

Cl Tshoose

Professor, Department
of Mercantile and Labour
Law, University of
Limpopo
ORCID: [https://orcid.
org/0000-0002-1663-0301](https://orcid.org/0000-0002-1663-0301)

DOI: [https://doi.
org/10.38140/jjs.
v48i2.7916](https://doi.org/10.38140/jjs.v48i2.7916)

ISSN 0258-252X (Print)
ISSN 2415-0517 (Online)

Journal for
Juridical Science
2023:48(2):163-194

Date Published:
29 December 2023

THE ROLE AND IMPACT OF CONSTITUTIONAL VALUES OF *UBUNTU*, EQUALITY, AND HUMAN DIGNITY IN THE INTERPRETATION AND PROTECTION OF THE RIGHT TO HAVE ACCESS TO SOCIAL SECURITY IN SOUTH AFRICA

SUMMARY

This article examines the role and impact of constitutional values of *ubuntu*, equality, and human dignity in the interpretation and protection of the right to have access to social security entrenched in the *Constitution of the Republic of South Africa*, 1996. Sec. 27(1)(c) of the *Constitution* provides a universal social security protection to everyone, including if they are unable to support themselves and their dependants' appropriate social assistance. Against this background, this article has three objectives. First, it enters the debate on the universal approach that comes with a human right to social security. Secondly, it examines the impact of the constitutional values of human dignity, equality, and *ubuntu* on the right to have access to social security. Thirdly, it looks at how the South African courts have incorporated and interpreted these values in their drive to protect and enforce the constitutional right to have access to social security. The article concludes by examining South Africa's compliance with its constitutional obligation in respect of ensuring that everyone has the right to have access to social security.



Published by the UFS
<http://journals.ufs.ac.za/index.php/jjs>

© Creative Commons With Attribution
(CC-BY)



1. INTRODUCTION

The right to social security is recognised as a human right at domestic and international levels.¹ The *Constitution of the Republic of South Africa, 1996* (hereafter, ‘the *Constitution*’) reinforces this principle of social security as a human right, by stating that “everyone has the right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance”.² The *Constitution* further places an obligation on the state and non-state actors to take reasonable legislative and other measures,³ within its available resources, to achieve the progressive realisation of [this right].⁴ In terms of sec. 7 of the *Constitution*, the state is required to respect, promote, and fulfil the rights in the Bill of Rights. Furthermore, the *Constitution* expressly provides that “the Bill of Rights is a cornerstone of democracy and it enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality, freedom and [*ubuntu*]”.⁵

Notwithstanding the constitutional undertaking of social security, many problems such as poverty,⁶ inequalities, and unemployment beset the system of social security.⁷ According to Statistics South Africa, the unemployment rate in the first quarter of 2023 was recorded at 32.9 per cent, and is among the highest in the world,⁸ showing an increase of 0.2 of a percentage point compared to the fourth quarter of 2022.⁹ Furthermore, South Africa’s income inequality and unemployment have skyrocketed over the years.¹⁰

Van den Heever acknowledges that “South Africa’s social security system is characterised by redistributive schemes that exclude many vulnerable families and social insurance that is insufficiently comprehensive”.¹¹

Based on this premise, the objectives of this article are threefold. First, it explores a value-based approach in assessing South Africa’s compliance with its constitutional obligation to social security. Secondly, it examines the role and impact of the constitutional values of human dignity, equality, and *ubuntu* on the right to have access to social security. Thirdly, it delves into how the courts have interpreted and protected these values in the context of the right

1 See sec. 27 of the *Constitution of the Republic of South Africa, 1996* (hereafter, ‘the *Constitution*’). See also art. 22 of the Universal Declaration on Human Rights, 1948 and art. 9 of the International Covenant on Economic, Social and Cultural Rights, 1966. See also Tshoose 2022:7-10.

2 Sec. 27(1)(c) of the *Constitution*.

3 See Malan 2005:1-23; Shoba & Zubane 2022:7-24. For further reading on the horizontal and vertical application of the Bill of Rights, see *Du Plessis and Others v De Klerk and Another* 1996 (3) SA 850:par. 8; Corrin 2009:31-71.

4 Sec. 27(2) of the *Constitution*.

5 Chapter 2 of the *Constitution*.

6 Nyenti 2013:913.

7 Ewinyu *et al.* 2021:3-13.

8 Dladla 2023.

9 Statistics South Africa 2022a.

10 Shahaboonin *et al.* 2023:102-111; Frances & Webster 2019:788-802.

11 Van den Heever 2021:11.

to have access to social security. In its concluding part, this article canvasses the idea that the value-based approach provides a yardstick to measure the government's constitutional obligation of realising the provisions of sec. 27(1)(c) of the *Constitution*.

2. DEFINING THE CONCEPT OF SOCIAL SECURITY LAW USING A VALUE-BASED APPROACH

Dror asserts that "in philosophical discourse, law is a subset of moral philosophy that translates abstract values and imperatives into concrete standards of action".¹² Consequently, the concept of social security law is viewed as an umbrella notion, encapsulating, among other aspects, the idea of social assistance, social insurance, and a wide variety of private and public measures that provide cash or in kind benefits or both, in the event of an individual's earning power permanently ceasing or being interrupted.¹³

McGregor *et al.* aver that social security acts as a "safety net", which catches people who lose their economic footing in life because of an unforeseen or unplanned event such as illness or unemployment.¹⁴ The author's view is that, when people cannot provide for themselves because of these events, the 'safety net' is there to prevent them from falling into complete destitution.¹⁵ For the purpose of this article, the phrases 'social protection' and 'social security' are used interchangeably, reflecting International Labour Organisation ('ILO') and United Nations practice.

