

Extending access to social security to the informal sector in South Africa: Challenges and prospects

MSN NGULUWE
25698710

Mini Dissertation submitted in fulfilment of the requirements for
the degree *Magister Legum* in
Labour Law
at the Potchefstroom Campus of the North-West University

Supervisor: Dr A Botes

May 2016

ACKNOWLEDGEMENT

I would like to thank the Lord, for giving me the strength and inspiration throughout my LLM studies.

I would, also like to express my gratitude to my promoter, Dr. Anri Botes, for her support, input and guidance during my studies.

I would also like to thank Dr and Mrs. Nyenti for their support, especially Dr Nyenti who introduced me to the field of social security and who gave me valuable exposure to this interesting field. His support, encouragement and comments during numerous discussions, were very valuable on the topic.

My profound gratitude also goes to my Parents, Barrister and Mrs Lifanje for their support and encouragement, as well as to my siblings Pride, Princess and Princely for always putting me in their Prayers.

Maranga Sebastien Nguluwe

Abbreviations and acronyms

AU.....	African Union
COIDA.....	Compensation for Occupational Injuries and Diseases Act
ICESCR.....	International Covenant on Economic Social and Cultural Rights
IJLE.....	Indian Journal of Labour Economics
ILO.....	International Labour Organisation
LIC.....	Life Insurance Corporation
NCEUS.....	National Commission on Enterprises in the Unorganised Sector
OSA.....	Occupational Scheme Account
OHSA.....	Occupational Health and Safety Act
SAA.....	Social Assistance Act
SADC.....	Southern African Development Community
SEWA.....	Self Employed Women`s Association
SHG.....	Self-Help Groups
SIS.....	SSNIT Informal Sector Scheme
SPF.....	Social Policy Framework
SSNIT.....	Social Security and National Insurance Trust
SPIREWORK..	Social Protection Plan for the Informal Economy and Rural Workers
UDHR.....	Universal Declaration of Human Rights
UHS.....	Universal Health Insurance System
UIF.....	Unemployment Insurance Fund
UIA.....	Unemployment Insurance Act
UN.....	United Nations

TABLE OF CONTENTS

ACKNOWLEDGEMENT	i
Abbreviations and acronyms	ii
Chapter 1.....	1
Introduction	1
Chapter 2.....	6
International and Regional Standards	6
2.1 Introduction	6
2.2 International and regional organisations.....	8
2.2.1 The International Labour Organisation (ILO)	8
2.2.2 African Union	10
2.2.3 Southern African Development Community (SADC).....	17
2.3 International and regional instruments	18
2.3.1 Social Security (Minimum Standards) Convention, 1952 (No. 102)	18
2.3.2 Social Protection Floors Recommendation 202 of 2012	20
2.3.3 Universal Declaration of Human Rights (UDHR)	22
2.3.4 The International Covenant on Economic, Social and Cultural Rights (ICESCR)	23
2.3.5 Charter of Fundamental Social Rights in the SADC.....	24
2.3.6 Code on Social Security in the SADC	25
2.4 Conclusion	26
CHAPTER 3	28
Social security in South Africa: Constitutional and legal framework.....	28
3.1 Introduction	28
3.2 The meaning of ‘informal sector’	30
3.3 Understanding the nature of social security in South Africa	32

3.4 South African social security and the Constitution.....	35
3.5 The South African social security legal framework.....	37
3.5.1 Social Assistance	38
3.5.1.1 Old age grant.....	39
3.5.1.2 Disability grant	39
3.5.1.3 Child support grant	40
3.5.1.4 War veterans grant	40
3.5.1.5 Military Pension	41
3.5.1.6 Special Pension	41
3.6 Social Insurance	42
3.6.1 Unemployment Insurance	43
3.6.2 Compensation for Occupational Injuries and Diseases	44
3.6.3 Pension.....	46
3.6.4 Occupational Health and Safety	46
3.7 Flaws of the South African social insurance system	47
3.8 Conclusion.....	48
Chapter 4.....	50
Extending social security coverage in comparative jurisdictions	50
4.1 Introduction	50
4.2 Extending social security coverage to informal sector workers in India	50
4.2.1 The Central Government Initiatives.....	54
4.2.2 State Level Initiatives	58
4.2.2.1 Kerala Welfare Fund for Unorganised Sector Workers	58
4.3 Extending social security to informal sector workers in Ghana.....	62
4.4 Conclusion.....	65
Chapter 5.....	66
Conclusion and Recommendations	66

5.1 Conclusion	66
5.2 Recommendations	68
Bibliography	72
Literature	72
International Instruments	78
Legislation	79

Chapter 1

Introduction

Section 27(1)(c) of the *Constitution of the Republic of South Africa*, 1996¹ states that everyone has the right to have access to social security, including appropriate social assistance should they be unable to support themselves and their dependents. The International Labour Organisation² defines social security as the protection that society provides its members, through a series of public measures against the economic and social distress that otherwise will be caused by the stoppage or substantial reduction of earnings, resulting from sickness, maternity, employment injury, unemployment invalidity, old age and death, the provision of medical care and the provision of subsidies for families and children.³

The Department of Social Welfare and Population Development gave an indication of its understanding of social security and what it entails in South African terms. It defines social security as covering a wide variety of public and private measures that provide cash or in-kind benefits or both, first, in the event of an individual's earning power permanently ceasing, being interrupted, never developing, or being exercised only at unacceptable social cost and such person being unable to avoid poverty and secondly, in order to maintain children. The domains of social security are poverty prevention, poverty alleviation, social compensation and income distribution.⁴

Despite the right to access to social security enshrined in section 27(1)(c) of the Constitution, those in the informal sector are largely excluded from accessing social security benefits. These challenges faced by workers in the informal sector stem from the

¹ Herein after referred to as the Constitution.

² Herein after referred to as ILO

³ *Social Security (Minimum Standards) Convention* 102 of 1952.

⁴ Strydom "Social security law" 23.

fact that the instruments put in place to guarantee access to social security have a very limited scope of application, which do not extend to those who are in the informal sector.⁵ The pattern that can be discerned from the South African social security law is evident: namely to extend social security protection, in particular social insurance, only to those who qualify as “employee”, or a similar term used in the event of a particular piece of legislation.⁶ From this it follows that the self-employed, the informally employed and several other categories of the atypically employed are for all legal and practical purposes excluded from vast areas of the social insurance system in South Africa, notably compensation for workplace injuries and diseases, and unemployment insurance.⁷ Social insurance covers only those who work in the formal sector, while social assistance coverage is limited to a categorical and means-tested approach.⁸ The term ‘informal sector’ refers to economic activities carried out by those who are not in the traditional formal employment, whose activities are not regulated by the legislations in place.⁹

Although the Constitution places an obligation on the state to ensure universal access to social security, it is stated in section 27(2) that the state can only do so within its available resources. In a social security scheme, which is contributory in nature, must the state wait until it has available resources in order to extend social security benefits to those in the informal sector? This shall be one of the questions considered in the course of this study.¹⁰

Statutory regulations regulating social security are largely in favour of those working in the formal sector, such as the Unemployment Insurance Fund, where both employers and employees contribute and the fund pays unemployment benefits to certain employees in the event of unemployment due to dismissal and illness. Only employees

⁵ See para 3.5 below.

⁶ See para 3.3 below.

⁷ Olivier and Mhone “Developing and integrated and inclusive framework” 150.

⁸ See para 3.5 below.

⁹ See para 3.2 below.

¹⁰ See para 3.4 below.

as defined by the *Unemployment Insurance Act* 63 of 2001 are covered. The Act defines an employee as any natural person who receives remuneration or to whom remuneration accrues in respect of services rendered or to be rendered by that person, but excludes any independent contractors.¹¹ From the above definition, only persons rendering services to another person are referred to as employees and these persons in turn receive remuneration for their services rendered. In other words, there must be an employer-employee relationship for a person to benefit from such a scheme. Informal sector workers, are, due to the atypical nature of their services, not necessarily in an employer-employee relationship, as they do not always fall within the ambit of the definition of an employee. Thus, for informal sector workers to participate in such a scheme, they will have to pay both the employer and employee contribution, which is an unlikely scenario, considering their low income and the unstable nature of their jobs.

Compensation for employment injuries and diseases established in terms of the *Compensation for Occupational Injuries and Diseases Act* 130 of 1993¹² (herein after referred to as COIDA) is paid to employees and their dependents out of the compensation fund, to which employers contribute. According to Olivier and Mhone,¹³ relying on the notion of “employee” and “contract of service” to signify those eligible for compensation under COIDA, excludes large categories of the atypically employed. Thus, once again, those who fall outside the ambit of the definition of an employee are excluded from coverage.

Social assistance, on the other hand has a limited scope of applicability due to the fact that it is categorical and means-tested. By excluding informal sector workers, from social security benefits, they are placed in an even direr situation, and as a result they are among the most vulnerable people in the South African society.

¹¹ Section 1 of the UIA.

¹² Act 130 of 1993.

¹³ Olivier and Mhone “Developing and integrated and inclusive framework” 147.

This study is ultimately aimed at extending social security benefits to workers in the informal sector and making recommendations on how this can be implemented in South Africa. In order to address the abovementioned problem, this study will be based on a literature study of relevant text books, journal articles, case law, international instruments and online articles relating to the challenges faced by the informal workers accessing social security benefits. International and regional standards on social security shall be discussed in chapter two, where specific attention will be paid to the ILO, which has as its major goal the promotion of opportunities for women and men to obtain decent work, in conditions of freedom, equity, security and human dignity on a global scale and the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care.¹⁴ The African Union (herein after referred to as AU), shall also be looked at, which has as one of its aims to promote sustainable development at the economic, social and cultural levels. The Southern Africa Development Community (herein after referred to as SADC) standards, shall be analysed, which standards will be used as recommendations to improve the situation of informal sector workers in South Africa.¹⁵

Chapter three will consist of a study of the constitutional and legal framework of the South African social security, as well as the concept of informal sector. Here the limited scope of the different social insurance and social assistant legislations will be analysed, as well as the meaning of the informal sector and the concept of social security in South Africa.

The fourth chapter is a comparative study of how social security has been extended to informal sector workers in other jurisdictions, notably in India where the recently approved *Unorganised Workers' Social Security Act* 33 of 2008 has adopted a deliberately wide notion of who is intended to be a worker for purposes of covering those embedded in a relationship of work in the informal sector. Section 2(n) of the 2008 version of the

¹⁴ See para 2.2.1 below.

¹⁵ See para 2.2.2 below.

Act has widened the scope of the definition of "unorganized sector worker", by stipulating that an unorganised worker means "an unorganised sector worker and also includes workers in the organised sector not covered by the existing laws relating to social security".¹⁶ A study of how social security benefits have been extended to informal sector workers in Ghana shall also be carried out, where the right to social security in Ghana is recognised in article 36(1) of the *Constitution of the Republic of Ghana*, 1992 and it states that the state shall take all necessary action to ensure that the national economy is managed in such a manner as to maximise the rate of economic development and to secure the maximum welfare, freedom and happiness of every person in Ghana and to provide adequate means of livelihood and suitable employment and public assistance to the needy. Without prejudice to those rights, the state authority shall make provisions to ensure that every person earns his livelihood. The *Social Security and National Insurance Trust* in Ghana provides for the coverage of social security to be extended to both formal and informal sector workers.¹⁷

Finally chapter five will consist of a final summary of the problems faced by informal sector workers in accessing social security benefits in South Africa, with proposed recommendations drawn from international and regional instruments as well as taking examples of how such benefits have been successfully made available to informal sector workers from other jurisdictions.

¹⁶ See para 4.2 below.

¹⁷ See para 4.3 below.

Chapter 2

International and Regional Standards

2.1 Introduction

During the development of social security recommendations that would benefit those in the informal sector, international law and standards must be considered. The influence that international law might have on the South African legal system is enshrined in the Constitution in sections 39(a-b) and 233. The Constitution states in section 39(1)(b) that when interpreting the Bill of Rights, every court, tribunal or forum must consider international law.¹⁸ It further requires in section 233 that, when interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.¹⁹ Thus South Africa has indicated its intention to become a party to and to be guided by the standards required by relevant international organisations such as the International Labour Organisation.²⁰ International perspectives exist mainly in the sense of international instruments which contain express provisions on social security as well as associated rights. Secondly, the substantial bulk of international social security provisions are couched as standards. These standards invariably provide the benchmark against which national policies and legislation are measured.²¹

International law is made up of both binding and non-binding law and where South Africa is not legally bound by such laws, section 39(1)(b) will still be applicable. International instruments therefore provide benchmarks against which the South African policies and legislation are measured.²² South Africa is a member of various international

¹⁸ Section 39(1) of the Constitution.

¹⁹ Section 233 of the Constitution.

²⁰ Herein after refer to as ILO.

²¹ Malan and Van Rensburg "An international perspective" 79.

²² Van Rensburg and Olivier "International Standard" 165.

organisations and/or a party to international instruments that contain provisions and standards relating to the extension of social security benefits to informal sector workers.²³ These standards will be discussed below.

The extension of social security benefits to those excluded (informal sector workers) is very important, as affirmed by several international organisations that every human being has the right to social security. Such organisations include the International Labour Organisation, the African Union (herein after referred to as the AU), and the Southern African Development Community (herein after referred to as SADC), as well as international and regional instruments, such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. In line with these international and regional human rights organisations and instruments, the Declaration of Philadelphia adopted in 1944 by the International Labour Conference, which was hosted by the ILO, assumes that “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”.²⁴

This chapter shall examine the position held by several international as well as regional organisations and instruments in setting standards for the extension of coverage to workers in the informal sector and how these standards can be applicable in the South African context.

²³ South Africa is a member of organisations such as the International Labour Organisation (ILO), the African Union (AU) and the Southern Africa Development Community (SADC). It is party to international instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the African Charter on Human and People`s Rights.

²⁴ ILO *Extending Social Security Coverage* 8-9.

2.2 International and regional organisations

International law plays a great role as far as providing guidelines for the extension of social security to informal sector workers is concerned. The most important international and regional organisations in this respect shall now be discussed below. After this discussion, an exposition of the most important and relevant instruments of these organisations will follow.

2.2.1 The International Labour Organisation (ILO)

In the international development context, one of the central players in social protection has traditionally been the ILO. The primary goal of the ILO is to promote opportunities for women and men to obtain decent work, in conditions of freedom, equity, security and human dignity on a global scale and the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care.²⁵ Since the ILO was first set up in 1919, pursuing the achievement of social security has consistently been at the core of its mandate.²⁶ The ILO has played an important role in the development of international minimum standards for social security by means of its conventions and recommendations.²⁷

According to the ILO, the exclusion of informal sector workers from formal social security systems is still a major problem in the present social security scheme. Informal sector workers cannot join formal national social security systems on a voluntary basis, as most are in categories of work that are excluded from formal systems. It is estimated that 75 per cent of all countries exclude workers in these categories. Many systems also exclude enterprises below a certain size, or exclude workers with earnings below a certain level.²⁸

²⁵ Constitution of the ILO and Selected text 23-24.

²⁶ ILO Social Security for Social Justice 10.

²⁷ Strydom "The role of the international labour organisation in social security" 274.

²⁸ ILO Employment and Social Protection in the Informal Sector para 81, p 16.

