supply was highest in Limpopo province at approximately R19 per month. Gauteng and KwaZulu-Natal also had comparatively high average charges for life-line supplies where Free Basic Water services were not operational.

In order to remove these glaring inequities in Free Basic Water provision, the report calls for an urgent revision of the pricing system to include a significantly greater level cross-subsidisation from high volume water users to low volume users in the 0-6 kl range. More support and funding is required to assist municipalities with capacity problems in implementing Free Basic Water. During droughts, local governments should ensure that Free Basic Water supplies for domestic users are assured and that a situation cannot develop where agricultural, mining and industrial users are allocated large volumes of water at similar prices to low-volume users.

The report describes some aspects of the devolution of domestic water quality monitoring and testing from Provincial Departments of Health to local municipalities and calls for rapidly providing sufficient funds for water quality monitoring to prevent serious disease outbreaks and illness.

The report recommends that the Department of Water Affairs and Forestry (DWAF) should take a leading role in making sure that farm dwellers, residents near commercial farms and poor households in rural and urban areas access clean water and proper sanitation services. DWAF should also ensure that it develops and implements a plan to address the specific problems of water access experienced by people living with HIV/AIDS.

The report suggests that monitoring bodies should be created at local level to effectively monitor the implementation of policies and laws aimed at fulfilling the right of access to water. The report warns that monitoring will only be effective if monitoring bodies from local, regional and national spheres work together. Where possible and when possible, the Free Basic Water allocation should be increased to cater for higher levels of domestic water consumption. A 50kl water allocation per household per month would bring South Africa's Free Basic Water allocation into the 'low level of health concern' range defined by the World Health Organisation.

## *The Right to Health Care*

The report on the right to health care focuses on key developments in three key health programmes of the State (Health Service Delivery, Strategic Health Programmes and Administration). Although the policy and legislative measures developed in the fiscal year under review can be said to be “reasonable” in their conception, there remain large gaps in implementing them in a manner such that all the provinces, urban and rural peoples, rich and the poor have equal access to the same high quality of care.

The three most important, and universally acknowledged, indicators to measure the health status of a nation are Life Expectancy at Birth, the Maternal Mortality Ratio, and the Infant Mortality Rate. Life expectancy has fallen from 56 years in 1996 to 52,5 in 2002 and is projected to fall to 47 by 2005. The infant mortality rate has increased from 45 in 1998 to 59 in 2002. This means that more children under the age of one died in 2002 as compared to 1998. The under five-mortality rate has risen from 61 in 1998 to 100 in 2002. Similarly, the maternal mortality ratio shows a steady increase since 1998 and is estimated to be 150 per 100 000 live births. The National Department of Health, as well as independent researchers, have concluded that this is due to HIV/AIDS related deaths.

The single most important challenge that government faces is the one posed by the AIDS pandemic and the high incidence of opportunistic diseases such as tuberculosis. It is estimated that about one tenth of the population of the population is infected with the HI virus i.e. close to 5 million people. The number of AIDS orphans is estimated to be one million. In a landmark case instituted by Treatment Action Campaign against the Minister of Health, the Constitutional Court, in 2002 confirmed the finding of the High Court that government’s policy to limit Nevirapine to research and training sites was in “breach of the States obligations under section 27(2) read with 27(1)(a) of the Constitution.” The report recommends that the Comprehensive National Aids Plan should be rolled out effectively in all the provinces so as to meet targets and timelines in order to substantially reduce new infections and to prolong the lives of those already infected.

In spite of the fact that policies and programmes directed at improving the health status of the country have been put in place such as the Integrated Management of Childhood Illnesses, the AIDS pandemic continues to be the single most cause of death in South Africa. This has placed an enormous strain on an already overburdened health system and undermines the efforts made by the State. This is compounded by the fact that the other economic and social rights, which contribute substantially to the health status of a nation, are also not fully enjoyed by the vast majority of poor South Africans due to the huge backlogs inherited from the past. Inadequate housing, poor sanitation, overcrowding, lack of clean drinking water, lack of efficiently run social services, insufficient nutrition and health education exacerbate the diseases of poverty. Moreover, a household that is affected by AIDS contributes to depleting the financial resources available to the family, thereby increasing the level of poverty.

government developed legislative and other measures to comply with its constitutional obligations in terms of section 7(2) of the Constitution. However, despite national policies and programmes, which, in the main comply with international standards and targets, the health care system has not been able to successfully deliver quality health

care on an equitable basis in all the provinces. Provinces do not spend the same amount per capita on health care delivery, and there is a serious lack of managerial capacity in the health system. The biggest challenge facing the efficient running of the health system is training managers to operationalise efficient systems especially for running clinics and hospitals where many problems have been identified. Efficient management systems in conjunction with effective engagement with labour should be operationalised with immediate effect in the public health sector so as to ensure that hospitals and clinics run well.

The report also recommends that there is a need to increase efforts in promoting preventative health measures by the State as well as by non-state actors. Programmes and policies should also be put in place to address the needs of the poor and vulnerable members of society, including a National Health Insurance System. Inequities in the health system such as intra- and inter-provincial health expenditures, access to clinics and hospitals, number of doctors, specialists, and nursing staff need to be addressed so as to give meaning to the constitutional right to universal and equal access to everyone. Finally, Departments of Health are strongly advised to improve their monitoring, evaluating, and reporting systems

### *The Right to Social Security*

The Constitution provides that everyone has a right to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance. The number of social assistance beneficiaries increased dramatically by 966 311 people from April 2002 to the end of March 2003, mostly as a result of increased registration for Child Support Grants for children up to the age of seven. By the end of March 2003, 5,6 million people were beneficiaries of social assistance, which mostly comprised of child support grants (2,5 million people), old age pensions (2 million people), disability grants (897 050 people) and foster care grants (133 309 people). The most rapid increases in uptake of social grants took place in Gauteng, Free State, KwaZulu-Natal, Mpumalanga and Limpopo. Take up rates were considerably lower in the Northern Cape, North-West, Eastern Cape and Western Cape.

Most provincial departments indicated that the allocated budget was not enough and that numbers of grant beneficiaries were constantly increasing, resulting in overspending for social security. However, the delivery of social services has not been efficient in some parts of the country as a result of administrative problems, lack of documentation as barriers to accessing grants, poor conditions at pay points, as well as corruption and maladministration.

As a result of rapid inflation in the cost of basic goods bought by the poor, in 2002/2003, the State moved swiftly to implement above inflation related increases in social grants. The old-age pension was increased by R20 to R640, the child-support grant increased by R10 to R140, the grant in aid increased from R120 to R130, the foster-care grant from R450 to R460, and the care dependency grant from R620 to R640.

The National and Provincial Departments of Social Development spent 90% of the R49 million allocated to the HIV/AIDS (home based/community based care) programme. The Home/Community Based Care programmes, through the collaborative work of



government, non-governmental organisations, including faith-based organisations, and communities have benefited 29 612 children orphaned or vulnerable to HIV/AIDS by the end of March 2003. The programme reached 75 000 children orphaned or vulnerable owing to HIV/AIDS since its inception in 2000.

The State also instituted new measures to further the right to social security, including disability assessment panels, a social relief of distress policy and the implementation of the National Food Emergency Scheme/Programme. Figures of the number of households that were assisted with food parcels in the pilot phase of the National Food Emergency Programme from December 2002 to the end of March 2003 range from 60 089 to 149 779.

The social security system at present does not cater for everyone and not everyone in need of social assistance is afforded such assistance. This is especially so for children in child headed households and children who live in the streets who sometimes engage in exploitative forms of labour. Some parents also fail to provide and take care of their children and put strains on the maintenance and social assistance systems.

The report recommends that the Department of Labour should take the International Labour Organisation's Decent Work for All Strategy forward in South Africa. It is also recommended that the relevant organs of State achieve better regulation of the insurance, health and maintenance systems. Particular attention should be paid to the coverage of old age pensions for workers in non-formal employment. The Department of Social Development is encouraged to continue fostering collaboration with all stakeholders, such as other government departments, Faith Based Organisations and Non-Governmental Organisations. The Basic Income Grant should continue to be considered as a viable option for addressing poverty in the country, especially amongst people of working age. The proposal to extend social assistance to all children in need (up to the age of 18), should also be kept alive.

### *The Right to Food*

The report concludes that many people, and children in particular, had their right to food violated during the reporting period as they lost access to affordable food due to high prices and/or unreasonable plans devised and supervised by government. During the reporting period, 101 152 children were admitted to hospital with severe malnutrition and it was not possible for the Commission to state how many children died of malnutrition. However, it is alarming that case fatality rates for severe malnutrition in two under-resourced hospitals in the Eastern Cape ranged from 21% to 38%.

The report finds the National Department of Health's targets for reducing malnutrition to be unreasonable in their conception because the targets for 2000 and 2005 were virtually identical. The report also finds two elements of the Primary School Nutrition Programme to be unreasonable in their conception.

The first issue concerns the reduced allocation of resources to the programme in 2002/2003 as compared to 2001/2002. In 2001/2002 the total cost of the school food "meal" ranged from approximately 99 cents to R2.10. In 2002/2003, the maximum budgeted resource available per targeted learner per day was less than 67 cents. This is

clearly an unreasonable set of parameters for the programme to be improved to meet the higher standards set by Cabinet.

The second element of the programme that was unreasonable was the reduction in the targeted number of children who should benefit from the programme. In the context of increasing numbers of children enrolled in schools, the Primary School Nutrition Programme did reach 4,5 million children in grades R to 7, however this was 151 615 children less than the year before. The drop in the number of learners who were reached is connected with government reducing its target from 5,4 million learners in 2001/2002 to 4,9 million learners in 2002/2003 as well as rapid increases in the cost of food procured for the programme. A three month gap in the implementation of the programme in the Eastern Cape also reduced access to the programme.

Non-State actors appear to have fallen short in their observance of their positive obligations to fulfil the right to food. As one example, the Yiyo Lena sifted maize relief programme introduced by a group of companies is alleged to have sold relief maize packs at a 20% discount, despite that fact that the companies announced that the programme would entail a 50% discount.

High basic food prices during the reporting period, were partly attributable to inadequate safeguards on the South African Futures Exchange, where maize prices are formed. High prices for maize were passed on to low-income consumers, who could ill afford such dramatic basic food price increases for such a sustained period of time. The potential for market manipulation should have been prevented by the Johannesburg Securities Exchange when allegations of abuse were first signalled in 2002. The report identifies that there are weaknesses in the State's observance of its obligation to protect against fraud, unethical behaviour in trade and contractual relations.

There were some signs of improvement in the State's delivery of production support to emerging farmers and people who grow their own food. For example, the Comprehensive Farmer Support Package was instituted during the reporting period to assist land reform beneficiaries. However, it was implemented in some provinces only.

The LandCare programme, which is one of the major production support programmes from the National Department of Agriculture, was heavily underspent at 65% of the total conditional grant to provinces. There is also a significant gap in production support for rural restitution beneficiaries.

It was found that very few Provincial Department's of Agriculture were operating well funded programmes designed specifically to provide grants or revolving loans to support increased access by small scale and emergent farmers to production and/or marketing related infrastructure. Production support materials and learning support materials that are relevant to resource to poor farmers in water scarce areas were also not readily available.

On the whole, the report determines that the State absorbed the heavy burden of duty to achieve the progressive realisation of the right to food as expeditiously as possible, within its available resources. However, there was a crucial weakness in the measures to protect the right to food from being violated by non-State actors or third parties that need not be repeated in future.

The report suggests that there is a need for greater care in the preparation of strategic and financial planning targets so that they inspire civil society to marshal their resources in support of the progressive realisation of the right. The report recommends: public education to raise awareness of malnutrition, rolling out the Integrated Food Security Strategy at a provincial level, improving food safety, achieving better regulation of the food industry through State procurement, accelerating agrarian reform, and communication policy and legislative developments more effectively. Finally, the report supports the call for government, labour, community and business representatives to negotiate an agreement at the National Economic Development and Labour Council (NEDLAC) to ensure the right to food and quality job creation in the food industry.

### *The Right of Access to Adequate Housing*

In order to fill some gaps in the housing policy framework, the State identified medium density housing, rental housing, social housing and emergency housing as the key policy priorities for 2002/2003. Emergency, medium density, rental and social housing are part and parcel of addressing inequalities in access to transport and the legacy of racial segregation. The Emergency Housing Policy Framework was conceptualised as a result of the *Grootboom* judgment and aims to assist groups of people that are deemed to have urgent housing problems, owing to circumstances beyond their control (e.g. disasters, evictions or threatened evictions, demolitions or imminent displacement or immediate threats to life, health and safety). The report highlights that it was not clear whether the Emergency Housing Policy should also cover people living in informal settlements, because they are living in intolerable circumstances. Social Housing projects demonstrate that socially, environmentally and sunshine conscious design principles can make a difference to the quality of State subsidised housing.

The State reported on measures to protect the right to housing in the form of the Prevention of Illegal Eviction from Occupation of Land Amendment Bill and the commencement of the Home Loan and Mortgage Disclosure Act 63 of 2000. With a view towards curbing discriminatory practices, the Act compels financial institutions to disclose information in their financial statements on home loan patterns according to categories of persons and geographic areas (both of which may be prescribed). The Community Reinvestment Bill confirmed the State's intention to increase private sector investment in the lower end of the housing market. The report highlights that the State was also attending to some aspects of the Housing Act 107 of 1997, as amended, in order to ensure that the Act, and its implementation, did not violate an individual's right to property in terms of the Constitution.

In terms of on-going policies and programmes, in 2002/2003, the State reported 203 288 houses completed or under construction, whilst the State approved 519 498 subsidies to households with a joint monthly income less than or equal to R3 500, or R1 500 if the house was built under the apartheid system. By the end of 2002/2003, the State reported that over 1,4 million houses had been delivered since 1994, whilst the number of families without houses (i.e. dwellings in backyards, informal dwellings, backyard dwellings in shared properties and caravans/tents) was reflected as 2 399 825- from the 2001 Census. The State also increased the subsidy amounts for the housing programme to keep pace with inflation and maintain the well-known quality and size of housing. Sixty-three projects were also completed as part of the Human Settlement Redevelopment Programme in order to correct imbalances and dysfunctionalities in

existing settlements that cannot be funded through the housing subsidy scheme (e.g. sports facilities, business hives, labour exchanges, cemeteries, parks and ablution blocks).

There was under expenditure on housing delivery amongst many provincial departments responsible for housing. Reporting on the constraints associated with underspending was not complete, but included the following in some cases: failure to secure suitably located land, delays in tender adjudication, municipalities failing to submit business plans, delays in the National Department approving projects, weaknesses and staff shortages at municipal level, incompetence, corruption, political intervention and nepotism, slow delivery associated with the People's Housing Process and delays at the Deeds Office.