The ILO defines social protection as:

the set of public measures that a society provides for its members to protect them against economic and social distress, caused by the reduction of income from work as a result of various contingencies (such as, sickness, maternity, employment injury, unemployment, invalidity, old age, death of the breadwinner, the provision of health care, and the provision of benefits for families with children).¹⁶

12 Dror 1957:440.

13 Olivier *et al.* 2003:23-24. The ILO Convention 102 of 1952 classifies social security systems into nine standard branches, namely healthcare, sickness, old age, unemployment, employment injury, family and child support, maternity, disability, as well as survivors and orphans. For each of these branches, Convention No. 102, complemented by other conventions and recommendations setting higher standards, also specifies how the systems are to be set up: What circumstances is each branch meant to protect? Who should be protected? What type of benefit should be provided? How do persons become eligible for benefits? For how long should the benefit be granted? The most recently adopted ILO social security standard, the Social Protection Floors Recommendation, 202 of 2012, expands the normative framework for the extension of social security by introducing the concept of nationally defined social protection floors that guarantee at least access to essential healthcare and basic income security throughout the life course. For a detailed discussion of what sec. 27(1)(c) entails, see Newaj 2023:126-133.

14 McGregor *et al.* 2021:253.

15 McGregor *et al.* 2021:253.

16 Garcia & Gruat 2003:13-14.

The ILO interprets social protection as broader and more inclusive than social security, since it incorporates non-statutory or private measures for providing social security, but still encompasses traditional social security measures such as social assistance and social insurance.¹⁷

Notwithstanding, the fundamental role played by social security, Razavi admits that:

the COVID-19 crisis has revealed stark gaps in social protection, with more than half of the world's population having no social protection cash benefit to fall back on, and only 30.6 per cent of the world's working-age population being legally covered by comprehensive social protection system[s] that include the full range of benefits.¹⁸

Workers in the informal economy have been hard hit, with hardly any or no recourse to social protection. Prior to the pandemic, they were excluded from formal work-related protection and from state-provided social assistance that targets the very poor and those outside the formal labour force.¹⁹ The employment-based social insurance scheme excludes most of the unemployed or atypically employed population.²⁰

It is submitted that the interpretation of the substantive content of the right to have access to social security ought to incorporate the constitutional commitment to eliminate poverty, deprivation, to promote human dignity, equality, freedom, and the principle of *ubuntu*. The Constitutional Court, in *Government of the Republic of South Africa and Others v Grootboom and Others*,²¹ made it clear that:

“The 1996 Constitution entrenches both civil, political and socio-economic rights. All rights in our Bill of Rights are *inter-related* and *mutually supporting*. There can be no doubt that human dignity, freedom and equality, the foundational values of our society, are denied those who have no food, clothing or shelter. Affording socio-economic rights to all people therefore enables them to enjoy the other rights enshrined in Chapter 2 of the Bill of Rights. The realisation of these rights is also key to the advancement of race, gender equality and the evolution of a society in which men and women are equally able to achieve their full potential”.²²

It is important to note that the constitutional right to have access to social security is not an absolute right, but it is subject to both internal and external limitations.²³ In other words, sec. 26 contains internal limitations that qualify this right. The state's obligation in respect of these rights goes no further than to take reasonable legislative and other measures within its available resources

17 See ILO 2019:Ch. 5.

18 Razavi 2022:270.

19 Razavi 2022:270.

20 Smit and Mpedi 2010:1.

21 *Government of the Republic of South Africa & Others v Grootboom & Others* 2001 (1) SA 46 (hereafter, '*Grootboom*').

22 *Grootboom*:par. 23.

23 Olivier & Jansen Van Rensburg 2000:89-90.

to achieve the progressive realisation of the rights.²⁴ If a legislative measure taken by the state to meet this obligation fails to pass the requirement of reasonableness for the purposes of sec. 26, sec. 36 can only have relevance if what is 'reasonable' for the purposes of that section is different to what is 'reasonable' for the purposes of sec. 26.²⁵

A value-based approach places premium on the universalistic nature of the protection and application of social security, rather than conditionality associated with the provisioning of social security benefits.²⁶ For example, most cases' access to formal social insurance benefits are dependent mainly on full-time employment. Furthermore, access to adequate medical aid benefits and maternity benefits are, to a large extent, linked to formal employment. Consequently, not much emphasis has been placed on neither the protection and promotion nor the fulfilment of the right to social insurance. Social and labour legislation in South Africa are extended to those who qualify as employees,²⁷ thus excluding various groups of atypical workers who fall short of the employee qualification.²⁸ As part of the interpretive exercise, the apparent purpose to which access to social security is directed must be considered and a 'purposive approach' adopted.²⁹ This approach entails examining the historical context of this statutory measure as well as the purpose of the underlying justification behind social security legislative framework viewed against the fundamental values of human dignity, equality, and *ubuntu*.³⁰

The advocates of a rights-based methodology use the language of human rights in the context of addressing 'individual empowerment'³¹ or a facilitator of agency because people can defend themselves against injustice when they have agency.³² This view on agency and rights equates to a liberal individualism that serves to "simply expand autonomy and choice" [viewed in the context of social security].³³

At an international level, the ILO encourages member states to close the social security gap and progressively achieve universal protection through the establishment and maintenance of comprehensive social security systems.³⁴ The ILO's Social Protection Floor Recommendation³⁵ calls for the implementation of the following priorities. First, the introduction of social protection floor as a fundamental element of national social security

24 Basson 2020:852-853.

25 See Stacey 2020:193-284; Coomans 2005:173-181.

26 Sustainable Development Goals target 1.3 calls on countries to "implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable".