In its efforts to achieve universal coverage of social security for all employees, regardless their type of employment contract and sector, the ILO sets international labour standards which should be upheld by all its member states who ratified²⁹ the instruments containing these standards. These instruments referred to take the form of conventions and recommendations, some of which provide concepts and standards for the formulation of social security policies.³⁰ For the purpose of developing new approaches to social security and protection, a broader definition of social security has been adopted by the ILO's social security programme as opposed to the restrictive and narrow definition based on the ILO's nine areas of social insurance³¹ which restricted millions of South Africans, especially those informally employed, from social security benefits. The definition stipulates that households and individuals should be provided with benefits through public or collective arrangements so as to protect against low or declining living standards resulting from a number of basic risks and needs.³² Such a broader definition is an advantage in the South African society in the sense that it will increase the possibilities for those informally employed to also have access to social security benefits as oppose to a narrow and restrictive definition which caters only for the needs of those working in the formal sector.

Since 1919, the ILO has adopted thirty one conventions and twenty three recommendations in the effort of extending social security coverage to those who are not covered by any social security scheme. This has greatly contributed to the development of social security as a universal human right, notably by laying down specific obligations and guidelines for its member states.³³ In 2002, the ILO Governing Body confirmed eight out of these thirty one conventions as up-to-date social security conventions which are:

²⁹ Ursula and Morales, "Social security- International Standards and the Right to Social Security" 91. Ratification is when an ILO Member state signs a Convention, and the state thereby become subject to legally binding international obligation.

³⁰ The mentioned instruments will be discussed below.

³¹ These nine branches of social security are: medical care; sickness benefit; unemployment benefit; old-age benefit; employment injury benefit; family benefit; maternity benefit; invalidity benefit and survivors' benefit.

³² ILO Employment and Social Protection in the Informal Sector para 82, p 16.

³³ ILO Social security for social justice Para 34, P 12.

Social Security (Minimum Standards) Convention, 1952 (No. 102); *Equality of Treatment (Social Security) Convention*, 1962 (No. 118); *Employment Injury Benefits Convention*, 1964 (Schedule I amended in 1980) (No. 121); *Invalidity, Old-Age and Survivors' Benefits Convention*, 1967 (No. 128); *Medical Care and Sickness Benefits Convention*, 1969 (No. 130); *Maintenance of Social Security Rights Convention*, 1982 (No. 157); *Employment Promotion and Protection against Unemployment Convention*, 1988 (No. 168) and *Maternity Protection Convention*, 2000 (No. 183).³⁴ At the forefront of this, is the *Social Security (Minimum Standards) Convention*, 1952 (No. 102), which will be discussed below.

2.2.2 African Union

The AU is a union consisting of fifty four African states which main aim is to achieve greater unity and solidarity between the African countries and the peoples of Africa.³⁵ It attempts to defend the sovereignty, territorial integrity and independence of its member states,³⁶ accelerate the political and socio-economic integration of the continent³⁷ and promote and defend African common positions on issues of interest to the continent and its people.³⁸ In addition it encourages international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights.³⁹ At its core is the promotion of peace, security and stability on the continent,⁴⁰ along with that of democratic principles and institutions, popular participation and good governance.⁴¹ Another goal entails the protection of human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments,⁴² while establishing the necessary conditions which enable the continent to

³⁴ ILO Social security for social justice Para 12 P 13.

³⁵ Article 3(a) Objective of the Constitutive Act of the AU.

³⁶ Article 3(b) Objective of the Constitutive Act of the AU.

³⁷ Article 3(c) Objective of the Constitutive Act of the AU.

³⁸ Article 3(d) Objective of the Constitutive Act of the AU.

³⁹ Article 3(e) Objective of the Constitutive Act of the AU

⁴⁰ Article 3(f) Objective of the Constitutive Act of the AU

⁴¹ Article 3(g) Objective of the Constitutive Act of the AU.

⁴² Article 3(h) Objective of the Constitutive Act of the AU.

play its rightful role in the global economy and in international negotiations.⁴³ Finally it aims to promote sustainable development at the economic, social and cultural levels as well as the integration of African economies⁴⁴ and co-operation in all fields of human activity to raise the living standards of African peoples.⁴⁵

South Africa is a member of the AU. According to the AU, work in the informal economy in Africa is, by definition, work with no social protection.⁴⁶ The lack of social protection is a key defining characteristic of the informal economy, as well as a critical aspect of social exclusion. Less than 10% of all workers in Sub-Saharan Africa and Asia have access to social security, while in other developing countries only 10% to 50% of workers are able to access social security. This evidences the low coverage of formal sector insurance, as the formal sector insurance in Sub-Saharan Africa covers only a fraction of the population, usually only civil servants and a few formal sector employees (between less than 1% in Ethiopia, 10% in Senegal and 11% in Kenya).⁴⁷

The AU, in an effort to extend social security coverage to informal sector workers, came up with the Ouagadougou 2004 Plan of Action on Employment Promotion and Poverty Alleviation, with its key priority to establish, improve and strengthen the social protection schemes in the AU and extending them to workers and their families currently excluded. The mentioned plan emphasise consideration of the specific social protection needs of the working poor in the informal economy and the rural sector, when social protection policies are devised.⁴⁸

Informal sector workers need to set up health and other social insurance schemes through community based initiatives that better meet their needs and contributory capacity. Working conditions in the informal economy are precarious, unsafe and very

⁴³ Article 3(i) Objective of the Constitutive Act of the AU.

⁴⁴ Article 3(j) Objective of the Constitutive Act of the AU.

⁴⁵ Article 3(k) Objectives of the Constitutive Act of the AU.

⁴⁶ AU Social protection plan for the informal economy Para 5, P 3.

⁴⁷ AU Social protection plan for the informal economy 2.

⁴⁸ AU Social protection plan for the informal economy 2.

poor both in terms of remuneration and occupational health and safety – including sexual harassment and violence against women. Informal workers, in particular rural workers, suffer also from market distortions where farmers are price takers and hardly experience the position of price negotiators. They are constrained by the absence of security and protection of their assets, including their skills.⁴⁹

The AU therefore established the Social Protection Plan for the Informal Economy and Rural Workers (herein after referred to as SPIREWORK) in April 2011 to advance the effective implementation of the vision and commitments made by the AU Heads of States and Governments to extend social protection to the informal economy and rural workers.⁵⁰

The SPIREWORK is an umbrella plan of the AU which sets up guidelines for member states to follow. It is based on and contributes to the goal and objectives of the Africa Health Strategy by strengthening the health system across Africa in order to reduce ill-health, especially among informal workers. In developing countries and in the perspective of the SPIREWORK, the most common categories of informal workers include the following working groups: self-employed, micro-entrepreneurs, home-based workers, unpaid workers, wage workers and apprentices.⁵¹ The informal and rural workers constitute the bulk of the available but poorest and marginalised labour force engaged in the socio economic development activities without or with little and inappropriate social health security services.⁵²

The reasons put forward for the adoption of a social protection plan, is because the working conditions of most African informal economy workers are particularly hazardous, and yet it is these very vulnerable workers that are least able to access any form of social

⁴⁹ AU Social protection plan for the informal economy 3.

⁵⁰ AU Social protection plan for the informal economy 3.

⁵¹ AU Social protection plan for the informal economy 3-4.

⁵² AU Social protection plan for the informal economy 5.

protection under current social security schemes because social security mainly focuses on the formal sector. Many of them are not able or willing to contribute a significant percentage of their incomes to finance formal sector social insurance benefits that do not meet their priority needs. There is also growing recognition internationally of the beneficial impact of social security with regard to both the strengthening of social cohesion within increasingly polarized societies, and also the economic returns of increased social security investment in workers in terms of productivity and skills development of both current workers and future generations of workers.⁵³ According to the AU, social protection for African informal workers, including the rural workers which represent together 70-80% of the workers in Africa, must be viewed as issues of human rights, human security, productivity, equity and social solidarity.⁵⁴ The strategy put forward by the AU in order to achieve social security for those in the informal sector consist of a minimal social protection package.

On the basis of a minimal social protection package, member states of the AU are required to define and implement a minimum protection substantive package for informal and rural workers and members of their families, encompassing measures on access to market and land for a stable workplace, health, maternity, death and retirement. This will be done through realising a comprehensive study done by member states to support the preparation of a “minimum package of social protection for rural and informal workers, and their families”. AU member states are required to reassess their social protection policies and programmes for better targeting and aligning with SPIREWORK; and reallocate existing resources to those schemes of protection which are most effective in terms of poverty alleviation and the reduction of vulnerabilities and insecurity.⁵⁵

SPIREWORK moreover, urges member states of AU to review their laws and regulations, policies, strategies and programmes as they relate to access of the informal and rural

⁵³ AU Social protection plan for the informal economy 4.

⁵⁴ AU Social protection plan for the informal economy 4.

⁵⁵ AU Social protection plan for the informal economy 10.

workers to social protection measures, and undertake reform measures for more inclusive social protection systems. This entails evaluation of their budget with regard to the social protection needs coverage for the informal and rural workers and members of their families.⁵⁶

On the other hand, in order to facilitate the achievement of a minimum social protection package, enablers must among other things, ensure the organisation of informal and rural workers for their effective empowerment and participation in the policy formalisation processes with a strong and effective voice. The social protection of informal and rural workers is a multi-dimensional challenge in that its achievement would necessarily require simultaneously addressing the challenges of the deficits in organisation and representation. Enablers such as the African Union Commission should put in place a comprehensive social protection scheme for the informal and rural workers and members of their families, through measures towards recognition, legal and regulatory framework, advocacy, statistics and knowledge management, organisation and networking for empowerment and effective participation of the informal workers, policy dialogue and social dialogue.⁵⁷

Furthermore, member states as enablers for the institution of a minimum social protection package for workers in the informal and rural economies are required to: conduct a national gap analysis on how many people need to be covered through social protection, which categories of informal sector workers exist, which targets should be pursued regarding social protection for these workers and what the social protection needs of the informal economy and rural workers are. They would have to identify key stakeholders, including multiple ministries, local government, informal economy employers and workers associations; encourage and support organising of the informal economy and rural workers and their participation in the policy dialogue at national and local levels. By doing

⁵⁶ AU Social protection plan for the informal economy 10.

⁵⁷ AU Social protection plan for the informal economy 10-11.

the above, this would give informal workers an opportunity to have a say in issues that affect them as far as social security coverage is concerned.⁵⁸

In order to ensure the effective implementation of AU standards on the extension of social security coverage to the informal sector, regional economic communities and United Nation agencies should include SPIREWORK in their regular Follow-up reports on the implementation of the Ouagadougou 2004 Declaration and Plan of Action on Employment Promotion and Poverty Alleviation, as well as their implementation of the Social Policy Framework and other relevant policies.⁵⁹ This plan is not a treaty that legally binds member states; the plan acts as guidelines that enable AU member states to implement the AU plan of action as far as social protection is concerned. South Africa being a member state would be obliged, but not legally bound to follow this plan of action.

The Social Policy Framework for Africa,⁶⁰ referred to above (herein after referred to as SPF) was established in Mauritius in 2003 at the first session of the AU Labour and Social Affairs Commission after ministers present at the session recommended and requested the AU commission, in collaboration and consultation with other stakeholders, to develop a social policy framework for Africa. The main purpose of SPF is to provide an overarching policy structure to assist AU member states in the development of their national social policies to promote human empowerment and development in their ongoing quest to address the multiple social issues facing their societies. The SPF sets out standards to guide member states in formulating and implementing their own national social policies, appropriate and applicable to their country-specific social challenges and situations. The SPF recognises the limited access of social security in the continent and thereby advocate

⁵⁸ AU Social protection plan for the informal economy 12.

⁵⁹ AU Social protection plan for the informal economy 16.

⁶⁰ Social Policy Framework for Africa adopted in Windhoek, Namibia 27 - 31 October 2008 to build an integrated, prosperous and peaceful Africa, an Africa driven and managed its own citizens and representing a dynamic force in the international arena.

for the strengthening and extension of social protection to workers and their families currently excluded.⁶¹

Member states are encouraged by the SPF to choose the coverage extension strategy and combination of tools most appropriate to their circumstances. There is an emerging consensus among member states that a minimum package of essential social protection should cover: essential health care and benefits for children, informal workers, the unemployed, older persons and persons with disabilities. This minimum package provides the platform for broadening and extending social protection as more fiscal space is created.⁶²

The SPF also urges member states to build political consensus and recognise that social protection should be a state obligation, with provision for it in national legislation, including social protection in national development plans and poverty reduction strategy processes. Member states are obliged to develop and operationalise costed national plans for social protection based on the concept of a “minimum package”. Governments should include civil society in policy-making on social protection and in programme design, implementation, monitoring and impact evaluation. Member states should ensure coordination and strengthening of development partner support for sustainable financing of social protection; design and deliver effective impact assessments, monitoring and evaluation of social protection programmes and utilise social protection instruments as a means of safeguarding the poor from global financial and economic shocks.⁶³

The extension of social security benefits to those excluded from coverage, the informal sector inclusive, is also one of SADC`s priorities. The coverage challenges as well as various SADC initiatives in the effort of extending coverage to those who are excluded will therefore be investigated.

⁶¹ AU Social Policy Framework for Africa para 29.

⁶² AU Social Policy Framework for Africa para 32.

⁶³ AU Social Policy Framework for Africa 18.

2.2.3 Southern African Development Community (SADC)

The Southern African Development Community (herein after referred to as SADC), is a regional organisation which comprises of Southern African countries. The organisation focuses on developmental, economic and regional integration. SADC is at the forefront of setting standards at the Southern African sub-region. It has as its objectives, to achieve development and economic growth, alleviate poverty, enhance the standard and quality of living of peoples in Southern Africa and to support the socially disadvantaged through regional integration.⁶⁴ According to Olivier,⁶⁵ social security is therefore often seen as serving the interests of the working elite, and not reaching out to those most in need of coverage. Yet it is clear that the general picture in Southern Africa reveals an increase in the informal economy and in unemployment, while the formal sector/economy is generally shrinking.

As a result of this limited coverage, efforts have been made by member states following SADC guidelines, found in the SADC *Code on Social Security* to extend social security benefits to those in the informal sector. SADC countries such as Tanzania, Namibia and Mauritius just to name a few, have embarked on major reform initiatives in an attempt to overhaul their social security systems comprehensively. The overall purpose of these developments is to introduce broad-based social assistance and social protection arrangements, to develop social insurance schemes aimed at including those in the informal economy, and to deal effectively with exclusions and marginalisation in the system and with the need to address poverty holistically and in an integrated fashion from a social protection point of view.⁶⁶

⁶⁴ Article 5 of the SADC treaty.

⁶⁵ Olivier "International and Regional Social Security Standards" 7.

⁶⁶ Olivier "International and Regional Social Security Standards" 8.

These international and regional organisations referred to above have also aimed to strengthen existing social protection policies and develop new ones through specific international and regional instruments. In this light the UDHR,⁶⁷ ICECSR,⁶⁸ Convention No. 102 (minimum standards), Recommendation No. 202 on Social Protection Floors,⁶⁹ Code on Social Security in the SADC and Charter of Fundamental Social Rights in the SADC shall be examined.

2.3 International and regional instruments

2.3.1 Social Security (Minimum Standards) Convention, 1952 (No. 102)

The *Social Security (Minimum Standards) Convention, 1952 (No. 102)* is the flagship of all ILO social security conventions, as it is the only international instrument, based on basic social security principles, that establishes worldwide-agreed minimum standards for all nine branches of social security. These branches are: medical care; sickness benefits; unemployment benefits; old-age benefits; employment injury benefits; family benefits; maternity benefits; invalidity benefits and survivors' benefits.⁷⁰ Convention No. 102 covers all nine branches and it requires that at least three of these branches be ratified by member states, which allows for the step-by-step extension of social security coverage by ratifying countries.⁷¹ Convention No. 102 does not prescribe how to reach these objectives but leaves certain flexibility to the member states.