Comparing performance in relation to targets was a problem in that provincial information was reported in the format of the number of units completed *or* under construction. Nevertheless, Gauteng and Limpopo provinces stand out as the only provinces to show a reduction in units, whether complete or under construction, from 2001/02 to 2002/03. The Gauteng Department of Housing reported delivering 59% of the target in the incremental housing programme and 39% of the target in the Social Housing programme. A Customer Support Service in the province acknowledged 83 714 queries and responded to a further 11 774 by letter.

According to the National Department of Housing, in 2002/2003, 6 469 houses did not conform to the Department's construction and safety standards. The National Home Builders Registration Council's (NHBRC) Warranty Scheme was instituted to provide assurance to beneficiaries that houses built and financed through the housing subsidy scheme are of an adequate quality. After trying to resolve disputes about the quality of construction, a housing subsidy beneficiary can forward complaints to the NHBRC. However, the report highlights that public education is required to empower consumers to identify quality problems and make use of the complaint procedures of the NHBRC. The Mpumalanga Department of Housing also reported that building works inspectors from provincial government and local government monitored the work of contractors.

The report makes one urgent recommendation, namely: to establish the dedicated fund for acquiring well-located land for low-cost housing. Other recommendations include reducing policy incoherence and institutional fragmentation, improving monitoring and evaluation, interpreting the Peoples' Housing Process as a route for strengthening culturally adequate housing, creating an informed and supportive environment for whistleblowing, and ensuring effective participation in the delivery of housing. Specific attention is drawn to the plight of farmworkers and vulnerable groups, especially HIV/AIDS orphans and People with Special Needs.

### *The Right to a Healthy Environment*

Section 24 of the Constitution establishes the right to environment in order to ensure the health and well-being of present and future generations. At its core, the right to environment aims to grant this benefit to everyone in South Africa, not just to the few. Although, translating this vision of the benefit of environmental health into reality has become increasingly complicated, ensuring that there are no violations of this right is as urgent as any violation of other rights in the Bill of Rights.

Analysts of data from South Africa's Global Atmosphere Watch station at Cape Point contend that continued emissions of greenhouse gases are cause for concern. Like many countries, South Africa is sensitive to global climate change and there are also occasions, especially in major urban areas, when more localised air pollution becomes a health threat.

By way of illustration, the Johannesburg *State of the Environment Report 2003* indicates that “while in many parts of Johannesburg, air quality is within acceptable standards, approximately 20% of the City, particularly dense settlements and lower income townships, experience severe air pollution, with ambient air pollution levels exceeding acceptable guidelines by approximately 20-30% particularly during winter when temperature inversions prevent emissions from dispersing.” The report goes further to state that “levels of particulate matter in certain townships can exceed the World Health Organisation standards by as much as 250% in winter.”

Progress in the realisation of the right to environment could not be very well monitored and observed by the Commission during the year under review because annual progress reports in terms of section 11 of the National Environmental Management Act 107 of 1998, were inaccessible at the time of writing. These progress reports should contain detailed information on the implementation of measures instituted to ensure the right to environment.

Nevertheless, the Commission did observe the growing influence of the Committee for Environmental Co-ordination through an interpretation of its review, and subsequent consolidation, of Environmental Implementation Plans and Environmental Management Plans submitted by relevant organs of State. These reports contain the planned and *aligned* outputs of national and provincial departments with an impact on, or management function over, aspects of the right to environment. The Commission also recognises that some Environmental Co-ordinating Committees were established at the provincial sphere, also for the purposes of alignment and co-operative governance.

Progress has been made, through the courts and other avenues, towards realising the procedural aspects of the right to environment (access to information, participation in decision-making processes, redress and remedy). The report includes several examples of objections and court applications lodged by Non-Governmental Organisations, with a view towards safeguarding environmental health in low-income areas. Despite these opportunities to access information and participate in decision making, some remedies for old violations could not be realised without concerted action on the part of the State. One example, is the case of workers with mercury poisoning, which first occurred many years ago. In March 2003, Thor Chemicals was served with a R60 million toxic chemical clean-up directive by the State.

On the substantive issue of waste management and pollution control, what was reported by government to the Commission fell short of what was expected in terms of the strategic objectives of the policy and strategy for pollution and waste management. The report highlights that there is still no clear understanding among the different mandate holders for this function of what they are required to do and as a result, implementation was not as effective as it could be. Having said this, there were positive developments during the period under review, including the introduction of waste buy-back centres

which address brown issues and could assist in strengthening the bargaining power of the very low income people who do the hard work of collection.

On the issue of Air Quality, the report acknowledges that progress was made in the Southern Industrial Basin through the focused action of the State and Community Based Organisations (CBOs) in linking asthma in school children to emissions, however there is an urgent need for national legislation to institute mechanisms and standards to effectively protect against pollution that threatens health and well-being, possibly including pollutant release and transfer registers.

Several new control measures were introduced to manage water pollution, including the second draft of the National Water Quality Management Framework Policy and the Waste Discharge Charge System. The Working for Water programme succeeded in protecting and preventing against water loss due to alien invasive plant species, however it was not clear how much of this work focused unfairly on commercial farmlands and not on areas inhabited by vulnerable sections of the population.

Most of the work by the State on inland as well as marine and coastal biodiversity and conservation was reasonable in as far as it related to tourism and the economic development of the country.

The report highlights that the challenges facing South Africa in terms of the right to a healthy environment include: allocating sufficient resources for progressive realisation of the right for the benefit of vulnerable groups; educating and training communities; ensuring that proper implementation systems are in place; ensuring effective co-operative governance; operating proper monitoring and evaluation systems.

The report recommends that while most policies and laws are in place or about to be instituted, there should be a quantum shift in focus towards implementation of measures to further the right to environment for vulnerable groups in a more decentralised way. Provincial government and local government should be resourced to concentrate their energies on implementation, in association with community based organisations that have already developed innovations to further the right, sometimes in the face of extreme resource scarcity.

The State has made valuable contributions to promoting the right to environment through for example, the “Bontle ke Batho” or the clean schools, wards and towns campaign; however, organs of State could do more to ensure that their own internal operations reflect implementation of the right to environment. For example, the Council for Scientific and Industrial Research (CSIR) implemented International Standards Organisation 14001 standards for handling and disposing of its own hazardous waste. This initiative by an organ of State seems to have afforded the CSIR the opportunity to gain some capacity and insight, which could be applied to other relevant contexts in the public or private sector within the South Africa.

The report also recommends that monitoring and evaluation systems need to be simplified where possible and improved. Annual progress reports in pursuit of targets and plans laid down in Environmental Implementation Plans and Environmental Management Plans should include a focus on the substantive aspects of the realisation of the right for vulnerable groups. The contents of the reports should also be widely

communicated so as to avoid conflict and encourage effective participation. The Committee for Environmental Co-ordination could also be complemented by the National Environmental Advisory Forum (NEAF) envisaged in the National Environmental Management Act 107 of 1998. This provision to encourage participation should be effected without delay.

#### **D) Protocols and the Report Production Process**

The production process for this report began with the SAHRC sending questionnaires, which are called protocols, to various organs of State for their comment in May 2003. The Commission then took some time to revise the protocols, which were resent to all relevant organs of State for comment and suggestions in June 2003. The response from relevant organs of State was not satisfactory; with the Department of Housing (Gauteng Province), the Department of Land Affairs and the Department of Water Affairs and Forestry being the only organs of State to respond. However, the Commission acknowledges that further work is required, in the next reporting cycle, to ensure that the protocols are improved for all spheres of government and parastatals.

The final protocols were sent to various organs of state (national and provincial government, parastatals, metropolitan and local councils) in July 2003, as mandated by section 184(3) of the Constitution. In future, the Commission will pay more attention to smaller municipalities by focusing field research on the implementation of programmes and projects at a local level.

The first deadline for the release of this Report was in December 2003. However, the Commission had major problems in getting timeous responses from organs of State and as a result, the Commission took a decision to subpoena several departments and postpone the release of the Report until sufficient information had been received (see summarised list overleaf).

SPHERE	INSTITUTION	DATE RESPONSE RECEIVED
2 - Provinces	GAU Social Services and Population Development	August 21, 2003
1 - National	NATIONAL Labour	August 29, 2003
2 - Provinces	EC Health	August 29, 2003
2 - Provinces	WC Agriculture	August 29, 2003
2 - Provinces	LIMPOPO Agriculture and Environmental Affairs	August 31, 2003
2 - Provinces	FS Health	September 1, 2003
2 - Provinces	NW Health	September 1, 2003
2 - Provinces	WC Social Services	September 1, 2003
2 - Provinces	EC Education and Training	September 5, 2003
2 - Provinces	GAU Health	September 5, 2003
2 - Provinces	KZN Agriculture and Environmental Affairs	September 9, 2003
4 -Parastatals	PARASTATAL Rand Water	September 9, 2003
2 - Provinces	KZN Traditional and Local Government	September 10, 2003
2 - Provinces	MP Local Govt and Traffic	September 10, 2003
2 - Provinces	NW Education	September 10, 2003
1 - National	NATIONAL Land Affairs	September 12, 2003
2 - Provinces	FS Social Welfare	September 12, 2003
2 - Provinces	GAU Housing	September 12, 2003
2 - Provinces	NC Health	September 12, 2003
2 - Provinces	NC Social Services and Population Development	September 12, 2003
1 - National	NATIONAL Agriculture	September 15, 2003
1 - National	NATIONAL Water Affairs and Forestry	September 15, 2003
2 - Provinces	EC Agriculture and Land Affairs	September 15, 2003
2 - Provinces	FS Education	September 15, 2003
2 - Provinces	GAU Education	September 15, 2003
2 - Provinces	MP Housing and Land Administration	September 15, 2003
2 - Provinces	WC Education	September 15, 2003
2 - Provinces	WC Environmental Affairs and Development Planning	September 15, 2003
2 - Provinces	WC Health	September 15, 2003
2 - Provinces	WC Housing	September 15, 2003
2 - Provinces	NC Agriculture Conservation and Environment	September 15, 2003
2 - Provinces	KZN Health	September 16, 2003
1 - National	NATIONAL Education	September 18, 2003
2 - Provinces	MP Health	September 18, 2003
2 - Provinces	NW Agriculture, Conservation and Environment	September 23, 2003
2 - Provinces	MP Social Services and Population Development	September 25, 2003
3 -Metropolitan Councils	METRO Greater Tswane Metropolitan Council	October 2, 2003
3 -Metropolitan Councils	METRO Nelson Mandela Metro Council	October 2, 2003
1 - National	NATIONAL Correctional Services	October 3, 2003
1 - National	NATIONAL Social Development	October 3, 2003
2 - Provinces	LIMPOPO Health and Welfare	October 3, 2003
2 - Provinces	EC Social Development	October 3, 2003
1 - National	NATIONAL Health	October 10, 2003
2 - Provinces	GAU Agriculture, Conservation, Environment and Land Affairs	October 10, 2003
4 -Parastatals	PARASTATAL Medicines Controls Council	October 10, 2003
2 - Provinces	FS Local Govt and Housing	October 29, 2003
1 - National	NATIONAL Housing	October 30, 2003
1 - National	NATIONAL Provincial and Local Government	October 30, 2003
1 - National	NATIONAL Environmental Affairs and Tourism	October 31, 2003
4 -Parastatals	PARASTATAL Agriculture Research Council	October 31, 2003
1 - National	NATIONAL Minerals and Energy Affairs	November 3, 2003
2 - Provinces	KZN Education and Culture	November 3, 2003
2 - Provinces	EC Housing, Local Government and Traditional Affairs	November 4, 2003
2 - Provinces	GAU Development Planning and Local Government	November 4, 2003
2 - Provinces	LIMPOPO Education	November 4, 2003
2 - Provinces	MP Agriculture, Conservation and the Environment	November 4, 2003
2 - Provinces	NC Local Govt and Housing	November 4, 2003
2 - Provinces	WC Planning and Local Govt	November 4, 2003
4 -Parastatals	PARASTATAL National Education Financial Aid Scheme	November 4, 2003
2 - Provinces	NW Developmental Local Government and Housing	November 5, 2003
3 -Metropolitan Councils	METRO Eastrand Metropolitan Council	November 5, 2003
4 -Parastatals	PARASTATAL Umngeni Water	November 5, 2003
3 -Metropolitan Councils	METRO Cape Town Metro Council	November 6, 2003
4 -Parastatals	PARASTATAL Medical Research Council	November 6, 2003
2 - Provinces	FS Agriculture	November 7, 2003
2 - Provinces	KZN Welfare and Pensions	November 7, 2003
2 - Provinces	LIMPOPO Local Govt and Housing	November 7, 2003
2 - Provinces	MP Education	November 7, 2003
2 - Provinces	NC Education	November 7, 2003
4 -Parastatals	PARASTATAL National Housing Finance Corporation	November 7, 2003
2 - Provinces	KZN Housing	November 14, 2003
3 -Metropolitan Councils	METRO eThekweni Metropolitan Council	November 17, 2003
4 -Parastatals	PARASTATAL Landbank*	November 17, 2003
4 -Parastatals	PARASTATAL Council for Scientific and Industrial Council*	November 18, 2003
2 - Provinces	FS Environmental, Tourism and Economic Affairs	November 19, 2003
3 -Metropolitan Councils	METRO Greater Johannesburg Metropolitan Council	December 17, 2003
2 - Provinces	NW Social Services**	

\_\_\_\_\_ First deadline  
 \_\_\_\_\_ Extended deadline  
 \_\_\_\_\_ Subpoena hearings begin  
 \_\_\_\_\_ Subpoena hearings end

\* Extension granted as a result of communication problems  
 \*\* No subpoena served, a letter explains the breakdown in communication



Most organs of State submitted their reports before they were meant to appear at a subpoena hearing. However, the North West Department of Social Services, Arts, Culture and Sport did not provide a response to the Commission as a result of problems with network cabling and the resignation of the personal assistant to the Acting HoD. The Department submits that it was not out of irresponsibility and deliberate disregard of the law that the Commission did not receive a report from the Department.

In order to improve the quality of the information, analysis and recommendations in the reports and to forge closer and better working relationships with government and non-governmental entities, a set of draft reports were released for comment to government and civil society before a National Input Workshop on 27-28 January 2004. Comments made at the workshop, and in writing, have been considered by each report writer.