27 Maloka & Okpaluba 2019:58-63.

28 See Fourie 2017:77.

29 See Barak 2015:85-96.

30 Carpenter 1995:260.

31 Ignatieff 2001:57.

32 Ignatieff 2001:57. See Nyenti 2013:901-916.

33 Brown 2011:145.

34 See ILO Social Protection Floors Recommendation, 202 of 2012.

35 ILO Social Protection Floors Recommendation, 2012.

systems for countries that do not have a minimum level of social protection. Secondly, the extension of social security with a view to progressively ensure higher levels of social security to as many people as possible, according to national economic, fiscal capacity, and as guided by the relevant ILO's social security standards.³⁶

According to the ILO, social protection floor should comprise at least four basic social security guarantees including access to essential healthcare, basic income security for children, persons of active age who are unable to earn sufficient income, and older person's benefits should be set at a level that allows people to live in dignity.³⁷ The social protection floor initiative provides the minimum core content of the human right to social security. It does this through a set of principles that provide guidelines for the design and implementation of social security programmes.³⁸ These guiding doctrines support both fundamental human rights values but also core principles related to the good governance, delivery, and financing of social security systems.³⁹ Fuo and Du Plessis evince that "the South African courts have shown reluctance to embrace, define and develop the minimum core content of socio-economic rights and its general deferent attitude towards the legislature".⁴⁰

3. NORMATIVE AND CONSTITUTIONAL BASIS FOR THE RIGHT TO HAVE ACCESS TO SOCIAL SECURITY

According to art. 22 of the Universal Declaration of Human Rights, 1948, and art. 9 of the International Covenant on Economic, Social, and Cultural Rights, 1966, access to social security is a human right. Meanwhile, there is proof that social security is a mechanism for achieving other economic, social, and cultural rights, including the right to food, education, and healthcare.⁴¹ As discussed earlier, the vast majority of the current social protection programmes were developed to address exposure and protection of people against risks.⁴²

Notwithstanding the fact that the *Constitution* enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality, and freedom, the vast majority of people do not have access to social security. In *S v Makwanyane*,⁴³ the Constitutional Court eloquently captured the very essence of constitutional values, when it stated that:

[o]ur new Constitution, unlike its dictatorial predecessor, is value-based. Among other things, it guarantees the protection of basic human rights, including the right to life and human dignity, two basic values supported

36 See fundamental principles couched in ILO's Social Protection Floors Recommendation, 2012.

37 See Ortiz *et al.* 2016:1-6.

38 See National Development Plan and United Nations International Children's Emergency Fund 2022:10-38.

39 ILO 2021:33-36.

40 Fuo & Du Plessis 2015:4. See also the rejection of the minimum core approach by the Constitutional Court in *Grootboom*:par. 14.

41 Basson 2020:867-868.

42 Caracciolo 2014:Unknown.

43 *S v Makwanyane and Another* 1995 (6) BCLR 665 (hereafter, '*Makwanyane*').

by the spirit of *ubuntu* and protected in secs. 9 and 10 respectively. In terms of sec. 35, this Constitution now commits the state to base the worth of human beings on the ideal values espoused by open democratic societies, the world over and not on race colour, political, economic and social class.⁴⁴

Unfortunately, COVID-19 and other concomitant socio-economic challenges dealt a blow to these constitutional values, in that they have not only disproportionately affected vulnerable groups such as the poor, but also impacted negatively on their right to social security as a human right.⁴⁵ Mubangizi avers that COVID-19 has directly and indirectly magnified these pre-existing inequalities, which manifest themselves through lack of access to income, employment, assets, healthcare, education, equal opportunity, and public services.⁴⁶ As a result, during lockdown, the poor were affected by the lack of essential goods and services, including food, water, and healthcare.⁴⁷

This state of affairs is diametrically unlike what the *Constitution* promises. For example, sec. 27 of the *Constitution* affords “*everyone* the right to have access to, (a) health care services, including reproductive health care; (b) sufficient food and water; and (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance”. Sec. 27(1)(c) guarantees “a right to have access to” social security as opposed to “a right to” social security. The Constitutional Court, in the *Grootboom case*,⁴⁸ held that a “right to have access to” (in the case of housing) is a much wider notion than a “right to”. The “right of access to” social security is protected because social security intersects with other rights in the Bill of Rights, as they are interrelated, interdependent, and mutually supporting.⁴⁹ A proper reading and application of this section show that the right to social security has a universalistic character and places a high premium on a value-based approach to social security coverage.

Vonk and Bambrough note that “the added value of the human right of social assistance lies in the possibility for an individual to address structural shortcomings in the existing architecture of social assistance schemes”.⁵⁰ Within a human rights perspective, the normative content of social security ought to cover nine classical risks embodied in the ILO Convention 102 of 1952. This Convention makes provision for adequate access to health services for all, cash benefits should be provided to those incapable of working due to ill-health to cover periods of loss of earnings, provision of social security schemes that provide benefits to older persons, ensure the protection of workers who are injured in the course of employment or other productive work.

Furthermore, according to Convention 102, the social security system should cover the costs and loss of earnings from the injury or morbid condition and the loss of support for spouses or dependants suffered as the result of

44 *Makwanyane*:par. 313.

45 Matthews *et al.* 2022:9-11.

46 Mubangizi 2021:244.

47 Mubangizi 2021:244.

48 *Grootboom*.

49 *Grootboom*:paras. 23-24.

50 Vonk & Bambrough 2020:377.

the death of a breadwinner, working mothers should be accorded paid leave or leave with adequate social security benefits, providing adequate income support to persons with disabilities who, owing to disability or disability-related factors, have temporarily lost, or received a reduction in their income, and have been denied employment opportunities, or have a permanent disability.

Nevertheless, access to the right to have access to social security is largely dependent on the availability of resources. The next section unpacks the availability of resources question.

