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Margaret Sagan

MONITORING THE RIGHT OF ACCESS TO SOCIAL SECURITY AND APPROPRIATE SOCIAL ASSISTANCE IN SOUTH AFRICA

An analysis of the policy effort, resource allocation and expenditure and enjoyment of the right to social security

Monitoring the Progressive Realisation of Socio-Economic Rights Project

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FOUNDATION FOR
HUMAN RIGHTS

PREFACE

"The right of access to social security, including social assistance, for those unable to support themselves and their dependants is entrenched because as a society we value human beings and want to ensure that people are afforded their basic needs. A society must seek to ensure that the basic necessities of life are accessible to all if it is to be a society in which human dignity, freedom and equality are foundational."

Justice Yvonne Mokgoro, Khosa & Others v Minister of Social Development & Others 2004(6) BCLR 569 (CC); 4 March 2004

The Studies in Poverty and Inequality Institute (SPII) is an independent research think tank that focuses on generating new knowledge, information and analysis in the field of poverty and inequality studies.

This working paper has been undertaken as part of the Monitoring the Progressive Realisation of Socio-Economic Rights Project conducted by SPII and authored by Margaret Sagan who was a visiting intern with the South African Human Rights Commission (SAHRC), through a combination of policy and budget analysis and statistical indicators. The objective of the project is to provide a comprehensive constitutional and human rights based framework and set of tools to monitor the progressive realisation of socio-economic rights. It is hoped that this project will be a useful tool for policy makers, for those that exercise oversight over the executive, including Parliament and the Chapter Nine institutions and civil society.

Please contact **Hopolang Selebalo** for any questions, queries or requests, including around the data used for the paper, which we are happy to provide – hopolang@spii.org.za.

Working Paper 14 - Edited by **Isobel** Frye.

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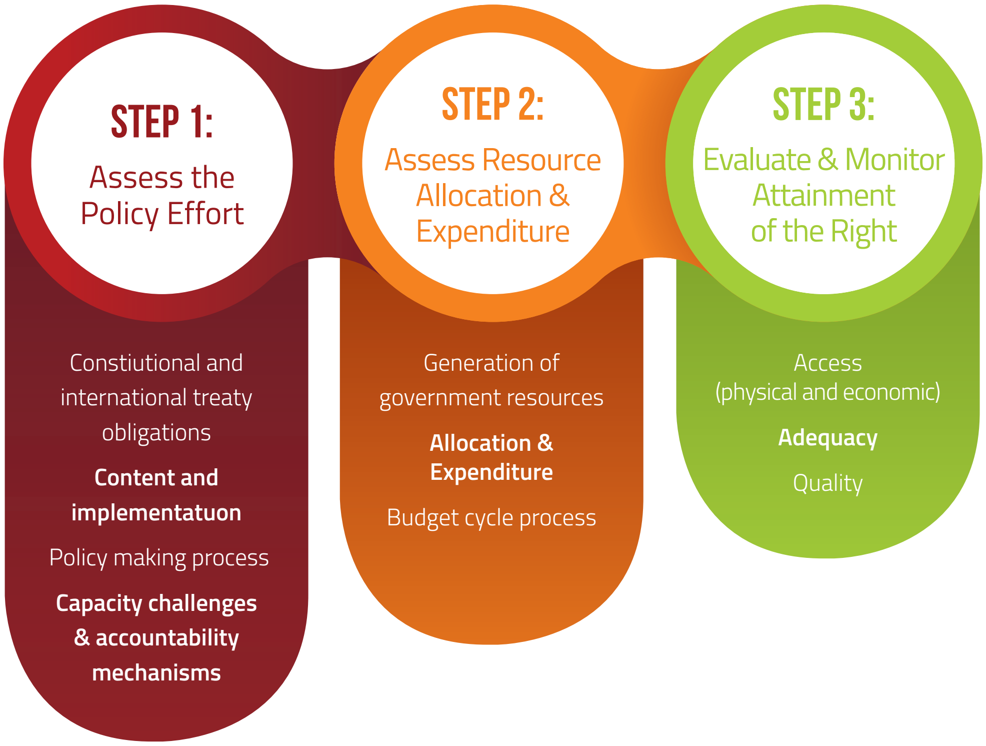
ACRONYMS

ASGISA	Accelerated and Shared Growth Initiative South Africa
ATM	Automated Teller Machine
BIG	Basic Income Grant
CPS	Cash Paymaster Services
CESCR	Committee on Economic, Social and Cultural Rights
CPI	Consumer Price Index
DCS	Department of Correctional Services
DSD	Department of Social Development
FPL	Food Poverty Line
GEAR	Growth, Employment and Redistribution Strategy
GEPF	Government Employees Pension Fund
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Information and Communications Technology
IDDT	Inter-Departmental Task Team
ILO	International Labour Organization
LBPL	Lower-Bound Poverty Line
MAC	Ministerial Advisory Committee
MAR	Maximum Available Resources
MEC	Member of the Executive Council
NAWONGO	National Association of Welfare Organisations and Non-Governmental Organisations
NDP	National Development Plan 2030
NGP	New Growth Plan
NEET	Not in Employment, Education, or Training
NPO	Non-Profit Organisation
NSSF	National Social Security Fund
PRASA	Passenger Rail Agency of South Africa
R	Rand
RAF	Road Accident Fund
RDP	Reconstruction and Development Programme
RFP	Request for Proposal
SAHRC	South African Human Rights Commission
SASSA	South African Social Assistance Agency
SERs	Socio-Economic Rights
SPII	Studies in Poverty and Inequality Institute
UBPL	Upper-Bound Poverty Line
UIF	Unemployment Insurance Fund

CHAPTER ONE:
3- STEP METHODOLOGY

The methodology developed by SPII is based on three distinct steps **(see figure below)**. These steps include an analysis of the policy effort **(Step 1)** and the allocation and expenditure of resources for specific rights **(Step 2)**. These two steps assist in monitoring and evaluating the attainment of rights **(Step 3)** on the ground through specific outcome indicators.

A summary of the three steps is provided below:



STEP 1: ANALYSE THE POLICY EFFORT

The first step of the analysis takes a closer look at the underlying policies and legislation guiding the realisation of SERs. This step firstly assesses whether the actual content of social and economic policies adequately reflects the **Constitution and international treaty obligations** and international standards that the state has signed or ratified.

Secondly, this step evaluates both the **content and implementation** of existing legislation, policy frameworks and government programmes to assess what gaps (in principle and in practice) exist. This assessment is based on a human rights framework that includes non-discrimination, gender sensitivity, dignity, participation, transparency and progressive realisation.

An important component of evaluating the policy effort is an assessment of the **policy making process** in terms of transparency and public participation in decision-making by relevant civil society organisations and communities specifically affected by the policy under review. Another important dimension is to analyse departmental responsibilities and institutional arrangements to assess the **capacity challenges and accountability mechanisms** currently in place.

STEP 2: ASSESS RESOURCE ALLOCATION & EXPENDITURE

The second step assesses the reasonableness of the budgetary priorities in light of the obligations on the state and human right principles and standards. This requires an analysis of firstly, the **generation of government revenue**.

Secondly, an analysis of the **allocation and expenditure of such resources** to reduce disparities, prioritise the most vulnerable and disadvantaged groups, and progressively realise SERs. This step uses various budget analysis techniques to monitor planned (i.e. budget allocations) and actual resource expenditures at both national and provincial levels and therefore assesses the delivery and implementation of government policy and programmes as they relate to the realisation of rights.

Thirdly, an analysis of the **budget cycle process** from the perspective of human rights principles of participation, non-discrimination, transparency and accountability. An assessment of resource availability cannot be separated from an analysis of institutional arrangements, human resources and local capacity which are necessary for the efficient and effective spending of budgets.

STEP 3: EVALUATE & MONITOR ATTAINMENT OF SERS

The third step measures the enjoyment of rights by rights holders and therefore monitors and evaluates the state's obligation to fulfil the realisation of SERs. This step evaluates the state's performance via the development of statistical indicators that provide a clearer and more specific illustration of SERs enjoyment on the ground over time. The outcome indicators refer to the three dimensions of access (physical and economic), quality and adequacy over time. This requires that quantifiable and replicable indicators (proxies for the different dimensions of SERs) be developed along with agreed benchmarks and targets.

The indicators need to be aligned to data that is freely and easily available in annual surveys and data sets, and must be capable of being decomposed (disaggregated) by region, race, gender and age – wherever possible and useful. This allows disparities between, for example, different population groups or geographical regions to be identified, and an assessment of the extent to which progress has been made over time.

OBJECTIVE OF MONITORING TOOL

The 3-step methodology provides a comprehensive framework from which to monitor and assess progress made to date. ***The purpose of the tool, however, goes beyond constitutional compliance and aims to achieve specific objectives:***

- Clarify and unpack the **content of the SERs** and the **obligations on the state** to ensure access to and enjoyment of SERs is continuously broadened.
- Determine the extent to which organs of the state have respected, protected, promoted and fulfilled their obligations. This involves identifying achievements, deprivations, disparities, and regression to illuminate both **causation and accountability** in terms of policies, resources spent, implementation and institutional capacity.
- Provide **evidence** for **advocacy initiatives** and **legal interventions**, and make **recommendations** that will ensure the protection, development and universal enjoyment of SERs.

By applying the 3-step methodology, this paper provides a comprehensive analysis of the status of the right to adequate social security some twenty three years into South Africa's democracy. The paper begins by unpacking the content of the right to adequate social security and then provides both a summary of the key shifts in policy and legislation since 1994 and a critical analysis of their contents, implementation and impact.

Secondly, the paper assesses the allocations and spending performance of the Department of Social Development to interrogate the adequacy, efficiency and effectiveness of government's budgeting and expenditure for the right to social security.

Finally, the paper discusses the process of developing performance and impact indicators for the right to social security that can be tracked and monitored over time. This allows for a clearer illustration of the enjoyment or lack thereof of the right to adequate social security and provides evidence to evaluate the state against its obligations and to make recommendations to broaden access to social security, including though the current NEDLAC negotiation process.

By combining the policy and budget analysis with evidence from indicators, the final section of the paper provides an overall analysis of the status of social security that feeds into recommendations which aim to ensure the rectification of gaps and retrogression as well as enhanced protection and accelerated fulfilment of the right of access to adequate appropriate social security.

This report will examine the implementation of the right to social security and appropriate social assistance in South Africa. It will also present current proposals towards comprehensive social security reform, which address some of the gaps in the implementation of this right. The objective of the research is to develop a measure of progressive realisation over time, towards the achievement the full and universal enjoyment of the right to social security and appropriate social assistance by all people in South Africa.

The report drew on desktop research along with interviews with social security stakeholders from academia, the Department of Social Development, and the National Treasury.

CHAPTER TWO:
UNDERSTANDING THE RIGHT

Social security is one of the SERs provided in South Africa, along with the right to housing, health care, food, and water.[1] In accordance with the Constitution of the Republic of South Africa and with international law, SERs are justiciable in South Africa. When SERs are violated, the state may be petitioned in court and ordered to provide a remedy. The Constitutional Court has been largely supportive of SERs, with 80% of rulings in favour of the applicants and asserting the state's obligations to progressively realise SERs.[2] Progressive realisation means that the state is obliged to use its available resources to over time realise the right of access universally to all in South Africa, through "laws and policies that aim to achieve incremental improvements in universal access". [3]

While the state has judiciable obligations towards SERs, there is often a tension among stakeholders about how to best pay for and sustainably implement SERs. Budget analysis can be used to measure SERs provision over time, giving stakeholders data that can be used to hold the state accountable to progressive realisation, and to improve policy.

LEGAL ANALYSIS OF THE RIGHT TO SOCIAL SECURITY

Social security is a human right, well expressed in Section 27(1)(c) of the Constitution of the Republic of South Africa and in international human rights law, particularly the International Covenant on Economic Social and Cultural Rights.

Social security is globally recognized as an effective mechanism of redistributive justice in the face of economic and social exclusion. The International Labour Organisation (ILO) purports that "effective national social security systems are recognised as powerful tools to provide income security, to prevent and reduce poverty and inequality and to promote social inclusion and dignity"[4]. South Africa must dramatically reduce levels of inequality if it is to "heal the divisions of the past and establish a society based on democratic values, social justice and fundamental rights" as envisioned in the Constitution.[5]

THE CONSTITUTIONAL MANDATE

The right to social security is enshrined in the Constitution of the Republic of South Africa, 1996. Section 7(2) of the Constitution obliges the state to "respect, protect, promote, and fulfil the rights of the Bill of Rights".[6] Section 27 of the Constitution establishes that: "Everyone has the right to have access to…(c) social security, including, if they are unable to support themselves and their dependents, appropriate social assistance." Further "(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights."[7]

South Africa's "justiciable Bill of Rights" is recognised for its commitment to economic and social rights.[8] These rights are a vehicle for "transformative constitutionalism", which seeks to induce "large-scale social change through non-violent political processes ground in law".[9] However, despite the progressive nature of South Africa's Constitution, South Africa endures worsening levels of inequality. The Gini coefficient is used to measure the distribution of household income and consumption, on a scale of 0 (completely equal distribution) to 1 (completely inequal distribution).[10] In the 2017 Stats SA Poverty Trends report, South Africa's 2015 Gini coefficient was measured at .68 (income per capita) and .64 (expenditure per capita). This is a negligible improvement to the 2011 Gini coefficient, which was .69 (income per capita) and .65 (expenditure per capita).[11]

This places South Africa at the top of the World Bank Gini index, as the most unequal country in the world.[12]

FOOTNOTES:

[1] The Republic of South Africa. (1996). Constitution of the Republic of South Africa. Sections 26 and 27.
[2] Jackie Dugard. (2017). Table of Socio-Economic Rights Cases of the South African Constitutional Court 1995-2017.
[3] Ariranga Pillay, 16 May 2012, CESCR/48th/SP/MAB/SW; additionally UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: ***http://www.refworld.org/docid/3ae6b36c0.html. Article 2, Section 1.***
[4] ILO, 2012, Social Protection floors for social justice and a fair globalisation, Report IV (I), ILO 101st Session, p. 5 ***www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_ 160210.pdf***
[5] The Constitution of the Republic of South Africa, 1996, p. 1.
[6] Ibid., Section 7 (2)
[7] Ibid., Section 27.
[8] Karl E Klare (1998) Legal Culture and Transformative Constitutionalism, South African Journal on Human Rights, 14:1, p. 147.
[9] Ibid., p. 150.
[10] Statistics South Africa. (2017). Poverty Trends in South Africa, p. 22.
[11] Ibid., p. 14.
[12] The World Bank, World Development Indicators: Distribution of income or consumption. ***http://wdi.worldbank.org/table/1.3***

Further, poverty levels rose in South Africa from 2011-2015. 55.5% of South Africans, or over 30.4 million people, were poor in 2015, living on R992 or less per month.[13] Social assistance is a form of government transfer, which redistributes money raised from taxpayers to people with low or nonexistent incomes. It is a key tool for South Africa to meaningfully lower its Gini coefficient while addressing the survivalist needs of beneficiaries.