A set of second draft reports were then made available to the Director General of the relevant national department in February 2003 to correct any remaining problems with factual information. Responses were received from the following departments: Water Affairs and Forestry, Minerals and Energy, Provincial and Local Government, Health, Social Development, Education, Land Affairs, and Housing. The final reports were also reviewed intensively within the Commission before being published.

## **E) Conclusion**

One of the concerns acknowledged by the Commission about the monitoring process so far is that it still relies heavily on reports from government.

Furthermore, even though the Bill of Rights applies vertically and horizontally and binds State entities and non-State entities, the Commission has some capacity problems in extending its mandate to non-State entities, especially big corporations.

In the next reporting cycle, the Commission will place more emphasis on conducting its own primary research in addition to improving on the existing protocols for each right and making better use of annual report information as soon as it becomes available.

## ACRONYMS

<b>CDG</b>	Care Dependency Grant
<b>CEDAW</b>	Convention on the Elimination of all Forms of Discrimination Against Women
<b>CERD</b>	Convention on the Elimination of all Forms of Racial Discrimination
<b>COIDA</b>	Compensation for Occupational Injuries and Diseases Act
<b>CPS</b>	Cash Payment Services
<b>CSP</b>	Comprehensive Social Protection
<b>CRC</b>	Convention on the Rights of the Child
<b>CRSS</b>	Committee for the Reconstruction of Social Security
<b>CSG</b>	Child Support Grant
<b>FBOs</b>	Faith Based Organisations
<b>FCG</b>	Foster Care Grant
<b>ILO</b>	International Labour Organisation
<b>IFSNP</b>	Intergrated Food Security and Nutrition Programme
<b>IPEC</b>	International Programme on the Elimination of Child Labour
<b>MDGs</b>	Millenium Development Goals
<b>NEPAD</b>	New Partnership for Africa Development
<b>NFES</b>	National Food Emergency Scheme
<b>NGOs</b>	Non Governmental Organisations
<b>PAFOD</b>	Pan African Federation of Disabled Persons
<b>PRSPs</b>	Poverty Reduction Strategy Papers
<b>SAHRC</b>	South African Human Rights Commission
<b>UIF</b>	Unemployment Insurance Fund
<b>WSSD</b>	World Summit on Sustainable Development

## **EXECUTIVE SUMMARY - SOCIAL SECURITY**

### **Constitutional Obligations**

Social security has been defined as a public support measure to address the consequences of sickness, maternity, occupational injury, unemployment, invalidity, old age and death, if they arise. The strands of social security considered in this report are social insurance and social assistance. Social insurance is based on contributions from employees and employers whereas social assistance is non-contributory.

The Constitution provides that everyone has a right to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance. Children have the right to basic nutrition, shelter, basic health care services and social services. The right of access to social security is guaranteed to everyone. The notion of access implies that everyone is entitled to an enabling environment, which obliges the State to take specific action to safeguard the right. A positive obligation is imposed on the State to take reasonable legislative and other measures, to achieve progressive realisation of the right within available resources.

In the final analysis social security embraces protection against damage, and inadequate standard of living and provides a social safety net against destitution. The South African social security system has, been fragmented and exclusionary. Social assistance is only afforded to the elderly; persons with disabilities and children but not all children in need of assistance are afforded such assistance. Social insurance is labour oriented and coverage is extended to those in the formal labour sector. People with no social protection fall easily into poverty traps.

### **Progress in the realisation of the right to social security**

#### *Respect*

The State was successfully challenged in court over its failure to respect the right to social security in the *Mashishi* and *Sibuye* cases.

#### *Protect*

The Department of Labour enacted the Unemployment Contributions Act 4 of 2002 and the Unemployment Insurance Act 63 of 2001. Both statutes came into effect in April 2002.

The Department of Labour has to be commended for striving towards making the lives of the most vulnerable in our society better. The inclusion of domestic workers and other workers in the Unemployment Insurance Fund, followed by the wide promotion and publicity through various mediums as well as the

April 2002 – March 2003

constant inspection of workplaces in order to protect workers is an indication of the effective, reasonable and expeditious manner in which the department respects, protects, promotes and fulfils its constitutional obligation.

The Minister of Labour determined two sectoral minimum wages in terms of the Basic Conditions of Employment Act 75 of 1997 during the reporting period. The first determination was for domestic workers, which became effective from 1 September 2002. The second determination was for farm workers and became effective on 1 March 2003. A major consideration in making both determinations was the high level of exploitation of domestic workers and farm workers, especially in rural areas and provinces next to our South African Development Community neighbours.

#### *Promote*

The social relief grant and the grant in aid have not been adequately promoted by the State in its social grant awareness campaigns. The Child Support Grant has been widely promoted, and the collaboration of the Department of Social Development and civil society has to be commended in advancing the rights of all in dire need.

#### *Fulfil*

During the reporting period, the National Department of Social Development and the provinces developed Disability Assessment Panels, drafted a Social Relief of Distress Policy, introduced the National Food Emergency Scheme/Programme and conducted Social Grants Awareness and Registration Campaigns. The Department of Social Development further reviewed the 1992 Social Assistance Act Regulations.

R28 billion was spent on social grants during the reporting period (2002/2003). The Poverty Alleviation Programme had an allocation of R100 million to support 416 projects. The National Food Emergency Scheme was allocated R230 million. The Disaster Relief Fund was allocated R49 million and R48 million was allocated for the HIV/AIDS programme. Most provincial departments indicated that the allocated budget was not enough and numbers of grant beneficiaries were constantly increasing, resulting in overspending for social security. Although there are still eligible beneficiaries of grants who are not receiving such grants, the number of beneficiaries accessing social grants has increased tremendously.

The social security system at present does not cater for everyone and not everyone in need of social assistance is afforded such assistance. This however does not mean that government is not committed to the progressive realisation of the right to social security. Social assistance grants are afforded to a large number of people and the numbers continue to increase, the child support grant has been extended to children who would be aged 14 years in 2005/2006. In

addressing poverty and unemployment, government has committed itself to reduce poverty by 2015. The Umsobomvu Youth Fund was established to create jobs and develop skills amongst the youth and Community Based Public Works Programmes were introduced as a measure to create employment and alleviate poverty with special focus on women, persons with disabilities and the youth.

#### *Overall assessment*

It may be concluded that there has not been much emphasis on the protection, promotion or fulfilment of the right to social insurance. Social and labour legislation in South Africa is exclusively extended to those who qualify as employees, thus excluding various groups of atypical workers who fall short of the employee qualification.

Most vulnerable and marginalised people in South Africans are either unemployed or atypically employed and therefore not covered by the occupational based social insurance schemes. Joblessness has increased from 15% to 30% since 1995, and there has been a rapid fall in real incomes from work, which has pushed more people into the informal sector and casual labour, and unemployment. These groups of people are denied access to social security.

Social exclusion, poverty, unemployment and the HIV/AIDS pandemic are challenges for the realisation of the right to social security. Human and budgetary constraints continue to be challenges in the realisation of the right to social assistance. The delivery of social services has not been efficient in some parts of the country as a result of administrative problems, lack of documentation as barriers to accessing grants, poor conditions at pay points, as well as corruption and maladministration. Children in child headed households and children who live in the streets are not adequately catered for and some engage themselves in exploitative forms of labour. Some parents fail to provide and take care of their children and put strains on the maintenance and social assistance systems.

#### **Recommendations**

The SAHRC would therefore recommend the introduction of the ILO's Decent Work for All Strategy and the Basic Income Grant, affording all children social assistance, better regulation of the insurance, health and maintenance systems and fostering the continuation of collaboration with all stakeholders, such as other government departments, and FBO's and NGO's.

## **1 INTRODUCTION**

### **1.1 Meaning and Content**

The concept of social security and the obligation of the State to provide for social security is a new phenomenon. Previously, individuals and their families had to provide their own adequate protection against risks.<sup>1</sup> The term “social security” was first used in the United States (the Social Security Act of 1935), and this Act initiated programmes to meet the risks of old age, death, disability and unemployment.<sup>2</sup> In New Zealand a 1938 Act brought together a number of existing social security benefits.<sup>3</sup> In 1941 the term “social security” was used in the Atlantic Charter (a wartime document).<sup>4</sup>

Social security was established as a basic human right in the International Labour Organisation’s Declaration of Philadelphia (1944) and its Income Security Recommendation of 1944 (No. 67). There is no universally applicable definition of the concept of social security. However, the International Labour Organisation (ILO) has codified it through the Social Security (Minimum Standards) Convention of 1952 (No. 102). The Convention is used internationally as a basis to define social security. Therefore, social security is defined as a public measure to address the consequences of sickness, maternity, occupational injury, unemployment, invalidity, old age and death.

Some authors have seen the definition as too narrow, hence recent attempts to define social security no longer focus on the list of social risks that are covered, but define it as a set of policy instruments to elaborate certain aims. Social security can therefore be defined in terms of its aims and objectives. It is, therefore, defined as the set of policy instruments that are implemented to compensate for the negative consequences of a number of risks if they occur.<sup>5</sup>

The strands of social security are social insurance and social assistance. Social insurance is financed by contributions from employers and employees, and benefits accrue and are afforded to contributors. Social assistance is financed by the general revenue of the country and is afforded to those most in need.<sup>6</sup>

### **1.2 International Perspective**

Social security is recognised as a basic human right and is upheld by various international instruments. The following declarations, covenants and conventions are relevant to extending social security:

- The Universal Declaration of Human Rights of 1948 (Articles 22 and 25);
- The International Covenant on Economic, Social and Cultural Rights of 1966 (Article 9);

- The Convention on the Elimination of all Forms of Discrimination Against Women [(CEDAW) (Article 11 (1)(e));
- Convention on the Elimination of all Forms of Racial Discrimination [(CERD) (Article 5(e)(iv));
- The Convention on the Rights of the Child (CRC) of 1989;
- The African Charter on the Rights and Welfare of the Child of 1990;
- The Equality of Treatment (Social Security) Convention of 1962 (No 118);
- The Maintenance of Social Security Rights Convention of 1982 (No 157);
- The Employment Promotion and Protection against Unemployment Convention of 1988 (No 168); and
- The Job Creation in Small and Medium Sized Enterprises Recommendation of 1998 (No 189).

Some of the instruments have linked social security to an adequate standard of living, and some have included both social security and social insurance as a benefit to individuals. The ILO Conventions have linked and combined social security and employment.

### **1.3 National Perspective**

Section 27(1)(c) of the Constitution of the Republic of South Africa Act 108 of 1996 (hereinafter the Constitution) provides that “*everyone has the right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance*”.

Children are afforded the right to social security in sections 27(1)(c) and 28(1)(c) of the Constitution. Section 27(1)(c) includes adults and children, whereas section 28(1)(c) caters for children only. According to this section:

*every child has the right to basic nutrition, shelter, basic health care services and social services.*

The right to social security is guaranteed to everyone, including marginalised groups. The notion of access implies that everyone is entitled to an enabling environment, which obliges the State to take specific action to safeguard the right.

A positive obligation is imposed upon the State by section 27 of the Constitution and the extent of the obligation is defined by the following three key elements:

- the obligation to take reasonable legislative and other measures;
- to do so within available resources ; and
- the obligation to achieve the progressive realisation of access right to social security.

The State has been challenged for not affording social assistance to everyone in the *Khoza* and *Mahlaule* cases.<sup>7</sup> Both cases were represented by the Legal Resources Centre on behalf of some residents in Limpopo. In the *Khoza* case some residents were unable to qualify for the State old pension grant because they were not citizens of South Africa, and in the *Mahlaule* case, non-citizen parents on behalf of their children were denied child care grants. The applicants, even though they were not South African citizens, were lawfully and permanently resident in South Africa, and their children were born in South Africa and met all the requirements to qualify for social assistance or a child support grant except for the citizenship requirement.<sup>8</sup>

Sections 3(c), 4(b)(ii) and 4B(b)(ii) of the Social Assistance Act 59 of 1992 as amended by the Welfare Laws Amendment Act 106 of 1997 were therefore declared unconstitutional and invalid because the sections precluded non-citizens from accessing social assistance.

In the final analysis, social security embraces protection against human damage, and provides an adequate standard of living and a social safety net against destitution. Although social security has to provide a safety net, most people, especially in developing countries, are excluded from social security. The social security systems are labour oriented and coverage is extended to the formal labour force.<sup>9</sup> Those not in formal employment are excluded and do not qualify for social assistance. People with no social protection easily fall into poverty traps, especially if they are not catered for by the social assistance systems.

The challenge facing States is to extend social security to everyone and ensure that everyone has an adequate standard of living. This standard of living includes a life free from poverty and hunger. This is encapsulated in the Decent Work for All Strategy introduced by the ILO in 1999. The ILO through the Decent Work Approach aims to find ways to end social exclusion and enlarge opportunities for better jobs. Entitlement to social security by everyone is an essential feature of the Decent Work Approach.<sup>10</sup>

In order to eradicate poverty, and to promote human dignity and equality, State parties, rich and poor, committed themselves to a global effort through the



Millennium Development Goals, which emanated from the 2000 Millennium Declaration. The Millennium Development Goals serve as benchmarks for the assessment of progress. Each Millennium Development Goal is linked to economic, social and cultural rights, and the achievement of Millennium Development Goals is a step towards the full realisation of economic, social and cultural rights.<sup>11</sup>

The Consolidated Report by the Committee of Inquiry into a Comprehensive System of Social Security (Taylor Report) 2002<sup>12</sup> is an advance because it provides a comprehensive attempt to bring together the different elements of a fragmented social security system to address, in a coherent and phased way, the constitutional and socio-economic challenges facing South Africa. The Committee indicated that the structure of the social security system in South Africa is unequal, exclusionary and inequitable. To address this, the Committee took into consideration the *Grootboom* judgement and recommended that social security policies and programmes must be reasonable both in their conception and their implementation. Therefore, vulnerable communities must be given priority by government, and their needs must be addressed effectively.

The Committee further recommended that social security laws should be amended to comply with international instruments.<sup>13</sup> In defining the concept of social security, the Committee of Inquiry settled on the term “Comprehensive Social Protection” (CSP).

*Comprehensive social protection for South Africa 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.*

*Comprehensive social protection is broader than the traditional concept of social security, and incorporates development strategies and programmes designed to ensure, collectively, at least a minimum acceptable living standard for all citizens. It embraces the traditional measures of social insurance, social assistance and social services, but goes beyond that to focus on causality through an integrated policy approach including many of the developmental initiatives undertaken by the State.<sup>14</sup>*

## **2 PROGRESS IN THE REALISATION OF THE RIGHT TO ACCESS SOCIAL SECURITY**

This section will analyse measures instituted by organs of State at national, provincial and local spheres. The measures analysed will include policy, programmes, and legislative and budgetary measures. The process of analysing measures and concluding on the progressive realisation of a right involves, *inter alia*, requesting and receiving information from State organs about measures instituted to realise the right progressively.