Although South Africa has not ratified the convention, the provisions of Convention No. 102 can be taken into account when drafting legislation on the extension of social security benefits to informal sector workers.

⁶⁷ Universal Declaration of Human Rights.

⁶⁸ International Convention on Economic, Cultural and Social Rights.

⁶⁹ *Social Protection Floor Recommendation No. 202 of 2012.*

⁷⁰ Part II-X of *Social Security (Minimum Standards) Convention, 1952 (No.102).*

⁷¹ Article 2(a)(II) of *Social Security (Minimum Standards) Convention, 1952 (No.102).*

The ILO has found that Convention No.102 has had an impact on the development of social security in various regions of the world. As a result, many governments, especially in the SADC sub-region such as the Democratic Republic of Congo, Namibia and Mauritius take the provisions of Convention No.102 into account when drafting their own legislation, so as to bring their national legislation more in line with the convention even if they have not yet ratified it. Convention No.102 has also influenced the development of formal social security systems in low-income countries: more than thirty African countries have set up pension schemes modelled on it even though they have not yet ratified the abovementioned convention. Although these countries' formal social security systems cover only a small portion of the population, Convention No.102 constitutes a development goal and is a reference used in documents setting long-term objectives with regard to the levels of protection and social security needed to be attained.⁷²

However, Convention No.102 is not without its shortcomings. Its approach is more formal employment oriented and therefore has little or no room for those in the informal sector. Comprehensive social protection (coverage by all branches of social security at least at a minimum level of benefits as guaranteed by the Social Security (Minimum Standards) Convention, 1952 (No. 102)), is not a reality for the vast majority of the world's population because the notion of social security as per Convention No. 102, is formal employment oriented, whereas the South African society has witnessed an increase in the number of people working in the informal sector. The ultimate aim of all ILO standards is to provide comprehensive protection to as many people as possible; the intermediate aim is to provide everyone with at least a basic level of protection. Such a "social protection floor" would guarantee at least a basic level of income security at all stages of the life cycle, as well as access to essential health services.⁷³ Due to the limitations of Convention No 102, the ILO adopted Recommendation 202 of 2012 concerning national floors of social protection.

⁷² ILO Social security for social justice 15.

⁷³ ILO Social security for social justice 30.

2.3.2 Social Protection Floors Recommendation 202 of 2012

In June 2012, the International Labour Conference adopted Recommendation No. 202 on social protection floors. The objective of this recommendation is to provide guidance to members to (a) establish and maintain, as applicable, social protection floors as a fundamental element of their national social security systems; and (b) implement social protection floors within strategies for the extension of social security that progressively ensure higher levels of social security to as many people as possible, guided by ILO social security standards.⁷⁴ Thus, Recommendation No. 202 is a set of guidelines on how to extend social protection coverage through the social protection floor approach. Member states are required to recognise the overall and primary responsibility of the state in giving effect to this recommendation, and it urges member states to apply among other principles, social inclusion, including persons in the informal economy.⁷⁵

A social protection floor involves an integrated set of nationally-driven policies designed to guarantee income security and universal access to essential social services. The Social Protection Floor promotes a set of basic transfers of rights enabling people to access essential goods and services and extends the initiative to such other services as drinkable water, wholesome food, sanitation, health, education and accommodation.⁷⁶ Social protection floors as per this recommendation are nationally defined sets of basic social security guarantees which secure protection aimed at preventing or alleviating poverty, vulnerability and social exclusion.⁷⁷

Furthermore, the text is of a programmatic character, prompting member states to adopt a certain policy and to take the necessary implementing measures. It provides guidelines to develop a social security strategy compatible with, and supportive of, wider national

⁷⁴ Article 1(a)(b) of social protection floor recommendation 202 of 2012.

⁷⁵ Article 3(e) of social protection floor recommendation 202 of 2012.

⁷⁶ Servais 2012 *E-Journal of International and Comparative Labour Studies* 19.

⁷⁷ Article 2 of social protection floor recommendation 202 of 2012.

economic and social policy strategies and seeks to reduce poverty and bring employment out of the hidden economy.⁷⁸ It urges members to put in place and complete as rapidly as possible their social protection floors, by supplying basic social security guarantees and ensuring that the needy have access to essential health care and to basic income security.⁷⁹ The social protection floor go therefore beyond the traditional social security schemes; it should include access to goods and services, defined as necessary at the national level, which constitute essential health care, including in the case of maternity, and access for children to nutrition, education, care and any other necessary goods and services.⁸⁰

The new instrument focuses on the extension of coverage to wider groups of the population which is known as horizontal extension of coverage. As for affording higher levels of protection – which amounts to vertical extension – the Recommendation encourages member states to ratify and to assess the effective implementation of Convention No. 102 and other up-to-date ILO social security instruments. The text specifies a number of guidelines for the design and implementation of national social security strategies. It prompts member states to fill coverage gaps of populations within the informal sector with contributory capacity through contributory schemes.⁸¹ The Recommendation has set up a system monitoring the progress made by the states in implementing social protection floors and achieving extension strategies of national social security systems.⁸²

The ILO therefore plays an important role in the development and implementation of standards to ensure the extension of social security coverage to those in the informal sector, which are part of the socially excluded.

⁷⁸ Servais 2012 *E-Journal of International and Comparative Labour Studies* 25.

⁷⁹ Article 4 of Social Protection Floor Recommendations 202 of 2012.

⁸⁰ Article 5(b) of Social Protection Floor Recommendations 202 of 2012.

⁸¹ Servais 2012 *E-Journal of International and Comparative Labour Studies* 25.

⁸² Servais 2012 *E-Journal of International and Comparative Labour Studies* 25.

2.3.3 Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights of 1948 (herein after referred to as UDHR), drafted by the United Nations, is an international document that states basic rights and fundamental freedoms to which all human beings are entitled. The UDHR begins by recognising that “the inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world”.⁸³ The right to social security to everyone is explicitly mentioned in the UDHR.

The UDHR states in its article 22 that everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international cooperation and in accordance with the organisation and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality. The declaration further states that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.⁸⁴ By using the word ‘everyone’, the declaration should also be made available to employees, regardless of the sector they perform their services in.

Although the UDHR is not a treaty that legally binds South Africa, section 39(1)(b) of the Constitution which states that when interpreting the Bill of Rights, a court, tribunal or forum must consider international law, makes it possible for the fundamental values of the UDHR to be applicable in South Africa.

⁸³ Preamble of the Universal Declaration of Human Rights.

⁸⁴ Article 25(1) of the Universal Declaration of Human Rights.

2.3.4 The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Covenant on Economic Social and Cultural Rights (herein after referred to as ICESCR) was adopted on December 16, 1966 by the UN General Assembly and entered into force ten years later. The ICESCR contains some of the most significant international legal provisions establishing economic, social and cultural rights. Its provisions include rights relating to work in just and favourable conditions, to social protection, to an adequate standard of living, to the highest attainable standards of physical and mental health, to education and to enjoyment of the benefits of cultural freedom and scientific progress.⁸⁵ The ICESCR defines a broad set of rights related to the economic, social, and cultural elements of life that states must provide to their citizens. The ICESCR, recognises in accordance with the Universal Declaration of Human Rights, that the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural life, as well as his civil and political rights.⁸⁶ According to the ICESCR, all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.⁸⁷ Among these rights is the right to access to social security whereby article 9 of the Covenant recognises "the right of everyone to social security, including social insurance". It requires parties to provide some form of social insurance scheme to protect people against the risks of sickness, disability, maternity, employment injury, unemployment or old age; to provide for survivors, orphans, and those who cannot afford health care and to ensure that families are adequately supported. Benefits from such a scheme must be adequate, accessible to all, and provided without discrimination. Consequently, the words "everyone" and "accessible to all" should be interpreted to include all categories of workers regardless the sector in which they work.

⁸⁵ Malan and Van Rensburg "An international perspective" 99.

⁸⁶ Preamble of the ICESCR.

⁸⁷ Article 1 of the ICESCR.

General Comment 19,⁸⁸ drafted by the Committee on Economic, Social and Cultural Rights is an explanatory note to the ICESCR, which provides for the extension of social security benefits to those who are working in the informal sector.⁸⁹ According to General Comment 19, the right to social security includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage, whether obtained publicly or privately, as well as the right to equal enjoyment of adequate protection from social risks and contingencies.⁹⁰ The General Comment further suggests ways by which states can provide social security to informal workers. It states that governments must take steps to the maximum of their available resources to ensure that the social security systems cover those persons working in the informal economy. According to the general comments, measures could include removing obstacles that prevent such persons from accessing informal social security schemes, such as community-based insurance, ensuring a minimum level of coverage of risks and contingencies with progressive expansion over time and respecting and supporting social security schemes developed within the informal economy such as micro-insurance and other microcredit related schemes.⁹¹

2.3.5 Charter of Fundamental Social Rights in the SADC

The Charter of Fundamental Social Rights in SADC came into force in 2003. It focuses on the protection of workers and vulnerable groups. It emphasises the harmonisation of minimum requirements in social security areas such as occupational health and safety protection and paid maternity leave.⁹² In its article 10, it clearly states that every worker has the right to adequate social protection. Subsection 1 of article 10 adds that, member states shall create an enabling environment so that every worker in the region shall have

⁸⁸ UN The Right to Social Security

⁸⁹ UN The Right to Social Security para 16, 18.

⁹⁰ UN The Right to Social Security para 9.

⁹¹ UN The Right to Social Security para 34.

⁹² Article 11 of the Charter of Fundamental Social Security Rights in the SADC.

a right to adequate social protection and shall, regardless of the status and the type of employment, enjoy adequate social security benefits. Moreover, subsection 2 provides that persons who have been unable to either enter or re-enter the labour market and have no means of subsistence shall be entitled to receive sufficient resources and social assistance. Thus, according to the charter, social security should be extended to every worker in the sub-region, without any exception or regard to the type of job they are involved in.

2.3.6 Code on Social Security in the SADC

Another SADC instrument, which promotes the extension of social security in the sub-region, is the *SADC Code on Social Security*. The purpose of the code is to provide member states with strategic direction and guidelines in the development and improvement of social security schemes, in order to enhance the welfare of the people of the SADC region. It also has as aim, to provide SADC and its member states with a set of general principles and minimum standards of social protection, as well as a framework for monitoring the implementation of these general principles and minimum standards at national and regional levels.⁹³ It further requires that everyone in the SADC region who has insufficient means of subsistence to support themselves and their dependents should be entitled to social assistance, in accordance with the level of socio-economic development of the particular member state.⁹⁴

The code also makes provision for the right to social security. It provides that everyone in SADC has the right to social security and that every member state should establish and maintain a system of social security in accordance with the provisions of this Code and article 10 of the Charter of Fundamental Social Rights in SADC. It continues by requiring member states to maintain its social security system at a satisfactory level at least equal

⁹³ Article 3 of the code on Social Security in the SADC.

⁹⁴ Article 5(1) of the code on Social Security in the SADC.

to that required for ratification by the *Social Security (Minimum Standards) Convention* (No.102) 1952.⁹⁵

Member states should progressively raise their systems of social security to a higher level, which should include achieving the meaningful coverage of everyone under the system, bearing in mind the realities and level of development in the particular member state.⁹⁶ The code further makes mention of contingencies such as health, maternity and paternity, death and survivor benefits, retirement and old age, unemployment and underemployment and finally occupational injuries and diseases.⁹⁷ The code also seeks to ensure access to social security to those who are traditionally excluded from social security coverage such as females, people with disabilities, families, children and young people, migrants, foreign workers and refugees.⁹⁸ Member states are consequently encouraged to establish social insurance schemes and should progressively expand the coverage and impact of these schemes.⁹⁹

2.4 Conclusion

The role of international and regional standards is to set out guidelines through which member states can develop their own national policies regarding extension of social security coverage to those excluded. They also act as a measuring rod to see if South Africa is in line with international standards as far as social security is concerned.

International and regional organisations such as the ILO, the AU and SADC as well as various international instruments such as the *Social Security (Minimum Standards)*

⁹⁵ Article 4.3 of the Code Social Security in the SADC.

⁹⁶ Article 4 of the code Social Security in the SADC.

⁹⁷ Article 7-12 of the code Social Security in the SADC.

⁹⁸ Article 13-17 of the code Social Security in the SADC.

⁹⁹ Article 6(1) of the code Social Security in the SADC.

Convention No. 102, Social Protection Floor Recommendation No. 202, the Universal Declaration of Human Rights, the International Covenant on Economic Social and Cultural Rights and the Charter of Fundamental Social Rights in SADC and Code on Social Security in SADC sets out standards both at the international and regional level on the extension of social security benefits to informal sector workers. Instruments such as the UDHR considers social security on a human rights based approach in the sense that it is a fundamental human right to have access to social security.

Taking into consideration the above mentioned standards set by these international and regional standards as well as the abovementioned instruments, as far as extending social security to informal sector workers is concerned, will help improve the lives of millions of informal sector workers in South Africa.

The next chapter shall consist of a comprehensive study of the concept of social security in South Africa. The nature of the informal sector shall be examined, as well as the legal and constitutional framework. The chapter will portray the exclusionary nature of social security benefits to informal sector workers in South Africa. Thus the standards and suggestions from the abovementioned international and regional instruments shall act as guidelines, to help ease access to social security benefits to informal sector workers in South Africa.

CHAPTER 3

Social security in South Africa: Constitutional and legal framework

3.1 Introduction

According to section 2 of the *Constitution of the Republic of South Africa*, 1996, the Constitution is the supreme law of the Republic and any law or conduct inconsistent with it is invalid and the obligations imposed by it must be fulfilled.¹⁰⁰ The rights of every citizen in South Africa are enshrined in Chapter 2 of the Constitution, known as the Bill of Rights. It guarantees the human rights of everyone and affirms the democratic values of human dignity, equality and freedom.¹⁰¹ The rights enshrined in the Bill of Rights are the inalienable or fundamental rights of everyone in the country, and as a result, applies to all and binds the legislature, the executive, the judiciary and all organs of the State.¹⁰² It is thus clear that the fundamental rights in the Bill of Rights are bestowed upon every citizen, without distinction.

Amongst the fundamental rights guaranteed and safeguarded are socio-economic rights, contained in section 27 of the Constitution, which include the right to access to social security (through social insurance) and social assistance.¹⁰³ Social insurance deals with contingencies such as employment injuries and diseases, unemployment and traffic accident-related injuries and death,¹⁰⁴ while social assistance is the provision of various kinds of social services such as institutional care and the payment of social grants, as well as social relief payments by the state.¹⁰⁵ The two schemes will be investigated more thoroughly below. A constitutional obligation therefore exists on the state to ensure the

¹⁰⁰ S 2 of the *Constitution of the Republic of South Africa*, 1996.

¹⁰¹ S 7(1) of the *Constitution of the Republic of South Africa*, 1996.

¹⁰² S 8(1) of the *Constitution of the Republic of South Africa*, 1996.

¹⁰³ Olivier and Kalula "Legal framework and scope of coverage" 43.

¹⁰⁴ Olivier Concept of social security 19.

¹⁰⁵ Olivier and Kalula "Legal framework and scope of coverage" 38.

access to social security to everyone, especially the most vulnerable in the society. Section 27(1)(c) states that everyone has the right to access to social security including appropriate social assistance if they are unable to support themselves and their dependents. Section 27(2) furthermore places a constitutional duty on the state by determining that the state must take reasonable legislative and other measures within its available resources to achieve the progressive realisation of each of these rights.¹⁰⁶ As will be seen below this does not always come to pass.