COMPLIANCE WITH INTERNATIONAL LAW

Section 39 of the Bill of Rights states that when interpreting the Bill of Rights, a court, tribunal, or forum must consider international law. In April 2015, South Africa ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), which affirms the right to social security in Article 9.[14] In Article 2.1, the ICESCR obliges a state party to "take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures".[15]

The most comprehensive set of international instruments on the right to social security are the International Labour Organization (ILO) conventions. Minimum Standards for Social Security are set forward in Convention 102 of 1952, which has not been ratified by South Africa. However, despite not having ratified C102, South African dialogues on labour standards including social security align with the contemporary approach of the ILO. Through the National Development Plan 2030, the state of South Africa has given support to the notion of a "social floor": "a standard of living below which no one should fall".[16] This is in line with the Social Protection Floor Initiative developed by the ILO.[17] South Africa has participated in the ILO advancement of this concept, particularly through the efforts of Ebrahim Patel, Minister of Economic Development.[18] The ILO affirms that social security is a human right, and recommends that national social protection floors provide all in need with both basic income security and access to essential social services, especially healthcare.[19] The World Bank also endorses this approach, noting that "the biggest shift in the nature of social safety net programs over the last half-decade is towards building better-integrated social protection systems that weave together the often disparate and fragmented social safety net programs, as well as those relating to social insurance and labour markets."[20]

In a 2012 letter by chairperson Ariranga Pillay, the Committee on Economic, Social, and Cultural Rights (CESCR) of the United Nations endorses the "social protection floor" concept as the "minimum core" which should be used by state parties to determine whether SERs, including the right to social security, are being met. [21] As noted by SERs budget analyst Aoife Nolan, this letter provides useful guidance towards state responsibilities, "particularly in relation to austerity measures".[22] To discourage the retrogression of SERs, it implores state parties to consider the impact of economic and budgetary policies on "disadvantaged and marginalized individuals and groups".[23] Policy makers in states with low economic growth or high deficits often contemplate reducing spending on entitlement programs: this debate is familiar in South Africa.

The CESCR directs that any retrogressive budget cuts or other policies that impact SERs must be temporary, "necessary and proportionate", non-discriminatory, counter-balanced by measures that mitigate inequality, and assure protection of the minimum core, the social protection floor.[24] Thus, South Africa and other state parties to the ICESCR cannot slim their national budgets by ignoring the obligation to progressively realise the socio-economic rights (SERs) contained in the Constitution.

FOOTNOTES:

[13] Stats SA. (2017). Poverty Trends in South Africa: An Examination of Absolute Poverty Between 2006 and 2015.
[14] UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: ***http://www.refworld.org/docid/3ae6b36c0.html***
[15] Ibid., Section 2.1.
[16] National Planning Commission, Department of the Presidency, Republic of South Africa, National Development Plan 2030, p. 355.
[17] Human Rights Council, Social Protection Floors and Economic and Social Rights, A/HRC/28/35, p. 1.
[18] International Labour Organization, 2011, Social Protection Floor for a Fair and Inclusive Globalization, p. v.
[19] International Labour Organization, Social Protection Floors Recommendation, 2012 (No. 202).
[20] The World Bank, (2014). The State of Social Safety Nets, p. 16
[21] Ariranga Pillay, CESCR chairperson. Letter to all state parties. May 16, 2012, CESCR,48th/SP/MAB/SW.
[22] Aoife Nolan. (2014). "Budget Analysis and Economic and Social Rights". Economic, Social, and Cultural Rights in International Law: Contemporary Issues and Challenges, p. 378.
[23] Ibid.
[24] Ibid.

South Africa has not yet come to an official consensus on the defined measures of its national social protection floor. One concrete measure is given in the National Development Plan 2030, which asserts that "no individual should live below the poverty line of R419 (in 2009 prices.)". [25] This was the Lower-Bound Poverty Line in 2009. Poverty lines are adjusted for inflation and benchmarked to the Income and Expenditure Surveys produced by Stats SA. South Africa measures three poverty lines: the Food Poverty Line (FPL), which measures the cost of a monthly food basket which meets the minimum daily calorie requirements; the Lower-Bound Poverty Line (LBPL), and the Upper-Bound Poverty Line (UBPL). As of April 2017, Stats SA defines the FPL at R 531, the LBPL at R 758, and the UBPL at R 1,138. [26]

JURISPRUDENTIAL ANALYSIS

Jurisprudential analysis will show how South Africa's legal obligations have been developed and enforced through the courts.

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
The MEC for the Department of Welfare v Nontembiso Norah Kate [27]

The Kate decision upheld the award of damages to a disabled woman whose application for social assistance was delayed by 37 months. This decision emphasizes the roles and responsibilities of government agencies. Judge of Appeal Nugent states *"the realization of the substantive right to social assistance is dependent upon lawful and procedurally fair administrative action, and the diligent and prompt performance by the state of its constitutional obligations, the failure to meet those process obligations denies to the beneficiary his or her substantive right to social assistance".* [28]

THE SOUTH AFRICAN CONSTITUTIONAL COURT ON THE INCLUSIVITY OF THE RIGHT TO SOCIAL SECURITY
Khosa & Others v the Minister of Social Development & Others [29]

The Khosa decision extends the South African right to social security to non-national permanent residents. This is particularly important because article 2.3 of the ICESCR leaves it up to developing countries to *"determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals".*[30] The applicants in this 2004 case challenged provisions of the Social Assistance Act 59 of 1992 and the Welfare Laws Amendment Act 106 of 1997 which reserved social grants for South African citizens.[31] The applicants submitted that the exclusion of non-citizens from benefiting from social grants was inconsistent with Section 27 of the Constitution.

When interpreting whether the rights contained in section 27(1)(c) are confined to citizens only or extends to a broader class of persons including non-nationals, the court stated that it would adopt a purposive approach to interpreting the word "everyone". Noting that the Grootboom decision affirmed the intersectionality of human rights, the court went on to state that denying access to social security to non-nations would violate the equality rights provided in section 9 of the Constitution.[32] The court noted that where rights in the Bill of Rights are restricted to citizens, such as the political rights contained in Section 19, this is stated explicitly. It concluded that "given that the Constitution expressly provides that the Bill of Rights enshrines the rights of 'all people in our country' and in the absence of any indication that the section 27(1) right is to be restricted to citizens as in other provisions in the Bill of Rights, the word 'everyone in this section cannot be construed as referring only to 'citizens'." [33]

The Court took a rights-based approach affirming the centrality of SERs: "A society must seek to ensure that the basic necessities of life are accessible to all if it is to be a society in which human dignity, freedom and equality are foundational." [34] The Constitutional Court's judgement in Khosa prioritizes non-discrimination and the universality of the right to social security.

FOOTNOTES:

[25] Republic of South Africa, National Planning Commission. National Development Plan 2030, p. 363.
[26] Werner Ruch, Stats SA. (2017). National Poverty Lines for South Africa. Email communication.
[27] Member of the Executive Council: Welfare v Kate (2006) SCA 46 (RSA).
[28] Ibid., p. 12.
[29] 2004 (6) SA 505 (CC).
[30] UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: ***http://www.refworld.org/docid/3ae6b36c0.html***
[32] 2004 (6) SA 505 (CC), p. 33.
[33] Ibid., para 51.
[34] Ibid., para 52.

A) POLICY ANALYSIS.

***SOCIAL SECURITY:** contributory and non-contributory pillars of the current system*

It is not possible to understand social assistance without understanding the broader landscape of social security in South Africa. Social security in South Africa relies on a three-pillar system: public contributory funds; private contributory pension and insurance funds; and non-contributory public social assistance. All three pillars must function in order to provide social protection that works for all South Africans. Public contributory social insurance includes three major statutory funds. There are also public contributory funds for state employees. The system is fragmented, with no nation-wide contributory social security fund for all citizens.

PUBLIC SOCIAL INSURANCE

Public contributory social insurance includes the Unemployment Insurance Fund (UIF), the Compensation for Occupational Illness and Diseases Fund (Compensation Funds), and the Road Accident Fund (RAF). The Unemployment Insurance Act of 2001, the Compensation for Occupational Injuries and Diseases Act of 1993, and the Road Accident Fund Act of 1996 are the primary pieces of legislation governing these funds. The RAF Act was amended in 2001, 2002, and 2005, to cap benefits. The RAF operates at a deficit, and there has been an effort to reign in disproportionate claims that threaten the fund's solvency. [35] The RAF pays benefits when people are injured or killed in motor vehicle accidents. It is paid for through a fuel levy collected by the South African Revenue Service (SARS). [36]

The Unemployment Insurance Fund (UIF) provides benefits to participating full-time and seasonal workers in case of adoption, childbirth, death, illness, or unemployment. It does not cover independent contractors or occasional workers, and benefits cease when a worker resigns (as opposed to being retrenched). UIF contributions are made by both employer and employee. Because benefits are capped, every year the UIF makes a net surplus. In 2016, the UIF had a net surplus of R10,686,137 and an accumulated surplus of R98,503,433.[37] As of 2017, 27.7% of South Africans are unemployed, approximately 6.18 million people.[38] Many of these people do not qualify for the UIF, because the UIF only covers people who have made contributions. It may make sense to rethink this limitation in order to address the crisis of chronic unemployment in South Africa. The UIF has expanded in access over time. The UIF Act was amended in 2003 to cover domestic workers and seasonal workers.[39] In 2017 UIF benefits were expanded to a year, from unemployment or childbirth, and a dependent benefit was expanded in case of death.

Compensation Funds cover claims for illness, injury, or death at the workplace. Compensation Funds contributions are made by both employer and employee. In 2015/16, the Compensation Fund registered 129,123 claims and adjudicated 135,531 claims, and approved R960,336,000 for payment.[40] It has attempted to modernize its operations through digitizing the claims process. In 2017 35 employees of the Compensation Fund were suspended for fraud, paying out false claims that were then collected by employees for personal enrichment. [41]

The UIF and the Compensation Fund are overseen by the Department of Labour, while the Road Accident Fund is overseen by the Department of Transport. There are three other industry-specific compensation funds: the Mines and Works Compensation Fund (overseen by the Department of Health); the Rand Mutual Association fund for injured miners; and the Federated Employers' Mutual Assurance fund, for injured construction workers.

PUBLIC AND PRIVATE PENSION FUNDS

Pension and provident funds rely on contributions by employers and employees over the course of an employee's career. These funds are the largest collective investors in the South African stock market. Pension funds held approximately R 4 trillion in assets in 2015. [42]

FOOTNOTES:

[35] Brockerhoff, Stephanie. (2013). A Review of the Development of Social Security Policy in South Africa. SPII.
[36] Ibid., p. 19.
[37] Department of Labour. (2016). Annual Report for the Unemployment Insurance Fund for the year ended 31 March 2016. P. 90 & p. 91.
[38] Joana Ferreira. (2017). "South Africa Jobless Rate Unchanged at 27.7% in Q2. Trading Economics.
[39] Brockerhoff, Stephanie. (2013). A Review of the Development of Social Security Policy in South Africa. SPII. P. 17.
[40] Department of Labour. (2016). Annual Report of the Compensation Fund 2015/2016, p. 19.
[41] Loyiso Sidimba. 10 May, 2017. "Dozens of employees face arrests for fraud 'worth millions' as scandal rocks Compensation Fund." Sowetan Live.
[42] Financial Services Board, 2015 Annual Report of the Registrar of Pension Funds, p. 11.

In 2015, there were 5,143 registered retirement funds in South Africa, of which 2,946 were privately administered, and 2,188 underwritten. The remaining funds were the Government Employees Pension Fund (GEPF), the Associated Institutions Pension Fund, the Temporary Employees Pension Fund, Transnet Funds, the Telkom Pension Fund, the Post Office Retirement Fund. There are also foreign funds that cover South African resident members, representing .008% of the aggregate assets of retirement funds in South Africa. [43]

The GEPF is the largest single pension fund in Africa, and covers South African public employees. It holds R 1.623,465 trillion in assets, while privately administered funds hold R 1.842,662 trillion in assets, and underwritten funds hold R 469.684 billion in assets.[44] The Pension Fund Act, established in 1956 and amended in 2007, governs the provision of private pension and provident funds in South Africa, while the Government Employees Pension Law of 1996, amended in 2003, oversees the GEPF. [45] The Medical Schemes Act of 1998 oversees health insurance.

64% of South African pension funds are defined contribution funds, while 12.8% are defined benefit, 17.9% are hybrid, and 5.1% are other. In South Africa, 49.2% are standalone pension funds representing single employers, 25.6% are pension funds with contributions from multiple employers, 23.1% are provident funds which offer the option of receiving the full amount in a lump sum, 2.6% are industry funds for sector employers, and 2.6% are other.[46]

NON-CONTRIBUTORY SOCIAL ASSISTANCE ('SOCIAL GRANTS').

Non-contributory social assistance provides financial support to people who do not have enough resources to provide for themselves. In South Africa however, there is no permanent social assistance available for able bodied working age people between 18 and 59 – the 'missing middle' - even though they may lack resources or access to employment. Historically, under the apartheid government, both contributory and non-contributory social security privileged the white minority, as did the country's labour markets, including through the use of racially determined job reservation. The Social Assistance Act of 1992 equalized the monetary value of social assistance grant allocations between racial groups.[47] Under this act, social assistance was administered on a provincial level, not a national level. This Act remains the foundation for the subsequently redrafted Social Assistance Act of 2004. This must be noted, given that the original act was drafted during Apartheid and before the adoption of the Constitution in which social assistance was included as a justiciable right.