Responses were received from the National Department of Social Development, the National Department of Labour, the Gauteng Social Services and Population Development Department, the Northern Cape Social Services and Population Department, the Western Cape Social Services Department, the Mpumalanga Social Services and Population Development Department, the Free State Department of Social Development, the Department of Health and Welfare in Limpopo, the Department of Social Welfare and Population Development in KwaZulu-Natal and the Eastern Cape. As mentioned in the Common Introductory Section, the North West Department of Social Services did not respond.

## **2.1 Policies and Programmes**

### ***2.1.1 National Sphere***

#### **2.1.1.1 Department of Social Development**

During the reporting period the National Department of Social Development developed disability assessment panels, drafted a social relief of distress policy and conducted awareness and registration campaigns about social grants.

The National Department of Social Development did not clarify that the policies were newly instituted. What came out clearly in the response was that the policies were worked on during the reporting period, which could mean that they were in place prior to the reporting period or that the policies were to be effected after the reporting period.

##### ***2.1.1.1.1 Disability Assessment Panels***

The Department established and piloted Disability Assessment Panels during 2002 as an alternative to an examination by a district surgeon and an evaluation of the district surgeon's report by the pensions medical officer, for the assessment of disability when applying for disability grants and care dependency grants (CDGs). This was due to the fact that the evaluation by the pensions medical officer did not adequately take into account the social circumstances of applicants and resulted in delays in the processing of applications for disability grants. The Disability Assessment Panel consists of a rehabilitation therapist, a social security official, a representative from the disability sector or a reputable community member, and an additional member appropriate to the disability being assessed.

##### ***2.1.1.1.2 Draft Policy on Social Relief of Distress***

The aim of the draft policy is to develop a framework for the implementation of the social relief of distress programme in a uniform and co-ordinated manner and ensure that social relief is provided to persons in desperate need and those

living in intolerable conditions or crisis situations. The framework to improve the system of social relief will be finalised in 2004.

#### *2.1.1.1.3 Grant Awareness Campaigns*

The Department of Social Development embarked on grant awareness and registration campaigns throughout the reporting period. The aim of the campaigns was to create awareness about social grants and to increase the uptake of beneficiaries.

#### *2.1.1.1.4 National Food Emergency Scheme/Programme*

The National Food Emergency Scheme (NFES), a sub-programme of the Integrated Food Security Strategy and Nutrition Programme (IFSNP), was announced by Cabinet in October 2002 and was piloted by the National Department of Social Development in December 2002 (the IFSNP, which is co-ordinated by the National Department of Agriculture is discussed at greater length in the report on the Right to Food in this series). The IFSNP was launched as a response to the famine in the Southern African region and increases in food prices within South Africa. It provides for a set of support measures, as follows:

*provision of food parcels for three months to the poorest families who do not have any income or cannot afford R200 for food per month, intensification of the registration for social grants, acceleration of the school nutrition programme, provision of agricultural starter packs so that households can provide food for themselves, and the development of sustainable household and community food security.<sup>15</sup>*

According to the National Department of Social Development, the pilot programme of the National Food Emergency Scheme included the following beneficiary selection criteria:

#### **Geographic**

- Rural and urban nodes plus provincial poverty pockets; and
- Rural and urban areas.

#### **Social status**

- Expenditure level below R300 per household per month;
- Vulnerable groups;
- Orphaned children and child-headed households;
- The elderly;
- People with disabilities;
- Female (nil-income) household heads;
- HIV/AIDS affected / infected.<sup>16</sup>

The number of households that were reached by the National Food Emergency pilot programme is shown in Table 1. The total number of households that benefitted from the pilot programme shown in Table 1 (60 089) does not concur with the statement in the National Department of Agriculture's Annual Report for 2003, which states that 149 779 households benefitted by March 2003.<sup>17</sup>

**Table 1: Progress with delivering the NFES Pilot project during 2002/2003**

<i>Province</i>	<i>No. of Households Assisted with food Parcels</i>	<i>Targeted output as of April 30 2003</i>	<i>% of Target reached by Pilot Programme</i>
Eastern Cape	3 463	35 000	10%
Free State	6 515	30 000	22%
Gauteng	1 160	5 000	23%
KwaZulu-Natal	5 865	30 390	19%
Mpumalanga	15 317	12 000	128%
Northern Cape	1 190	4 670	25%
Limpopo	10 455	50 890	21%
North West	15 317	72 000	21%
Western Cape	807	5 000	16%
Total	60 089	244 950	25%

*Source: Pilot programme figures from the National Department of Agriculture protocol response 2003 and Targets for 30 April 2003 from Department of Social Development, Integrated National Business Plan for the National Food Emergency Scheme (NFES) for the 2003/04 and 2004/05 financial years.*

#### 2.1.1.2 Department of Labour

The National Department of Labour did not report any newly instituted measures.

##### 2.1.1.2.1 *Provincial Sphere*

Gauteng, Mpumalanga, Free State, Eastern Cape and the Northern Cape instituted various policies and programmes during the reporting period. The Western Cape and KwaZulu-Natal did not institute any policy measures during the reporting period.

##### *National Food Emergency Scheme/Programme*

Three provinces, Gauteng, Mpumalanga and Free State reported that they instituted the Food Emergency Scheme/Programme. In Free State, the programme was implemented in December 2002, when food parcels were distributed to needy households with a monthly expenditure of less than R200 on basic necessities. In Gauteng and Mpumalanga the programme was launched in March 2003.

### *HIV/AIDS Policy*

Gauteng introduced a policy on HIV/AIDS to ensure that infected people, who are unable to work owing to the severity of their illness, are eligible to apply for a disability grant. The Western Cape afforded people who are HIV positive access to a disability grant only if their medical condition deteriorates to an extent that renders them unable to work.

### *Medical Assessment Panels*

The Eastern Cape established medical assessment panels to enable applicants of disability grants to be assessed not only by medical surgeons, who only look at physical and clinical aspects, but by a panel that considers economic and social aspects as well.

### *Registration Campaign*

The Eastern Cape embarked on a registration campaign for social grants during the reporting period.

## **2.2 Legislative Measures**

### **2.2.1 National Sphere**

#### 2.2.1.1 Department of Social Development

The Department of Social Development reported that the Social Assistance Act Regulations were reviewed.

##### *2.2.1.1.1 Review of the 1992 Social Assistance Act Regulations*

The National Department of Social Development reviewed the 1992 Social Assistance Regulations pertaining to eligibility for the Child Support Grant. According to the Regulations, the eligibility age for the child support grant is from birth to seven years. The Department of Social Development therefore proposed the extension of the age of eligibility to include all children up to the age of 14 years.<sup>18</sup>

#### 2.2.1.2 Department of Labour

##### *2.2.1.2.1 Unemployment Contributions Act 4 of 2002*

The Department of Labour enacted the Unemployment Contributions Act 4 of 2002. This Act came into effect on 1 April 2002. It provides for the collection of contributions from both employers and their employees.

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#### *2.2.1.2.2 Unemployment Insurance Act 63 of 2001 Act*

The Unemployment Insurance Act enacted in 2001 also came into effect on 1 April 2002. This Act provides for the administration and payment of benefits to contributors in the event that they become unemployed. Beneficiaries benefit for 238 days, which is an increase in the number of benefit days, compared to the old Unemployment Insurance Act 30 of 1966, which provided for 121 days only.

#### *2.2.1.2.3 Sectoral Determination for Domestic Workers and Farm Workers*

This item is repeated in the Right to Food report in this series.

The Minister of Labour determined two sectoral minimum wages in terms of the Basic Conditions of Employment Act 75 of 1997 during the reporting period. The first determination was for domestic workers, which became effective from 1 September 2002.<sup>19</sup> The second determination was for farm workers and became effective on 1 March 2003. A major consideration in making both determinations was the high level of exploitation of domestic workers and farm workers, especially in rural areas and provinces next to our South African Development Community neighbours.

### **2.3 Budgetary Measures**

This section will outline the total allocation of the National Department of Social Development, its allocation towards programmes and projects as well as allocations for social assistance in provinces. The information was obtained directly the government departments through protocols as well as information from other sources to supplement the inadequate information obtained from protocol responses.

#### ***2.3.1 National Sphere***

##### **2.3.1.1 National Department of Social Development**

Table 2 reflects the total allocation of the National Department of Social Development and the allocations towards programmes. It should be noted that the 2001/2002 budget included an extraordinary allocation for backpayments of unpaid social security grants to beneficiaries, hence the major change in the Grant Systems Administration budget from 2001/2002 to 2002/2003.

**Table 2: Department of Social Development Total Budget Allocation**

<i>Programme</i>	<i>2002/2003</i>		<i>2001/2002</i>	
	<i>Revised allocation R'000</i>	<i>Actual Expenditure R'000</i>	<i>Revised allocation R'000</i>	<i>Actual Expenditure R'000</i>
Administration	150 242	149 918	43 105	43 165
Social Security Policy and Planning	7 348	6 976	5 410	5 138
Grant Systems Administration	79 217	70 499	2 104 253	2 098 362
Welfare Service Transformation	13 061	12 244	10 096	9 592
Development Implementation Support	391 178	390 764	73 227	72 997
Population and Development	9 205	9 009	6 066	6 038
Special Functions		14		
<b>Total</b>	<b>650 251</b>	<b>639 424</b>	<b>2 242 157</b>	<b>2 235 292</b>

*Source: National Department of Social Development Annual Report 2002/2003*

In accounting for variances the National Department of Social Development reported that there were savings made on professional and special services owing to unforeseen delays in the finalisation of planned projects. The Department also stated that the total budgetary allocation for the Department and the allocation for programmes and projects were adequate. There was underspending of the total revenue as well as underspending for programmes and projects.

The Department's budget allocations were based on demand for earmarked services. Vulnerable groups were afforded access to social grants through the child support grant, disability grant, old age pension grant; persons living with and those affected by HIV/AIDS were targeted through the allocation for the Home/Community Based Care, Counselling Services and Support as well as food supplements.

Child-headed households, unemployed persons, persons with low incomes and poverty-stricken persons, homeless persons, and persons infected with and those affected by HIV/AIDS benefited from the National Food Emergency Scheme. The allocation for Poverty Relief Programme enabled women in rural areas and informal settlements to partake in income-generating projects.

Table 3 shows the total allocation for various programmes for the period 2002/2003.

**Table 3: Total Allocation for Specific Programmes 2002/2003**

<i>Programme</i>	<i>Total allocation</i>
Social Grants	R28 billion (expenditure)
National Food Emergency	R230 million
Poverty Alleviation	R100 million
Disaster Relief Fund	R49 million
HIV/AIDS (Home/Community Care)	R46,5 million

*Source: Department of Social Development Annual Report 2002/2003*

R28 billion was allocated for social grants during the reporting period (2002/2003). The National Food Emergency Scheme was allocated R230 million. The Poverty Alleviation Programme had an allocation of R100 million to support 416 projects. The Disaster Relief Fund was allocated R49 million, which benefited 61 463 victims. The Emergency Relief Fund allocated R2,5 million to the Eastern Cape, R1,5 million to Limpopo and R1 million to Mpumalanga. The Home Based/Community Based Programme for children and families affected by HIV/AIDS was allocated R1,5 million for the national sphere and R46,5 million for the provinces.<sup>20</sup>

The Department of Social Development was allocated R48 million for the HIV/AIDS programme. The provinces were then allocated R47,5 million, R37 million of which was spent by the end of February 2003. An amount of R1,6 million of the special allocation for the HIV/AIDS programme was kept in the account of the National Department for national projects, project management and administration costs for the 2002/2003 financial year.

During the reporting period, the old-age pension was increased by R20 to R640, the child-support grant increased by R10 to R140, the grant in aid increased from R120 to R130, the foster-care grant from R450 to R460, and the care dependency grant from R620 to R640. As the Department of Social Development states, the second round of increases only took effect from April 2003:

*In 2002, two increases in social grants were announced, making a total of R1,5 billion available to the most vulnerable members of society. From April 2003, pension and disability grants increased by R60 to R70 a month while the child-support grant (CSG) rose by 14% to R160. In both cases these were above-inflation increases. The 2003 Budget set aside a total of almost R12 billion to facilitate the extension of this grant to more beneficiaries.<sup>21</sup>*

### **2.3.2 Provincial Sphere**

Table 4 shows the provincial budget allocations for social assistance grants. Table 5 shows the percentage of social grant expenditure as a percentage of the



total social development budget for each province. Gauteng and Western Cape spend a considerably lower percentage of their total budget on social grants.

### 2.3.2.1 Social Assistance Grants

**Table 4: Provincial Social Security Budgetary Allocations**

<i>Province</i>	<i>2001/2002 Allocation</i>	<i>2001/2002 Expenditure</i>	<i>2002/2003 Allocation</i>	<i>2002/2003 Expenditure</i>
Eastern Cape	4 355 733 000	4 355 733 000	5 523 716 000	6 043 820 000
Free State	1 321 207 000	1 293 328 863	1 842 683 000	1 873 759 551
Gauteng	2 198 763 000	2 304 216 000	2 921 897 000	3 207 219 000
KwaZulu-Natal	4 584 562 000	4 686 829 000	6 110 346 000	6 442 159 000
Limpopo*	-	-	-	-
Mpumalanga	1 440 510 000	1 421 098 000	1 915 783 000	1 877 766 000
Northern Cape	593 175 700	592 224 309	723 050 000	803 144 894
Western Cape	1 973 036 000	1 955 698 000	2 559 434 000	2 676 319 000

*Source: Protocol responses from the provinces Notes: \*Limpopo did not furnish the required figures for the budget section.*

**Table 5: Social Grants as a Percentage of Provincial Social Development Budgets**

<i>Province</i> <sup>22</sup>	<i>Expenditure 2001/2002</i>	<i>Estimated Expenditure 2002/2003</i>
Limpopo	95,8%	96,3%
North West	88,6%	95,2%
Mpumalanga	93,4%	94,2%
Eastern Cape	94,2%	94,0%
KwaZulu-Natal	94,1%	94,0%
Free State	87,0%	86,6%
Northern Cape	90,2%	89,4%
Western Cape	79,2%	82,0%
Gauteng	81,5%	81,9%

*Source: Treasury Presentation to the Portfolio Committee on Social Development, Financing of Social Grants, September 2003*

The Eastern Cape reported that the variances (shown in Table 3) in the Department's budget for the periods 2001/2002 and 2002/2003 were based on the incremental rate of beneficiaries who were taken into the system each year, which is about 2–7% according to the inflation index and increases of potential applicants to be reached by the project. Since the budget was not adequate for the social security programme, the department was unable to embark on an outreach programme for the massive registration campaign in poverty-stricken rural areas. During the 2002/2003 period the department overspent on the allocated budget. The over-expenditure was addressed through using funds from programmes and services that were underspending, such as professional

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and special services. To address the overspending the Department introduced an Early Warning System.