As mentioned in the introductory chapter, the South African social security scheme is exclusionary in nature in that both the social insurance and social assistance schemes have a limited scope of coverage. The various social insurance schemes are limited in their scope of coverage in that they are employment oriented, covering only those in the formal employment sector, while the social assistance scheme is means-tested.¹⁰⁷ Last mentioned entails that the state would have to verify if an individual has enough financial resources to support him or herself and what amount of social assistance payment, if any, such an individual may qualify for. It is thus clear that social assistance focuses on wages and a particular level of income. Under the social assistance scheme the following grants are available, namely the child support grant, the disability grant, old age grant, war veteran's grant, care dependency grant and foster care grant.¹⁰⁸ It therefore appears impossible for informal sector workers to partake in the social assistance scheme if they do not fall under the category of people covered by such a scheme. As a result of the orientation mentioned above, it seems as though those in the informal sector are largely excluded from any of the available social security schemes, be it social insurance or social assistance. This matter will be investigated below.

In order to understand the extent to which those in the informal sector are excluded from the fundamental right to social security benefits, the constitutional and legal framework

¹⁰⁶ Olivier and Van Rensburg 2009 *Law Democracy and Development* 88.

¹⁰⁷ Olivier and Kalula "Legal framework and scope of coverage" 34. This aspect will be motivated below.

¹⁰⁸ Olivier and Guy "Developing an Integrated and Inclusive Framework" 149.

on social security, through social insurance and social assistance will be scrutinised. The nature of these concepts in South Africa shall also be investigated. The aim of this chapter is to examine the constitutional and legal framework on universal access to social security, and to show the limited applicability of these frameworks to certain categories of people as far as access to social security benefits is concerned.

Before the aspects mentioned will be analysed, the meaning of the concept 'informal sector' should first be properly grasped.

3.2 The meaning of 'informal sector'

The concept 'informal sector' has its origin in a research paper of the ILO conducted in Kenya in 1972.¹⁰⁹ The term 'informal sector' refers to economic activities carried out by those who are not in the traditional formal employment. According to Smit,¹¹⁰ the term 'informal sector' was first coined by the ILO to describe the economic activities being carried out by the poor who were not recognised, regulated or protected by the public authorities. In order to give a broader perspective of the informal sector, the definition adopted by the Fifteenth International Conference on Labour Statisticians¹¹¹ in 2002 conceptualises the informal sector as follows:¹¹²

The informal sector is regarded as a group of household enterprises or unincorporated enterprises owned by households that includes: informal own-account enterprises, which may employ contributing family workers and employees on an occasional basis; and enterprises of informal employers, which employ one or more employees on a continuous basis. The enterprise of informal employers must fulfil one or both of the following criteria: size of unit below a specified level of employment, and non-registration of the enterprise or its employees.

¹⁰⁹ Olivier et al "Informality, Employment and Protection" 4.

¹¹⁰ Smit "Promotion of access to social Security to informal sector workers" (international Perspective) 193.

¹¹¹ ILO "Women and men in the Informal Economy" 11.

¹¹² ILO "Women and men in the informal economy" 12.

'Informal sector' as per Statistic South Africa is unregistered businesses run from homes, street pavements or other informal arrangements.¹¹³ According to the ILO, this notion covers a large variety of groups (most of whom are self-employed) and defines the informal sector in terms of characteristics of the enterprises (production units) in which the activities take place, rather than in terms of the characteristics of the persons involved or the characteristics of their jobs. Accordingly, persons employed in the informal sector were defined as "comprising all persons who, during a given reference period, are employed in at least one production unit of the informal sector, irrespective of their status in employment and whether it is their main or secondary job". Production units of the informal sector were defined as "a subset of unincorporated enterprises owned by household(s), that is, production units which are not constituted as separate legal entities independently of the household or household members that own them".¹¹⁴

The irregular nature of the informal sector makes it difficult for those working in the sector to participate in any social security scheme. First of all, it is difficult to locate them, since most often their activities does not permit them to have a fixed location, and this is problematic because it makes it difficult for any institution tasked with the collection of contribution to locate them. Secondly the irregular nature of their work, gives them irregular or low income.

Employment in the informal sector portrays various characteristics. It may include all remunerative work, both self-employment, (such as independent contractors, street vendors and industrial outworkers) and wage employment that is not recognised, regulated or protected by existing legal or regulatory frameworks, such as the UIA and non-remunerative work undertaken in an income-producing enterprise. Informal employment in South Africa, as well as in the rest of the world, comprises diverse activities. These include street trading and hawking, the provision of 'street services' such

¹¹³ Uys and Blaauw 2006 *Acta Commercii* 248.

¹¹⁴ Dekker "Social Security for those who work informally" 250-251.

as shoe-repair and hairdressing, the provision of transport services such as taxis, as well as productive activities like manufacturing.¹¹⁵

Most informal workers – including both self-employed and wage workers – are deprived of secure work, workers' benefits, social protection and representation or voice.¹¹⁶ The self-employed have to take care of themselves and their enterprises. Moreover, they often face a competitive disadvantage vis-à-vis larger formal firms in capital and product markets. Informal wage workers also have to take care of themselves as they receive few (if any) employer-sponsored benefits. In addition, both groups receive little (if any) legal or social protection. As a result of these and other factors, a higher percentage of people working in the informal economy, compared to those working in the formal economy, are poor.¹¹⁷

As a result, the rural and urban poor, the informally employed, as well as the structurally unemployed, generally pose major challenges to social security protection. This follows from the fact that they are usually not part of the formal workforce and are therefore as a rule excluded from social insurance mechanisms.¹¹⁸ The weakness of the informal sector lies in its concentration on retailing and personal services, its lack of craft skill, and resultant weakness in value-added production.¹¹⁹

3.3 Understanding the nature of social security in South Africa

There is no clear or consistent definition of social security.¹²⁰ The definition of social security is flexible, reflecting a country-specific content and is subject to constant change and development over time.¹²¹ Structural and cultural factors amongst others determine

¹¹⁵ Uys and Blaauw 2006 *Acta Commercii* 249.

¹¹⁶ ILO "Women and men in the informal economy" 12.

¹¹⁷ ILO "Women and men in the informal economy" 12.

¹¹⁸ Liffman *et al* 2009 *Law Democracy and Development*. 19

¹¹⁹ Uys and Blaauw 2006 *Acta Commercii* 249.

¹²⁰ Nyenti "Adjudication and Enforcement Mechanisms and the Administrative Framework" 54.

¹²¹ Dekker *et al* 2009 *Law Democracy and Development* 3.

the specific content of social security in a country on any given time. South African policy documents and academic writings provide numerous definitions of social security. Many definitions include an enumeration of social risks, while others are defined in terms of the involvement of the state, employers and/or the private sector, or in terms of the aims and/or benefits or financing of the scheme.¹²² According to Nyenti,¹²³ the most widely used definition by various governments is that of the ILO notion of social security, which defines it as:¹²⁴

The protection that society provides for its members, through a series of public measures, against the economic and social distress that otherwise will be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old age, and death; the provision of medical care; and the provision of subsidies for families and children.

According to Nyenti,¹²⁵ this definition focuses on employment-related social insurance and a means-tested social assistance system. The definition of social security, based on the ILO concept, is oriented towards formal employment, due to the fact that it covers only contingencies that emanates from work regulated by the different legislations concerned. Consequently it does not address the issues of a South African society which is witnessing an increase in the number of workers in the informal sector. The above-mentioned definition of social security, which is based on the so-called nine classical risks (that is sickness, maternity, employment injury, unemployment, invalidity, old age, death, medical care and family) listed in the ILO *Social Security (Minimum) Standards Convention* 102 of 1952,¹²⁶ is focused largely on individuals who eke out a living in formal employment. Accordingly, social security, just like labour law in general, is more concerned with shielding those persons employed in the formal sector (and their families).¹²⁷ It must also be emphasised that a shift from curative to preventive social

¹²² Dekker *et al* 2009 *Law Democracy and Development* 3.

¹²³ Nyenti "Adjudication and Enforcement Mechanisms and the Administrative Framework".

¹²⁴ *Social Security (Minimum Standards) Convention* 102 of 1952.

¹²⁵ Nyenti "Adjudication and Enforcement Mechanisms and the Administrative Framework" 55.

¹²⁶ See par 2.3.1 above.

¹²⁷ Mpedi *Reinventing Labour Law* 271.

security is necessary. Thus, a three-tiered approach to social security is suggested, whereby an attempt must first be made to prevent, then repair and, in the last instance, compensate an individual for damages that occurred.¹²⁸

Kaseke¹²⁹ opines that it is apparent from this conceptualisation of social security that it is primarily meant to benefit workers in formal employment. In essence, this means that only those in a standard employer-employee relationship are able to access *contributory* social security.¹³⁰ The effect of this is that many workers in South Africa are to a large extent not able to participate as they operate outside the formal sector, being in atypical employment relationships that do not reflect a standard employer-employee relationship.¹³¹ Nyenti¹³² further opines that:

The ILO definition fails to capture the characteristics of social security in developing countries, some of which include: the extent of poverty and deprivation to which millions of people in developing countries are exposed and the present exclusion of a majority of these from social security coverage; the rise in informal employment and the exclusion of and/or marginalisation of the informally employed from social security; limited state-regulated public schemes, restricted scope of formal system.

Thus, a continuous conceptualisation of social security in South Africa based on the definition provided by the ILO will continue to limit the access to social security benefits to those in the formal sector.

¹²⁸ Olivier and Van Rensburg 2009 *Law Democracy and Development* 23.

¹²⁹ Kaseke "Promotion of access to social security to informal sector workers" (South African Perspective) 210.

¹³⁰ With social insurance, individuals, employers and/or government contribute and benefits are allocated automatically and can be linked to the amount of contributions. (Dekker *et al* 2009 *Law Democracy and Development* 7).

¹³¹ This aspect will be discussed below.

¹³² Nyenti "Adjudication and Enforcement Mechanisms and the Administrative Framework" 55.

3.4 South African social security and the Constitution

Section 27(1)(c) of the Constitution¹³³ provides that *everyone* has the right to have access to social security, including appropriate social assistance in the case where they are unable to support themselves and their dependents. The obligation imposed on the state in terms of section 27(2), which states that the state must take reasonable legislative and other measures within its available resources to achieve the progressive realisation of each of these rights, must be read in conjunction with section 2 of the Constitution as previously discussed. According to Liffmann,¹³⁴ section 27 has been carefully crafted. It contains three sections. The first confers a general right of access to social security, including, if they are unable to support themselves and their dependents, appropriate social assistance. The second determines and circumscribes the scope of the positive obligation imposed upon the state to promote access to social security. This obligation includes the adoption of enabling strategies to assist people to gain access to the rights through their own endeavours and initiatives, as well as more direct forms of assistance to groups in particularly disadvantageous or vulnerable circumstances.

From the above statement, it is clearly a constitutional right of every South African citizen to have access to social security benefits, regardless of their employment status, as section 27 refers to 'everyone'. But then, in reality not everyone as stipulated in the above mentioned section of the Constitution has access to social security benefits. A large number of people, those in the informal sector inclusive, form part of those who are excluded from the existing social security system. The exclusion of this group of persons goes against the fundamental values enshrined in the Constitution. It defeats the very purpose of section 27(1)(c) of the Constitution. The exclusion of those in the informal sector therefore poses a constitutional problem in that, by limiting the right to access to

¹³³ Constitution of the Republic of South Africa, 1996.

¹³⁴ Liffmann "Social security as a constitutional imperative" 35.

social security benefits to a few people in the society, it goes against the spirit of equality which is enshrined in section 9 in the Bill of Rights of the Constitution.¹³⁵

The various social insurance schemes in South Africa are contributory in nature, whereby participants in the various social insurance schemes contribute a percentage of their income on a monthly basis, which is refunded to them in the event of any contingency. One can therefore argue that to extend social security to those in the informal sector, the state does not necessarily need to wait until such a time when it has available resources as stated in section 27(2) of the Constitution to provide a universal social security, because it is possible for a voluntary scheme to be developed in order to allow informal sector workers with sufficient funds to participate. However, although this may be a solution in theory, the reality is still that informal workers, even those financially capable to make contributions, are excluded from the scope of social insurance due to its focus on formal employment. This will therefore increase the number of people without any social security cover, and will go a long way to increase the number of dependents on the government sponsored social assistance scheme.

According to Mpedi,¹³⁶ those who appear to be most in need of the protection offered by social security are in effect excluded and marginalised. In practice these people are, amongst others, the rural and urban poor, the informally employed and the long-term unemployed. They do not qualify for social insurance benefits, since they were not and are not involved in the formal sector, or they may not be compelled to belong to such a scheme. As long as they are able-bodied, social assistance would normally also not reach out to them.

¹³⁵ Section 9 of the *Constitution of the Republic of South Africa*, 1996.

¹³⁶ Mpedi *Reinventing Labour Law* 277.

3.5 The South African social security legal framework

As should be clear by now, the social security system in South Africa is currently characterised by a strict distinction between social assistance and social insurance.¹³⁷ Whereby those who are or have been in formal employment benefit from fairly well-developed social insurance coverage, in particular unemployment insurance and workers' compensation, while social assistance (in particular the grant system) remains restricted in coverage based mainly on a categorical, means-tested approach which provides protection against a limited number of risks.¹³⁸ This means-tested approach entails that the state will have to consider the particular individual's financial resources to determine whether he or she can qualify for social assistance, while the categorical approach requires that beneficiaries must be both resident in and a citizen of the Republic of South Africa and fall within a particular category as identified by relevant legislations. Should an individual however be financially able to support him or herself, such a person will not be eligible for social assistance.

Social security protection is very often only extended to those individuals who qualify as an 'employee' in terms of the provisions of the various statutes which regulate the provision of social security in one way or another. An 'employee' is defined in terms of *Compensation for Occupational Injuries and Diseases Act* 130 of 1993 (herein after referred to as COIDA) as a 'person who has entered into or works under contract of service or of apprenticeship or learnership, with an employer.' Although the definition of an employee is cast in fairly wide terms (with the exception of the UIA which contains a more restrictive definition),¹³⁹ the fact remains that a vast portion of the economically active population are excluded from eligibility for social protection. Typically excluded from coverage are the unemployed, the self-employed, the informally employed and

¹³⁷ Olivier and Kalula "Legal framework and scope of coverage" 34.

¹³⁸ Dekker et al *Law Democracy and Development* 7) .2; Olivier and Kalula "Legal framework and scope of coverage" 34.

¹³⁹ This aspect will be discussed below.

others who are categorised as so-called atypical employees. As a result, these people are unable to claim compensation for workplace injuries and diseases (in terms of COIDA) as well as from claiming unemployment insurance (in terms of the new UIA).¹⁴⁰

Both the social assistance and the social insurance schemes and their limited scope of application shall now be examined.

3.5.1 Social Assistance

The South African social assistance scheme is regulated by the *Social Assistance Act*¹⁴¹ which pays out grants to those who are in need. Thus, the scheme is means-tested, as it pays out to those who are found to lack sufficient funds to cater for their particular needs. The provision of social assistance seeks to impact on the living conditions and income levels of recipients. The social grant system has become less of a net devised to catch an unfortunate few in terms of temporary distress, and more of a major commitment to help a large fraction of the population over sustained periods.¹⁴² The social assistance scheme is non-contributory in nature in the sense that recipients of such a scheme do not make any contribution to the said scheme. The scheme is based on state funds, as payments are made on the basis of an annual budgetary allocation.¹⁴³ This protection is largely provided through a tax-financed social assistance scheme.¹⁴⁴

According to Olivier and Kalula,¹⁴⁵ from the view point of a constitutional and international human rights instruments approach, the approach of the concept of social assistance in the applicable legislation is unrealistically narrow. This is due to the fact that social assistance is limited in its scope of coverage, through its means-tested approach, and

¹⁴⁰ Basson "Social security legislation" 239.