4. ELEPHANT IN THE ROOM: THE AVAILABILITY OF RESOURCES QUESTION

The question of the availability of resources is critical to the realisation of the right to have access to social security. The State is obliged to take reasonable legislative and other measures within its available resources to achieve the progressive realisation of these rights.⁵¹ As discussed earlier, the *Constitution* places an obligation on the State to ensure universal access to social security. It concurrently allows a certain degree of latitude in relation to these aspects: the progressive realisation of the right,⁵² the taking of reasonable measures, and the availability of resources.⁵³ The meaning of the phrase 'available resources' was interpreted in *Soobramoney v Minister of Health (Kwazulu-Natal)*⁵⁴ to mean that provisions of sec. 27 regarding access to social security impose an obligation on the State to realise these rights. However, this is subject to the availability of resources, and that the corresponding rights themselves are limited because of the lack of resources.⁵⁵ The court remarked further that, given this lack of resources and the significant demands on them, an unqualified obligation to meet these needs would not presently be capable of being fulfilled.⁵⁶ In *Grootboom*, the court emphasised that there is a balance between goal and means.⁵⁷ The measures must be calculated to attain the goal expeditiously and effectively but the availability of resources is an important factor in determining what is reasonable.⁵⁸

An important question arises in this context: Where does the evidentiary burden lie in respect of the qualifying phrase, *within its available resources*? It would be unreasonable to expect ordinary litigants to identify and to quantify all the resources available to the State for the realisation of particular socio-

51 Sec. 27(2) of the *Constitution*.

52 In *Madzodzo*, the court rejected the government's interpretation of the right to basic education as described in various policy documents as a right to be progressively realised over time. Instead, the court reaffirmed the developing jurisprudence on the right to basic education by saying that the state must take all reasonable measures with immediate effect to realise the right. See *Madzodzo and Others v Minister of Basic Education and Others* 2014 (3) SA 441 (ECM).

53 Sec. 27(2) of the *Constitution*.

54 *Soobramoney v Minister of Health (Kwazulu-Natal)* 1997 12 BCLR 1696 (CC):par. 11 (hereafter, '*Soobramoney*').

55 *Soobramoney*:par. 11.

56 *Soobramoney*:par. 11.

57 *Grootboom*:par. 46.

58 *Grootboom*:par. 46.

economic rights. If the State wishes to rely on a lack of available resources in order to rebut an allegation that it has failed to take reasonable measures, it should bear the burden of proving the alleged unavailability of resources.⁵⁹ Relevant organs of state are clearly best placed to adduce this type of evidence.⁶⁰ The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) stated that, if a State uses resource constraints as an explanation for retrogressive steps, such information would be assessed, taking into consideration a number of criteria, including:

- a. The country's level of development;
- b. The severity of the alleged breach, in particular whether the situation concerned the enjoyment of the minimum core content of the Covenant;
- c. The country's current economic situation, in particular whether the country was undergoing a period of economic recession;
- d. The existence of other serious claims on the State party's limited resources; for example, resulting from a recent natural disaster or from recent internal or international armed conflict;
- e. Whether the State party had sought to identify low-cost options; and
- f. Whether the State party had sought cooperation and assistance or rejected offers of resources from the international community for the purpose of implementing.

Similarly, various options are available to South Africa, as it explores the fiscal space options for addressing the lack of resources. In other words, this part focuses on analysing potential sources of revenue to obtain the supplementary financing required to achieve the right to have access to social security. Concerning financing options, Sustainable Development Goal target 1.A calls on countries to "[e]nsure significant mobilisation of resources from a variety of sources,⁶¹ including through enhanced development cooperation, in order to provide adequate and predictable means for developing countries ...". Likewise, international experience shows that countries can draw on various strategies for creating fiscal space, which should be examined in the context of a national social dialogue, namely:

- i. increasing tax revenues;
- ii. expanding social security coverage and contributory revenues;
- iii. eliminating illicit financial flows;
- iv. reallocating public expenditures;
- v. using fiscal and central bank foreign exchange reserves;
- vi. managing debt: borrowing and restructuring existing deb

59 Liebenberg 2002:176-177.

60 Liebenberg 1997:350-351.

61 United Nations 2030 Agenda – Sustainable Development Goals: Goal 1A.

- vii. adopting a more accommodating macroeconomic framework, and
- viii. increasing Official Development Assistance ('ODA') aid and transfers.⁶²

On the issue of maximising resources for the progressive realisation of social security rights, Heywood points out that "when it comes to those rights that are immediately realisable, like 'basic education' or 'children's rights to basic nutrition, shelter, basic health care services and *social security*', the state must budget sufficient resources to fulfil those rights, unless it can show that it is impossible to do so".⁶³ It is for this reason that the government cannot use the availability of resources and lack of appropriate and effective fiscal policy as an excuse to realising the right to have access to social security. On this point, Heywood posits that:

Tackling 'broader issues of social fiscal policy' is not just 'a lust of the blood, but a permission of the [Constitutional] will' ... If this lacuna is not filled, South Africa's democratic project risks being destroyed as inequality and poverty become more and more entrenched, causing our society to develop in a shape directly contrary to the vision and values set out in both the Preamble and founding provisions of the Constitution.⁶⁴

In light of the above, it becomes evident that the government's inability to deal with corruption is also a failure to meet the commitment to maximize available resources. This is due to the fact that resources that have been misdirected or mismanaged are squandered. As a result, funds must be used appropriately to enable the seamless administration and management of assigned resources. For example, when budget decision-making tasks are delegated to provincial and local authorities, funds must be provided for training and supervision systems to guarantee that individuals tasked with managing those resources can do so effectively.