In Mpumalanga the allocation for the periods 2001/2002 and 2002/2003 was not fully utilised.

KwaZulu-Natal reported that the over-expenditure in 2001/2002 was a result of limited resources that were made available by the Provincial Treasury as a result of the overall financial constraints in the province. The over-expenditure in 2002/2003 was caused by tariff increases, which became effective in October 2002 and were not adequately provided for, as well as the implications of the Appeals Board Sitings and the costs of paying grants to beneficiaries.

The budget for social assistance grants was not adequate, which resulted in overspending by the Department on the allocated budget for the programme. The funds for social grant payments have been far below than that which is required.

The shortfalls in the social security programme have been covered by the use of unspent budgetary allocations from other programmes. The unspent budget for suspended places of care pending fraud investigations was used to cater for shortfalls in the social security programme.

Gauteng reported that insufficient funds were received from the Provincial Treasury to meet the increase in the number of beneficiaries. However, the Provincial Treasury was approached for additional funds.

The department reported that the budget was adequate because savings in programmes were utilised to defray excess expenditure in other programmes. To address overspending the department has put strategic plans, business plans and measurable objectives in place to improve spending. Expenditure on each programme is monitored every month by the use of an In-Year Monitoring System.

The Western Cape reported that the variances in the budget are a result of the increase in the allocation from 2001/2002 to 2002/2003 owing to the increases in the grant amounts payable and beneficiary growth. The allocated budget for the period 2002/2003 was exceeded because it was not adequate. The department managed, however, to scale down on other activities to ensure that there were adequate funds available for social assistance. The department engaged in a consultative process with the National and Provincial Treasury on the impending over-expenditure of its allocation. To address the over-expenditure, stricter budgetary control measures were implemented, and the process and procedure in awarding grants was strengthened. The Provincial Treasury was informed on a monthly basis of the budget, and presentations were made to the Portfolio Committee, Budget Council and National

Departments of Treasury and Social Development. A special task team was appointed to review the application process and ensure strict control measures.

Free State reported that the budget was not adequate for the 2002/2003 financial year. Additional funds were requested from the Provincial Treasury, and grants were issued to qualifying beneficiaries. The Department overspent on the allocated budget. However, the shortfall was discussed with the Provincial Treasury and a formal letter was submitted to the Provincial Treasury requesting funds to cover the shortfall, which was granted. To address the overspending, the Department holds regular bi-laterals with the Provincial Treasury to discuss options of addressing the overspending.

#### 2.3.2.2 HIV/AIDS Programme

Table 6 below shows provincial allocations and actual expenditure for the HIV/AIDS (home based/community based care) programme.

Mpumalanga and the North West had to roll out funds from the 2001/2002 financial years. As at 31 March 2003, Mpumalanga had an allocation of R7 million consisting of the R7 million allocated for 2002/2003 and a roll over of R174 thousand from the 2001/2002 financial year. The North West had an allocation of R6 million comprising the R5 million allocation for the 2002/2003 financial year and the roll over of R1 million from the 2001/2002 financial year. The total amount that was available for the HIV/AIDS programme at the end of March was R49 of which R44 million (90%) of that amount was spent.<sup>23</sup>

Limpopo had already spent the total amount available by the end of February 2003. The Eastern Cape, Gauteng, Free State and the Northern Cape spent 100% of the available funds for the HIV/AIDS Programme at the end of March 2003.<sup>24</sup>

There was underspending by some provinces. KwaZulu-Natal spent 59,51%, Mpumalanga spent 86,21%, North West spent 97,48% and the Western Cape spent 99,71% of the available allocation.<sup>25</sup>

**Table 6: HIV/AIDS Programme expenditure by the end of March 2003**

<i>Province</i>	<i>Total Received R'000</i>	<i>Actual Expenditure R'000</i>
Eastern Cape	4 798	4 798
Free State	6 650	6 650
Gauteng	6 983	6 983
KwaZulu-Natal	8 644	5 144
Limpopo	3 135	3 135
Mpumalanga	7 251 (7 077 + 0 174)	6 251
Northern Cape	2 660	2 660
North West	6 812 (5 463 + 1 349)	6 640
Western Cape	2 090	2 084

*Source: Department of Social Development Annual Report 2002/2003*

The inadequate capacity to roll out the programme was the reason for underspending on the programme. In Mpumalanga, the delay in the receipt of an unpaid invoice from a service provider to ensure that the amount is paid prior to the end of the 2002/2003 financial year caused the underspending, whereas in the North West underspending was attributed to the administrative inefficiencies in spending the amount rolled over from the previous year.<sup>26</sup>

### 2.3.2.3 Poverty Relief Allocations

In 2001/02 the department was allocated R50 million and in 2002/03 the department was allocated R100 million.<sup>27</sup> Of the R100 million R45,54 million was paid to projects at the end of January 2003 and R45,426 million was planned to be released in March and April 2003 totalling an amount of R90,97 million of the budget for 416 projects.<sup>28</sup> The remaining allocation of R9,03 million was set aside for administration and capacity building (R4,08 million); the development of a social finance capacity to address poverty (R3,6 million); and support for the integration of the disabled into the different Poverty Relief Projects (R1,35 million).

## 2.4 Indicators

### 2.4.1 Grant Indicators

By the end of March 2003, the number of social grant beneficiaries had increased tremendously from April 2002. In April 2002, the number of beneficiaries was just over four million and this increased to just over five million by the end of March 2003.<sup>29</sup> Over 2,7 million children were registered for the Child Support Grant by the end of March 2003.<sup>30</sup>

Table 7 shows the number of beneficiaries of Social Assistance Grants.<sup>31</sup> Table 8 shows the same indicators, except the information is drawn from the National Department of Social Development's Annual Report for 2002/2003.

**Table 7: The Total Number of Social Grant Beneficiaries 2002-2003**

<i>Grant Type</i>	<i>April 2002</i>	<i>March 2003</i>
Old Age Pension	1 903 042	2 000 041
Disability	694 232	897 050
Child Support	1 907 774	2 513 693
Care Dependency	34 978	56 150
Foster Care	95 216	133 309
Grant in Aid	10 332	12 279
War Veteran	5 266	4 629
Total	4 650 840	5 617 151

*Source: Treasury Presentation to the Portfolio Committee on Social Development, Financing of Social Grants, September 2003*

The largest difference in information between Table 7 and 8 relates to the number of child support grant beneficiaries in April 2002.

**Table 8: Trends in the number of grant beneficiaries, by type of grant**

<i>Grant Type</i>	<i>April 2002</i>	<i>April 2003</i>	<i>% Change</i>
Old Age Pension	1 936 553	2 009 419	3,8%
Disability	714 019	953 965	33,6%
Child Support	1 574 927	2 630 826	67,0%
Care Dependency	42 474	58 140	36,9%
Foster Care	90 680	138 763	53,0%
Grant in Aid	10 840	12 787	18,0%
War Veteran	5 324	4 594	-13,7%

*Source: Department of Social Development Annual Report 2002/2003*

Table 9 shows the number of beneficiaries of social assistance grants in each province.

**Table 9: Beneficiaries of Social Assistance by Province 2002/2003**

<i>Province</i>	<i>April 2002</i>	<i>March 2003</i>	<i>% Increase</i>
Eastern Cape	903 975	1 035 763	14,6%
Free State	275 018	356 518	29,6%
Gauteng	517 070	682 156	31,9%
KwaZulu-Natal	1 024 408	1 285 463	25,5%
Limpopo	646 972	784 082	21,2%
Mpumalanga	314 734	387 071	23,0%
Northern Cape	124 021	134 260	8,3%
North West	411 123	450 712	9,6%
Western Cape	433 520	501 126	15,6%

*Source: Treasury Presentation to the Portfolio Committee on Social Development, Financing of Social Grants, September 2003*

April 2002 – March 2003

Tables 9 and 10 show grant indicators (number of beneficiaries for social assistance grants) as reported by the National Department of Social Development and the provinces.

**Table 10: The Total Number of Eligible Social Assistance Beneficiaries 2002/2003**

<i>Grant Type</i>	<i>Eligible 2002/2003</i>	<i>Receiving 2002/2003</i>
Old Age Pension	2 014 795	2 009 419
Disability	943 676	953 965
Child Support	3 768 058	2 827 729
Care Dependency	80 203	58 140
Foster Care	168 661	138 763

*Source: Protocol response from the National Department of Social Development*

### Observation

Tables 7 and 10 should have similar figures of grant beneficiaries; however, this is not the case because the Department of Social Development provided statistics beyond the reporting period. The figures in Table 7 (April 2003) are similar to those in Table 10 (beneficiaries receiving 2002/2003) except for beneficiaries receiving the Child Support Grant who are 2 827 729 in Table 10 and 2 630 826 in Table 8. The annual report states that “over 2,7 million children were registered for the Child Support Grant by the end of March 2003”.<sup>32</sup> This could be attributed to estimates as a result of the increasing number of beneficiaries as well as estimated target beneficiaries.

The number of persons who received the disability grant was higher than the number of persons eligible for the grant. Since this is highly unlikely, the information could be inaccurate or could indicate problems with fraud. The persons who are eligible for grants include those in receipt and those not in receipt of the grant.

### *Grant indicators as reported by provinces*

Gauteng provided high numbers of persons in receipt of the social assistance grants and low numbers of persons eligible for the grants, this is reflected in Table 11. The department indicated that the eligibility figures reflected in the table were projections made based on the number of applications received in the previous financial year and actually reflect the additional persons who may be added in the current year.

**Table 11: Beneficiaries of Social Assistance by Province**

<i>Province</i>	<i>Grant Type</i>	<i>Eligible</i>	<i>Receiving</i>
Eastern Cape	Old Age Pension	-	409 223
	Disability	-	212 324
	Child Support	-	377 634
	Care Dependency	-	11 020
	Foster Care	-	23 724
Free State	Old Age Pension	145 757	122 524
	Disability	129 000	74 298
	Child Support	534 000	150 000
	Care Dependency	5 200	2 474
	Foster Care	31 000	14 977
Gauteng	Old Age Pension	4 110	240 850
	Disability	51 200	111 703
	Child Support	245 066	304 246
	Care Dependency	3 837	6 984
	Foster Care	4 194	11 618
KwaZulu-Natal	Old Age Pension	-	416 851
	Disability	-	183 086
	Child Support	-	694 392
	Care Dependency	-	15 762
	Foster Care	-	31 559
Limpopo	Old Age Pension	-	-
	Disability	-	-
	Child Support	-	-
	Care Dependency	286 573	5 437
	Foster Care	5 437	-
Mpumalanga	Old Age Pension	164 986	141 677
	Disability	104 308	47 126
	Child Support	496 271	199 913
	Care Dependency	-	3 052
	Foster Care	-	3 468
Northern Cape	Old Age Pension	-	43 426
	Disability	-	-
	Child Support	-	-
	Care Dependency	-	-
	Foster Care	-	-
Western Cape	Old Age Pension	-	153 810
	Disability	-	109 486
	Child Support	-	196 472
	Care Dependency	-	5 382
	Foster Care	-	20 625

Source: Protocol responses from the provinces

#### **2.4.2 Income Indicators**

The National Department of Social Development indicated that 15 799 575 was the total number of persons with incomes inadequate to provide food and shelter during 2002/2003:

- 3 159 915 households had incomes inadequate to provide minimum food and shelter;

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- 13 660 545 persons had no source of income;
- 2 732 109 households had no source of income;
- 15 799 575 persons had incomes below the poverty line;
- 3 159 915 households had incomes below the poverty line;
- 5 148 934 households relied on social assistance;
- 2 827 729 children relied on social assistance;
- 3 768 058 children were eligible for social assistance;
- 7 976 663 persons benefited from the poverty alleviation programmes;
- 5 148 934 households benefited from the poverty alleviation programmes;
- 57 878 households were denied social assistance owing to administrative problems; and
- 289 390 persons were denied social assistance as a result of administrative problems.

*Income Indicators as reported by the Provinces*

Households that relied on social assistance as reported by the provinces:

- Free State – 460 000
- Gauteng – 650 000
- Northern Cape – 121 952

Households that had no income and/or receive inadequate income and receive no social assistance:

- Free State – 200 000
- Gauteng – 55 310

Children who relied on social assistance:



- Free State – 168 000
- Gauteng – 322 848
- Mpumalanga – 16 183
- Northern Cape – 57 000
- KwaZulu-Natal – 741 713

The number of children eligible for social assistance:

- Free State – 570 200
- Gauteng – 253 097

The number of children aged between seven and 18 who had no access to social assistance:

- Free State – 600 000

Number of children living in the streets:

- Gauteng - 2 500
- KwaZulu-Natal - 1 007
- Northern Cape - 336.

In Mpumalanga 1 354 237 persons had incomes inadequate to provide for minimum food and shelter, and 945 129 households had incomes inadequate to provide for minimum food and shelter. The number of persons with no source of income was 1 169 537, and 293 165 households had no source of income. 1 354 236 persons had incomes below the poverty line, and 945 129 households had incomes below the poverty line.

The Northern Cape had 33 340 persons with incomes inadequate to provide minimum food and shelter, and 16 670 households had incomes inadequate to provide minimum food and shelter. 2 780 persons have no source of income; 3 201 persons had incomes below the poverty line; 1 067 households have incomes below the poverty line; 51 693 children aged between seven and 18 years had no access to social assistance.

In KwaZulu-Natal 23 843 persons benefited from the poverty alleviation programmes, and 2 382 children received care at children's homes and secure care facilities.

### 2.4.3 Infrastructure Indicators

The National Department of Social Development reported that there 8 894 social grant payout points in total. The average distance to payout points was 5 km. 57% of the beneficiaries reside within 5 km from the payout point; 12% of the beneficiaries reside within 25 km from the payout point; and only 1% of beneficiaries reside within 50 km from the payout point. The average time taken by beneficiaries at payout points was two hours. In total 3 360 payout points did not have facilities for persons with disabilities, whereas 410 payout points did not have access to water and toilet facilities.

Table 12 provides the infrastructure indicators on a provincial basis.