¹⁴¹ 13 of 2004 (hereafter referred to as SAA).

¹⁴² Pillay 2007 *Africa Institute of South Africa* 18.

¹⁴³ Olivier and Kalula "Legal framework and scope of coverage" 38.

¹⁴⁴ Mpedi *Reinventing Labour Law* 271.

¹⁴⁵ Olivier and Kalula "Legal framework and scope of coverage" 38.

thus impacts the life of only a particular category of people determined by the applicable legislation. As a result of this means-tested and categorical approach, informal sector workers who form part of the needy in the South African society, are left in desperate situations to cater for themselves with no assistance.

The discussion below will indicate the different grants in the social assistance scheme available to certain categories of people as identified by section 4 of the SAA.

3.5.1.1 Old age grant

This grant is available to women over the age of 60 years and men over the age of 65 years,¹⁴⁶ provided he or she complies with the applicable means-test. The rationale behind the Old Age Pension is that the elderly (60 years for women and 65 for men) cannot or should not be expected to work, and in the absence of adequate savings or support from family members, risk falling into desperate poverty.¹⁴⁷ This grant is the largest current social security transfer in South Africa, and for those elderly persons who receive it, the grant is an important poverty alleviation means to the entire household.¹⁴⁸ According to Pillay,¹⁴⁹ estimates suggest that each social pension paid to a beneficiary helps between five and six other people in a household. The Old Age Pension enables old age pensioners to support their extended family, including grandchildren and unemployed adults. These pensions are used to meet basic needs such as food, clothing, education and the health needs of the children.

3.5.1.2 Disability grant

This grant is allocated to persons who have been medically diagnosed to be unfit to engage in any gainful activity. It is payable to persons between the ages of 18 to 59 who

¹⁴⁶ Section 10(a)(b) of the SAA.

¹⁴⁷ Pillay 2007 *Africa Institute of South Africa* 19.

¹⁴⁸ Olivier and Kalula "Legal framework and scope of coverage" 39.

¹⁴⁹ Pillay 2007 *Africa Institute of South Africa* 19.

are disabled, owing to a physical or mental disability, unfit to obtain any service, employment or profession which would guarantee the means needed to enable him or her to provide for his or her maintenance.¹⁵⁰ The current value of disability grant is R820.

3.5.1.3 Child support grant

The child support grant is paid to primary caregivers for children under the age of 14.¹⁵¹ Given the widespread poverty among children, the Child Support Grant is a means-tested grant that was introduced in 1998 and initially offered a modest amount of R100 per month per child under the age of 7. Its sole purpose was to help children acquire basic sustenance. As rising orphan hood stemming from the HIV/AIDS epidemic has increased the demand for this type of grant, the Child Support Grant was extended to the age of 14 in 2006, and currently stands at R190 per month. The Child Support Grant invariably boils down to the fact that an adult “primary caregiver” (the person who has responsibility for the child on a daily basis),¹⁵² as opposed to a biological parent could be a beneficiary of a grant aimed at children. Primary caregivers who are not biological parents are entitled to hold grants for a maximum of 6 children.

3.5.1.4 War veterans grant

A person is eligible for a war veteran`s grant if he/she has attained the age of 60 years and owing to physical or mental disability, is unable to provide for his/her maintenance.¹⁵³ This grant is available to persons who fought in the two world wars, performed any naval, military or air force service during those wars or the Korean War.¹⁵⁴ This is subject to

¹⁵⁰ Section 9(a)(b) of the SAA.

¹⁵¹ Section 6 of the SAA.

¹⁵² Pillay 2007 *Africa Institute of South Africa* 23.

¹⁵³ Section 11(a)-(b) of the SAA.

¹⁵⁴ Section 11(b)(i)-(iv) of the SAA.

them meeting the means test requirement. The applicant must be resident in South Africa at the time of application,¹⁵⁵ must be 60 years and older, or must be disabled.¹⁵⁶

3.5.1.5 Military Pension

The military pension, a non-contributory scheme, is regulated by the *Military Pension Act*.¹⁵⁷ The act makes provision for the payment of benefits to members of the South African National Defence Force. Benefits depend on the extent of the disability. A gratuity (a once-off cash lump sum) is paid if the degree of disability is less than 20 percent, while an annuity (monthly pension) is paid if the degree of disability exceeds 20 percent. Military pensioners are also entitled to medical treatment and appliances for their disabilities.¹⁵⁸

3.5.1.6 Special Pension

A special pension is also a non-contributory fund which is regulated by the *Special Pensions Act*.¹⁵⁹ The act makes provisions for benefits to persons who are disabled and who made sacrifices or served the public interest in the establishment of a non-racial democratic order.¹⁶⁰ The South African special pension's administration falls under the Ministry of Finance. The purpose of the Act is to compensate those who were involved in the liberation struggle and who on that account lost the opportunity to provide for a pension before 2 February 1990 for a period of at least five years. It also seeks to compensate the surviving spouses and dependents of such persons.¹⁶¹ These pensions

¹⁵⁵ Section 5(b) of the SAA.

¹⁵⁶ Section 11(a)-(b) of the SAA.

¹⁵⁷ Act 84 of 1976.

¹⁵⁸ Preamble of the Military Pension Act.

¹⁵⁹ Act 69 of 1996.

¹⁶⁰ Le Roux "Invalidity" 121.

¹⁶¹ Preamble of the Special Pension Act.

and gratuities are only payable to persons whose involvement in political conflict made it impossible for them to provide for themselves.¹⁶²

3.6 Social Insurance

Another form of social security available in South Africa is the social insurance scheme. Social insurance refers to the use of compulsory insurance as a means to make available medical and cash benefits in the case of sickness, unemployment, disability, widowhood, old age, occupational injuries and diseases, as well as injuries occurred in road accidents.¹⁶³ The social insurance scheme is financed from contributions made by both the employers and their employees and is based on a risk-based approach, in other words based on various risks an individual encounters in the course of formal employment. From this it follows that the self-employed, the informally employed, and several other categories of the atypically employed are for all legal and practical purposes excluded from vast areas of the social insurance system in South Africa, notably compensation for workplace injuries and diseases, and unemployment insurance.¹⁶⁴ As a result those in the informal sector are excluded from participation, as they are not necessarily in the standard employer-employee relationship.

According to Mpedi,¹⁶⁵ it is, hardly surprising that access to employment-related schemes depends largely on the existence of an employer-employee relationship as contained in the labour laws. As a result, persons who do not fit within the definition of 'employee' (for example the independent contractors, informal sector workers and self-employed) are excluded and marginalised from the scope of coverage of the employment-based social insurance schemes. As will be seen below, social insurance legislation focuses on who is an employee to determine applicability.

¹⁶² Myburgh "Hardship" 184.

¹⁶³ Nyenti " Adjudication and Enforcement Mechanisms and the Administrative Framework" 55

¹⁶⁴ Liffman *et al* 2009 *Law Democracy and Development*. 16.

¹⁶⁵ Mpedi *Reinventing Labour Law* 272.

3.6.1 Unemployment Insurance

Unemployment insurance is governed by the *Unemployment Insurance Act* that pays unemployment insurance benefits to employees. The aim of this act is to establish an Unemployment Insurance Fund (herein after referred to as UIF) to which employers and employees contribute and from which employees who become unemployed or their beneficiaries, as the case may be, are entitled to benefits and in so doing to alleviate the harmful economic and social effect of unemployment.¹⁶⁶ The funds collected from the employer and the employee is to pay unemployment benefits to certain employees in the event of unemployment as a result of dismissal, illness, maternity and adoption. The contribution made by the employers and employees are collected by the commissioner of the South African Revenue Service or by the unemployment commissioner.¹⁶⁷ The fund may also pay dependents' benefits related to the dependents of the contributor.¹⁶⁸ The UIA does not apply to all in South Africa,¹⁶⁹ instead, unemployment insurance covers only those who are defined as employees by the UIA. The Act defines employees as:¹⁷⁰

Any natural person who receives remuneration or to whom remuneration accrues in respect of services rendered or to be rendered by that person, but excludes any independent contractor.

According to Dekker,¹⁷¹ the emphasis on remuneration in the definition of "employee" signifies a more restricted scope of coverage than the approach followed for "employees" in terms of the labour laws. The definition of an employee by the UIA limits its scope of application in the sense that only those who fit the definition of an employee have access to the unemployment insurance benefits. As a result of this narrow notion of who is an employee, those in the informal sector are excluded from coverage. The UIF covers only

¹⁶⁶ Section 2 of UIA.

¹⁶⁷ Section 4 (2)(a-b) of UIA.

¹⁶⁸ Olivier and Mhone "Social Protection in SADC: Developing an Integrated and Inclusive Framework" 148.

¹⁶⁹ Section 3 of UIA.

¹⁷⁰ Section 1 of UIA.

¹⁷¹ Dekker Informal Social Security 58.

5% of the unemployed and about 5 million unemployed people are without any form of income support from the social security system.¹⁷² In order to extend coverage to more people, the UIF widened its scope of protection to also include domestic workers and seasonal workers.¹⁷³ Although the UIF widened its scope of protection to include the above mentioned categories of workers, it is still not sufficient to cover a wider range of 'worker'.

3.6.2 Compensation for Occupational Injuries and Diseases

The compensation for occupational injuries and diseases is regulated by the *Compensation for Occupational Injuries and Diseases Act*. COIDA covers work-related injuries and diseases which arise out of and in the course of an employee's employment and resulting in a personal injury or death of the employee.¹⁷⁴ This act is administered by the Department of Labour. Compensation for employment injuries and diseases is paid to employees and their dependents out of the compensation fund, to which employers contribute on the basis of industry-based risk assessment.¹⁷⁵ Employers are obliged to pay contributions, calculated by taking into account the risks to which the employees are exposed to in the specific sector or line of work in which the employee is involved.

The benefits under COIDA include medical care (usually for a period of up to 24 months), compensation for temporary, total or partial disablement, compensation for permanent disablement, dependents' benefits, certain transportation costs, a constant care attendant grant and a funeral grant. Compensation is usually paid as a regular income, except where, among others, in the case of permanent disablement, the degree of disablement is established to be 30 per cent or less, and in the event of a part of the

¹⁷² Olivier and Mhone Olivier "Social Protection in SADC: Developing an Integrated and Inclusive Framework" 148.

¹⁷³ *Unemployment Insurance Act* 63 of 2001.

¹⁷⁴ Section 1 of COIDA.

¹⁷⁵ Olivier and Kalula "Legal framework and scope of coverage" 37.

benefit accruing to a surviving spouse. The scope of application of COIDA is once again based on the definition of an employee, and the act defines an employee as follows:¹⁷⁶

“Employee” is defined as a person who has entered into or works under a contract of service or of apprenticeship or learnership, with an employer, whether the contract is express or implied, oral or in writing, and whether the remuneration is calculated by time or by work done, or is in cash or in kind.

The act provides for the specific exclusion of certain categories of workers which are: A person, including a person in the employ of the state, performing military service or undergoing training referred to in the *Defence Act*¹⁷⁷ and who is not a member of the permanent force of the South African Defence Force; a member of the Permanent Force of the South African Defence Force while on “service in defence of the Republic” as defined in section 1 of the *Defence Act*; a member of the South African Police Force while employed in terms of the *South African Police Service Act*,¹⁷⁸ on “service in defence of the Republic” as defined in section 1 of the *Defence Act*; a person who contracts for the carrying out of work and he or she engages other persons to perform such work and a domestic employee employed as such in a private household.¹⁷⁹ Thus the scheme turns out to exclude vulnerable workers such as domestic workers, independent contractors and the self-employed that are injury prone, considering the poor nature of their jobs and that they may be exposed to high work related risk. It is clear that these workers have no access to formal social protection as far as COIDA is concerned.

Dekker¹⁸⁰ opines that:

The risk for people in the informal sector of sustaining occupational injuries and diseases is even greater, because they work under less strict supervision and in more dangerous and desperate situations. Ironically, those in need of more protection therefore have less protection in terms of the formal social security system.

¹⁷⁶ Section 1 of COIDA.

¹⁷⁷ Act 44 of 1957.

¹⁷⁸ Act 7 of 1958.

¹⁷⁹ Section 1(d)(I-V).

¹⁸⁰ Dekker Informal Social Security 62.

However, under COIDA the definition of an “employee” has been widened to include more persons. For example, the definition was broadened to also include the dependents of a deceased employee.

3.6.3 Pension

There is no national pension scheme to cater for the wellbeing of employees after retirement. As a result of this, private funds have been established for this purpose. This fund is regulated by the *Pension Fund Act*.¹⁸¹ Due to the private nature of the scheme, only the rich and those who are in formal employment can afford such a scheme. Therefore those who are in need of social protection such as the poor and those in the informal sector are excluded from such a scheme due to their low income. According to Olivier and Kalula,¹⁸² there is no obligation to belong to a pension or provident fund. The implication is that those workers who do not so belong, including the informally and self-employed, often become dependent on state social grants for the elderly.

3.6.4 Occupational Health and Safety

Occupational health and safety is regulated by the *Occupational Health and Safety Act*,¹⁸³ (herein after referred to as OHSA) The Department of Labour is responsible for the administration of this Act. The purpose of the OHSA, is to provide for the health and safety of persons at work and for the health and safety of persons in connection with the use of machinery. The Act provides social protection to those who are considered as employees as per section 1 of the Act which states that an employee is any person who is employed by or works for an employer and who receives or is entitled to receive any remuneration or who works under the direction or supervision of an employer or any

¹⁸¹ Act 24 of 1956.

¹⁸² Olivier and Kalula “Legal framework and scope of coverage” 41.

¹⁸³ Act 85 of 1993.

other person. Looking at the purpose of OHSA, it is clear that its aim is to prevent injuries and diseases in the workplace. The fact that section 1 of the Act limits the definition of an employee to persons employed by or who works for an employer, once more exclude informal sector workers such as street vendors and industrial outworkers, who work in hazardous conditions and are more likely to sustain injuries or occupational diseases due to the poor nature of their job.

3.7 Flaws of the South African social insurance system

According to Olivier and Mhone,¹⁸⁴ it is obvious that relying on the notions of “employee” and “contract of service” to signify those eligible for compensation under a scheme such as COIDA, excludes large categories of the atypically employed, including those in the informal sector. Consequently the self-employed, the informally employed and several other categories of the atypically employed are for all legal and practical purposes excluded from vast areas of the social insurance system in South Africa.¹⁸⁵

Despite the extension of social security benefits to some groups of people by the above mentioned statutes,¹⁸⁶ majority in the informal sector are still excluded, mainly because they do not fit the definition of an “employee” under these statutes. Furthermore, the exclusion of certain categories of people from any social security benefit is due to the fact that there exists no legal obligation to participate in a particular scheme or programme, aimed at insuring against certain social risk.¹⁸⁷

As a result of a lack of statutory obligation to belong to any social security scheme, Olivier and Mhone,¹⁸⁸ stated that:

¹⁸⁴ Olivier and Mhone “Social Protection in SADC: Developing an Integrated and Inclusive Framework” 147.

¹⁸⁵ Olivier and Mhone “Social Protection in SADC: Developing an Integrated and Inclusive Framework” 150.

¹⁸⁶ UIF 2001 and COIDA 1993.

¹⁸⁷ Olivier MP and Kalula ER “Legal framework and scope of coverage” 49-50.

¹⁸⁸ Olivier and Mhone “Social Protection in SADC: Developing an Integrated and Inclusive Framework” 153.