5. SIGNIFICANCE OF CONSTITUTIONAL VALUES IN THE INTERPRETATION AND PROTECTION OF THE RIGHT TO HAVE ACCESS TO SOCIAL SECURITY

5.1 The relevance and importance of constitutional values in the context of sec. 27(1)(c)

Hadiprayitno observe that "law is not an exclusive domain for lawyers and legal scholars. The impacts that law has on society, its co-existence with other norms, values, and ethics as well as its interaction with power, institutions and

62 ILO 2017:185-186. See also Ortiz *et al.* 2019:1-99. The South African government uses ODA as a strategic extra-budgetary resource to improve systems, share best practices, experiment with new models, unlock bottlenecks, add value, and play catalytic roles in the delivery of services. For a detailed discussion on the role of foreign aid in promoting economic growth, see Feudjou 2014:8-54.

63 Heywood 2021:19.

64 Heywood 2021:36.

people invite scholars from various academic disciplines".⁶⁵ In the context of the right to have access to social security, this observation is of importance for several reasons.

First, sec. 39(1)(a) of the *Constitution* requires a court, tribunal or any forum when interpreting the rights entrenched in the Bill of Rights, [in particular social security rights], to promote the values that underlie an open and democratic society based on human dignity, equality, and freedom.⁶⁶ Secondly, sec. 39(1) (2) of the *Constitution* provides that, when interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport, and objects of the Bill of Rights.

Sec. 39 is silent on the meaning and scope of application of the values that underlie the *Constitution* on the protection and interpretation of social security rights. Henceforth, this article examines a value-based approach in the protection and interpretation of social security rights. The core values of *ubuntu*, human dignity, equality, and freedom are significant in relation to how they should inform executive/administrative action directed towards fulfilling the social security rights entrenched in the *Constitution*. In this regard, these values are intended to inform the future decision-making in terms of governance, administration, and the development of policies on social security law in South Africa. As discussed earlier, these values offer two significant benchmarks in the interpretation and protection of social security rights. First, these core constitutional values ought to inform state action about the obligation to respect, protect, and fulfil the social security rights entrenched in the *Constitution*.⁶⁷ Secondly, these values offer a yardstick of assessing government obligation in discharging its duties towards the indigents.

To come to the point, as it shall be evinced in the discussion below, values underpin a rational and fair expectation of how power should be organised, exercised, and controlled at a private and public level.⁶⁸ The essential constitutional values most particularly relevant to social security law are a rejection of unfairness and an insistence on essential equality; respect for the integrity and dignity of the individual, and *ubuntu*. It is important to note that each constitutional value goes to the core of what we understand humanity and the individual to be, and to what is expected when power is exercised by or against individuals. Nyenti acknowledges "that, over the years, constitutional values have had an impact on the expansion of the social security system".⁶⁹

65 Hadiprayitno 2020:31.

66 Malherbe 2001:111-112.

67 See sec. 7 of the *Constitution*.

68 Allsop 2016:par. 4.

69 Nyenti 2016:202.

5.1.1 The value of human dignity in social security protection and interpretation

A fundamental principle of human rights legislation, human dignity is linked to the right to social security but is particularly challenging to define.⁷⁰ The South African Constitutional Court has reinforced this relationship, by stating: “Dignity is a difficult concept to capture in precise terms ... it requires us to acknowledge the value and worth of all individuals as members of our society”.⁷¹ The Eastern Cape Division of the High Court, in *Ngalo v The South African Social Security Agency (SASSA)*, poignantly captured the very essence of human dignity, by stating that:

[t]reating human beings with dignity requires of the state to act in a reasonable manner towards those claiming social security rights, such as the right to social grant. Human dignity, as a fundamental constitutional value and a fundamental right enshrined in the Bill of Rights, is an important catalyst to alleviate poverty of the historically deprived”.⁷²

While respect is not defined in human rights law, it is reasonable to assume that treatment with dignity is an essential element of being treated with respect.⁷³ According to art. 22 of the Universal Declaration of Human Rights, social security is “indispensable” to the dignity of the individual. Accordingly, the rights to social security and to an adequate standard of living are among the most relevant to the protection of dignity. These can be a guide to the minimum standard of living required for the protection of dignity. Nonetheless, it is clear from art. 11 of the International Covenant on Economic, Social, and Cultural Rights, and art. 27 of the Convention on the Rights of the Child that an adequate standard of living goes beyond physical necessities for survival to include goods, services, activities, and housing in keeping with the cultural expectations of a society. One crucial element of human dignity is the amount of social assistance payments.⁷⁴ The social assistance payments are minuscule to the extent that they undermine the dignity of the recipients, making it impossible for them to satisfy their basic demands.⁷⁵

Dignity is the cornerstone of oneself,⁷⁶ entrenched in the following four pillars. First, human dignity is a relative right. Secondly, human dignity is not an absolute right. Thirdly, while human dignity is a high value, it is not the only one. Fourthly, the constitutional right to human dignity encompasses acts and omissions that sometimes overlap with other constitutional rights, but it includes acts and omissions that lie within its own domain and are not

70 Simpson *et al.* 2017:6.

71 *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others* 1999 (1) SA 6:par. 28.

72 *Ngalo v The South African Social Security Agency (SASSA)* (2013) 2 All SA 347 (ECM):par. 26.