The Social Assistance Act of 2004 and the South African Social Assistance Agency (SASSA) Act of 2004 consolidated non-contributory social assistance. These acts established nation-wide social grants through a single agency, housed under the Department of Social Development, and administered on a national level. Non-contributory social assistance is provided by the Department of Social Development (DSD) and its sub-agency, the South African Social Security Agency (SASSA). Non-contributory social assistance encompasses the provision of social services and social grants (cash transfers) to qualifying South African residents. The eight categories of social grants are provided in the table below. Grants are administered by SASSA. SASSA social grants are considered unconditional cash transfers, because although they are means-tested, receipt is not conditional on specific actions, such as attending school or enrollment in the labour force.

FOOTNOTES:

[43] Ibid., p. 14.
[44] Ibid., p. 14.
[45] Government Gazette, Vol. 506, Cape Town, 29 August 2007, No. 30240: No. 11 of 2007: Pension Funds Amendment Act, 2007.
[46] Southern African Venture Capital and Private Equity Association (SAVCA). (2016). New Frontiers: Perceptions of and Allocations to Private Equity by Southern African Pension Funds. P. 16-17.
[47] Act 59 of 1992

THE NON-CONTRIBUTORY SOCIAL GRANTS AVAILABLE TODAY IN SOUTH AFRICA ARE LISTED BELOW.

TABLE 1. CURRENT CATEGORIES AND VALUES OF NON-CONTRIBUTORY SOCIAL GRANTS IN SOUTH AFRICA.

Grant	Eligibility [48]	Maximum Amount as of April 2017 [49]
Older Persons, 60-74 years	Citizen, permanent resident or refugee who does not live in a state institution. Income below R 73,800 (single) or R 147,600 (married). Assets below R 1,056,000 (single) or R 2,112,000 (married).	R 1,600
Older Persons, 75+ years	Citizen, permanent resident or refugee who does not live in a state institution. Income below R 73,800 (single) or R 147,600 (married). Assets below R 1,056,000 (single) or R 2,112,000 (married).	R 1,620
War Veterans'	Citizen or permanent resident who fought in World War I, World War II or the Korean War; does not live in a state institution. Income below R 73,800 (single) or R 147,600 (married). Assets below R 1,056,000 (single) or R 2,112,000 (married).	R 1,620
Disability	Citizen, permanent resident or refugee who has submitted a medical assessment of disability and does not live in a state institution. Income below R 73,800 (single) or R 147,600 (married). Assets below R 1,056,000 (single) or R 2,112,000 (married).	R 1,600
Care Dependency	Citizen, permanent resident or refugee; child under 18 with a medical assessment of permanent severe disability, who does not live in a state institution. Income below R 192,000 (single) or R 384,200 (married). No assets test.	R 1,600
Foster Child	Citizen, permanent resident, or refugee. No means test, must provide court order of foster care status.	R 920
Child Support	Citizen, permanent resident, or refugee. Income below R 45,600 (single) or R 91,200 (married). No assets test.	R 380
Grant-in-Aid	Recipient of Older Persons Grant, Disability Grant, or War Veterans' Grant, who requires a full-time caretaker, and does not receive care in a state-subsidized institution. No means test.	R 380
Social Relief of Distress (SROD)	Temporary grant issued for up to six months, after a disaster or other hardship. Can be issued in food parcels or vouchers rather than cash. No means test, must be unemployed.	R 1,600 adults, R 380 children, for up to 6 months

Source: SASSA, You and Your Grants 2016/17, supplemented by call to SASSA at 0800-60-10-11.

FOOTNOTES:

[48] SASSA, You and Your Grants 2016/17, supplemented by call to SASSA at 0800-60-10-11.
[49] Government Gazette, March 31, 2017, DSD No. R. 305, "Increase in Respect of Social Grants".

Gradually, since 1992, the number of people who receive social assistance in South Africa has grown. Grant allocations have expanded incrementally, while qualifications for the grants have also been liberalized. These incremental changes have followed civil society mobilization and advocacy. The largest grant by number of beneficiaries is the Child Support Grant, while the largest by state expenditure is the Older Persons Grant.[50] Since 2008, South African residents age 60 and over can receive the Older Persons Grant if they qualify by the means test, regardless of gender. Previously, women could apply at age 60, and men at age 65. This policy change followed the legal challenge in Roberts and Others v Minister of Social Development and Others (unreported decision of the Transvaal Provincial Division, Case Number 32838/05). Likewise, the age limit for the Child Support Grant gradually extended to cover more South Africans, moving from age 7 (2001) to age 9 (2003) to age 11 (2004) to age 14 (2005), and now to age 18 (2010).[51] Groups such as the Basic Income Grant Coalition advocated for the incremental expansion of the Child Support Grant to cover older children, and also following the legal challenge of Mahlangu v Minister of Social Development and Others Case No. 25754/05 (Transvaal Provincial Division). Today, the Child Support Grant is the grant that the largest number of South Africans have access to, with 11,972,900 people accessing the grant in 2015/2016.[52] The Department of Social Development has worked to supplement the grant with meaningful services through its Early Childhood Development centres and programmes, based on policies put in place by Cabinet in 2015. [53]

While the expansion of the Child Support Grant laudably extends coverage to a greater share of poor South Africans, it's important to realise that many poor South Africans still do not have access to grants, and that the current structure of grants into eight categories may be seen as exclusionary and inadequate. As will be discussed later in the report, at least 25.4% of poor South Africans still have no individual access to social assistance. Quality has also wavered, as the introduction of a debit card system of grant distribution has made grant distribution more efficient, but has also introduced new types of exploitation into the social assistance system.

The Older Persons Grant, the War Veterans' Grant, the Disability Grant, and the Care Dependency Grant all have allocations that are large enough to place an individual just over the upper-bound poverty line (UBPL), which adjusted for inflation stands at R 1,138 in 2017. However, as will be discussed in greater detail in the budget analysis section of this report, the economic value of these four grants has gone down by about 5% in the last five years, lowering the adequacy of the grants. In addition, the grant values are often further eroded, as beneficiaries must share them with other family members who are indigent but do not qualify for grants. This will be covered below in the section on the unemployment gap in social assistance.

At R 380, the Child Support Grant is 28.44% less than the current Food Poverty Line of R 531. The Child Support Grant is not an adequate amount of money to feed a hungry adult, let alone lift a person out of poverty or meet the minimum core of social protection. However, despite its modest size, the Child Support Grant is often recognized as a highly effective means of improving child health and education, particularly during early years. An impact assessment of the grant published by UNICEF found that early take-up of the grant improved nutrition and raised grade attainment in primary school by 10.2%, for children whose mothers had less than 8 years of schooling.[54] Of unconditional cash transfer programs worldwide, the Child Support Grant was found by the World Bank to be the fourth largest by scale, covering over 11 million people or 21% of South Africans in 2014.[55]

THE ABLE BODIES WORKING AGE GAP IN SOCIAL ASSISTANCE—THE 'MISSING MIDDLE'

The social grants administrated by SASSA tend to cover groups that are not usually expected to join the workforce, such as the elderly, minors, and the disabled. It does not cover healthy, working age adults. The largest gap in social assistance coverage is the lack of benefits for unemployed adults ages 18-59.

FOOTNOTES:

50 2016 Annual Report, Department of Social Development, p. 50 and p. 52.

51 Maria Santana. (2008). An Evaluation of the Impact of South Africa's Child Support Grant on School Attendance. Centro de Estudios Distributivos, Laborales y Sociales, Universidad Nacional de La Plata, Argentina.

52 SASSA. (2016). 15/16 Annual Report. Table 1, p. 26.

53 Ibid., p. 27.

54 DSD SASSA and UNICEF. (2012), The South African Child Support Grant Impact Assessment, p. 106.

55 World Bank. (2014). The State of Social Safety Nets, p. 12 and p. 86.

If adults have never been employed or have only had marginal short-term employment, they do not qualify for the UIF. SROD is occasionally accessed by unemployed adults for a short-term period of up to 6 months, but this grant is not consistently available. Present-day South Africa has exceptionally high levels of unemployment and poverty. In Q1 2017 the Quarterly Labour Force Survey published by Statistics South Africa found a national unemployment rate of 27.7% and an expanded unemployment rate of 36.4%.[56] The expanded unemployment rate includes those that would like to work but are not actively seeking a job. The highest levels of unemployment are found among the youth and those without substantive educational qualifications. Among youth ages 20-24, 49.5% are Not in Employment, Education, or Training (NEET).[57] People who did not graduate matric are more likely to be unemployed in South Africa than people with higher levels of educational attainment, with an unemployment rate of 33.1%.[58] Socio-economic inequality in the country still reflects the pervasive disenfranchisement of black South Africans that took place under colonialism and apartheid. 80% of the unemployed in South Africa are black, or 31.4% of black South Africans, the highest unemployment rate by racial group.[59] The Q1 2017 unemployment rates for other racial groups are 22.9% (Coloured), 12.9% (Indian/ Asian), and 6.6% (White).[60]

South Africa has pursued 5 strategic plans for economic growth since the transition to democracy in 1994, all of which have included proposals to curb unemployment. These have been Reconstruction and Development Programme in 1994 (RDP), the Growth Employment and Redistribution Strategy in 1996 (GEAR), the Accelerated and Shared Growth Initiative in 2006 (ASGISA), the New Growth Path in 2010 (NGP), and the National Development Plan in 2012 (NDP).[61] While South Africa's national unemployment rate dropped from 27.9% (2004) to 20.7% (2008) under ASGISA, it began to climb again after the global financial crisis of 2008.[62] South Africa's strategic plans have not managed to significantly reduce persistent structural unemployment, particularly for low-skilled workers.

B) CHANGES IN GRANT DISTRIBUTION

BANK ACCOUNTS AND DIRECT DEBITS

The largest and most controversial shift in the provision of social assistance in the last five years has been the migration of grant holder payment systems to the banking sector. This has made grant payment more convenient for grant-holders, but has also subjected grant-holders to predatory behavior. Disagreements about how to move forward since the migration have weakened SASSA as an agency and threaten to disrupt the payment of grants. It has also illuminated risks in turning to private sector vendors to provide public services, along with governance problems within the Department of Social Development, some of which stem from how the SASSA Act was written.

The following Constitutional Courts cases all bear on contract process and public accountability:

AllPay and Others v CEO of SASSA and Others

AllPay and Others v CEO of SASSA and Others (No 2)

AllPay and Others v CEO of SASSA and Others [2015]

Black Sash Trust v Minister of Social Development and Others [2017]

In 2011, SASSA initiated a process to modernize grant distribution, opening a tender for a private vendor to create a biometric beneficiary identification system, and an electronic debit card payment system for grant distribution. In 2012, Cash Paymaster Services (CPS), a subsidiary of Net1, won the tender. AllPay, a rival bidder, sued SASSA over how the tender was handled.

FOOTNOTES:

[56] StatsSA, 2017, Media Release: Quarterly Labour Force Survey – QLFS Q1:2017.
[57] StatsSA, 2017, Quarterly Labour Force Survey, Q1 2017, p. 11.
[58] Ibid., p. 15.
[59] Ibid., p. 21, p. 24.
[60] Ibid., p. 24-25.
[61] Lorainne Ferreira and Riaan Rossouw. (October 2016). "South Africa's Economic Policies on Unemployment: A Historical Analysis of Two Decades of Transition". Journal of Economic and Financial Sciences. 9 (3), p. 818.
[62] Ibid., p. 813.

The court found in AllPay's favor and invalidated the contract. However, when CPS declined to bid on a new tender, SASSA continued working with CPS, under a suspended order of invalidation, and then finally past the dated terms of the original contract. In its decision in the second All Pay case (Remedy Judgement), the Constitutional Court makes it clear that fulfilling obligations to rights-bearers must be prioritized, and that private contractors providing public services must be held to the same accountability as the state. The Court found SASSA at fault for its "irregular conduct" that led to the declaration of invalidity.[63] It deemed that "for the purposes of the impugned contract", Cash Paymaster Services must be considered an "organ of the state".[64] Thus, CPS had an obligation to continue to deliver public services. This is an example of a horizontal application of the Bill of Rights and prioritizes the obligation to fulfill SERs. Stating that CPS must be subject to "public scrutiny, both in its operational and financial aspects", the Court ordered CPS to provide audited financial statements that included information about the profitability of its contract.[65] As SASSA did not have measures in place for the payment of social grants after 1 April 2017, when the original contract with CPS was due to expire, through the Black Sash case the Constitutional Court again affirmed that SASSA and CPS are "under a constitutional obligation to ensure payment of social grants to grant beneficiaries from 1 April 2017 until an entity other than CPS is able to do so". [66]

These decisions point towards the Maximum Available Resources (MAR) obligation. If public services that fulfill ESR are outsourced to private companies, this may create a tension with the MAR obligation, especially in cases where companies are harvesting profits that would not have been accessible otherwise. Companies reinvest any surpluses towards their own bottom line, rather than re-investing surpluses towards fulfilling rights.

The SASSA Act gives the Minister of Social Development authority to terminate the SASSA CEO, and state that SASSA must make payment arrangements "with the concurrence of the Minister" of Social Development.[67] The lack of independent oversight over SASSA, and the lack of clear lines between political and administrative authority per the SASSA Act, contributed to the lack of remedy for the invalid CPS contract. This is an example of poor governance structures risking retrogression of rights that South Africa is constitutionally obliged to fulfill.

THE NET1 CASE: LIMITING REGULATION OF GRANT HOLDER BANK ACCOUNTS

Net1 Applied Technologies SA and Others v CEO of SASSA and Others (2017)

In contradiction to the general findings of the Constitutional Court cases, an important recent case in the High Court limits the state's authority to intervene in the banking and service arrangements between grant holders and private companies. In May 2017, the High Court in Gauteng ruled that there is no merit in the argument that *"Grindrod banks accounts are not bank accounts chosen by the beneficiaries"* and states that authorized debits are merely *"payment of a legitimate debt"*.[68] This decision counters Department of Social Development and civil society efforts to rein in commercial activity directed at grant holders. In 2016, the Department of Social Development endeavored to ban direct debits outside of funeral policies. This decision limits the authority of DSD to intervene in transactions made between grant beneficiaries and commercial interests.

FOOTNOTES:

[63] Ibid., [73].
[64] Ibid., [52].
[65] Ibid., [65].
[66] Black Sash Trust v Minister of Social Development and Others (Freedom Under Law NPC intervening) (CCT 48/17) [2017] ZACC 8, p. 4.
[67] SASSA Act, 2004 (Act No. 9). Ch. 3, Sec 5.4, Ch. 2, Sec 4.2a.
[68] Net1 Applied Technologies South Africa and Others v Chief Executive Officer of the South African Social Security Agency and Others; Finbond Mutual Bank v Chief Executive Officer of the South African Social Security Agency and Others; Smart Life Insurance Company Limited v Chief Executive Officer of the South African Social Security Agency and Others (43557/16; 46024/16; 46278/16; 47447/16) [2017] ZAGPPHC 150 (9 May 2017) In the High Court of South Africa (Gauteng Division, Pretoria), Case 43557/16, May 9, 2017, p. 21 and p. 27.