There is no statutory obligation to the effect that contributions/benefits have to be transferred or preserved, should an employee change jobs or terminate his/her services, the implication is that (ex) – employees so affected may become reliant on the limited state social support for the elderly. The same result flows from the absence of an obligation to belong to a pension or provident fund. Consequently, those workers who do not so belong, including the informally and self-employed, later often become dependent on state social assistance.

As stated previously¹⁸⁹ the social insurance scheme in South Africa is developed on a risk-based approach, which is based on the nine risks provided by the ILO.¹⁹⁰ In a country like South Africa, social security should be considered beyond the nine risks provided by the ILO. According to Nyenti,¹⁹¹ social security should include the provision of portable water, nutrition, shelter and adequate health facilities. In essence, then, the effect of relying on the "employee" and "contract of service" notions (or similar notions employed by the legislature in order to signify coverage) is that large groups of those who work atypically, in particular independent contractors, so-called dependent contractors, the self-employed and the informally employed as well as the long-term unemployed, are excluded from protection. Given the strict approach of South African social assistance, whereby protection in the form of social assistance is restricted to certain categories (in particular old age, disability and child care grants) and is made subject to an income and assets test, the position thus is that these persons, as a rule, enjoy no or very little social security protection.¹⁹²

3.8 Conclusion

From the above discussion it is clear that social security in South Africa is mainly limited to those who are in formal employment, while the bulk of the population who are informally employed are mostly excluded from the available social security schemes. The

¹⁸⁹ See Para 2.3. above

¹⁹⁰ See Chapter 2. above

¹⁹¹ Nyenti " Adjudication and Enforcement Mechanisms and the Administrative Framework" 56.

¹⁹² Liffman *et al* 2009 *Law Democracy and Development* 18.

reason for this limited availability of social security is because the legal framework has a limited scope on the notion of those who are entitled to any social security benefits. Thus, very few people qualify as employees and the system is based on a limited risk based approach. As a result of this, those in the informal sector are excluded from any social insurance coverage, because they do not fall under the definition of an “employee” as defined by various statutes, and consequently they are largely excluded from any social assistance scheme due to the fact that it is means-tested in nature.

The lack of a coherent approach in South African social security is clearly discernible and needs to be researched properly. In a sense the present system suggests an archaic and rigid distinction between social insurance and social assistance. For instance it lets those who are or have been in formal employment benefit from a fairly well-developed social insurance coverage (in particular unemployment insurance and workers' compensation coverage), while social assistance, in particular the grant system, remains restricted in its categorical means-tested approach which provides meagre protection against the occurrence of a limited number of social risks. Though the informal sector is traditionally low waged with very little income security, they are not necessarily covered by the social assistance scheme if they do not fall within the category of persons covered by the scheme.

Moving away from a restrictive and more westernised notion of social security, and embracing a wider notion, which reflects the socio-economic realities of the South African society will go a long way to address this issue. Lessons should be taken from international and regional instruments as previously discussed as well as other jurisdictions, to follow in the next chapter, to facilitate the extension of social security benefits to informal sector workers in South Africa.

Chapter 4

Extending social security coverage in comparative jurisdictions

4.1 Introduction

This chapter is aimed at providing examples, taken from other jurisdictions, notably India and Ghana, where initiatives have been developed to extend social security benefits to informal sector workers. These examples should be able to assist in proposing recommendations on how social security benefits can be extended to informal sector workers in South Africa.

4.2 Extending social security coverage to informal sector workers in India

Unorganised or informal sector workers constituted about 86% of the workforce in the Indian economy in 2004-2005 and informal employment both in the organised and unorganised sector as 92%. Out of the total 457.5 million workers in India, 422.6 million (92.4%) are engaged in the informal employment sector. Of this workforce 393.5 million workers are engaged in informal employment in the unorganised sector and 29.1 million workers are in informal employment in the organised sector. This national level pattern of informal workers occupying around 90% of the workforce is more or less similar in the case of most of the prominent states in the country.¹⁹³

The growth of formal employment in the country has always been less than that of the total employment, indicating a faster growth of employment in the informal sector. Temporal data suggests that within the formal sector also the proportion of informal or unorganised workers is on the increase.¹⁹⁴

¹⁹³ Ramesh *Extending Social Security for Unorganised Workers in India* 3.

¹⁹⁴ Ramesh *Extending Social Security for Unorganised Workers in India* 3.

Notwithstanding its prominence in the economy in terms of employment provision and contribution to the Gross Domestic Product, the unorganised or informal sector in India suffers from a low productivity syndrome, compared to the organised or formal sector. The prominent features of this sector are lower real wages and poor working or living conditions. Furthermore, the sector is characterised by excessive seasonality of employment (especially in the agricultural sector), preponderance of casual and contractual employment, atypical production organisations and work relations, negation of social standards and worker rights and denial of minimum wages.¹⁹⁵ Given these underlying characteristics, providing social protection to the workers in the unorganised sector (through effective social security measures and welfare legislations) is one of the major challenges faced by policy planners. On the other hand social security entitlements such as provident funds, gratuity and health cover, that are legally binding on the Government of India are available for a majority of formal workers in the organised sector.¹⁹⁶

The term generally used in India to denote the informal sector is 'unorganised sector' and informal workers are referred to as 'unorganised workers'.¹⁹⁷ The unorganised sector is defined in India as:

All unincorporated private enterprises owned by individuals or households engaged in the production and sale of goods and services and operated on a proprietary or a partnership basis and employing less than 10 persons.¹⁹⁸

The unorganised sector is an enterprise-based concept and does not reflect the characteristics of the jobs or employment relationships. All the casual workers and unpaid family workers in all enterprises, irrespective of the sector are being considered as unorganised workers.¹⁹⁹

¹⁹⁵ Ramesh *Extending Social Security for Unorganised Workers in India* 4.

¹⁹⁶ NCEUS *Social security for unorganised workers*. 10-11.

¹⁹⁷ NCEUS *Social security for unorganised workers* 6.

¹⁹⁸ NCEUS *Social security for unorganised workers* 7.

¹⁹⁹ NCEUS *Social security for unorganised workers* 8.

Social security arrangements in the unorganised sector are confined to a small number of workers and assume the form of welfare funds for selected categories of workers, sponsored by the central government and few state governments.²⁰⁰ Those involved in the unorganised sector therefore enjoy very little job and social security. As a result the need for security for the informal sector in India includes health security, maternity needs, life and accident security, old age and unemployment security.²⁰¹

The law that governs the unorganised sector on social security protection is the *Unorganised Worker's Social Security Act* 33 of 2008 and the National Commission on Enterprises in the Unorganised Sector (herein after referred to as NCEUS).²⁰² The mentioned Act provides for the social security and welfare of unorganised workers to some extent. The Act has adopted a deliberately extensive notion of what is comprehended by the term 'unorganised sector' and of who is intended to be an employer and a worker for the purposes of covering those embedded in a relationship of work in the informal economy.²⁰³ According to the Act the unorganised sector shall include individuals or self-employed workers, engaged in the production or sales of goods or providing service of any kind whatsoever. The definitional extension could also occur on an industry basis. For example, in the beedi industry (hand-rolled cigarettes), the *Beedi and Cigar Workers (Conditions of Employment) Act* 32 of 1996 also covers a person employed directly or through any agency who is given raw materials by an employer or a contractor: in this way, informal workers such as outworkers and home workers are included. The scheme is financed by the beneficiaries and the government, both at central and state level depending on the nature or level of the scheme.²⁰⁴

²⁰⁰ NCEUS *Social security for unorganised workers* 11.

²⁰¹ NCEUS *Social security for unorganised workers* 14 19.

²⁰² The NCEUS is a supervisory and advisory body for the unorganised sector for examining the the problems confronting the enterprises in the unorganised/informal sector and making recommendations to provide technical, marketing and credit support to these enterprise.

²⁰³ Section 2(k) of the Unorganised worker's Social Security act 33 of 2008

²⁰⁴ Section 4(1) of the Beedi and cigar (Conditions of Employment) Act

According to the *Unorganised Worker's Social Security Act 33 of 2008*, the Central Government shall from time to time, develop suitable welfare schemes for unorganised workers relating to life and disability cover, health and maternity benefits, old age protection and any other benefits as may be determined by the Central Government.²⁰⁵ On the other hand the Act states that the state government shall from time to time, develop suitable welfare schemes for unorganised workers, including schemes relating to provident funds, employment injury benefit, housing, educational schemes for children, funeral assistance and old age homes.²⁰⁶

As per the Act, every unorganised worker shall be eligible for registration in order to be eligible for social security benefits subject to the fulfilment of the following conditions: he or she shall have completed fourteen years of age and issued a self-declaration by him or her confirming that he or she is an unorganised worker.²⁰⁷ Upon registration the Act entails that if a scheme requires a registered unorganised worker to make a contribution, he or she shall be eligible for social security benefits under the scheme only upon payment of such contribution.²⁰⁸

In an effort to extend social security coverage to workers in the unorganised sector, the Central Government of India, together with state governments²⁰⁹ has come up with a number of initiatives. The social security model that has been adopted by the Government of India as well as the different state governments and NCEUS entails welfare-funds. The initiatives of the Government of India, NCEUS and the state of Kerala whose initiatives

²⁰⁵ Section 3(1a-d) of the Unorganised worker's Social Security act 33 of 2008

²⁰⁶ Section 4(a-g) of the Unorganised worker's Social Security act 33 of 2008

²⁰⁷ S 10(1a-b) of the *Unorganised worker's Social Security act 33 of 2008*

²⁰⁸ S 10(4) of the *Unorganised worker's Social Security act 33 of 2008*

²⁰⁹ As per the Constitution of India, a federal structure of governance is followed in the country, where a Union Government (commonly referred as Central Government), governs a federal union of 28 states and 7 union territories, collectively called the Republic of India. Under the Constitution of India, labour is a subject in the concurrent list where both the Central & State Governments are competent to enact legislation and implement policies, subject to certain matters being reserved for the Centre.

have been hailed as an example to be emulated by other states as well as other countries shall be examined below.

4.2.1 The Central Government Initiatives

Due to a growing recognition of the burgeoning informal sector and its resultant adverse implications on labour standards as well as social security systems, during the recent past, India have been paying considerable attention towards designing more effective social safety nets and revamping the existing measures. Of late, issues like targeting, proper identification, expansion of coverage as well as designing of efficient delivery mechanisms received more attention than ever in the past. Alongside these aspects, mounting fiscal deficit scenarios forced the governments (both at the centre and in the states) to seek alternative approaches to devise more cost-effective and targeted interventions as well as to seek enhanced participation of and contributions from other stakeholders, such as the employers as well as the social or community actors (including the targeted beneficiaries themselves).²¹⁰

The model for social security that has so far been adopted by the central Government as also the State Governments is that of Welfare Funds. Typically, this model is a tripartite one, consisting of the representatives of workers, employers (where identifiable) and of the government.²¹¹

In India, separate statutes²¹² have been enacted by Parliament to set up welfare funds to be administered by the Ministry of Labour which funds provide housing, medical care, social security, education and recreational facilities respectively to workers in the informal sector.²¹³ This social security scheme in India for the informal sector or unorganised

²¹⁰ Ramesh *Extending Social Security for Unorganised Workers in India* 4.

²¹¹ NCEUS *Social security for unorganised workers* 20.

²¹² *The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996* and *the Building and other Construction Workers Welfare Cess Act 1996*.

²¹³ NCEUS *Social security for unorganised workers* 22.

workers is executed on a sector basis, whereby different welfare funds are set up to provide protection of workers in the different sectors.

Firstly, in 2000, a universal social insurance scheme called *Janshree Bima Yojana* was launched to target the urban and rural poor who live below the poverty line or on the margin. The premium for the insurance cover would be Rs. 200²¹⁴ per annum of which fifty per cent would be borne by the Central Government through the newly set up social security fund. The scheme provides for the payment of Rs. 20,000 to the nominee in the event of death of the policy-holder due to natural causes. In the event of accidental death or permanent disability, the benefit will be enhanced to Rs. 50,000, while in the case of partial disability, the policy-holder would get Rs. 25,000. The implementation of the scheme, which is currently functional and expanding, is designed with the help of some local level nodal agencies, which could be local self-governments, non-governmental organisations and self-help groups (SHGs) or any other institutionalised arrangements.²¹⁵

Secondly, in 2003 another insurance scheme called the *Varishta Pension Bima* was launched. The scheme is exclusively meant for unorganised sector workers aged 55 years and above. The amount of pension benefit varies according to the amount invested from a minimum of Rs. 33,335 to a maximum of Rs. 266,665. The scheme is implemented by the Life Insurance Corporation of India (herein after referred to as LIC). Subsidy is provided by the Government of India to the LIC to the tune of the difference of the actual pension pay-out at 9% and the amount actually earned by the LIC on the corpus.²¹⁶ This scheme is being fully financed by the investments of the beneficiaries with an annual return of 9 per cent in the form of monthly pension.²¹⁷

²¹⁴ Rs stands for the Rupee which is the monetary unit of the Republic of India.

²¹⁵ NCEUS *Social security for unorganised workers* 24.

²¹⁶ NCEUS *Social security for unorganised workers* 24.

²¹⁷ Ramesh *Extending Social Security for Unorganised Workers in India* 5.

Furthermore, in 2004, a community based Universal Health Insurance System (herein after referred to as UHIS) was also launched by the public sector general insurance companies of the country, which aimed at providing some reimbursement of medical expenses, life-cum-accident insurance and compensation on job loss to the families below the poverty line. The UHIS was redesigned over the period of 2004 and 2005 exclusively for persons and families below the poverty line with a premium of Rs. 165 for individuals, Rs. 248 for families of five persons and Rs. 330 for a family of seven. As per the contingencies mentioned above, benefits are allocated as follows: reimbursement of medical benefits were up to Rs. 30,00 towards hospitalisation, an insurance cover for death due to accident of Rs. 25,000 and compensation due to loss of earnings at the rate of Rs. 50 per day for up to a maximum of fifteen days. However, the scheme excludes maternity benefits and outpatients care.²¹⁸

As part of the Central Government initiative, there have been some important legislative developments that have had a positive impact on the welfare of unorganised sector workers. In 1996, two umbrella statutes towards regulating the conditions of work and provision of a measure of social security to the group of construction workers, which constitutes one of the largest segments of workers in the unorganised sector – were passed by the Parliament of India. The Acts concerned with this scheme are the *Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996* and the *Building and other Construction Workers Welfare Cess Act 1996*. Under these acts, the Central Government came up with the *Building and Other Construction Workers (ECS) Central Rules, 1998*. The Acts set out rules to be followed by employers as far as the provision of social security benefits to construction workers is concerned. These Acts are applicable to every establishment that employs ten or more workers in any building or construction work. The welfare funds in the Acts are to be financed by contributions from beneficiaries, levy of a cess on construction workers at a rate ranging between 1 and 2% of the construction cost incurred by an employer and non-mandatory

²¹⁸ Ramesh *Extending Social Security for Unorganised Workers in India* 5.

grants by state or central governments. The benefits include support in the event of an accident, old age pension, housing loans, payment of insurance premiums, children`s education, medical and maternity benefits.²¹⁹

Apart from the abovementioned Central Government initiatives, one of the major recent policy interventions of the government to focus on the unorganised sector to strengthen it further is the setting up of the NCEUS as a supervisory and advisory body for the unorganised sector for examining the problems confronting the enterprises in the unorganised or informal sector and making recommendations to provide technical, marketing and credit support to these enterprises.²²⁰

As per the NCEUS, three forms of social security can be provided to about 300 million workers in the unorganised sector. These include health insurance, life insurance and old age security, involving joint financing by the workers, employers and the Central and State Government.²²¹ A distinct feature of the NCEUS`s proposal is its right based approach, as the scheme envisages a legally enforceable entitlement for the beneficiaries. Unlike many other earlier schemes such as the *Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act*, 1996 and the *Building and other Construction Workers Welfare Cess Act* 1996 and the *Varishta Pension Bima*, it makes all unorganised sector workers eligible for social security, irrespective of their occupation and duration of employment.²²²

The Central Government of India, through different legislative interventions and initiatives, as well as proposals from NCEUS, has managed to provide a considerable amount of social security benefits to millions of unorganised sector workers in the different sectors. However, the task of providing social security benefits to unorganised workers does not rest only on the Central Government of India; state governments also

²¹⁹ NCEUS *Social security for unorganised workers* 26.