73 Wright *et al.* 2014:64-66. See also Winchester *et al.* 2021:443-454.

74 See Wright *et al.* 2015: 445-451.

75 Basson 2020:850-870; Winchester *et al.* 2021:4-5.

76 See Ackermann 2012:179, 251; Kant 1997:56-57.

covered by other rights.⁷⁷ To acknowledge inherent human dignity, the state is progressively required to provide minimum living conditions, which are embodied in the second-generation social and economic human rights.⁷⁸

The philosophical origins of the word 'dignity' is found in Greek philosophy and in Judeo-Christian insight into the unique value and equal worth of every human being.⁷⁹ In *Freedom of Religion South Africa v Minister of Justice and Constitutional Development*,⁸⁰ the Constitutional Court underscored the importance of the right to human dignity as follows:

There is a history and context to the right to human dignity in our country. As a result, this right occupies a special place in the architectural design of our Constitution, and for good reason. As Cameron J correctly points out, the role and stressed importance of dignity in our Constitution aim 'to repair indignity, to renounce humiliation and degradation, and to vest full moral citizenship to those who were denied it in the past'. Unsurprisingly because not only is dignity one of the foundational values of our democratic state, [but] it is also one of the entrenched fundamental rights.⁸¹

The idea that every individual has inherent value is expressed by human dignity. In South Africa, where the apartheid regime and colonialism before it denied a shared humanity, devaluing the dignity of all South Africans, respect for the dignity of all human beings is especially crucial. The *Constitution* rejects this past and upholds the value of every South African as being equal. The *Constitution* and its guiding principles are the recognition and protection of human dignity.⁸²

Personal dignity and autonomy are at the very foundation of human rights. They are intricately linked to the principles of equality and non-discrimination.⁸³ Consequently, respect for the inherent dignity of all must inform all public policies. Social security administrators must avoid stigmatisation and prejudice, recognise and support the realisation of social security for all, especially vulnerable groups such as those living in poverty, living with HIV/AIDS, and migrants. Respecting the dignity of those who receive State social security benefits implies that all actors within the social security system should recognise the efforts that beneficiaries are making to improve their lives. This also implies that minimum essential levels of social protection be set in a manner that allows them to live in dignity and health.⁸⁴

The Constitutional Court made its pronouncements on the meaning of dignity clear in several judgments. In *S v Makwanyane and Another*, Justice

77 Barak 2015:243-279; Rapatsa 2019:16-17.

78 McCrudden 2008:679.

79 Starck 2002:180-18; Sossin 2003:227; Hasson 2003:81.

80 *Freedom of Religion South Africa v Minister of Justice and Constitutional Development* 2019 (11) BCLR 1321 (CC) (hereafter, '*Freedom of Religion*').

81 *Freedom of Religion*:par. 45.

82 See *Makwanyane*:par. 329.

83 *President of the Republic of South Africa v Hugo* 1997 (6) BCLR 708 (CC):par. 41.

84 Social Protection Floors Recommendation 202:par. 8.

O'Regan stated that, "without dignity, human life is substantially diminished".⁸⁵ She acknowledged that establishing the founding constitutional value of human dignity acknowledges the intrinsic worth of human beings who are entitled to be treated as worthy of respect and concern.⁸⁶

In *Mahlangu and Another v Minister of Labour and Others*,⁸⁷ the Constitutional Court dealt with the important question of why and how the government can justify excluding domestic workers from social security benefits in the form of occupational health and safety protection. The *Compensation for Occupational Injuries and Diseases Act 130 of 1993* (hereafter, '*COIDA*') specifically excluded domestic workers from benefitting from compensation for injuries or diseases that they may have contracted through their employment.

The Court found that sec. 1(xix)(v) of *COIDA* is unconstitutional because it specifically excluded domestic workers from the protection that the *Act* affords other workers. The Court found that the order of invalidity should take immediate and retrospective effect from 27 April 1994. In dealing with the applicant's right to have access to social security, the court held that "economic, social and cultural rights, of which the right of access to social security is a part, are indispensable for human dignity and equality".⁸⁸ The court further held that the provisions of *COIDA* that excluded domestic workers from the ambit of its protection ought to be interpreted through the prism of the Bill of Rights and the foundational values of human dignity, equality, and freedom.⁸⁹ In interpreting *COIDA* through the prism of the Bill of Rights, the court made reference to *Khosa v Minister of Social Development; Mahlaule v Minister of Social Development*,⁹⁰ wherein the Constitutional Court had to determine the issue of whether non-South African citizens (but permanent residents) qualify for a social grant. The Constitutional Court found that the denial of access to social grants to permanent residents did not constitute a reasonable legislative measure, as contemplated by sec. 27(2) of the *Constitution*. Mokgoro J, writing for the majority, held that the exclusion of permanent residents from the welfare scheme is not a reasonable way to achieve the realisation of the right to social security. Furthermore, the Court held that the exclusion of permanent residents from the scheme is discriminatory and unfair and infringes the right to dignity and equality.⁹¹

In determining the scope of the right to social security, the Constitutional Court, in *Mahlangu and Another*, held that "one must have regard to sec. 39(1) (a) of the Constitution which requires that an interpretation of the Bill of Rights must promote the values that underlie an open and democratic society based on *human dignity, equality and freedom*".⁹²

85 *Makwanyane*:par. 327.

86 *Makwanyane*:par. 328.

87 *Mahlangu and Another v Minister of Labour and Others* 2021 42 ILJ 269 (CC) (hereafter, '*Mahlangu and Another*').

88 *Mahlangu and Another*:par. 48.

89 *Mahlangu and Another*:par. 49.

90 *Khosa v Minister of Social Development; Mahlaule v Minister of Social Development* 2004 (6) BCLR 569 (CC) (hereafter, '*Khosa*').

91 *Khosa*:par. 85.

92 *Mahlangu and Another*:par. 53.

Art. 22 of the Universal Declaration of Human Rights, 1948 states that social security is 'indispensable' to preserving an *individual's dignity*. Thus, among the most important rights for the preservation of dignity are those to social security and to a living wage. They might serve as a guide for the minimal level of life necessary to preserve dignity.⁹³ Nonetheless, it is evident from art. 11 of the International Covenant on Economic, Social, and Cultural Rights and art. 27 of the Convention on the Rights of the Child, 1989 that a decent quality of living goes beyond the bare minimum required for life to encompass products, services, and opportunities.