Studies in Poverty and Inequality Institute (SPII) has developed a budget analysis matrix to monitor whether budgets comply with human rights obligations defined in the ICESCR: progressive realization, non-discrimination and use of maximum available resources.[69] This type of budget analysis will be applied to social protection below.

A note on data transparency and accessibility: a budget analysis to advance socio-economic rights depends on clear, publicly available data. The national and provincial budget reviews should be contextualized with poverty data from Stats SA and department-specific data from DSD, which bears primary responsibility for social protection. There is not enough data publicly available on the Social Relief of Distress grant category. Increases to Social Relief are not published along with the other grants. It would also be useful if SASSA published more disaggregated data on the demographics of grant recipients.

PROGRESSIVE REALIZATION

Measures that show the state's progress over time towards achieving the full realization of socio-economic rights.

1. Has Social Protection spending kept up with CPI (inflation changes) including food inflation? (Adequacy)

GRAPH 1. RELATIVE GRANT ALLOCATIONS AND POVERTY LINES IN RANDS, 2011 – 2017

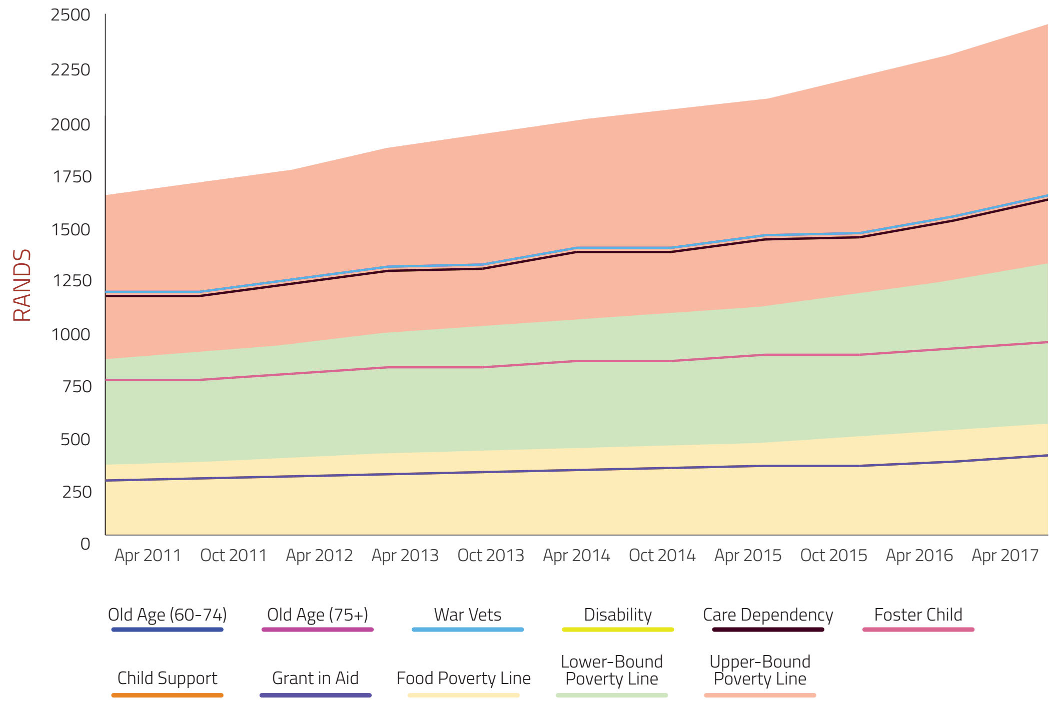


Chart by Margaret Sagan and Dennis Webster, using poverty lines data provided by Stats SA and grant increases published in the Government Gazette and available on *www.gov.za.*

The chart above shows the relationship between monthly social grant allocations and the poverty lines from 2011-2017. The official poverty lines are released in March and April, so the October poverty line amounts in this graph are only average values.

FOOTNOTES:

[69] Thandiwe Matthew and Daniel McLaren. (2016). Budget Analysis for Advancing Socio-Economic Rights. P.

The poverty lines are produced by Stats SA using a "cost-of-basic-needs approach".[70] The values of the poverty lines are adjusted annually to reflect inflation. The grant allocations are increased at least once a year, sometimes twice. The increases reflect CPI and keep the grants in general alignment with changes in the poverty lines that are due to changes in food inflation and CPI. The chart shows that the position of the grant categories relative to each other and the poverty lines have maintained some coherence over the last four years, but that each set of grants have lost some relative value in comparison to the poverty lines, with the Foster Child Grant showing the largest loss in relative value.

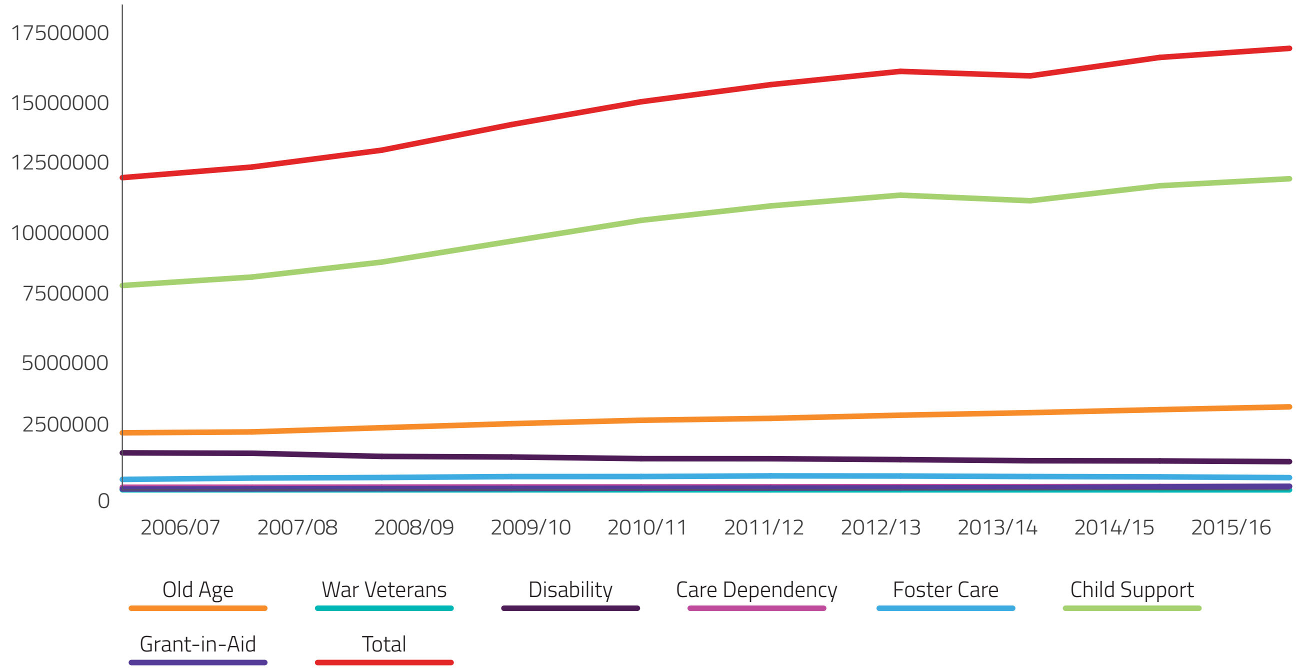
It can be observed that from 2011-2017, the Older Persons, War Veterans, Disability, and Care Dependency Grants have stayed above the Upper-Bound Poverty Line (UBPL).

In 2011, a disability grant allocation of R1140 was 146.34% of the value the UBPL of R779, while in 2017 a disability grant of R1600 is 140.59% of the value of the UBPL of R1138. The Foster Child Grant has not increased enough to keep up with changes in the Upper Bound Poverty Line, and is now closer to the Lower Bound Poverty Line. In 2011, the Foster Child Grant of R740 was 94.99% of the UBPL of R779, while in 2017 the Foster Child Grant of R920 is 80.84% of the UBPL of R1138. The Child Support Grant and the Grant-in Aid have always been below the Food Poverty Line (FPL), which is the cost of minimalist survival. They have also lost relative value. In 2011, the Child Support Grant of R 260 was 77.61% of the FPL of R335, while in 2017, the Child Support Grant of R 380 is 71.56% of the FPL.

2. How has the number of social grants changed over time? (Access)

As can be seen in the chart below, since 2006/2007, the total number of social grants distributed has grown 41.41%, from 12,015,059 to 16,991,634. The number of grants does not measure the number of people served by the grants, since some people, such as primary caretakers or grant-in-aid beneficiaries, draw multiple grants. The chart shows that Child Support Grants make up 70.46% of social grants distributed in 2017. Civil society has been instrumental in pushing for the incremental expansion of access to social grants.

GRAPH 2. NUMBER OF SOCIAL GRANTS, 2006/07 TO 2015/16



Source: Data from SASSA Annual Report 2015/16, Table 1, p. 26.

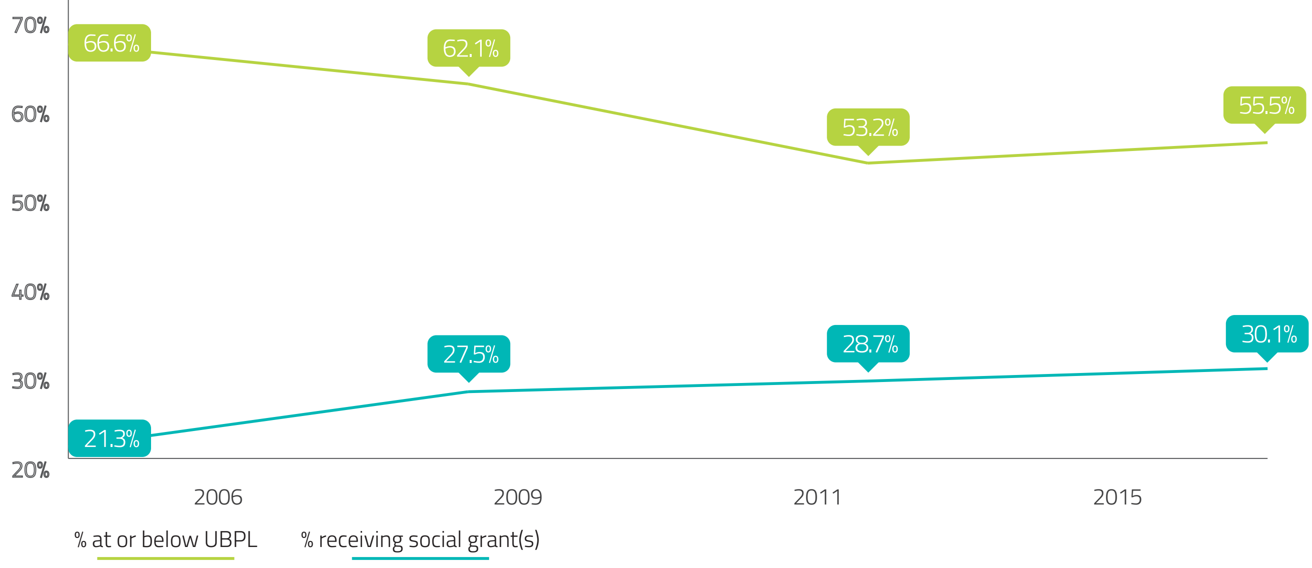
FOOTNOTES:

[70] Statistics South Africa. (2017). Poverty Trends in South Africa, p. 7.

3. How has the number of poor people in South Africa changed over time and how does this compare to the number of people with access to social grants? (Access)

Not everyone who receives social grants in South Africa lives at or below the Upper-Bound Poverty Line. However, it's instructive to compare the number of individuals living below the UBPL with the number of individuals receiving at least one social grant. Doing so gives a sense of the number of poor individuals who do not have individual access to social assistance.

GRAPH 3. NUMBER OF SOUTH AFRICANS LIVING UNDER THE UBPL VS THE PERCENTAGE OF SOUTH AFRICANS RECEIVING AT LEAST ONE SOCIAL GRANT



Sources: Stats SA, Poverty Trends (2017), Figure 2.2, p. 15 & General Household Survey, 2016, Figure 24, p. 27

Stats SA released a major report on Poverty Trends in 2014, which analyzed data from 2006-2011. A new edition of this report was released in 2017, to extend the longitudinal analysis of poverty in South Africa from 2006-2015. These reports are the most comprehensive data currently available on South African poverty. The percentage of South Africans below the Upper-Bound Poverty Line dropped from 66.6% in 2006 to 53.2% in 2011, but began to rise again in 2015, to 55.5%. 30,384,000 people lived under the UBPL in 2015.[72] In 2014/2015, 16,642,643 social grants were distributed, and 11,703,165 of these were Child Support Grants worth less than the value of the FPL.[73] Social grants reduce the number of people living in poverty in South Africa, and the severity of poverty in South Africa. However, the current allocation of social grants does not provide adequate social protection to all South Africans living in poverty, nor is it sufficient to lift the vast majority of the poor out of poverty.