²²⁰ NCEUS *Social security for unorganised workers* 1.

²²¹ Ramesh *Extending Social Security for Unorganised Workers in India* 6.

²²² Ramesh *Extending Social Security for Unorganised Workers in India* 7.

have a significant role to play as far as extending social security benefits to unorganised or informal sector workers is concerned. Below the efforts of the state of Kerala which has a huge experience as far as extending social security benefits to unorganised sector works is concerned shall be discussed.

4.2.2 State Level Initiatives

Various state governments in India are also involved in the extension of social security benefits to the unorganised or informal sector workers. One of such states is the state of Kerala.

4.2.2.1 Kerala Welfare Fund for Unorganised Sector Workers

The Welfare Fund model of social security for informal sector workers in Kerala is now more than thirty years old. The Kerala approach reflects what the workers in the informal sector could achieve in countries like India, given the contemporary political context and the democratic political framework of the state.²²³

Unlike most other states in India, Kerala shows very little disparity in several social development indicators such as between rural and urban areas as well as between the male and female population. This is because the Kerala Government, in response to sustained public action, has been providing a range of promotional and protective forms of social security, which cover an overwhelming majority of the population, especially those in the poorer households. This has helped Kerala to raise its level of human development for the population, in general and the poorer sections in particular.²²⁴

Kerala has twenty three Welfare Boards for the unorganised workers, which cover a wide range of occupations and have come to be seen as an important institutional arrangement

²²³ Kannan 2002 *IJLE* 6-7.

²²⁴ NCEUS *Social security for unorganised workers* 28.

for providing social security to the informal sector workers such as loading and unloading (known as head-load workers), motor transport, clerks working with legal advocates, artisans, fish workers and hand loom workers. To this should also be added such groups as cashew and coir processing workers dominated by women.²²⁵

Contributions to these funds are made by the workers, employers (where identifiable) and the Government. The individual contributions of employers and employees are determined after taking into account a number of both specific and common factors. Thus, these welfare funds offer some form of social security at the end of the working life, social insurance in the event of sickness, accident and/or death and a measure of welfare arrangements in the form of assistance for housing, education of children and marriage of daughters. In certain cases where the Welfare Funds are not in a position to provide old age pension, the state came out directly to provide such pensions from the budget.²²⁶ Some of the benefits from the Kerala Welfare Funds are briefly discussed below.

4.2.2.1.1 Provident Fund

This is provided by only three funds, the *Kerala Motor Transport Workers' Welfare Fund* of 1985, *Kerala Toddy Workers' Welfare Fund* of 1969 and *the Kerala Abkari (workers in liquor shops) Welfare Fund* of 1990.²²⁷ In the case of motor workers, the contribution of workers are repaid with interest. For workers in liquor shops the net credit on retirement is used for financing a monthly pension. In the case of Toddy tappers both workers and employers contribute to the provident fund.²²⁸

²²⁵ Kannan 2002 *IJLE* 12.

²²⁶ Kannan 2002 *IJLE* 12.

²²⁷ NCEUS *Social security for unorganised workers* 195.

²²⁸ Kannan 2002 *IJLE* 29.

4.2.2.2.2 Disability and Accident Cover

The concern for disability or death arising out of accidents has been so strong that all the funds have provided for some cover. However, the relatively politically influential sections of workers have provided for a monthly pension in the event of permanent disability. In all others it is a lump sum *ex gratia* payment from the Kerala welfare fund except in the case of fish workers, administered by the *Kerala Fishermen Welfare Fund* of 1989²²⁹ who, in addition to an *ex gratia*, also have a group insurance cover.

4.2.2.2.3 Health Cover

There is no formal insurance cover provided to the workers. Health cover is usually in the form of reimbursement of a part of the expenses incurred for medical treatment. Ten funds provide for some financial assistance in the event of treatment for illness and/or accident. Those who enjoy this benefit are toddy tappers, khadi workers, coir workers, workers in small scale factories and shops, motor workers, artisans and skilled workers, fish workers, handloom workers and construction workers.²³⁰

4.2.2.2.4 Educational Assistance

A majority of funds have provided for this assistance. These are usually for the education of the children of unorganised sector workers. A number of funds such as the Kerala Toddy Workers` Welfare Fund, the Kerala Agricultural Workers` Welfare Fund, the Kerala Construction Workers` Welfare Fund, the Kerala Motor Transport Workers` Welfare Fund and the Kerala Handloom Workers` Welfare Fund have instituted incentives for children who do well in their education.²³¹

²²⁹ NCEUS *Social security for unorganised workers* 195.

²³⁰ Kannan 2002 *IJLE* 31.

²³¹ Kannan 2002 *IJLE* 32.

4.2.2.2.5 Housing Assistance

The relatively powerful groups of workers such as head-load workers, workers in liquor shops and construction workers have this benefit. To this should be added the handloom weavers who are not economically powerful as the above but seem to enjoy political backing. For the majority of workers there is no provision for housing assistance. However, there are several housing schemes for the poor in Kerala that this aspect of social security has been quite seriously addressed as part of the state government's poverty alleviation programmes.²³²

This model of providing a *modicum* of social security for the workers in the informal sector has been a remarkable one. Kerala now has an accumulated experience of implementing this model for more than three decades. Kerala's efforts in extending social security benefits to unorganised sector workers have improved the life of millions of workers.

Apart from the efforts made by the central and states government in India to extend social security benefits to informal sector workers, NGO's are also involved in this effort. The Self Employed Women's Association (herein after referred to as SEWA) is an example of an NGO in India that has extended social security to workers in the informal sector. SEWA came into being in 1979, with the sole aim to improve the welfare of women in the informal sector. The informal sector workers are divided into four categories, namely vendors, hawkers, home-based workers and labourers. SEWA provides a number of services for its members such as credit, training, child care, health care, pension and insurance. In order to provide these services SEWA has links with private insurance companies. The strength of SEWA is that it responds to the specific needs and priorities of the members and also responds to both immediate and future needs.²³³ SEWA runs the largest comprehensive contributory social protection scheme for informal workers in

²³² Kannan 2002 *IJLE* 32.

²³³ Olivier *Extension of social insurance coverage* 16.

India today. One third of the premium is financed through interest paid on a grant provided by the German Technical Agency (GTZ), one third through direct contributions by women workers and one-third through a subsidised package scheme, provided by the Life Insurance Corporation of India and the United India Insurance Company. SEWA members can choose whether to become members of the scheme, which covers health insurance (including a small maternity benefit component), life insurance (death and disability) and asset insurance (loss or damage to housing unit or work equipment). SEWA has also designed the payment of premiums to suit different income groups among the very poor²³⁴

4.3 Extending social security to informal sector workers in Ghana

Countries on the African continent have also adopted initiatives aimed at extending social security benefits to informal sector workers. An experience worth mentioning as far as extending social security to informal sector workers on the African continent is concerned is the case of Ghana.

Social security in Ghana is administered by the *Social Security and National Insurance Trust* (herein after referred to as SSNIT) which also provides social security to the self-employed on a voluntary basis. The scheme is financed by a combined contribution of 12.5% by employers and 5% by employees. The scheme is mandated by law to provide social protection to the working population. Coverage is mandatory for all persons working in establishments with one or more employees and voluntary for the self-employed. As at the end of 2002 there were 941,782 active members comprising 10% of the working population. Of this number, 5,423 were voluntary contributors, although the self-employed made up 70.8 per cent of the working population.²³⁵

²³⁴ ILO Decent work and the Informal Economy 64

²³⁵ Osei *Extending Social Security Coverage* 1-2.

The majority of the labour force, however, work in the informal economy or in agriculture and are outside the scope of the above scheme. In recent years, the Government has been seeking ways of extending coverage to the self-employed and the majority of workers who are employed in the informal economy. Informal economy workers are reluctant to join SSNIT because their needs are short-term and considering their present source of income which is irregular, they need help with their children's education, health care is more important than a future pension and bureaucratic procedures.²³⁶ As a result of the shortcomings of the SSNIT in extending social security benefits to informal sector workers in Ghana, the Government saw the need for an initiative to cover workers in the informal sector. This led to the introduction of the informal sector scheme in May 2005, to cater for the needs of informal workers. The scheme operates a social protection scheme appropriate for the working population in the informal sector of the Ghanaian economy. It operates in five regional capitals with eleven contact offices. Based on positive evaluations, the *SSNIT Informal Sector Scheme (SIS)* was established in February 2008.

The above mentioned scheme is offered to self-employed Ghanaians who are aged between 15 and 59 years, to workers in the formal sector and to Ghanaians living abroad.²³⁷ The SIS is a voluntary contributory pension scheme designed principally for workers in the informal sector which provides members with benefits that are based exclusively on their contributions. Unlike the formal sector scheme, this has no fixed-rate contributions. Contributions by members are divided into two equal parts and credited to two individual member sub-accounts, the Occupational Scheme Account, (herein after referred to as OSA), 50% of contribution, and the Retirement Account (50% of contribution minus a life insurance premium).²³⁸ The scheme covers contingencies such as old age, invalidity and survivorship. Members to the scheme have the option of contributing daily, weekly, bi-monthly, monthly, quarterly, annually and seasonally. In all

²³⁶ Bailey *Extending social security coverage* in Africa 10.

²³⁷ Samson *Good practice review* 10.

²³⁸ Samson *Good Practice Review* 10.

cases, members would be required to contribute amounts that are at least equal to the national minimum wage. Contributors have the option to pay either through their trade associations or directly to an accredited collector who would approach them at their workplace to collect the contributions.²³⁹

Members are allowed to make periodic withdrawals from their OSA after five months of initial contributions provided the account has a credit balance. The funds in the Retirement Account only become accessible in the event of old age (60 years), disability or death. Members can use their contributions as partial collateral to secure credit from other regular financial institutions. They can also access small loans to start a business or help finance homes. Members of the fund may be permitted to borrow up to four times the outstanding balance on their OSA. Members are therefore entitled to old-age pensions as well as disability and survivor's benefits.²⁴⁰

The programme's tripartite structure supported an efficient employment of administrative and financial resources. The SIS established an agreement with two key financial institutions, the HFC Bank and Bofo Microfinance Services. The SIS maintained responsibility for recruiting members from the informal sector, opening accounts and ensuring contributions, while Bofo designed, offered and serviced loan products to scheme members, using in part loan capital provided by the fund. HFC Bank on the other hand provides loan capital and offers its banking network for the mobilisation of contributions as well as the disbursement and repayment of loans. It is expected that the HFC "branch network will cover all the regions of the country by the end of 2009."²⁴¹ This tripartite arrangement essentially enables the SSNIT's Informal Sector scheme to specialise in the long-term retirement services for members while the partner financial institutions (HFC Bank and Bofo) address the current business and personal financial needs of the participants.

²³⁹ Osei *The Ghanaian experience* 8.

²⁴⁰ Samson *Good Practice Review* 10.

²⁴¹ Samson *Good Practice Review* 10.

The arrangement leverages HFC Bank's expertise, capital and branch network, eliminating the risk of inefficient bureaucratic expansion. Bofo's expertise in evaluating loan candidates reduces the risk to the fund's investment portfolio. As a result of the above, the scheme has attracted a large number of previously excluded groups of workers. By December 2006 the scheme had attracted 9,399 members, and that number rose to 21,000 by late 2008. The innovative value-added approach promises to significantly extend social security coverage to the informal sector while supporting economic growth and job creation.²⁴²

Thus Ghana's approach to extending coverage to the informal sector represents a model of Dynamic Social Security. The innovative approach balances cost-effective mechanisms with features that support economic productivity, building bridges between the informal and formal sectors. The scheme not only mobilises national savings but also finances the participants' own investments. The success of this model suggests that simply enabling informal sector workers to save for their retirement may be insufficient. Providing value-added financial services and enabling participants to collateralise a portion of their savings may offer more compelling choices.²⁴³

4.4 Conclusion

The above examples from the aforementioned jurisdictions may not be a panacea to the hardships faced by informal sector workers in South Africa, but their approach can be emulated in South Africa as far as extending social security benefits to informal sector workers is concerned. Thus, if the approach taken by the abovementioned jurisdictions in the extension of social security to informal sector workers was met with significant success, following the same approach in South Africa could be met with similar success.

²⁴² Samson *Good Practice Review* 11.

²⁴³ Samson *Good Practice Review* 11.

Chapter 5

Conclusion and Recommendations

5.1 Conclusion

In section 27(1)(c) the Constitution guarantees the right to access to social security benefits to *everyone*, including if they are unable to support themselves and their dependants, appropriate social assistance. Section 27(2) further states that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right to social security. Thus, according to the Constitution, every member of society who finds him/herself in need of social care will or should have access to support. This therefore means that social security benefits must be accorded to everyone in the country, without distinction.

However, despite the right to access to social security benefits, guaranteed to everyone in the Republic by the Constitution, not everyone has access to social security benefits, as seen in chapter 3 above. Those who work in the informal sector, such as the self-employed, form part of the socially excluded. This limited scope of application is due to the fact that social security from its very inception was made to cater for workers in the formal sector, without the informal sector in mind and with the aim of attracting more people into the formal sector. However, considering the present economic situation, more people are found working in the informal sector while the formal sector is continuously shrinking. This has led to a minimal amount of people to benefit from social insurance schemes, while the rest of the population working informally do not benefit from any social security scheme.

Furthermore, the categories of contingencies such as retirement, sickness, unemployment, employment injuries and diseases and maternity, which form the basis of international and regional social security standards as seen in chapter 2 and which

forms the basis of social security schemes in developing countries, are largely incompatible with the realities in South Africa as far as those working in the informal sector are concerned.²⁴⁴

As mentioned above the social insurance schemes put in place requires the contribution of both the employee and the employer. Informal sector workers which are mostly self-employed, are without employers, thus this will make it difficult for them to pay the contribution of both the employer and the employee, reason being that it will be difficult to contribute a relatively high percentage of their incomes to finance social security benefits that do not even meet their priority needs.²⁴⁵

As indicated above the reason for the limited coverage is because it is always difficult in identifying, registering, educating, persuading and monitoring persons and businesses in the informal economy to ensure that they comply with all the rules of the scheme.²⁴⁶

Social assistance, though not employment based, is not always open to informal sector workers. The scheme is means-tested, that is providing assistance to those with limited income or the needy in the South African society. Informal sector workers tend to have a low income and are therefore among the needy in the society. They would consequently in all likelihood satisfy the means-test, but social assistance is based on a categorical approach, that is, it is limited to certain categories of people, and informal workers will not necessarily fall within a particular category as covered by social assistance schemes.²⁴⁷

South Africa, in developing new social security standards, is compelled to consider international standards.²⁴⁸ As far as social security is concerned, South Africa has done very little to comply with international standards, especially in the domain of providing

²⁴⁴ See par 2.2.1 above.

²⁴⁵ See chapter 1 above.

²⁴⁶ See par 3.2.

²⁴⁷ See par 3.5 above.