5.1.2 Equality and the protection of social security rights

The colonisation and apartheid regime was founded on inequality in the first place. The political and judicial structures legalised inequality by advancing the socio-economic status of White people at the cost of Black people. A plethora of resistance movements demanded equality over the years, and they included this demand in the *Constitution* and action plans. At present, in South Africa, access to healthcare, employment, education, and property are only a few examples of the many areas where inequality has left profound scars.

Nevertheless, sec. 9 of the *Constitution* sets out all the components of the right to equality. Sec. 9(1) provides that everyone is equal before the law and has the right to equal protection and benefit of the law. Sec. 9(3) proclaims that the state may not unfairly discriminate against anyone on the grounds of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth.

Equality means that all people should have equal opportunity to achieve their potential.⁹⁴ The *Constitution* emphasises that the decades of systematic racial discrimination entrenched by apartheid cannot be eliminated without positive action being taken to achieve that result. Because of a history of dispossession and inequality, equality cannot always be achieved by treating everyone the same. The right strives to achieve genuine equality by ensuring that all members of society have equal opportunities. The *Constitution* requires us to examine the impact of discrimination on people to see whether it promotes or impedes the achievement of equality and opportunity. The Constitutional Court has expanded on the meaning of equality in a number of judgments. For example, in *Makwanyane*, the court held that "under our constitutional order the right to human dignity is specifically guaranteed. It can only be limited by legislation, which passes the stringent test of being necessary".⁹⁵

According to Fredman, the four-dimensional principles of substantive equality are redressing disadvantage; addressing stigma, stereotyping, prejudice, and violence; enhancing voice and participation, and accommodating

93 See McCrudden 2008:724.

94 Kodelja 2016:18-22.

95 *Makwanyane*:par. 58.

difference and achieving structural transformation.⁹⁶ Fredman avers that the right to equality should be situated in the social context and attentive to those who are oppressed, denigrated, excluded, or neglected. It is submitted that this substantive approach equality is aligned to indirect social security (for example, access to basic services, housing subsidies, free basic electricity, poverty relief programmes, and land redistribution). In essence, indirect social security refers to certain forms of social security, which are generally not listed as part of direct social security measures. Consequently, indirect social security and direct social security are closely intertwined.⁹⁷ Olivier contends that an examination of indirect social security measures demonstrates a bias toward the poor, particularly the rural poor.⁹⁸ The bias in indirect social security measures, which corresponds to the vulnerability approach, clearly suggests that the safety net of indirect social security should be as broad as possible, subject to the criteria of a need and adequate resources to meet that necessity. This demonstrates the prerequisite of targeting and prioritising indirect social security initiatives. Access to free basic electricity and clean water, for example, should take precedence over [other rights].⁹⁹

As discussed earlier, an understanding of the relationship between the right to equality and the right to have access to social security is central to a broader understanding of the substantive content of the right to equality. Equality in respect of social assistance is implicit in the reference to everyone being entitled to have access to the rights in sec. 27 of the *Constitution*. Those who are unable to survive without social assistance are equally desperate and equally in need of such assistance.¹⁰⁰ Social assistance's primary goal is to provide all those in need with a dignified existence as free and equal citizens, so adopting an interpretation that starts with an assumption in favour of every person in need is sanctioned.

In *Port Elizabeth Municipality v Various Occupiers*,¹⁰¹ the Supreme Court of Appeal set aside the order of eviction granted by the High Court,¹⁰² and agreed with the respondents that the applicant (Port Elizabeth Local Municipality) was under obligation to provide alternative accommodation to unlawful occupiers.¹⁰³ The municipality applied to the Constitutional Court for leave to appeal against the decision of the Supreme Court of Appeal and to have the eviction order restored. In addition, the municipality sought a ruling that it was not constitutionally obliged to find alternative accommodation to unlawful occupiers. Justice Sachs (as he then was) held that, in cases where there is a conflict between sec. 25 (dealing with property rights) and sec. 26 (concerned with housing rights) of the *Constitution*, these sections must be read together in order to find a fair and equitable outcome. It is interesting to note that, in this

96 Fredman 2016:713.

97 Olivier *et al.* 2003:537.

98 Olivier *et al.* 2003:555.

99 Olivier *et al.* 2003:555.

100 Khosa:par. 41.

101 *Port Elizabeth Municipality v Various Occupiers* 2004 (12) BCLR 1268 (CC) (hereafter, '*Port Elizabeth Municipality*').

102 *Port Elizabeth Municipality*:par. 4.

103 *Port Elizabeth Municipality*:par. 5.

case, Sachs chose to be guided by constitutional values of human dignity and equality as a path towards justice and equity. Such deliberations saw Sachs denying the eviction order, arguing that the Port Elizabeth Municipality should instead offer alternative accommodation to the squatters and not evict them as this would render them homeless and vulnerable.

The Constitutional Court, in the *Khosa* case, held that equality is a foundational value, which must inform the interpretation of the Bill of Rights, including the right to have access to social security.¹⁰⁴ According to the court, the *Constitution* itself makes it clear that socio-economic rights must be bestowed on an equal footing by declaring that “everyone” holds those rights.¹⁰⁵ The Constitutional Court, in *Mahlangu*, made it clear that the approach to interpreting the rights in the Bill of Rights and the *Constitution* as a whole is purposive, generous, and gives effect to constitutional values including substantive equality.¹⁰⁶

5.1.3 *Ubuntu* and social security protection

Values such as the foundational values set out in Chapter 1 of the *Constitution* are central to our *Constitution* and do not appear explicitly in the text. They are implied in the architecture of the *Constitution* and are just as important as the explicit values. The case in point relates to the fundamental value of *ubuntu*.