4. Has there been an incremental increase over time in the allocation to programs likely to reduce inequality? (Adequacy)

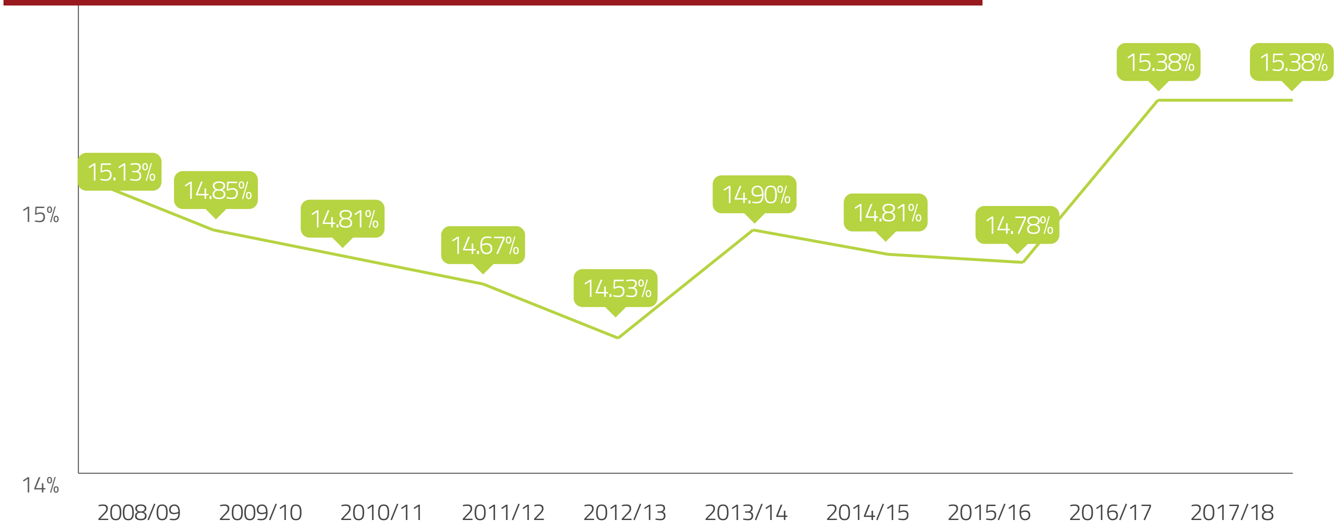
Social grants reduce inequality. Looking at 2005/06 data, Stats SA found that social grants reduced the Gini coefficient, which measuring disparities in household expenditure, from .8 to .72. Likewise, Woolard et al. found that income transfers such as social grants create statistically significant reductions in the gap between rich and poor in South Africa. Using data from 2011, researchers found "before transfers the richest 10% of the population has an income more than one thousand times the poorest 10%, while after transfers their income is 66 times that of the poorest 10%."[74]

FOOTNOTES:

[72] Ibid., p. 15.
[73] Department of Social Development. (2016). 2015/16 Annual Report, p. 51.
[74] Department of Social Development, (2017), Comprehensive Report on the Review of the White Paper for Social Welfare, 1997, p. 56. DSD citing Stats SA 2007 Income and Expenditure of Households, and Woolard, I. et al. (2015) How Much is Inequality Reduced by Progressive Taxation and Government Spending?

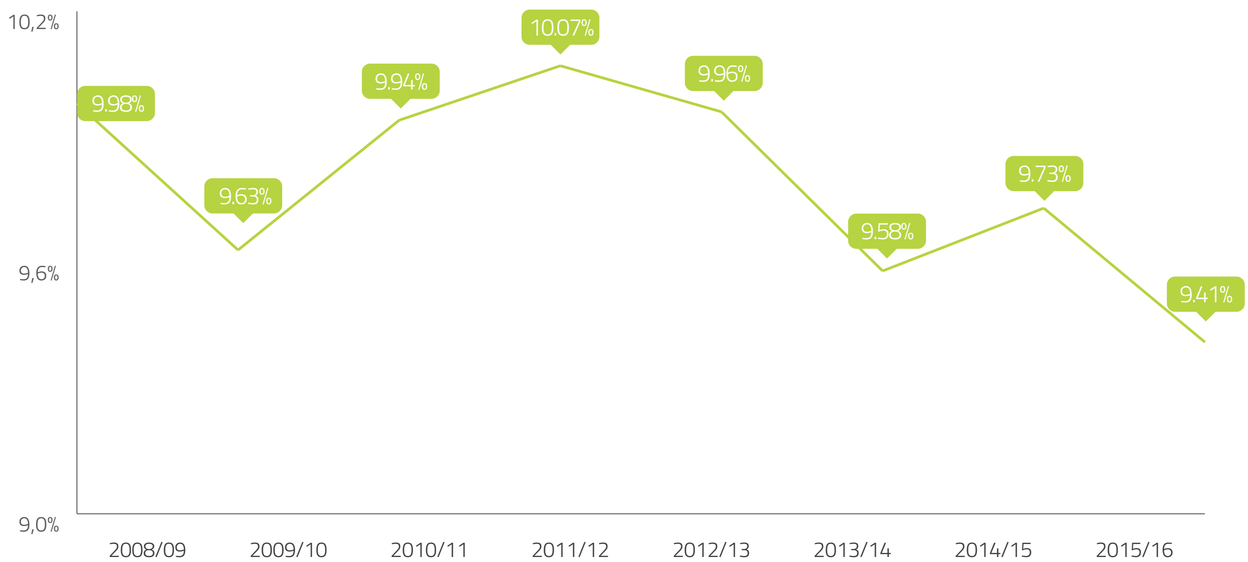
The percentage of national expenditure allocated to social protection is quite high.

GRAPH 4. SOCIAL PROTECTION AS A PERCENTAGE OF NATIONAL ANNUAL CONSOLIDATED EXPENDITURE



Social Protection represents the entire budget of the Department of Social Development. If examining purely the amount of spending that goes to social grants, representing a direct transfer from taxpayers to the less advantaged, the percentage of national expenditure goes down to between 9-10%. While this is laudable, it does not represent true progressive realisation, which is supposed to incrementally improve. Instead, spending on transfers has remained fairly static over time.

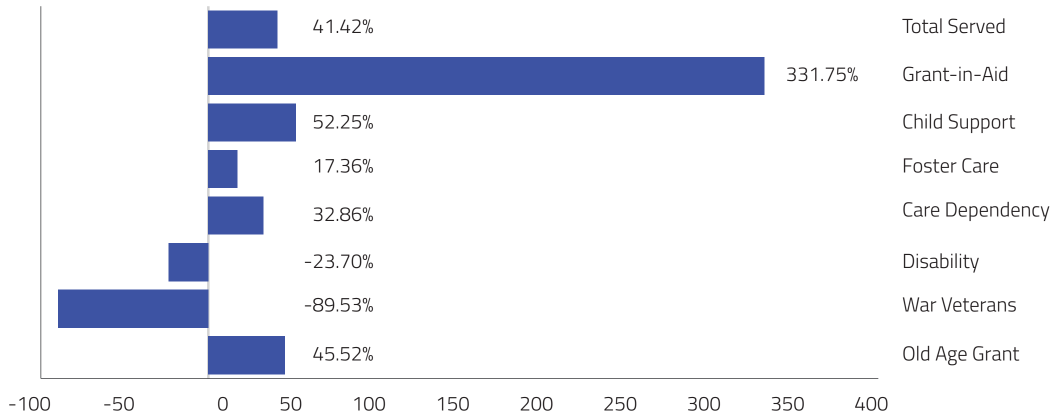
GRAPH 5. SOCIAL GRANT TRANSFERS AS A PERCENTAGE OF NATIONAL CONSOLIDATED EXPENDITURE



5. How has the number of social grants changed over time by grant category? (Adequacy)

While the total number of social grants given has expanded, change in quantities of grants over time varies considerably between grant categories. The chart below shows the changes in volume of individual grant categories from 2006/2007 to 2015/1016. While the total number of social grants has expanded by 41.42%, the expansion is not identical between grant categories, and some categories have experienced contractions.

GRAPH 6. CHANGE IN NUMBER OF SOCIAL GRANTS, 2006/07 TO 2015/16

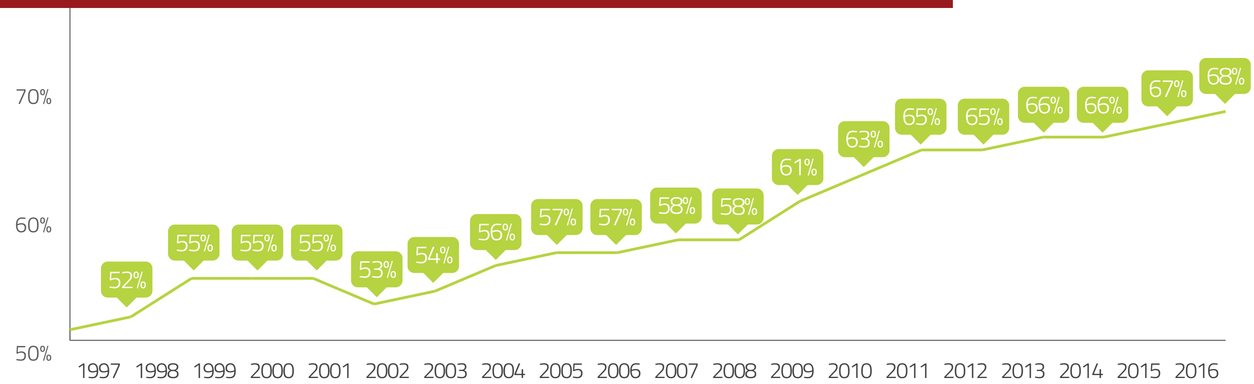


Derived by author from SASSA Annual report 2015/2016, Table 1, p. 26

The War Veterans' and Disability Grants have both declined in number. The War Veterans' Grant has declined because most veterans of the World Wars and the Korean War have died. The Department of Social Development noted in its Annual Report 2016/17 that disability assessments have become more stringent, and that this has eliminated fraudulent claims.[75] From a human rights perspective, it would be useful to have disability advocates independently assess whether the new assessments are appropriately measuring disability. According to the DSD, comparing the General Household Survey of 2014 and SASSA statistics for 2012/13 indicates that only an estimated 51% of the people ages 18-59 who have a disability receive the disability grant.[76]

The chart below shows what percentage of South Africans over age 60 receive an Older Persons Grant, from 1997-2016. The data from 1997-2013 has already been published by the Department of Social Development.[77] Since the census only takes place every 10 years in South Africa, some data has to derive from population estimates. The data for 2014-2016 is estimated using the Stats SA projected population over 60 for 2014-2016, compared to the number of social grants for those years.[78] In the Poverty Trends report, Stats SA documented declining poverty among the elderly. From 2006-2011, this report shows the number of age 65+ South Africans living under the UBPL declining from 55.6% to 36.2%, with a decline from 45.9% to 35% among South Africans ages 55-64. While comprehensive data is not available, it is likely that the Older Persons grant is providing an appreciable reduction in elderly poverty. However, it is important to realize that entire households often depend on the Older Persons grant, diluting its impact for any one individual.

GRAPH 7: UPTAKE OF OLDER PERSONS GRANT AMONG POPULATION 60 YEARS AND ABOVE, 1997 – 2016



FOOTNOTES:

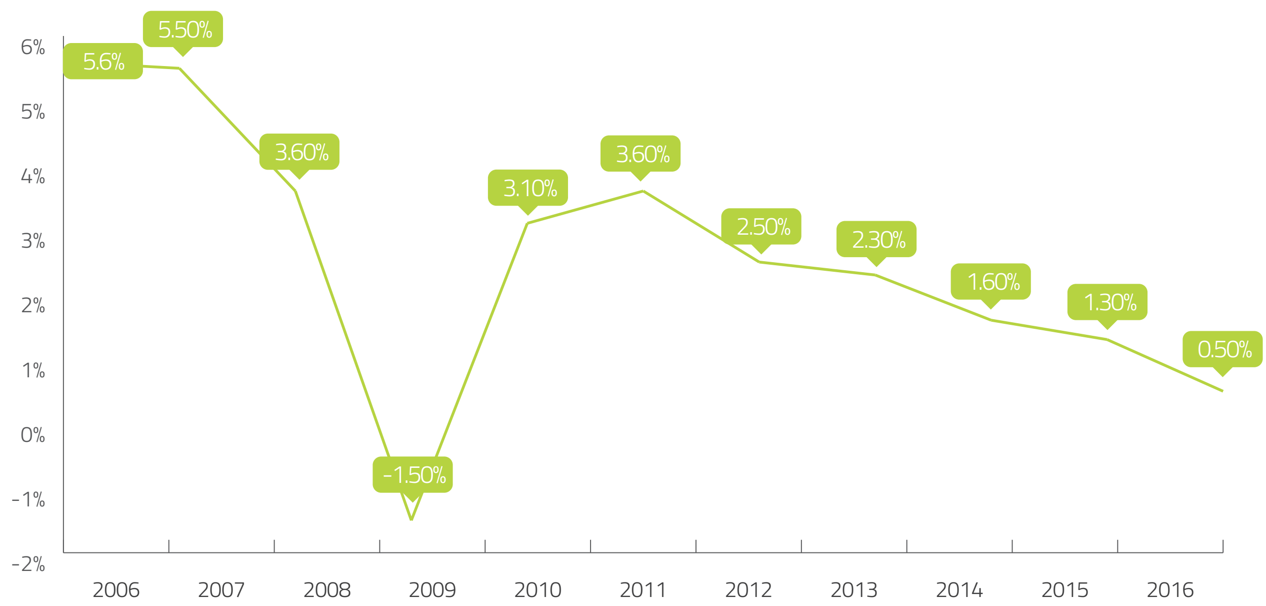
[75] Department of Social Development. (2017). DSD Annual Report 2016/17, p. 51.
[76] Department of Social Development. (2017). Comprehensive Report on the Review of the White Paper For Social Welfare, 1997. Reproduction of Figure 34, p. 225.
[77] Ibid. Reproduction of Figure 34, p. 225.
[78] Stats SA. (2014). Census 2011: Profile of older persons in South Africa, Report 03-01-60. Table 4.4, p. 25.

6. Examination of economic trends that might strain progressive realisation.

Poverty is related to unemployment and the overall health of the economy. The adverse conditions of a faltering economy not only make it more likely that people will fall into poverty, it also means that less tax money will go into the budget. This can create pressure on policy makers to be fiscally conservative, and not incrementally increase access to SERs. The interrelationship between poverty and unemployment is one of the reasons comprehensive social security reform must take place, implementing changes to both the contributory and non-contributory forms of social security.

The chart below shows real GDP growth in South Africa, from 2006-2016. It can be seen that South Africa has been on a general downward slope for the last 10 years, with a dramatic contraction due to the global financial crisis of 2008/2009. There was a recovery from that contraction, but growth has fallen steadily since 2011, with an anemic rate of .5% growth for 2016. Without real GDP growth, it will be difficult to bring the unemployment rate down, and the number of South Africans under the Upper-Bound Poverty Line will grow. Spending on socio-economic rights is not sufficient alone to reduce inequality in South Africa. However, it is necessary in order to reduce the depth of poverty in South Africa and to reduce unemployment. As Alex van den Heever has argued, access to cash transfers makes it more likely that people will be able to take the risks necessary to get a good job.