²⁴⁸ See par 2.1 above.

social security benefits to those who are excluded by the present legislations, such as those working in the informal sector. In its efforts to achieve universal coverage of social security for all employees, regardless their type of employment contract and sector, the ILO sets international labour standards which should be upheld by all its member states who ratified the instruments containing these standards. These instruments referred to take the form of conventions and recommendations, some of which provide concepts and standards for the formulation of social security policies.²⁴⁹ However, South Africa has not ratified the *Social Security (Minimum Standards) Convention, 1952* (No. 102), which sets out social security standards for member states to follow. Thus, they do not even comply with those standards.

The policies, put in place by India and Ghana, in extending social security benefits to informal sector workers have improved the standard of living of these workers. Such policies, if emulated by South Africa, will help improve the lives of informal sector workers.

5.2 Recommendations

The following suggested recommendations may be applied to extend coverage of social security benefits to informal sector workers in South Africa.

Extending coverage of social security benefits to informal sector workers can be achieved through extension of existing contributory schemes whereby those working in the informal sector with adequate and stable income can be encouraged to participate in existing social insurance schemes. This may be done by widening the narrow concept of social security in order to embrace new categories of workers such as those working in the informal sector who do not fall within the traditional protected group of workers.

²⁴⁹ See par 2.2.1 above.

In India, for example, the *Unorganised Workers' Social Security Act*, has adopted a deliberately wide notion, firstly, of what is comprehended by the term "unorganised sector" and, secondly, of who is intended to be an employer and a worker for the purposes of covering those embedded in a relationship of work in the informal economy. It defines "employer" within the context of the informal sector as "a person or an association of persons, who has engaged or employed an unorganised sector worker either directly or otherwise for remuneration". It attaches a specific meaning to unorganised sector workers, and defines this term with reference to a distinction to be drawn between a home-based worker, self-employed worker and a wage worker. Similarly, the scope of definition of "unorganised sector worker" has been widened.²⁵⁰ By widening the scope of definition, those who were not considered as workers, are now considered to be workers under this new definition and this will provide them with some kind of social security which they did not have prior to the widening of the definition.

Such a scenario can be emulated in South Africa, where social security benefits are provided only to those whom the applicable legislation considers as employees. Thus, by widening the definition of an employee in these statutes to embrace new categories of workers such as those in the informal sector, this will give this category of workers an opportunity to access social security benefits.

More so, informal social security schemes, such as SEWA, has been used in India, to extend social security benefits to informal sector workers in India. SEWA, through contribution of its members, provides cover for illness, accident and disability, natural death, and loss of assets due to fire or flood.²⁵¹ A similar organisation such as SEWA in India, can be formed in South Africa, which will have as its sole aim to provide social security benefits to informal sector workers in South Africa.

²⁵⁰ See par 4.2 above.

²⁵¹ See par 4.2.2 above.

Furthermore, the ILO has suggested a broader definition of social security, which stipulates that households and individuals should be provided with benefits through public or collective arrangements so as to protect them against low or declining living standards resulting from a number of basic risks and needs, as opposed to a narrow definition which is based on ILO's nine areas of social insurance which restricted millions of South Africans, especially those informally employed, from social security benefits.²⁵²

The definition is an advantage in the South African society in the sense that it will increase the possibilities for those informally employed to also have access to social security benefits as oppose to a narrow and restrictive definition which caters only for the needs of those working in the formal sector.

Informal sector workers might find existing social security schemes inefficient or not in their best interests and therefore may be unwilling to participate. Special arrangement can be set up for these categories of workers that will meet their immediate needs. An example of such an arrangement was successfully set up in Ghana, after an initial attempt to extend the existing social security scheme failed. In order to extend coverage to informal sector workers in Ghana, a special fund, known as the Informal Sector Fund was set up by SSNIT. Contribution to the fund is not fixed and it is based on the contributor's ability to pay. Unlike the formal sector scheme, contributions by members are divided into two equal parts and credited to two individual member sub-accounts, that is the Occupational Scheme Account, "OSA" (50 per cent of contribution), and the Retirement Account (50 per cent of contribution minus a life insurance premium). The scheme covers contingencies such as old age, invalidity (only accident) and survivorship. Members to the scheme have the option of contributing daily, weekly, bi-monthly, monthly, quarterly, annually, and seasonally.²⁵³

²⁵² See par 2.2.1 above.

²⁵³ See par 4.3.

A similar approach can be carried out in South Africa, whereby instead of extending the present social insurance scheme to informal sector workers, a specialised scheme can be set up, to cater only for the informal sector workers.

The South African government can extend social security benefits to informal sector workers by removing obstacles that prevent such persons from accessing informal social security schemes, such as community-based insurance, ensuring a minimum level of coverage of risks and contingencies with progressive expansion over time and respecting and supporting social security schemes developed within the informal economy such as micro-insurance and other microcredit related schemes.²⁵⁴

Therefore, the coverage of existing social insurance schemes can be extended to informal sector workers by amending who is considered an employee in terms of the applicable legislation, or by creating schemes particularly for the informal sector as was done in other jurisdictions notably Ghana, as well as broadening the definition of social security as suggested by the ILO and India. These, if considered, will be of great help, in ameliorating the present situation of informal sector workers as it will provide them at least with some kind of social security that they can depend on, in the event of a contingency.

²⁵⁴ See par 2.3.4.

Bibliography

Literature

A

AU *Social protection plan for the informal economy and Rural Workers*

AU "Social protection plan for the informal economy and Rural Workers" (8th Ordinary Session of the Labour and Social Affairs Commission of the African Union) (Yaounde 11-15 April 2011)

AU *Social Policy Framework for Africa*

AU "Social Policy Framework for Africa" (First Session of the Au Conference of Ministers in Charge of Social Development) (Windhoek 27-31 October 2008)

B

Basson *Discrimination in Social Security Legislation*

Basson A "Discrimination in Social security legislation" in Strydom EML (ed) *Essential Social Security Law* (JUTA Cape Town 2001) 223-257

Bailey *Extending Social Security Coverage*

Bailey C *Extending Social Security Coverage in Africa* (Geneva, Date Unknown)

D

Dekker *Informal Social Security*

Dekker AH *Informal Social Security: A Legal Analysis* (LLD-theses UNISA 2005)

Dekker *et al* 2009 *Law, Democracy and Development*

Dekker AH *et al* "Social Security: A conceptual view" 2009 *Law Democracy and Development* 1-13

I

ILO *Women and Men in the Informal Economy*

ILO "Women and Men in the Informal Economy: A Statistical Picture"
International Labour Office (Geneva 2002)

ILO *Decent work and the Informal Economy*

ILO "Decent Work and the Informal Economy" *International Labour Organisation Report VI* (90th Session of the International Labour Conference) (Geneva 2002)

ILO *Extending Social Security Coverage to Informal Economy Workers*

ILO *Extending Social Security Coverage to Informal Economy Workers: Way Forward* (International Labour Organisation Geneva 2009)

ILO *Social Security for Social Justice and a Fair Globalisation*

ILO "Social Security for Social Justice and a Fair Globalisation" *International Labour Organisation Report VI* (100th Session of the International Labour Conference) (Geneva 2011)

ILO *Employment and Social Protection in the Informal Sector*

ILO "Employment and Social Protection in the Informal Sector: ILO activities concerning the urban informal sector" *International Labour Organisation: Committee on Employment and Social Policy* (277th Session of the International Labour Office) (Geneva 2000)

K

Kannan 2002 *IJLE*

Kannan "The Welfare Fund Model of Social Security for Informal Sector Workers The Kerala Experience" 2002 *IJLE* 1-64

Kaseke *Institutional framework, legal instruments and legal techniques relating to the Promotion of access to social security to informal sector workers*

Kaseke E "Institutional framework, legal instruments and legal techniques relating to the Promotion of access to social security to informal sector workers. A southern African Perspective" in Becker U and Olivier M (eds) *Access to Social Security for Non-Citizens and Informal Sector Workers. An International, South African and German Perspective* (CICLASS 2008)

L

Le Roux *Invalidity*

Le Roux P "Invalidity" in Strydom EML (ed) *Essential Social Security Law* (JUTA Cape Town 2001) 111-121

Liffman *et al* 2009 *Law, Democracy and Development*

Liffman R *et al* "Those who have and those who don't; An investigation into the limited scope of application of social security in South Africa" 2009 *Law, Democracy and Development* 15-25

Liffmann *Social security as a constitutional imperative*

Liffmann R "Social security as a constitutional imperative: An Analysis and Comparative Perspective with Emphasis on the Effect of Globalisation on Marginilisation" in Olivier MP *et al* (eds) *The Extension of Social Security Protection in South Africa* (Cape Town 2001) 29-73

M

Malan and Van Rensburg *Social Security as a Human Right and the Exclusion of Marginalised Groups*

Malan S and Van Rensburg LJ "Social Security as a Human Right and the Exclusion of Marginalised Groups: An international perspective" in Olivier *et al*

(eds) *The Extension of Social Security Protection in South Africa - A Legal Inquiry*
(Cape Town 2001) 74-114

Mpedi (Date unknown) *Reinventing Labour Law*

Mpedi LG "The evolving relationship between labour law and social security"
(Date Unknown) *Reinventing Labour Law* 270-285

Myburgh *Hardship Caused by the State*

Myburgh P "Hardship Caused by the State" in Strydom EML (ed) *Essential Social Security Law* (JUTA Cape Town 2001) 183-187

N

NCEUS *Social Security for Unorganised Workers* (New Delhi 2006)

Nyenti *Adjudication and Enforcement Mechanisms and the Administrative Framework*

Nyenti M "Adjudication and Enforcement Mechanisms and the Administrative Framework" in Becker U and Olivier MP (eds) *Access to Social Security for Non-Citizens and Informal sector works. An International, South African and German Perspective* (CICLASS Johannesburg 2008)

O

Olivier *Extension of Social Insurance Coverage*

Olivier MP *Informality, Employment Contracts and Extension of Social Insurance Coverage* (Geneva 2009)

Olivier and Kalula *Legal Framework and Scope of Coverage*

Olivier MP and Kalula ER "Legal Framework and Scope of Coverage" in Olivier MP *et al Introduction to Social Security* (LexisNexis Butterworths Durban 2004)

Olivier *International and Regional Social Security Standards*

Olivier MP "International and Regional Social Security Standards: SADC" Case Study on Southern Africa (Date Unknown) 1-70

Olivier *Concept of Social Security*

Olivier MP "Concept of Social Security" in Olivier MP *et al Introduction to Social Security* (LexisNexis Butterworths Durban 2004)

Olivier and Van Rensburg 2009 *Law, Democracy and Development*

Olivier MP and Van Rensburg LJ "Protection and Enforcement of the Right to Social Security" 2009 *Law, Democracy and Development* 87-99.

Olivier and Mhone *Social Protection in SADC: Developing an Integrated and Inclusive Framework*

Olivier MP and Mhone G "Social Protection in SADC: Developing an Integrated and Inclusive Framework-The case of South Africa" in Olivier MP and Kalula ER (eds) *Social Protection in SADC: Developing an Integrated and Inclusive Framework* (CICLASS July 2004)

Olivier *et al Informality, Employment and Social Protection*

Olivier MP *et al Informality, Employment and Social Protection: Some Critical Perspectives For/From Developing Countries* (July 2012) 1-25.

Osei *Extending Social Security Coverage: The Ghanaian experience*

Osei K "Extending Social Security Coverage: The Ghanaian experience" Meeting of Directors of Social Security Organizations in English-speaking Africa (Banjul, The Gambia, 7-9 October 2003)

P

Pillay 2007 *Africa Institute of South Africa*

Pillay PL "The Poverty Alleviation Impetus of the Social Security System in South Africa" 2007 *Africa Institute of South Africa* 16-26

R

Ramesh *Extending Social Security for Unorganised Workers in India*

Ramesh BP "Extending Social Security for Unorganised Workers in India: One step forward, two steps backward? Emerging trends in times of instability: New challenges and opportunities for social security" 6th International Policy and Research Conference on Social Security (Luxembourg 2010)

S

Samson *Extending social security coverage in Africa*

Samson M "Good Practice Review: Extending social security coverage in Africa" (Geneva 2009)

Servais 2012 *E-Journal and Comparative Labour Studies*

Servais JM "The New ILO Recommendation on Social Security" 2012 *E-Journal and Comparative Labour Studies* 1-26

Smit *Institutional framework, legal instrument relating to the promotion of access to social Security to informal sector workers. An international perspective*

Smit N "Institutional framework, legal instrument relating to the promotion of access to social Security to informal sector workers. An international perspective" in Becker U and Olivier MP (eds) *Access to Social Security for Non-Citizens and Informal sector workers. An International, South African and German perspective* (CICLASS Johannesburg 2008)

Strydom *et al Essential Social Security Law*

Strydom EML (ed) *et al Essential Social Security Law* (Juta Cape Town 2001)

Strydom *The role of the international labour organisation in social security*

Strydom "The role of the international labour organisation in social security" in
Strydom EML (ed) *et al Essential Social Security Law* (Juta Cape Town 2001)

U

UN *General Comment No.19. The right to social security (art. 9)*

UN "General Comment No.19. The right to social security (art. 9)" *United Nations: Economic and Social Council* 39th Session of the Committee of Economic, Social and Cultural Rights (5-23 November 2007)

Ursala and Morales *Social security- International Standards and the Right to Social Security*

Ursala K. and G.L. Morales "Social security- International Standards and the Right to Social Security" in Eibe Riedel (ed) *Social Security as a Human Right Drafting a General Comment on Article 9 ICESCR - Some Challenges* (Mannheim September 2006)

Uys and Blaauw 2006 *Acta Commercii*

Uys MD and Blaauw PF "The Dual Labour Market Theory and the Informal Sector in South Africa" 2006 *Acta Commercii* 248-257.

V

Van Rensburg and Olivier *International Standards*

Van Rensburg LJ and Olivier MP "International Standards" in Olivier MP *et al* (eds) *Introduction to Social Security* (LexisNexis Butterworths Durban 2004)

International Instruments

Charter of Fundamental Social Rights

SADC Code on Social Security

Constitutive Act of the African Union of 11 July 2000

General Comment No. 19 (E/C.12/GC/19 of 4 February 2008)

Social Security (Minimum Standards) Convention, 102 of 1952

Equality of Treatment (Social Security) Convention, 118 of 1962
Employment Injury Benefits Convention, 121 of 1964 (schedule I amended in 1980)
Invalidity, Old-Age and Survivors' Benefits Convention, 128 of 1967
Medical Care and Sickness Benefits Convention, 130 of 1969
Maintenance of Social Security Rights Convention, 157 of 1982
Employment Promotion and Protection against Unemployment Convention, 168 of 1988
Maternity Protection Convention, 183 of 2000
International Covenant on Economic Social and Cultural Rights 1966
Social Protection Floors Recommendations 202 of 2012
Universal Declaration of Human Rights 1948

Legislation

Beedi and Cigar Workers (Conditions of Employment) Act 32 of 1996
Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996
Building and other Construction Workers Welfare Cess Act 1996.
Building and Other Construction Workers (ECS) Central Rules, 1998
Compensation for Occupational Injuries and Diseases Act 130 of 1993
Constitution of the International Labour Organisation 1944
Constitution of the Republic of South Africa, 1996
Defence Act 44 of 1957
Military Pension Act 84 of 1976
Occupational Health and Safety Act 85 of 1993
Pension Fund Act 24 of 1956
Social Assistance Act 13 of 2004
South African Police Service Act 7 of 1958
Special Pension Act 69 of 1996
SSNIT Informal Sector Scheme (SIS) of 2008
Unemployment Insurance Act 63 of 2001
Unorganised Worker`s Social Security Act 33 of 2008