**Table 12: Provincial Social Security Infrastructure Indicators**

<i>Category</i>	<i>Province</i>	<i>Total</i>
Number of Social Grant payout points	Gauteng	-
	Free State	176
	Limpopo	1 764
	Western Cape	293
	Northern Cape	206
	Mpumalanga	286
	Eastern Cape	2 726
	KwaZulu-Natal	2 609
Average distance to social grant payout points	Gauteng	-
	Free State	5 km
	Limpopo	5 km
	Western Cape	5 km
	Northern Cape	5 km
	Eastern Cape	5 km
	Mpumalanga	5 km
	KwaZulu-Natal	5 km
Average time taken at social grant payout point	Gauteng	-
	Free State	90 min
	Limpopo	2 hrs
	Western Cape	30 min
	Northern Cape	1 hr
	Eastern Cape	20 min
	Mpumalanga	1–2 hrs
	KwaZulu-Natal	30 min
Number of beneficiaries who reside within 5 km from the payout point	Gauteng	-
	Free State	174 600
	Limpopo	566 712
	Western Cape	470 117
	Northern Cape	106 000
	Eastern Cape	849 496
	Mpumalanga	-

*Source: Protocol responses from provinces*

In Gauteng all pay points have water and toilet facilities. In Mpumalanga 102 payout points lacked water, whereas 54 payout points had no toilet facilities.

The Eastern Cape Department of Social Services indicated that 80% of payout points were in rural areas and had neither toilet facilities nor facilities for persons with disabilities. This Department did not provide most of the information requested in the indicators section.

KwaZulu-Natal supplied information from a 2001 survey for the indicators section and there could have been more information after the survey.

## **2.5 The Impact of the Measures on Vulnerable Groups**

South Africa has shown its commitment through the various measures instituted, which have had an impact on the lives of vulnerable and marginalised groups. While the indicators show that there is an increase in the number of beneficiaries, there are also high numbers of eligible grant beneficiaries who are not receiving grants. The high numbers of beneficiaries contribute to the over-expenditure on the allocated budgets by the various provinces.

The Government has committed itself to halving poverty by 2015. The New Partnership for Africa's Development (NEPAD), the United Nations Millennium Summit (2000) and the 2002 World Summit on Sustainable Development (WSSD) also advocate that States should reduce poverty by half by 2015.

### ***2.5.1 Women, Youth and People with Disabilities***

Government also embarked on a Community Based Public Works Programme, spearheaded by the Department of Public Works. The programme aims to alleviate poverty and has the rural poor as one of its main focus. The programme created 20 539 employment opportunities; 10 537 jobs were received by women; 9 614 jobs were received by youth; and persons with disabilities received 535 jobs.<sup>33</sup> The jobs received by youth and persons with disabilities included both males and females.

### ***2.5.2 Children***

#### **2.5.2.1 Child Support Grant**

Government has to be commended for putting children first and striving towards the advancement and promotion of children's rights. The Child Support Grant serves as a measure to alleviate poverty among children. Registration and awareness campaigns were embarked upon by government, and registrations for the Child Support Grant took place successfully. Government even went a step further by extending the Child Support Grant up to the age of 14 years by the year 2005/6.

#### 2.5.2.2 Children living in the streets

Children living in the streets, like all other children, have the right to social security and social services. It is difficult to ascertain if these children enjoy their rights because State organs do not give much information about policies, programmes and projects aimed at realising the rights of these children. In the South African Country Report to the 2<sup>nd</sup> International Conference on Children and Residential Care in Stockholm (2003) it was indicated that although there is a lack of data on the number of street children, the number of children living on the streets increases gradually due to the impact of poverty and HIV/AIDS.

Places of safety and institutions such as shelters, drop in centres and children's homes cater for the needs of these children. However, not all children who live in the streets have access to these services.

In the South African Human Rights Commission, 4<sup>th</sup> Economic and Social Rights Report 2000/2002 at pg 216, it was indicated that:

*“these children are denied access to most social services provided by the State. They do not have access to the CSG and all other forms of assistance such as the poverty alleviation programmes and projects that are afforded to all the children in the country. These children are unable to benefit from the Primary School Nutrition Programmes because they do not go to school and they cannot even access to basic health care services. They cannot access the CSG because there is no care giver and they also do not have the necessary documentation, such as birth certificates.”*

#### 2.5.2.3 Child-Headed Households

Children in these households, especially girls, compromise their education in order to take care of their siblings. The Department of Social Development has to be commended for implementing the National Food Emergency Scheme, using an allocation of R230 million to cater for vulnerable households, especially child-headed households. Since it was instituted in 2002/3 the programme has been rolled out to 244 00 households. The National Food Emergency Scheme is a good programme, which provides food parcels to households. However, its scope does not extend to the education and health of children in child-headed households, nor, in all cases, to enabling them to access Child Support Grants. There is a need for a more comprehensive programme to cater for all their needs.

#### 2.5.2.4 Children infected or affected by HIV/AIDS

The Home/Community Based Care programmes through the collaborative work of government, non-governmental organisations, including faith-based organisations, and communities have benefited 29 612 children orphaned or vulnerable to HIV/AIDS by the end of March 2003.<sup>34</sup> The programme has

reached 75 000 children orphaned or vulnerable owing to HIV/AIDS since its inception in 2000.<sup>35</sup>

#### 2.5.2.5 Children and Juveniles in Prison<sup>36</sup>

The number of children in prison increased during the reporting period. The Department of Correctional Services Annual Report 2002/2003 states that the number of infants and children in detention with their mothers increased from 194 in 2001/2002 to 208 in 2002/2003. The number of unsentenced juveniles in prison on the last day of March increased from 2 086 in 2001, to 2 311 in 2002 and 2 654 in 2003. The number of sentenced juveniles in prison grew less rapidly from 1 690 in 2001, to 1 782 in 2002 and 1 795 in 2003. Furthermore, the number of unsentenced Juveniles (under 21 years old) was 15 216 male and 293 female at the end of March 2003. According to the Department:

*Despite measures to remove children from the Criminal Justice System, there are still instances where children are sent to prison as awaiting trial persons and sentenced offenders. The Department therefore established separate facilities for youths in prison to enhance their education, rehabilitation and development prospects. However, a large number of youths are accommodated in sections of adult prisons, but separately from adult offenders. Currently there are 13 Youth Correctional / Development Centres countrywide. Youth offenders in custody remain a major concern to the Department and the Department is doing everything in its power to reduce these numbers.<sup>37</sup>*

The Department of Correctional Services stated that 5 762 inmates had been to a Saturday/Sunday Court during 2002/2003<sup>38</sup> in order to reduce the overall unsentenced prisoner population, which stood at 55 500 people at the end of March 2002. Despite Saturday/Sunday courts, the overall unsentenced prisoner population grew to 58 144 by the end of March 2003. It was not clear how many unsentenced juvenile inmates were tried at Saturday/Sunday courts during the reporting period. The increase in the number of juvenile inmates, took place in the context of a rapid increase in the male and female adult inmate population, leading to unprecedented levels of overcrowding (78 507).

The Department's protocol response provides the following information in respect of HIV/AIDS in prisons as at 31 March 2002:

- prisoner population - 177 701
- prisoners with HIV/AIDS - 110 336, comprised of 5 618 females and 104 718 males, prisoners with HIV/AIDS 2,03%, prisoners with STDs 0,01%, prisoners with TB 1,2%,
- number of prisoners suffering from malnutrition 24, iron deficient prisoners = 43.<sup>39</sup>

There were 23 174 learners, 317 teachers and 120 prisons where qualified educationalists render services.

The Department of Correctional Services reported that it was developing a new transformed white paper that focuses more on unit management, a restorative approach to justice to facilitate healing, rehabilitation missions and programmes, study and education as well as labour in prison.<sup>40</sup>

### **2.5.3 Older Persons**

Older persons in South Africa are afforded the right to social assistance through the State Old Age Pension Grant. This means-tested grant is the government's most effective poverty alleviation measure for the aged.<sup>41</sup> Most aged persons have had a life of struggle, deprived of a proper education and excluded from labour laws<sup>42</sup> and social protection. The majority of African elderly people have no other source of income.<sup>43</sup> As unskilled manual workers they earned low wages and did not contribute to private pension funds; thus most rely solely on the State Old Age Pension Grant.<sup>44</sup>

The State Old Pensions Grant serves as a redistributive mechanism, which enables the survival of people in structurally vulnerable settings.<sup>45</sup> Julian May, in *Chronic Poverty and Older People in South Africa* is of the view that "in multigenerational families pensions are shared and the Old Age Pension Grant forms an important safety net for other members of older households. Estimates suggest that each social pension paid to a beneficiary supports five to six people in a household."<sup>46</sup>

## **3 CHALLENGES FOR THE REALISATION OF THE RIGHT TO ACCESS SOCIAL SECURITY**

Social exclusion, poverty, unemployment and the HIV/AIDS pandemic are challenges for the realisation of the overall right to social security. Human and budgetary constraints continue to be challenges in the realisation of the right to social security. The delivery of social services has not been efficient in some parts of the country as a result of administrative problems, lack of documentation as a barrier to accessing the grants and poor conditions that prevail at pay points.

### **3.1 Administration**

In some instances the administration of social services also hampered the realisation of the right. These problems include people travelling for long distances to local welfare offices; waiting for hours before being attended to; and grants that were suspended or terminated with no reason given and without proper procedures being followed.<sup>47</sup> As a result of these administrative problems the Department of Social Development was prone to a number of legal actions instituted against it by the persons affected.

In the *Mashavha*<sup>48</sup> case, the Legal Resources Centre during the reporting period applied to the High Court (Transvaal Provincial Division) for an order to strike down the assignment of the power to administer grants in the provinces. This was after Mashavha waited for more than a year for his disability grant as a result of a long-standing practice in Limpopo to roll over applications for grants to the next financial year where the province has exhausted its budget. The High Court ruled that the assignment was improper, and was declared invalid in so far as it assigned the powers to the provinces, which delayed the process of receiving grants in 2003.

In the *Mashishi*<sup>49</sup> case decided during the reporting period, an interim order was obtained for the reinstatement and further prohibition of the State from stopping grants that were deemed temporary by the State, unless a lawful procedure that allowed for an appeal was followed and a proper test for a temporary grant was applied. Mashishi instituted action against the State after his disability grant was terminated. He had not been informed that his grant was temporary when he applied for it, nor was he informed when it was about to be terminated.

In the *Sibuye*<sup>50</sup> case, social grant recipients were declared dead and as a result their grants were stopped. Even though they protested that they were alive and showed their identity documents to the officials, they were referred to the Home Affairs Department to rectify the error. The grant recipients had to make new applications for identity documents to enable them to reapply for social grants. They were not told that they could apply to restore their grants or appeal against a decision to stop the grant; they were also not given the necessary forms, to enable them to apply for the restoration of grants or to appeal against the decision.

### **3.2 Documentation**

Access to grants is also affected by the requirement of valid identity documents and birth certificates. This becomes a problem because some children do not have birth certificates and some adults have no identity documents and therefore cannot qualify for any social assistance grants.<sup>51</sup>

Evidence to this effect comes from a monitoring exercise by the South African Human Rights Commission (SAHRC) at social grant registration/payout points in some parts of the Eastern Cape, namely Bashee, Ngqeleni and Willowvale, from the 17–21 March 2003. This is supplemented by the SAHRC's Report on the Inquiry into Human Rights Violations in Farming Communities.<sup>52</sup>

### **3.3 Government response to challenges**

In addressing some of the challenges, the Committee for the Restructuring of Social Security (CRSS) was set up in 1996 to respond to the crisis in social

grants. The Committee recommended improvements to customer care as well as the privatisation of services.

The Cash Paymaster Service (CPS) and Allpay (private companies) were then contracts by government to pay out grants to social security grant beneficiaries. In the Eastern Cape, CPS and Allpay were granted a R180 million contract to pay out grants in the former Transkei. Despite the privatisation of services problems still persisted. The privatisation did not bring improvements to the grant recipients, because services were still not accessible and conditions at pay points were still appalling.<sup>53</sup> There were still long queues, and lack of shelter, water and toilet facilities at some pay points. Grant recipients were insulted by staff at pay points, and paymasters arrived late with machines breaking down. The problems were, *inter alia*, the long queues at pay points; venues that lack shelter, chairs, toilet facilities and water; and attitudes of paying staff.<sup>54</sup>

A Social Security Agency Bill (2003)<sup>55</sup> has been enacted and it proposes to establish a Social Security Agency to address service delivery and the administration of grants.

### **3.4 Corruption and mismanagement**

The National Department of Social Development reported cases of corruption and mismanagement in which some officials of the Department were receiving pensions on behalf of deceased beneficiaries. The National Department and provinces worked together to address this.

A Fraud and Compliance Unit was established to identify and investigate fraud, corruption and irregularities, and the National Directorate of Public Prosecutions (Scorpions) also investigated cases related to fraud and corruption. The Department was engaged in a process of purchasing data mining and analysis tools that will enable it to manipulate data on the data warehouse for the payment system to identify trends, anomalies and irregularities. In the Eastern Cape these cases were reported to the Departmental Inspectorate, the South African Police Services and the National Directorate of Public Prosecutions (Scorpions), resulting in arrests and convictions. In Gauteng notices were placed on newspapers requesting fraudulent beneficiaries to cancel the grants.

In KwaZulu-Natal an independent Special Investigation Unit investigated issues of fraud and corruption within the Department of Social Welfare and Population Development.

### **3.5 Challenges for the Department of Labour**

The Department of Labour indicated that most (UIF) beneficiaries in rural areas received payments by cheques instead of cash because of the scarcity of banks in remote rural areas. Beneficiaries travel long distances to the nearest town



with a financial institution to cash these cheques. The Unemployment Insurance Fund has consulted with the Post Offices and TEBA Bank to enable beneficiaries to have more convenient and affordable access to their benefits.