GRAPH 8. REAL GDP GROWTH, 2006 TO 2016



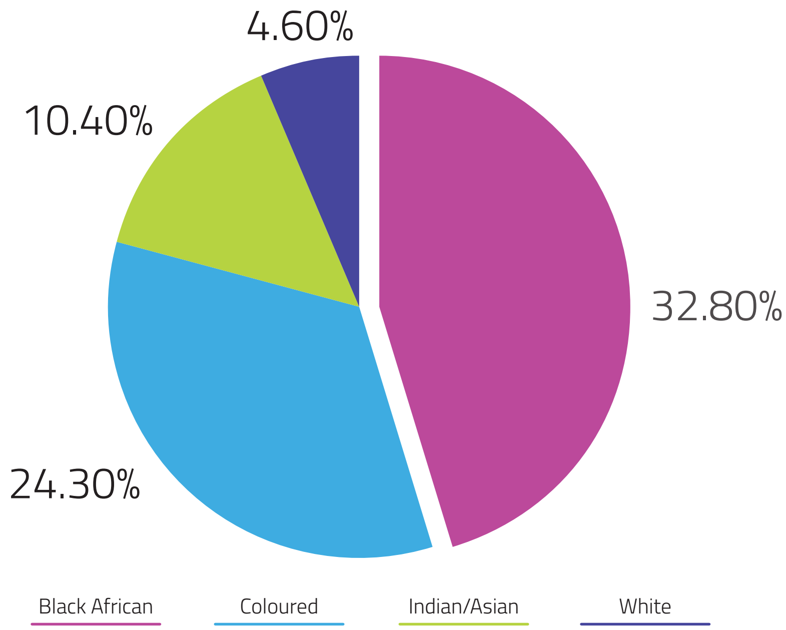
NON-DISCRIMINATION

Measures that show that state policies do not formally or substantively discriminate against vulnerable groups. [79]

1. Comparison over time of the demographics of grant beneficiaries, disaggregated by race and gender.

SASSA does not provide disaggregated data on the racial and gender characteristics of the population receiving social grants. However, this data is available through the General Household Survey.

GRAPH 9: 2014 BENEFICIARIES BY POPULATION GROUP



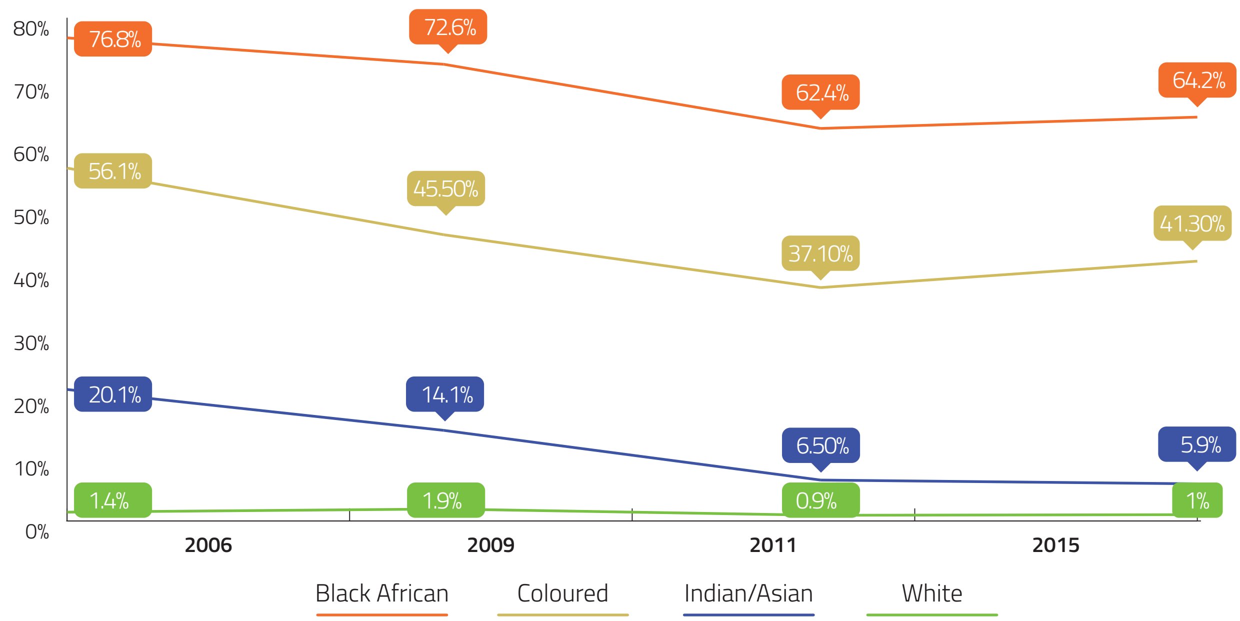
Source: 2014 General Household Survey, p. 12.

The 2017 Poverty Trends report of Stats SA shows that from 2006-2015, racial and gender disparities in poverty remained evident. Reflecting on the demographics of poverty in South Africa, black South Africans and to a lesser extent Coloured South Africans are the main recipients of social assistance, given the means test, and are the primary victims to any cuts in social protection. Women are also helped by social protection, and as women are often the primary caretakers of children, they are the main recipients of the most widely distributed grant, the Child Support Grant.

FOOTNOTES:

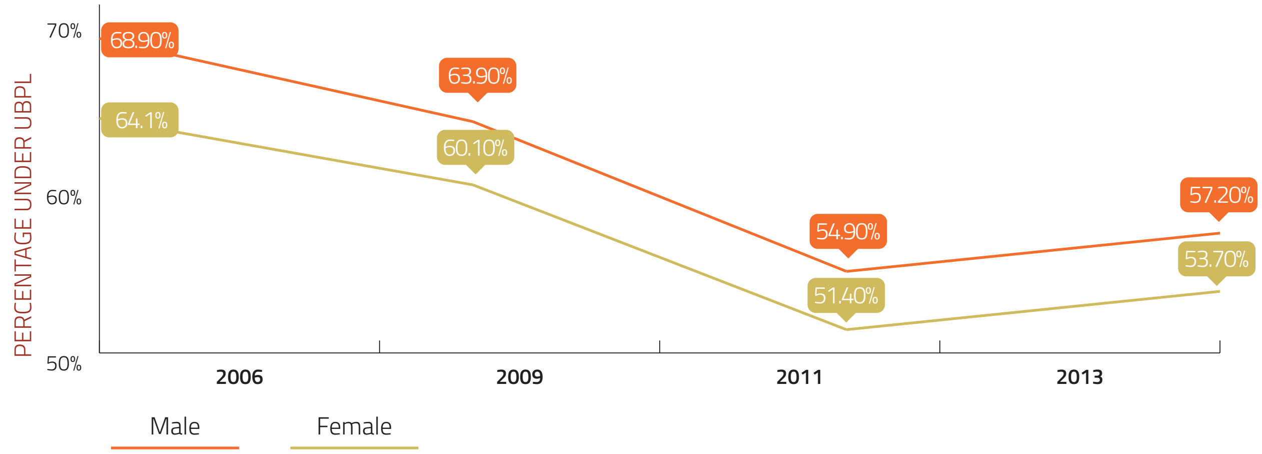
[79] Thandiwe Matthews and Daniel McClaren. (2017). 'Within its available resources'- an assessment of South African spending on socio-economic rights from 2008/09 to 2017/18, p. 5.

GRAPH 10. POVERTY HEADCOUNT BY POPULATION GROUP



Source: Statistics South Africa. (2017). Poverty Trends in South Africa, p. 58, Figure 3.2.

GRAPH 11. POVERTY HEADCOUNT BY SEX



Source: Statistics South Africa. (2017). Poverty Trends in South Africa, p. 56, Figure 3.1.

2. Track whether money spent on social protection actually is spent on its intended purpose, especially in poor regions.

The Department of Social Development takes guidance from the National Development Plan 2030 (NDP) in adhering to the concept of social protection. According to the NDP, "the social protection system includes non-income transfers and a set of basic services" that address multi-dimensional poverty.[80] While in the national budget, social protection goes to DSD as the department that focuses on the poor, minimum social protection is defined in the NDP as encompassing SERs in general. The NDP states "the basic essential social rights and transfers in cash and in kind that provide minimum income and livelihood security as

FOOTNOTES:

[80] National Planning Commission. (2011). The National Development Plan 2030: Our future- make it work. P. 356.

well as essential basic services such as water, electricity, sanitation, health care, and education that should be available to all those who need them. These would define an acceptable standard of living for all." [81]

Within national and provincial budgets, Department of Social Development spending is captured in the expenditure line Social Protection. The national budget largely goes toward social assistance, while the provincial budgets largely go towards social services.

However, while South Africa's overall level of social protection spending is high, it is not always implemented well. Welfare services are budgeted for and implemented at the provincial level. These services get variable rating for accessibility across services and provinces by service providers, practitioners, and beneficiaries.[82] Provincial expenditure also varies considerably. Variations in provincial per capita expenditure can have a detrimental impact on the most vulnerable. For example, in 2015/2016 Limpopo was the province with the lowest per capita expenditure per poor person, although in 2015 it ranked as the second poorest province by headcount, poverty gap, and severity, after Eastern Cape.[83]

Through (inadequate) provincial subsidies, NPOs often deliver social services to vulnerable groups at the provincial level. The NAWONGO decisions of the High Court has recognized that these NPOs are actually fulfilling the government's constitutional obligations and set out guidelines for how programmes are funded.[84] While not in the scope of this paper's budget analysis, which focuses on the national level, examining whether NPO funding is adequate on across all 9 provinces would be a further measure of non-discrimination.

MAXIMUM AVAILABLE RESOURCES

Measures that show states are putting all the resources available towards the fulfillment of rights. Section 27 (2) of the Constitution has been interpreted by the Constitutional Court as "an internal limitation on the content of section 27(1)".[85] 27(2) limits the obligation of the state to achieve progressive realization to measures "within its available resources".[86] As South Africa ratified the ICESCR in 2015, it is obliged to take measures "to the maximum of its available resources" (MAR).[87] As SPII has noted, "the obligation to use maximum available resources (MAR) requires a government to generate maximum resources to progressively realise SERs. This includes generating revenue through efficient tax collection, but would also extend to international assistance, including investment and where necessary, aid." [88]

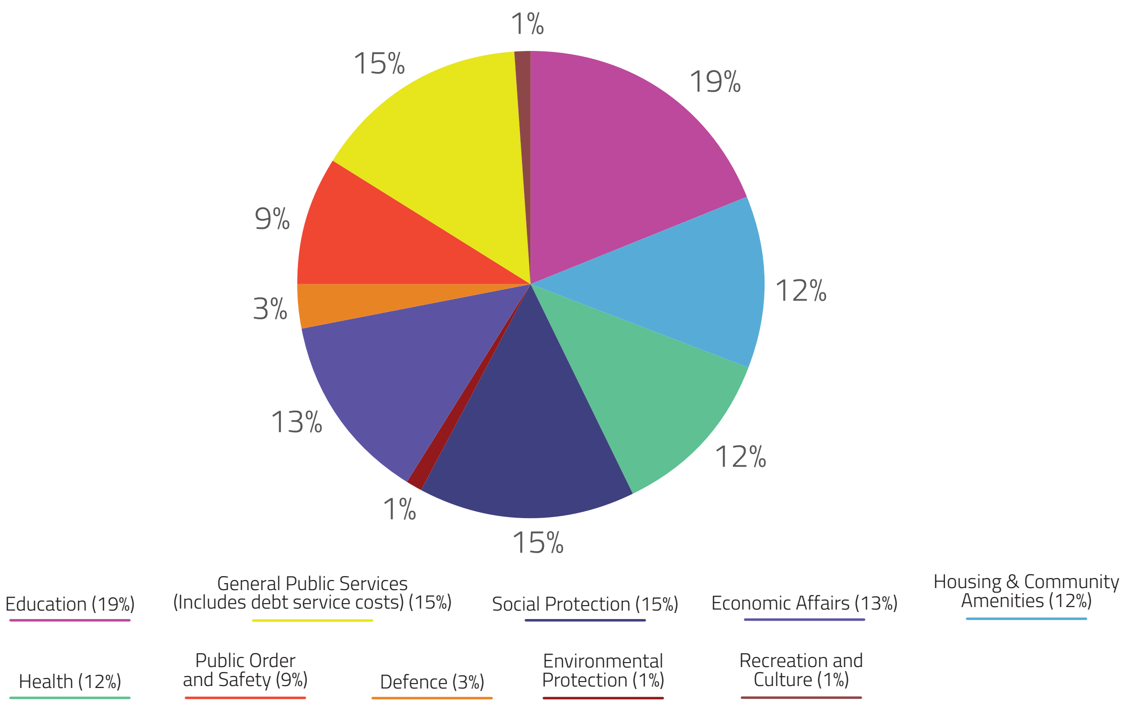
1. An examination of total government expenditure in order to identify any programs which obstruct expenditure on social protection.

As can be seen from the chart below, analyzing the 2015/2016 consolidated government expenditure, South Africa spent 59% of its budget on socio-economic rights, and the amount of money spent on social protection is fairly generous, at 14.78%, rounded to 15% in the chart below.

FOOTNOTES:

[81] Ibid., p. 357.
[82] Department of Social Development, (2017), Comprehensive Report on the Review of the White Paper for Social Welfare, 1997, p. 36.
[83] Ibid., p. 31 and Stats SA, 2017, Poverty Trends, p. 64.
[84] High Court Bloemfontein. 2014. Case 1719/2010. National Association of Welfare Organisations and Non-Governmental Organisations and Others and The Member of the Executive Council for Social Development, Free State, and others.
[85] Mokgoro J. Constitutional Court of South Africa. (2004). Khosa and Others v. The Minister of Social Development and Others. P. 28.
[86] Republic of South Africa, The Constitution of the Republic of South Africa, 1996. 27 (2).
[87] UNGA. International Covenant on Economic, Social and Cultural Rights. Article 2.
[88] Thandiwe Matthews and Daniel McLaren. (2016), Budget Analysis for Advancing Socio-Economic Rights. SPII. P.5.

GRAPH 12. 2015/16 CONSOLIDATED GOVERNMENT EXPENDITURE



Source: Data from National Treasury, 2017 Budget Review, Table 7 on p. 230 and Table 8 on p. 238

The social protection budget is spent by the Department of Social Development, and encompasses a broad variety of programs, both grants and services, directed towards the poor and the marginalized. However, the extent of the social protection budget that goes directly to cash transfers to the poor is smaller. In 2015/16, South Africa spent R201,690,600,000 on social protection, of which R128,322,854,776, or 63.62% of the social protection went directly to cash transfers.[89] The amount going directly to social grants represents 9.4% of consolidated government expenditure in 2015/2016.