#### **4 CRITIQUE OF MEASURES INSTITUTED**

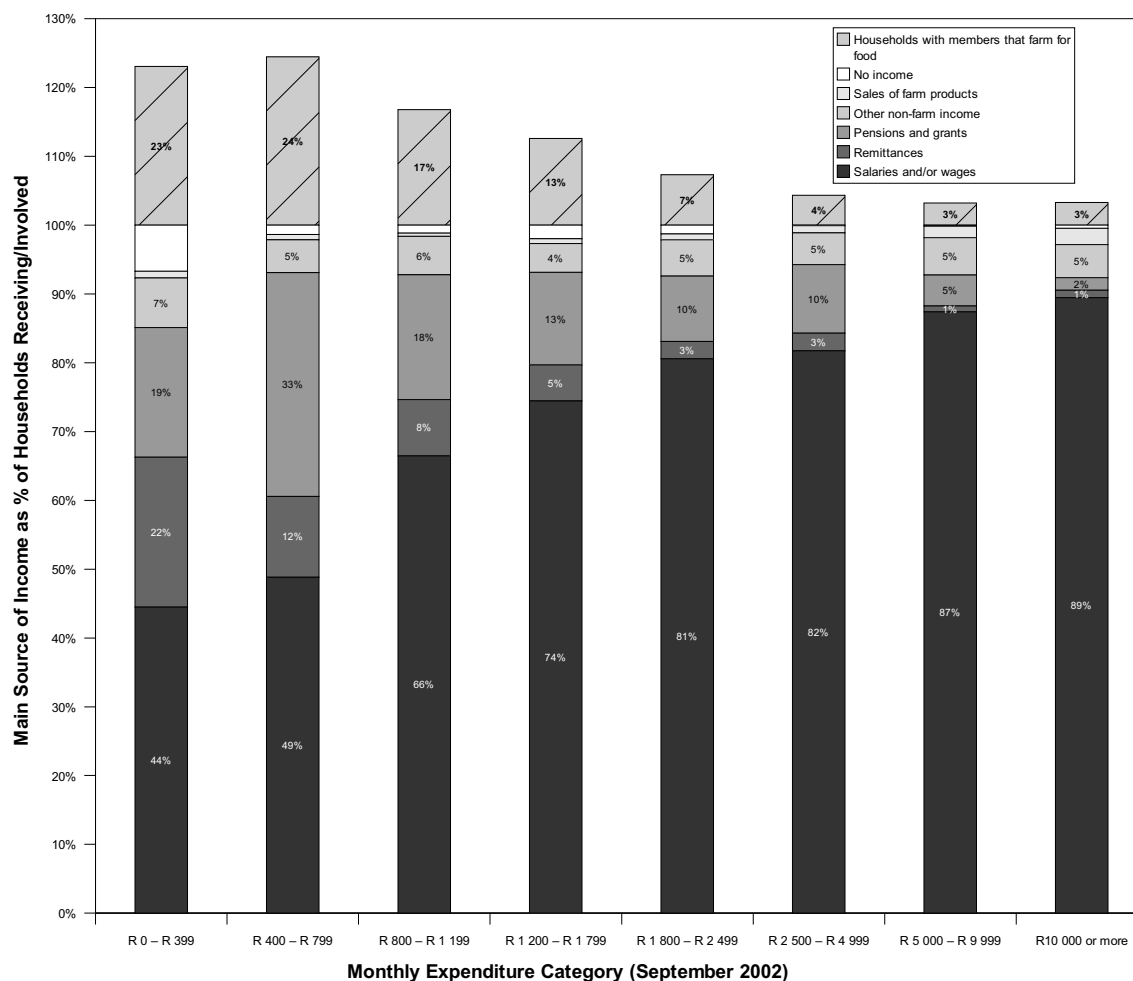
The basic goal of our Constitution is that the basic needs of all in our society should be met effectively; the requirement of progressive realisation means that the State must take steps to achieve this goal. This means that accessibility should be progressively facilitated: legal, administrative, operational and financial hurdles should be examined and, where possible, lowered over time.<sup>56</sup> There should be a balance between goal and means. The measures must be calculated to attain the goal expeditiously and effectively but the availability of resources is an important factor in determining what is reasonable.<sup>57</sup>

##### **4.1 The Scope of Coverage**

The social security system in South Africa is limited and exclusionary; the social insurance system does not provide coverage for those outside formal employment.<sup>58</sup> Social assistance measures also exclude many poor and vulnerable people. The main grants that are available are the Child Support Grant, Old Age Pension Grant, Disability Grant and the Foster Care Grant.

There were approximately 3,2 million households in the poorest expenditure category of R399 per month and less in September 2002 (see Figure 1). Pension and grants were the main source of income amongst the poorest households in 19% of cases as compared to wage income, which made up 44% of cases. This indicates that there are many working poor people and that there are sometimes problems in State social assistance reaching the poorest, mostly rural, remittance dependent and usually female-headed households. Importantly, 23% of households in the lowest income category had members that farm for food for own consumption. The percentage of households involved in farming for food rises to 24% in the second lowest expenditure category, despite the fact that the number of households receiving grants as the main source of household income increases dramatically to 33% of households.

Research in Mount Frere in the Eastern Cape, showed that only four of the 54 children who qualified for child support grants were able to access them. In that community, the poorest 25% of households live on R150 a month without social grants, but that would increase to R560 with grants.<sup>59</sup>



**Figure 1: Main Sources of Household Income According to Monthly Expenditure Category in September 2002**

Source: StatsSA, Labour Force Survey CD ROM September 2002  
 Notes: Excludes missing cases

South Africa has an unequal society, many people have no wage income, and there is a wide divergence in the wages of those who work.<sup>60</sup> Poverty and unemployment are closely linked; the household wage income is a major determinant of inequality and poverty. Unemployment does not only affect the loss of income but also affects feelings of self-worth.<sup>61</sup>

Africans, especially blacks, are most affected by poverty in South Africa.<sup>62</sup> This to a large extent may be attributed to the apartheid system. As a result of our history, millions of people have no houses, lack education and jobs, and there is little dignity when people live under those conditions.<sup>63</sup>

All people have a right to an adequate standard of living for themselves and their family, thus poverty is a violation of human rights.<sup>64</sup> The right to be free from poverty includes, *inter alia*, the right to an adequate standard of living, the

right to work and receive wages that contribute to an adequate standard of living, the right to be free from hunger, and the right to have access to basic social services.<sup>65</sup>

At the end of the reporting period, the official (narrow) unemployment rate was estimated to be 31.2%.<sup>66</sup> In March 2003 there was an estimated number of 29,6 million unemployed people aged between 15 and 65 years. Approximately 16,8 million were economically active while 12,7 million were not. Of the economically active, 11,6 million were employed and 5,3 million were unemployed. Full-time scholars made up 5,2 million of those not economically active; 1,2 million were full-time homemakers and 1,2 million were disabled or chronically ill; 1 million were either too young or too old to work; and 0,3 million were retired.<sup>67</sup>

Of all the provinces, Limpopo had the highest unemployment rate.<sup>68</sup> Among their economically active population, 38,4% was unemployed in Limpopo, 35,5% in KwaZulu-Natal, 32,9% in the North West, 31,8% in the Free State, 31,5% in Gauteng, 30,5% in Mpumalanga, 30,2% in the Eastern Cape, 28,9 in the Northern Cape and 20,3% in the Western Cape.<sup>69</sup>

Africans had the smallest percentage (62,3%) of persons employed within the formal sector and the highest percentage (25,6%) within the informal sector.<sup>70</sup> More than 90% of the Indian and white population were employed within the formal sector and 8,6% and 5,6% respectively were employed in the informal sector.<sup>71</sup>

## **Race**

Africans had the highest unemployment rate in South Africa, whereas whites had the lowest rate. The unemployment rate for women exceeds that of men in all population groups. African unemployed women lead with 41.3% followed by 28.8% of Indian women, 23.9% of coloured women and 7.8% of white women. Unemployed African men were also in the lead with 33.1%, followed by 20,4% of coloured men, 18,2% of Indian men and 6,1% of white men.<sup>72</sup> Low unemployment rates are found among Africans with high educational qualifications, including post-matric qualifications. The highest unemployment rates are found among those with educational qualifications between grades 8 and 12 for both males and females. At all educational levels the unemployment rates for women exceed those of men. The official unemployment rate for both men and women with no education was 19,6% and 22,6%.<sup>73</sup>

In an attempt to address the question of unemployment, especially amongst the youth, the government established the Umsobomvu Youth Fund in January 2001 aimed at creating jobs and developing skills amongst the youth. The fund is made up of two integrated divisions, the Employment Programmes Division and Youth Entrepreneurship Division, which are divided into units that are further divided into programmes.

The Youth Fund has spent R470 million on 61 projects over the past two years, R200 million was allocated to Contact, Information and Counselling, R300 million to Skills Development and Transfer and R500 million to the Youth Entrepreneurship Programme.<sup>74</sup>

#### **4.2 Targeting**

Anecdotal evidence regarding the implementation of the National Food Emergency Scheme highlights several problems:

- Problems in selecting target areas and having confidence that all deserving areas were reached;
- Insufficient funding compared with needs in target areas;
- A lack of clarity regarding qualifying criteria;
- Delays in procurement and a lack of clear policy regarding fair prices for basic foods purchased from the private sector;
- Incomplete connections, in some provinces, between the delivery of emergency food relief and mobile/out of office grant registration campaigns.

The details of how many and how well people benefited from the National Food Emergency Scheme are not clear. The timelines and effectiveness of the measures to address hunger and malnutrition in times of high prices and drought, should be considered alongside other possible courses of action, namely: reducing the pensionable age, better regulation of the food industry, and the phased introduction of a universal Basic Income Grant.<sup>75</sup>

#### **4.3 People with disabilities**

The unemployment rate among people with disabilities is higher than that of able-bodied persons; black people have higher numbers of unemployment compared to whites with disabilities.<sup>76</sup> The poverty levels are also high among people with disabilities.

Disability is one of the major determinants of poverty, and people with disabilities are one of the poorest groups of society. The United Nations estimate that there are 7-10% of persons with disabilities in a country's population. Disability is the cause for poverty, and in a vicious cycle poverty leads to disability.<sup>77</sup> Persons with disabilities are thus disadvantaged by poverty caused by inadequate nutrition, poor sanitation and health care.<sup>78</sup> They are often denied access to existing social services and economic support because of physical barriers such as the absence of wheelchair-friendly ramps to buildings.<sup>79</sup> At pay points where there are no chairs, shelter, toilets and water, nor suitable conditions for persons with disabilities, they suffer the most because they are expected to wait in long queues after travelling long distances to the pay points.

Access to employment is an effective way of reducing the poverty faced by persons with disabilities and other vulnerable groups that are subjected to dire poverty. Social assistance carries with it an element of welfare and dependency. Among persons with disabilities there are those who are severely disabled who would permanently rely on social assistance and there are those who are capable of working. Mechanisms should thus be established that would provide these people with access to productive work.<sup>80</sup>

Rule 3 of the United Nations Standard Rules provides that member states should ensure the provision of rehabilitation services to children, women and men with disabilities in order for them to reach and sustain their optimum level of independence and functioning. Member states should also ensure the development and supply of support services, including assistive devices for persons with disabilities and interpreter services, to assist them to increase their level of independence in their daily living, and to exercise both their rights as disabled people and their human rights as human beings. Persons with disabilities should be able to participate in the design of the organisation of rehabilitation services concerning themselves.

#### **4.4 Atypical Workers**

It may be concluded that there has not been much emphasis on the protection, promotion or fulfilment of the right to social insurance. Social and labour legislation in South Africa is exclusively extended to those who qualify as employees, thus excluding various groups of atypical workers who fall short of the employee qualification.<sup>81</sup>

Most vulnerable and marginalised people in South Africans are either unemployed or atypically employed<sup>82</sup> and therefore not covered by the occupational based social insurance schemes.<sup>83</sup> Joblessness has increased from 15% to 30% since 1995, and there has been a rapid fall in real incomes from work, which has pushed more people into the informal sector and casual labour, and unemployment.<sup>84</sup> These groups of people are denied access to social security.

Those that are afforded social assistance can be prejudiced and deprived of their grants by unfair administrative actions. There are also a number of people who are eligible for social grants but because the information about grants is not disseminated to them, they are deprived of the grants. The social relief grant and the grant in aid have not been adequately promoted by the State in its social grant awareness campaigns. The Child Support Grant has been widely promoted, and the collaboration of the Department of Social Development and civil society has to be commended in advancing the rights of all in dire need.

## **4.5 Children**

### ***4.5.1 Child Support Grant***

Although the CSG has been extended to include children aged 14 by 2005, the phasing in of the extension merely caters for children who are in the system and receiving the grant. Children such as those aged 12 prior to 1 April 2003 will never have access to the grant, as they will be over the age of 14 by 2005. At present children aged between 9 and 18 years have no access to the Child Support Grant.

### ***4.5.2 The Care Dependency Grant and the Foster Care Grant***

The Foster Care Grant and the Care Dependency Grant have not received as much publicity as the Child Support Grant has. The registration campaigns were selective and concentrated more on the Child Support Grant. The Foster Care Grant and the Care Dependency Grant are the most difficult to attain and the procedure is extensive. The Foster Care Grant involves a process that involves courts and social workers. The Care Dependency Grant involves medical professionals and social workers.

### ***4.5.3 HIV/AIDS, Disability grants and Care Dependency Grants***

According to the responses received from government, some provinces indicated that persons infected with HIV/AIDS were allowed to apply for the Disability Grant, only if they were in a condition that rendered them unable to work. However, nothing was reported about children infected with HIV/AIDS. A care-dependent child is defined as a child between the ages of one and 18 years who requires and receives permanent home care owing to his or her severe mental or physical disability. From this definition it could be deduced that a child infected with HIV/AIDS can qualify for the Care Dependency Grant in the terminal stages of the disease when permanent home care is required.

Children infected with HIV/AIDS as well as adults need specialised care to prolong their lives. The income support would be necessary at stages prior to the terminal stage because some may die before receiving the grants.

### ***4.5.4 HIV/AIDS and Child Labour***

A study on HIV/AIDS and child labour in the Sub Saharan Africa by the International Programme on the Elimination of Child Labour (IPEC)<sup>85</sup> found that the HIV/AIDS pandemic adds a new dimension to the problem of child labour. There are also a number of links to child labour. A burden is placed on girls, who often provide care and household services for the entire family when a parent becomes ill or dies. Children find themselves under pressure to work to assist their siblings in securing a livelihood and those engaged in the worst

forms of child labour are at risk of becoming infected and further spreading the disease.<sup>86</sup> Children who live in the streets often fend for themselves and in order to survive engage themselves in any activity that generates income.

Child labour, especially exploitative forms of child labour, pose serious threats to the work done by government in affording protection to children against exploitative and harmful labour. Children fall into this trap because they are excluded from the social safety nets (social assistance). Government can curb this by closing all the gaps and affording every child social security.

#### **4.6 Social insurance**

Social insurance covers joint contributions from the employer and the employee. This aspect of social security is not mandatory in other aspects such as old age pension but it is mandatory in aspects such as the Unemployment Insurance Fund and the Compensation for Occupational Injuries and Diseases at work.

The Department of Labour has to be commended for striving towards making the lives of the most vulnerable in our society better. The inclusion of domestic workers and other workers in the Unemployment Insurance Fund, followed by the wide promotion and publicity through various mediums as well as the constant inspection of workplaces in order to protect workers is an indication of the effective, reasonable and expeditious manner in which the department respects, protects, promotes and fulfils its constitutional obligation.