16% of consolidated expenditure is spent on general administration. This masks that 10.39% of the consolidated expenditure is spent on debt service, which is kept as a sub-category of general administration. However, the amount of money spent on socio-economic rights (SERs) and on the SERs category of social protection is generous. The obstacles to progressive realisation comes not only from how much money is spent, but how effectively it is spent, and from whether there is enough economic growth to improve socio-economic conditions within the country.

2. With privatization of grant payment services, is surplus finance being re-invested in social protection?

While social grants get high ratings for accessibility and impact nationwide, the outsourcing of grant payment to Net1 to CPS and migration of grants into the banking sector have introduced new private sector profit streams that in effect siphon money generated through access to the social grants system back to Net1 and to other companies that debit the accounts of beneficiaries. It is arguable that grant holders have the same rights as other citizens to make decisions about how to best spend their own money, and that this autonomy is part of what makes unconditional cash transfers effective.

However, since the Constitutional Court deemed CPS "an organ of the state" because it is performing state functions, it is worth examining the profits made by CPS and other companies owned by its parent company, Net1. The Constitutional Court ordered CPS to submit financial statements to the court. Those statements have not been made readily accessible to the public. In the absence of the submitted statements, we can look at estimates made by financial journalists.

FOOTNOTES:

[89] National Treasury, 2017 Budget Review, Table 7, p. 230 and SASSA, Annual Report 2015/16, Table 2, p. 26.

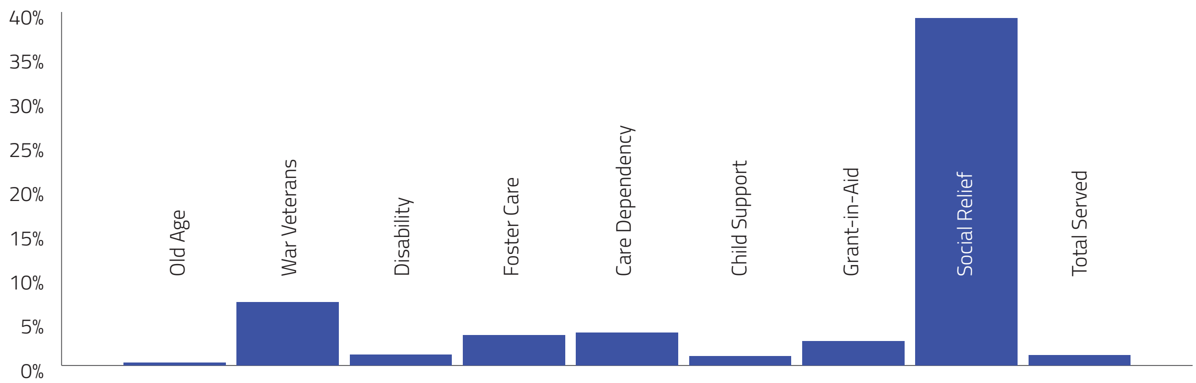
Investor and financial journalist Jay Yoon has estimated that in 2015, Net1 made $420,100,00 in SASSA-related revenue, of which $214,200,000 was drawn from "financial inclusion and applied tech" products other than CPS, which includes Moneyline, EasyPay Everywhere, and Umoya Manje.[90] In Rand value at the 2015 average exchange rate of 12.7721, that estimate would be R2,735,783,820 of secondary revenue to Net1, and R5,365,559,210 of total SASSA-related revenue to Net1.[91] These estimates represent corporate revenue, not the state budget. For comparison's sake, these figures are equivalent to 1.49% and 2.93% of the total national consolidated expenditure of R182,691,400,000 on social protection in 2014/2015.[92]

Grant holders, like anyone else, use their bank account to access loans and pay for monthly budgetary expenses. However, since these bank accounts originated through the social grants program, it is worth asking whether they should be treated differently than other bank accounts. Should companies with active tenders with DSD (CPS) or that hold the bank accounts subsidized by SASSA (Grindrod) be expected to re-invest some of their profits into the social grants system? At companies that make money through their financial relationships with grant holders, is there a role for corporate responsibility programs that feed money back into the SASSA budget? The ICESCR obliges the state to put Maximum Available Resources towards fulfilling rights obligations, and the Constitution requires progressive realization within the state's available resources. Privatization of service provision has created income streams for companies that were made possible through their government contracts. Should some of the profits from these income streams go back into funding social protection?

3. Does a comparison of expenditure plans with end-of-year audit reports show that the allocation for social protection is fully spent?

The percentage not spent for of the 2015/16 social grant expenditures is shown in the chart below. Percentages have been rounded to two decimal points. The one egregious discrepancy is in Social Relief, where 39.3% of available funds were not spent. The social relief grants are criticized in DSD's own literature as abused as a "vote-catching mechanism" and poorly defined.[93] Social relief grants are temporary grants that are supposed to go to unemployed people facing disaster and hardship, but are notoriously hard to access. 39.3% of the Social Relief budget went unspent in 2015/16. This represents a lost opportunity to help working-age adults in need of social assistance as it is the only grant currently available for able bodied working age people.

GRAPH 13. UNSPENT APPROPRIATION FUNDS 2015/6



Sources: Data derived from DSD Annual Report 2015/16, P2: Social Assistance Table, p. 52.

FOOTNOTES:

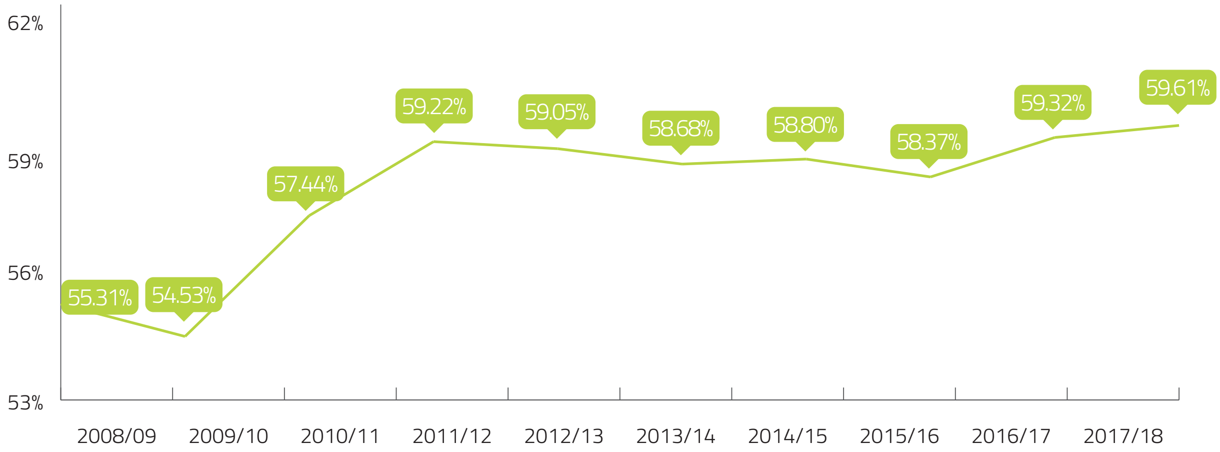
[90] Jay Yoon. October 30, 2015. "Why Net 1 UEPS Will Soon Lose Almost 70% of its Revenue." Seeking Alpha. P. 2.
[91] Nedbank Limited. Annual Average Exchange Rates.
[92] National Treasury, Republic of South Africa. Budget Review 2017. Table 8 Consolidated Government Expenditure 2013/2014-2019/2020. P. 238.
[93] Department of Social Development, (2017), Comprehensive Report on the Review of the White Paper for Social Welfare, 1997, p. 226.

4. Is socio-economic rights (SERs) spending significantly higher than non-ESR spending?

According to Development Finance International and Oxfam, in 2017 South Africa rates first in Africa in its Commitment to Reducing Inequality, coming in first in both spending on health, education and social protection, and first in its progressive tax structure. [95]

The chart below shows that South African's annual SERs expenditure is considerable. The categories included in the calculation below are education, housing and community amenities, health, social protection, and environmental protection. Agriculture, a sub-category of economic affairs, has not been included.

GRAPH 14. ANNUAL SERS EXPENDITURE AS A PERCENTAGE OF CONSOLIDATED EXPENDITURE

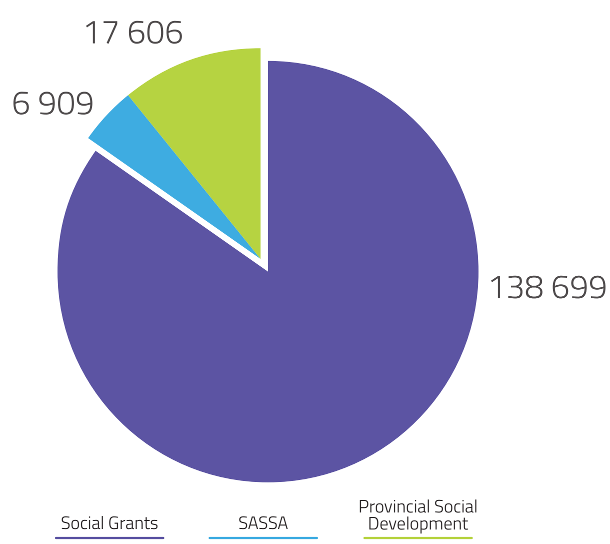


Sources: Derived from National Treasury, 2012 Budget Review, p. 128 and p. 146; 2014 Budget Review, Table 1, p. 2016; and 2017 Budget Review, p. 230 and p. 238.

5. Is national expenditure largely spent directly on grant holders?

The chart below shows that 84% of the national expenditure on social protection goes to social grants, while less than 5% goes to SASSA administration. 11% goes to provincial social development. As noted, the provinces vary in their administration of social protection.

GRAPH 15: SOCIAL PROTECTION EXPENDITURE, 2016/17



Source: National Budget Review 2017, Table 5.8, p. 59.

FOOTNOTES:

[95] Development Finance International and Oxfam. (2017). The Commitment to Reducing Inequality Index. P. 23.

ACCESS INDICATORS

1. Is physical infrastructure available nationwide that allows beneficiaries to obtain grants in a timely and dignified manner?

The creation of a single nationwide agency to handle administer grants has improved provincial disparities in access to grants. Since the introduction of the debit cards payment system for social grants in 2012, beneficiaries have gained more control over where and when they receive grants. However, as Natasha Vally has documented, there are often still long wait times for grant payments at authorized pay points such as grocery stores.[97] Some rural areas in South Africa still utilize open pay points, where grants are paid by mobile units or in outdoor areas. In 2015, SASSA identified 4,000 open pay points in use.[98] These are gradually being converted to fixed pay points, with 144 converted in 2014/2015 and 262 converted in 2015/2016.[99] Figures have not been released for 2016/2017.

2. Do all of the poor have access to social assistance?

All of the poor do not have access to social assistance in South Africa. There is no form of long-term social assistance available to working-age adults in South Africa, even though South Africa has high levels of chronic unemployment. The NIDS surveys give a sense of the extent to which the poorest do not all have access to social grants.

Table 2. NIDS, Wave 4, 2014-2015: Income from Social Grants by Total Monthly Income

Monthly Income Reported in Rands	Total Household Numbers	Reported Income from at least one Social Grant	Reported No Income from Social Grants
<1300	1564	46.16%	53.64%
1300-2200	1903	71.89%	27.96%
2210-3460	1915	71.23%	28.67%
3470-6210	1921	63.25%	36.54%
>6250	1,923	34.69%	65.31%

Source: NIDS Wave 4 data set, interpreted by author using STATA.

The above chart shows access to social grants among relatively poor South Africans. NIDS uses longitudinal data gathered nation-wide since 2008. Wave 4 data was gathered between 2014 and 2015. It can be seen that among South African households who report the lowest level of income, under the UBPL, 53.64% report that they do not have access to any monthly income from grants. These households may not have children or older people residing within the home. The next two income groups have over 70% of households receiving at least one social grant. Four of the social grants are worth R1600 per month, so if households have access to the Older Persons, War Veterans, Disability, or Care Dependency grants, they move out of the

FOOTNOTES:

97 Natasha Vally. (2016). "Insecurity in South African Social Security: An Examination of Social Grant Deductions, Cancellations, and Waiting." Journal of Southern African Studies. 42 (5), p. 973.

98 Parliamentary Monitoring Group. (2015). ATC150507: Report of the Portfolio Committee on Social Development on the Budget Votes 17, The Strategic Plans and the Annual Performance Plans of the Department of Social Development and its Entities for 2015/16.

99 SASSA Annual Report 2015/2016, p. 49; DSD Annual Report 2016, p. 101.

poorest category. It can be seen from the chart that once income reaches R6250 per month, the majority of people at that level no longer receive social grants.

Stats SA has measured the uptake of the Older Persons Grant and the Child Support Grant among poor people living at or below the Upper-Bound Poverty Line. Uptake of the Older Persons Grant is fairly high among the poor, with 92.2% uptake among poor seniors nationwide. However, the Child Support Grant has more limited uptake among the poor, with only 50.75% of poor households with children headed by men taking up the grant, and only 71.3% of poor households with children headed by women taking up the grant. The national uptake among all poor households with children is 61.3%.[100] As early uptake of the grant has been shown to have positive impacts on nutrition, health, and educational outcomes, it is unacceptable that 38.7% of poor households with children do not have access to this grant. The Child Support Grant replaced the State Maintenance Grant, which targeted single parents, primarily mothers, and their children. Perhaps more outreach needs to occur to married parents and single fathers, to decrease any stigma around uptake and ensure more poor children are enrolled.

3. Are there upfront and ongoing costs that erode the value of social grants for beneficiaries?

The #HandsOffOurGrants campaign led by Black Sash has documented how direct debits can reduce the value of grants for beneficiaries. It is administratively much easier for beneficiaries to sign up for monthly debits than to cancel these debits. Some were allegedly fraudulent, taking money out of grant holder accounts for services they never signed up for and never received.[101] While the Department of Social Development amended the Social Assistance Act in 2016 to restrict most debits except for funeral policies from approved companies, the High Court ruled in 2017 that debits from the Grindrod bank accounts of social grant beneficiaries are not under the purview of DSD, because these are private bank accounts like any other private bank account.[102] SASSA has instituted a complaints procedure for people who are unhappy with their deductions, but it has not solved the overall problems of predatory business practices.

FOOTNOTES:

[100] Stats SA. (2017). Poverty Trends. P. 37.

[101] Minister Bathabile Dlamini. 11 September 2014. Media Statement by DOSD MIN DLAMINI ON UNAUTHORISED DEDUCTIONS.

[102] Department of Social Development (2016). Amendment, Social Assistance Act of 2004 & High Court of South Africa (2017) Net1 and Others vs. the CEO of SASSA

2. Is South Africa spending Maximum Available Resources on social grants?

Here are the tables used to estimate the MAR data explicated in the Budget section. Adjusted using the 2017/2018 CPI index, to bring all numbers to current real prices, the following table shows the amount of money that goes each year directly to cash transfers. The amount of consolidated government expenditure that is transferred directly to grant beneficiaries is currently at 9.41%, while cash transfers represent only 3.14% of GDP.

Table 3. Expenditure and Inflation, 2008/09 to 2015/16.

R million	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
Cpi Index (2017/2018)	0.59	0.65	0.69	0.72	0.76	0.80	0.85	0.89
GDP (2017/2018 prices)	3899147.58	3758310.08	3980073.39	4158314.94	4223113.59	4532439.87	4566200.61	4574483.10
Consolidated Expenditure (CPI)	1199235.10	1268072.62	1273802.75	1329082.20	1377956.94	1429925.16	1457950.81	1526976.40
Total Social Grant expenditure (R million, rounded)	70715.88	79259.75	87492.91	95972.99	103898.85	109596.59	119958.04	128322.85
Total Social Grant expenditure (R Million) (CPI amounts)	119698.42	122074.93	126649.94	133839.35	137208.69	137057.88	141791.65	143635.36
Annual social grant expenditure (CPI adjusted) % of Consolidated Expenditure (CPI adjusted)	9.98%	9.63%	9.94%	10.07%	9.96%	9.58%	9.73%	9.41%
Annual social grant expenditure (CPI adjusted)% of GDP	3.07%	3.25%	3.18%	3.22%	3.25%	3.02%	3.11%	3.14%

Sources: National Treasury, 2017 Budget Review, Table 8, p. 238 and SASSA 2015/2016 Annual Report, Table 2, p. 26

3. Here are the tables used to show the relationship between grant levels and the poverty lines over time.

Table 4. *Shows the relationship between grant levels and the poverty lines over time.*

Grants	Old Age (60-74)	Old Age (75+)	War Vets	Disability	Care Dependency	Foster Child	Child Support	Grant in Aid	Food Poverty Line (ZAR)	Lower-Bound Poverty Line (ZAR)	Upper-Bound Poverty Line (ZAR)
2011 (April)	1140	1160	1160	1140	1140	740	260	260	335	501	779
2011 (Oct)	1140	1160	1160	1140	1140	740	270	270			
2012 (April)	1200	1220	1220	1200	1200	770	280	280	366	541	834
2013 (April)	1260	1280	1280	1260	1260	800	290	290	386	572	883
2013 (Oct)	1270	1290	1290	1270	1270	800	300	300			
2014 (April)	1350	1370	1370	1350	1350	830	310	310	417	613	942
2014 (Oct)	1350	1370	1370	1350	1350	830	320	320			
2015 (April)	1410	1430	1430	1410	1410	860	330	330	441	647	992
2015 (Oct)	1420	1440	1440	1420	1420	860	330	330			
2016 (April)	1500	1520	1520	1500	1500	890	350	350	498	714	1077
2017 (April)	1600	1620	1620	1600	1600	920	380	380	531	758	1138

Sources: Government Gazette, DSD Announcements of Social Grant Increases, and Stats SA, communication from Werner Ruch.

1. Are cash transfers a robust means of helping people exit poverty in South Africa?

Table 5. *Trigger Events Associated with Poverty Entry and Exit*

	W1 to W2	W2 to W3	W1 TO W3	W1 TO W4	W1 TO W2	W2 TO W3	W1 TO W3	W1 TO W4
Demographic								
Head Changed	34.83	49.49	52.02	42.1	34.34	47.5	50.55	55.91
Needs > Money	11.7	6.75	12.96	13.73	3.75	0.62	0.37	2.64
Demographic Share	46.53	56.24	64.98	55.83	38.09	48.12	50.92	58.55
Income								
Head Labour Earnings	18.86	15.72	10.02	19.11	23.57	16.99	4.6	4
Spouse Labour Earnings	4.64	1.75	2.82	3.15	2.7	3.86	3.59	1.38
Remittances	4.67	3.65	3.91	3.98	2.18	5.08	4.5	2.4
Grant Income	4.52	3.31	2.26	3.53	9.89	7.39	23.97	23.16
Income Share	47.16	36.88	28.57	40.37	55.92	46.97	47.05	40.83
Inconclusive	6.32	6.88	6.44	3.8	5.99	4.91	2.02	0.62
Total	100	100	100	100	100	100	100	100
Observations	963	925	1266	804	1317	1937	2324	3288

Source: Arden Finn and Murray Leibbrandt. (2016). The Dynamics of Poverty in South Africa. NIDS Discussion Paper 2016/1, Southern Africa Labour and Development Research Unit. Table 6, page 17.

The National Income Dynamics Study is a longitudinal nation-wide survey, conducted since 2008. Anonymous NIDS data is open access, and can be analyzed using STATA. Arden Finn and Murray Leibbrandt published the above table, which shows the reasons that households in the NIDS sample entered and exited poverty. Demographic changes in who was the head of the household was the most important reason for households to enter or exit poverty. In about 40% of cases, a change in household income caused entry to or exit from poverty. A change in the head of the households labour earnings was the most important income-related reason for people to enter poverty, at 19.11%. Income from social grants was the most important income-related reason for people to exit poverty, at 23.16%. Another way to express this is that nearly one quarter of the people who have managed to exit poverty since 2008 have done so because of social grant income.

CHAPTER SIX:
TOWARDS UNIVERSAL SOCIAL SECURITY: PROPOSALS FOR COMPREHENSIVE SOCIAL SECURITY REFORM

The process of comprehensive social security reform has a long history. Representatives of government and civil society have worked together to generate proposals that address the gaps in social security and social assistance coverage in South Africa. The current iteration of comprehensive social security reform is being facilitated through the National Economic Development and Labour Council (NEDLAC).

Today's process owes a debt to the The (Taylor) Committee of Inquiry into a Comprehensive System of Social Security for South Africa, chaired by Professor Vivienne Taylor. This committee published the Taylor Report in 2002, Transforming the Present—Protecting the Future. The work of the Taylor Committee still inspires the social security reform work of government and civil society. The 2002 proposal included a universal Basic Income Grant (BIG) to address the pervasive adult poverty of South Africans who are excluded from formal sector employment. BIG reforms have never made it through parliament, based on concerns that it is not sustainable at benefit levels that would truly alleviate poverty, but in all likelihood due to a lack of political will to address the needs of the poor given their relative lack of influence and power.

However, the overall commitment to finding a comprehensive approach that considers contributory and non-contributory programs side by side and removes means tests is still a national priority. The Taylor Committee's recommendation to implement a national health insurance system likewise has strong support both within government and among civil society. The measure of progressive realisation however and the need for a structured and time bound road map towards attaining universal enjoyment seldom finds its way into reform discussions, despite the constitutional imperative and duties on the state.

REFORMS SUPPORTED BY DSD AND THE INTER-MINISTERIAL COMMITTEE

Since 2007, an Inter-Ministerial Committee, led by the Minister of Finance, has worked on reform proposals to social security, with the assistance of an Inter-Departmental Task Team (IDTT) comprised of directors-general from National Treasury, Social Development, Labour, Transport, Health, Public Service and Administration, and the Presidency. This team produced discussion papers in 2012 and 2015. The 2012 discussion paper represents the 2017 policy position on comprehensive social security reform held by the Department of Social Development and the Ministerial Committee on the Review of the White Paper, chaired by Professor Taylor.

The major reform suggested is the formation of a National Social Security Fund (NSSF), for the public provision of modest public pensions and life insurance to all workers, funded through contributions from employers and employees.[104] These contributions are set at 12% up to the UIF earnings threshold (R178 464 per year in 2017), with workers making under R 13,000 exempt from contributing, and low-income workers receiving additional contributions from government.[105] This would include the current 2% unemployment contribution. The NSSF is designed to smooth income consumption through the life cycle, giving individuals more money in retirement, when they are no longer earning a monthly income. Lower-income workers are less likely to currently participate in private pension funds, so an NSSF is a means of improving the retirement prospects of the working poor.

FOOTNOTES:

[103] Department of Social Development, (2017), Comprehensive Report on the Review of the White Paper for Social Welfare, 1997, p. 236 and p. 241.
[104] Inter-Departmental Task Team of Social Security and Retirement Reform, (2012), Comprehensive Social Security in South Africa, p. 4.
[105] Ibid., p. 5; Sage HR & Payroll (2017), Payroll Tax Pocket Guide 2017/18, p. 52.

To make the NSSF affordable, the Government Employees Pension Fund (GEPF) and other public sector funds for employees of state-owned enterprises and local government will need to be restructured upon the formation of the NSSF. Their contribution base will be divided between the NSSF, and supplementary funds that will be subject to the Pension Funds Act. The GEPF is currently exempted from the Pension Funds Act.

Above the UIF threshold, workers are advised to supplement the public pension with a private pension, in order to maintain their pre-retirement standard of living. The creation of a national public pension fund is not intended to replace the private pension fund industry, and has not done so in other countries with public social security funds. Private pension funds are major investors in the South African stock market.

According to the IDTT recommendation, the public pension fund would be managed by a private-sector fund management company, contracted through a competitive tender process. This needs to be handled with great care, as seen by the loss of control SASSA experienced through the CPS contract. One expert recommendation is that future contracts take care to break up the value chain of contracts that oversee benefit investment and distribution. One example of how to do this would be to give several different private pension funds management authority over portions of the pooled contributions. That way, participants in the public fund could choose between different plans, and the plans would be forced to compete with one another, incentivizing better performance and accountability to the contributing taxpayers.

The public pensions available through the NSSF would be based on career-average earnings under the UIF earnings threshold, while disability and life-insurance benefits will be based on salary level at the time of injury or death.[106] This means that the amount of years a person works matters for their pension, but not for disability or survivor benefits. People with a disability benefit will also receive a pension, based on a career-average wage that treats years of disability as years of career service. A flat-rate funeral benefit would also be available through the NSSF.

Other improvements to contributory programs include strengthening UIF benefits and supporting the congruent development of a National Health Insurance.

The contributory and non-contributory public pillars of social security in South Africa would be drawn more closely together in the proposed reform. Both pillars would be administered from a single department. The payment of public pensions will draw on the experience of SASSA, which currently oversees the largest nationwide benefits payment system. Utilizing a single department to pay contributory and non-contributory public benefits would require that the social assistance budget be forecast using long-term modelling, rather than only the 3-year medium-term expenditure process currently used to budget grants.[107] A single master registry would consolidate the records of all public account holders, whether participants in social insurance or social assistance.

The team advocates phasing out means-testing for the Child Support Grant, the Older Persons Grant, and the Disability Grant, by gradually raising the income levels qualifier for grants, while at the same time making tax rebates universally available to people in these three groups who make income above the tax threshold. So, the primary caretakers of children, the elderly, and the disabled would be eligible for either a tax refund or a grant, depending on their income.

One discrepancy between the NSSF and the Older Persons Grant at the outset would be the age to receive benefits: for financial sustainability, while the Older Persons Grant begins at age 60, the NSSF pension benefits are not recommended to start before age 65, and the retirement age may be raised further in the future as the national population distribution changes.[108]

FOOTNOTES:

[106] Ibid., p. 6.
[107] Ibid., p. 31.
[108] Ibid., p. 25, 31.

This discrepancy may potentially be solved through a tax structure that stops giving tax deductions for retirement contributions at age 60, if individuals elect to start receiving their tax rebate or Older Persons grant at that age. When possible, it is ideal to set single standards. The team recommends setting a single national disability assessment standard, as there are currently different standards used by different government departments.

GOVERNANCE REFORMS, SOCIAL SECURITY ADMINISTRATION

There is a wide-spread consensus between social security experts that the turmoil around the winding down of the CPS contract has exposed limitations in the Social Assistance and SASSA Acts of 2004. Whether the current agency continues or whether proposed reforms lead to a new Social Security department, the knowledge of weaknesses in the SASSA Act should inform governance structures going forward. The department that oversees the social assistance and possibly the NSSF should be overseen by an independent board. Ideally, the board members should be appointed by not only the department's minister, but also in consultation with labour, community, and business.

Currently, social grants are appropriated from the budget of the Department of Social Development (DSD), but their payment is administrated by the South Africa Social Security Agency (SASSA), an agency within DSD. However, the SASSA Act is written in such a way that both the CEO of SASSA and the Minister of Social Development have administrative authority, which has led to dysfunction. The governance chain between administrating agencies and parent departments could be improved at a deputy-general level, so that when problems occur at an administrative level, there is prescribed process in place to work together and safeguard statutory responsibilities. Reform proposals have included the recommendation of a standalone department of social security, including all contributory and non-contributory funds. Administrative and political authority should be clearly divided in a new department, so that the administration of benefit distribution is not subject to political interference.

CONCLUSION

The Constitution of the Republic of South Africa makes socio-economic rights judiciable. Dedicated to social transformation, the Constitution admirably prioritizes the material concerns of the poor through a commitment to socio-economic rights. South Africa has the legal foundations necessary to develop a sound social protection floor that eliminates extreme poverty. It also dedicates an admirable fraction of its budget to SERs, and especially to social protection. However, the government agency dedicated to overseeing social protection has struggled with poor governance and administration, and has not done a good job of overseeing private contractors as we have demonstrated above. Budget analysis shows that while social grants have reduced poverty, South Africa is not adequately protecting the most vulnerable, because grant levels are losing ground relative to the poverty lines. There is further no clear roadmap that points towards the state's constitutional realisation of universal social security. South Africa has low levels of economic growth, and while comprehensive social security reform is a priority of the state and of civil society, there has not been enough consensus to enact needed reforms. Reforming social security will both protect the most vulnerable and create sustainable retirement protections for the middle class. It is necessary in order to increase social solidarity and combat growing inequality across the nation.

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Studies in Poverty and Inequality Institute (SPII)

31 Quinn Street, Newtown
Johannesburg
South Africa
2000

Phone: + 27 11 833 0161
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www.spii.org.za

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