The non-mandatory forms of social insurance need to be regulated. Government should also promote the right of everyone to social insurance, encourage people to cover themselves against unexpected contingencies and ensure that employers contribute towards their employees provident or pension fund. This will reduce reliance on State social assistance.

### **5 RECOMMENDATIONS**

The Millennium Declaration and the Millennium Development Goals (MDGs) establish the values that guide, amongst other things, global development, freedom, equality and tolerance. World leaders pledged to promote equality and the empowerment of people as effective ways to combat poverty, hunger and disease and to stimulate development that is sustainable using the MDG indicators.<sup>87</sup> The Government should move towards the goal of halving poverty by 2015, and tackle the problems of unemployment and exclusion from social security.

The State should implement the Taylor Committee recommendations and begin the process of a comprehensive social security system for all. The White Paper on Social Welfare provides for a comprehensive system:

*the general long-term objective is to have an integrated and comprehensive social security system supported by the collective potential of existing social and development programmes. This would be supported by a well informed public, which is economically self reliant, in a country which has active labour market policies aiming at work for all while accepting that all will not necessarily have formal employment. Where these broad goals cannot be met, social assistance should be a reliable and accessible provider of last resort. A comprehensive and integrated social security policy is needed to give effect to the Constitutional right to social security.*

Owing to the high rate of poverty, inequality and exclusion from social security, the introduction of a Basic Income Grant could assist the poorest of the poor who are excluded from social security and social assistance to begin to escape poverty and have some form of income. The source of finance for the grant would be funds retrieved from the tax system from middle- and higher-income earners.

The Unemployment Insurance Fund (UIF) is a short-term measure aimed at protecting workers against the risk of unemployment. It does not, adequately afford coverage against unemployment as most people find themselves in situations that demand protection beyond two years. People who have been unemployed for long periods and those who have been retrenched have scant protection against long periods of unemployment. Therefore the State should extend the period of coverage to three years in the short term and ten years in the long term and increase the contribution fees if the need arises. Workers within the informal labour sector should also be afforded access to some form of protection against the risks connected with labour.

The social insurance system needs to be regulated particularly the aspects of old age/pension retirement coverage. This aspect is at present not mandatory and as such is not thoroughly regulated. The State has to ensure that employers comply with their responsibilities. This will also reduce the burden carried by the State in affording everyone social assistance. Reliance on social assistance will be reduced and only afforded to those who really need it.

The State should have a comprehensive system of social services to all vulnerable children. The SAHRC therefore once more recommends that the Child Support Grant be extended to all children up until the age of 18 years.

The maintenance system cannot only be a problem of the Departments of Justice and Constitutional Development and Social Development, communities should be involved. Parents should know about their obligations and responsibilities. The system has to be regulated properly and stringent measures should be applied where necessary.

The State should embark on effective awareness campaigns and inform the public about all the available grants. The application processes should be simplified. The Department of Social Development in partnership with the



Department of Health should introduce a comprehensive programme that will address income as well as health care needs.

The State should introduce mechanisms that will deter vulnerable and poor children from engaging in child labour. Measures be taken to give appropriate support to all children. A study should be undertaken by the State to enable the State to look at effective ways to cater for the needs of children living in the streets. The State should institute policies and programmes aimed at preventing and reducing the number of children living in the streets by re-integrating them into their families and also supporting such families financially. Thus government should devise measures that would look into the needs and rights of these children; and measures other than the National Food Emergency Scheme should be devised by the State to address hardships faced by children in child-headed households.

A comprehensive evaluation of the National Food Emergency Scheme is urgently required to assess its effectiveness in targeting and assisting the poorest of the poor on a sufficient scale and for a sufficient duration. According to the National Department of Agriculture's 2003 protocol response, the figures used for determining the size of the National Food Emergency Scheme should have been adjusted with more recent population and poverty indicators.

During the period under review the State has promoted the right to social assistance, however social security does not only encompass social assistance. The State has to make efforts aimed at promoting and protecting everyone's right to social insurance. The State has an obligation to institute measures aimed at fulfilling the right to social security. Some workers are not protected; for instance contract workers are not provided with social insurance. When some workers are retrenched they are thrown into poverty, which raises concern about an increased pool of unprotected people who will be forced to rely on social assistance when they reach retirement age. The Decent Work for All Strategy<sup>88</sup> should be taken into consideration by the Department of Labour in order to afford everyone coverage and social protection and enlarge opportunities for better jobs.

- 1 Olivier, M.P. et al. 1999. *Social Security Law, General Principles*, Butterworths, p.9.
- 2 International Labour Organisation. 1984. *Introduction to Social Security*, Geneve, p.3.
- 3 Ibid.
- 4 Ibid.
- 5 Olivier, M.P. et al. 1999. *Social Security Law, General Principles*, Butterworths, p.7.
- 6 International Labour Organisation. 1984. *Introduction to Social Security*, Geneve, p.3.
- 7 *Khosa and Others v the Minister of Social Development and Others*, Transvaal High Court case number 17220/02 and Constitutional Court case number 12/03; *Mahlaule and Another v the Minister of Social Development and Others*, Transvaal High Court case number 25453/02 and Constitutional Court case number 13/03.
- 8 The applicants had come into South Africa after fleeing from Zimbabwe in 1998. They were granted amnesty in terms of an agreement with the South African and Mozambican governments and were granted permanent residence in the country.
- 9 Olivier, M.P. et al. 1999. *Social Security Law, General Principles*, Butterworths, p.24.
- 10 Ginneken, W. 1999. Extending social security: Policies for developing countries, ESS Extension of Social Security Paper, No 13, Social Security Policy and Development Branch International Labour Office, Geneve. p.11.
- 11 United Nations Development Programme (UNDP). 2003. Millennium Development Goals: A compact among nations to end human poverty, a summary of the United Nations Human Development Report 2003.
- 12 Transforming the Present – Protecting the Future, Consolidated Report, Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa (2002)
- 13 Transforming the Present – Protecting the Future, Consolidated Report, Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa (2002), p52
- 14 Ibid., p41
- 15 Government Communication and Information System *Pocket Guide*, June 2003 pp 169-170.
- 16 Department of Social Development, Integrated National Business Plan for the National Food Emergency Scheme (NFES) for the 2003/04 and 2004/05 financial years
- 17 National Department of Agriculture Annual Report 2002/2003, p33.
- 18 Cabinet approved the extension of the CSG beyond the age of seven to enable children up to the age of 14 years to access the grant. The extension of the grant started in April 2003 and will be phased over a period of three years to 2005. Children turning seven in March will not be removed from the system; instead those children turning seven and eight would be registered in 2003/2004. In 2004/2005 children aged nine and ten, turning eleven the next birthday, would be registered. Children between 11 and 14 years of age would be registered in 2005/2006.
- 19 Government Notice Department of Labour No R. 1068, August 15 2002 GG No 23732 Basic Conditions of Employment Act 75 of 1997 Sectoral Determination 7: Domestic Worker Sector, South Africa. [http://www.lawlibrary.co.za/notice/r1068\\_2002\\_domestic\\_workers.htm](http://www.lawlibrary.co.za/notice/r1068_2002_domestic_workers.htm)
- 20 Pocket Guide to South Africa, Department of Social Development, 2003
- 21 Government Communication and Information System *Pocket Guide*, June 2003 p169 The Department of Social Development projected that 1 767 699 people would be added to the social assistance grant payment system between April 2002 and April 2003. The total increase would result from an expansion of the Child Support Grant by 706 044, followed by Disability Grants (188 017), Old age pensions (99 235) and Foster Care and Care Dependency

Grants (84 085).

- 22 Social grants are financed from provincial revenues, which comprise the equitable share, conditional grant and the provinces' revenues. Provinces in collaboration with national government determine the projected beneficiaries and resulting spending on grants; this was indicated in the Treasury Presentation to the Portfolio Committee on Social Development, Financing of Social Grants, September 2003.
- 23 Department of Social Development, Annual Report, 2002/2003, p73.
- 24 Ibid.
- 25 Ibid.
- 26 Ibid.
- 27 Penny Parenzee, A Gendered Look at Poverty Relief Funds, Budget Information Services, Idasa Budget Brief No 129, April 2003.
- 28 Department of Social Development, Annual Report, 2002/2003, p63.
- 29 Department of Social Development, Annual Report, 2002/2003, p18.
- 30 Department of Social Development, Annual Report, 2002/2003, p1.
- 31 Treasury Presentation to the Portfolio Committee on Social Development, Financing of Social Grants, September 2003.
- 32 Department of Social Development, Annual Report, 2002/2003, p1.
- 33 Department of Public Works Annual Report 2002/2003, p33
- 34 Department of Social Development, Annual Report 2002/2003
- 35 Ibid.
- 36 The Department of Correctional services indicated, in its protocol response, that the term "Child- prisoners" includes all offenders younger than 21 years old, after it had highlighted some of the Constitutional provisions relating to detention e.g. children are persons under the age of 18.
- 37 Department of Correctional Services, Annual Report 2002/2003, p50-51.
- 38 Department of Correctional Services, faxed letter dated 23 February 2004.
- 39 The protocol response states that the minimum calories per prisoner per day is as follows: 2 500 K/calories per day for adult female and male prisoners and 2800 K/calories per day for children.
- 40 Department of Correctional Services, Draft 4 - WHITE PAPER ON CORRECTIONS 15 DEC WITH COPY RIGHT.doc to the South African Human Rights Commission on 7 May 2004, as per the covering letter to the Department's protocol response for 2002/2003.
- 41 Ibid.
- 42 The Report by the Ministerial Committee on Ill treatment, Neglect and Abuse of Older Persons.
- 43 Ibid.
- 44 Ibid.

- 45 Julian May, Chronic Poverty and Older People in South Africa, School of Development Studies, University of Natal, South Africa, Chronic Poverty Research Centre, Working Paper 25, February 2003, p21.
- 46 Julian May, Chronic Poverty and Older People in South Africa, School of Development Studies, University of Natal, South Africa, Chronic Poverty Research Centre, Working Paper 25, February 2003, p25
- 47 A draft report on accessing funds from government departments: PPP Research Project  
<http://www.idasa.org.za/bis/docs/Whats%20available%20%20A%20guide%20to%20government%20grants.htm>.
- 48 *Mashavha v The State President of the Republic of South Africa and Others*, Transvaal High Court case number 17220/02 and Constitutional Court case number 67/03.
- 49 *Mashishi v The Minister of Social Development and Others*, Transvaal High Court case number 4239/03.
- 50 *Sibuye and Others v The Member of the Executive Committee for Health and Welfare in Limpopo and the Minister of Social Development and Others*, Transvaal High Court case number 17713/03.
- 51 A draft report on accessing funds from government departments: PPP Research Project  
<http://www.idasa.org.za/bis/docs/Whats%20available%20%20A%20guide%20to%20government%20grants.htm>.
- 52 The South African Human Rights Commission, Final Report on the Inquiry into Human Rights Violations in Farming Communities (August 2003) p200, found that many people had no access to social security services in farming communities. The documentation required to access grants (identity documents and birth certificates), the long distances travelled and the transportation costs were some of the major causes for the non-accessibility of social security
- 53 Department of Social Development, Mothers and Fathers of the Nation. Report of the Ministerial Committee on Abuse, Neglect and Ill Treatment of Older Persons (2001).
- 54 Department of Social Development, Mothers and Fathers of the Nation. Report of the Ministerial Committee on Abuse, Neglect and Ill Treatment of Older Persons (2001).
- 55 The Social Security Agency, though an agent of the State, aims at ensuring the efficient and effective management, administration and payment of social security grants.
- 56 *Government of the Republic of South Africa and Others v Grootboom and Others 2000 (11) BCLR 1169(CC) 1192 para 45.*
- 57 Ibid. at para 46.
- 58 Olivier *et al.* 1999. *Social Security Law General Principles* Butterworths. p.32.
- 59 Mail & Guardian, June 13 to 19 2003, "BIG could bust poverty". Pp.37.
- 60 Poverty and inequality in South Africa, a working paper prepared for DFID (SA) see <http://www.sarpn.org.za/CountryPovertPapers/SouthAfrica/july2002/woolard/page1.php> site accessed on 04/09/2003
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- 62 Statistics South Africa. 2000. 1999 October Household Survey.
- 63 Arthur Chaskalson, The Third Bram Fischer Lecture, Human Dignity as a Foundational Value of our Constitutional Order (2000) 16 SAJHR. p204
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- 68 Ibid.
- 69 Ibid.
- 70 Ibid.
- 71 Ibid.
- 72 Ibid.
- 73 Statistics South Africa, Labour Force Survey, March 2003.
- 74 [http://www.safrika.info/what\\_happening/news/youthfund-050903.htm](http://www.safrika.info/what_happening/news/youthfund-050903.htm)
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- 77 International Labour Organisation, Infocus Programme on Skills, Knowledge and Employability/Disability Programme, Disability and Poverty Reduction Strategies, Discussion Paper, November (2002), p4
- 78 South African Human Rights Commission, Towards a barrier-free society: a report on accessibility and built environments, November 2002, p14
- 79 Tobias van Reenen, Equal access to socio-economic rights for people with disabilities, ESR Review Vol 3, No 1 July 2002. see [http://www.communitylawcentre.org.za/ser/esr2002/2002july\\_disabilities.php](http://www.communitylawcentre.org.za/ser/esr2002/2002july_disabilities.php) site accessed on 17/11/03
- 80 International Labour Organisation, Infocus Programme on Skills, Knowledge and Employability/Disability Programme, Disability and Poverty Reduction Strategies, Discussion Paper, November (2002), p4
- 81 M.P. Olivier, M.C. Okpaluba, N. Smit & M. Thompson, *Social Security Law, General Principles*, p.37.
- 82 Atypical employed would include part-time employees, casual and temporary employees, fixed-term contractors and home workers.
- 83 Olivier, M.P. et al. *Social Security Law, General Principles*, p.24.
- 84 See [www.nedlac.org.za/docs/pr/2003/pr0411a.html](http://www.nedlac.org.za/docs/pr/2003/pr0411a.html) (Labour Paper for the Growth and Development Summit, 7 June 2003) site accessed on 04/06/03
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- 86 The worst forms of child labour include: prostitution, domestic work and street vending.
- 87 Progress of the World's Women 2002. See <http://www.unifem.undp.org/resources/progressv2/index.html>
- 88 Ginneken, W. Extending social security: Policies for developing countries, ESS Extension of Social Security Paper, No 13, Social Security Policy and Development Branch International Labour Office, p11.