South Africa has a history of deep divisions characterised by strife and conflict. However, one shared value and ideal that runs like a golden thread across its indigenous cultures is the value of *ubuntu*, a notion in post-apartheid South Africa that relates closely to the constitutional values of dignity, freedom, and equality.¹⁰⁷ *Ubuntu* means that *motho ke motho ka batho ba bangwe/umuntu ngumuntu ngabantu* which, literally translated, means a person is a person because of others.¹⁰⁸

In *S v Makwanyane*, the Constitutional Court made it clear that the notion *ubuntu* carries in it the ideas of humaneness, social justice, and fairness.¹⁰⁹ The court further held that *ubuntu* calls for a balancing of the interests of society against those of the individual, for the maintenance of law and order, but not for dehumanising and degrading the individual.¹¹⁰ Since *S v Makwanyane*, *ubuntu* has become an integral part of the constitutional values and principles that inform the interpretation of the Bill of Rights and other areas of law. In particular, a restorative justice theme has become evident in cases that encompass customary law, eviction, defamation, and criminal law matters. In this context, Bohler-Muller and Zikhali aver that “the value of *ubuntu* demands that we deal with people in the context of their historical and current disadvantage and that equality issues must address the actual conditions of human life, for example life as a ‘non-citizen’ or a ‘squatter’”.¹¹¹

104 *Khosa*:par. 42.

105 *Khosa*:par. 42.

106 *Mahlangu and Another*:par. 55.

107 Mathabane 2018:Ch. 11; Murove 2009:1-461; Migheli 2017:1213-1232.

108 Tshoose 2009:12-19. See also *Makwanyane*:par. 308.

109 *Makwanyane*:par. 237.

110 *Makwanyane*:par. 250.

111 Bohler-Muller *et al.* 2018:176.

The constitutional values of *ubuntu*, human dignity, and equality play an important role in assessing the government's constitutional obligation of realising the right to have access to social security to everyone. In *Soobramoney*, the Constitutional Court acknowledged:

We live in a society in which there are great disparities in wealth. Millions of people are living in deplorable conditions and in great poverty. There is a high level of unemployment, inadequate social security, and many do not have access to clean water or to adequate health services. These conditions already existed when the Constitution was adopted and a commitment to address them, and to transform our society into one in which there will be *human dignity, freedom and equality*, lies at the heart of our new constitutional order. For as long as these conditions continue to exist that aspiration will have a hollow ring.¹¹²

It is clear from this judgment that human dignity, freedom, and equality are central to the realisation of social security rights entrenched in the *Constitution*. These values offer the courts an opportunity to realise a value-laden perspective in interpreting the content and meaning of the constitutional right to social security.

6. ASSESSING THE GOVERNMENT'S CONSTITUTIONAL OBLIGATION TO SOCIAL SECURITY AGAINST THE CORE VALUES OF *UBUNTU*, HUMAN DIGNITY, AND EQUALITY

In light of the rampant socio-economic challenges facing South Africa, it can be argued that, although significant progress has been achieved in the context of social security, the government has to do more in as far as incorporating the fundamental constitutional values in the protection and provision of social security. Government has to overcome barriers of social exclusion and explore opportunities for social justice and comprehensive social security for all. In the Constitutional Court case of *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others*,¹¹³ Justice Alby Sachs (as he was then) opined:

the values of the Constitution are strong, explicit and clearly intended to be considered part of the very texture of the constitutional project. They are implicit in the very structure and design of the new democratic order. The letter and the spirit of the Constitution cannot be separated; just as the values are not free-floating, ready to alight as mere adornments on this or that provision, so is the text not self-supporting, awaiting occasional evocative enhancement. The role of constitutional values is certainly not simply to provide a patina of virtue to otherwise bald, neutral and discrete legal propositions. Text and values work together in integral fashion to provide the protections promised by the Constitution. And by their nature, values resist compartmentalisation.¹¹⁴

112 *Soobramoney*:par. 8.

113 *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* 2008 (2) SA 24 (CC) (hereafter, '*Sidumo*').

114 *Sidumo*:par.149.

It is clear that value-laden interpretation is completely different to the mechanical systematic process used during the literal (text-based) approach. It is more fluid, flexible, and allows the law to develop within the parameters of a normative legal framework.¹¹⁵ The value-laden approach to social security extends far beyond the frontier of its provisions in the Bill of Rights.¹¹⁶ Consequently, when interpreting the right to have access to social security enshrined in the *Constitution*, values are eccentric, in that one ought to support the approach which aspires, in the interpretation of individual constitutional provisions, to realise the 'scheme of values' on which the constitutional order is premised.¹¹⁷ AJ van der Walt echoes these constitutional values, and concludes: "the Constitution must be interpreted in terms of values which take the past into account, but in doing so it looks towards the future, towards reconstruction and reconciliation in an open and democratic society based upon freedom and equality".¹¹⁸ Mpedi acknowledges that "these values are important in the process of social security provision because they to a large extent give meaning to the socio-economic rights entrenched in the Constitution".¹¹⁹

The best way to ensure that societal values are incorporated into decision-making about social security is to make social values measurable and manageable for public officials.¹²⁰ In other words, developing analytical approaches to capture and measure a variety of social values. This can be done by measuring socio-economic impact, improving quality of life, and establishing a comprehensive set of principles to guide the interpretation and protection of social security so that decision-makers can objectively consider broader values that are informed and shaped by history and the current reality of poverty, unemployment, and inequalities.

In relation to the right of access to adequate housing, the Constitutional Court indicated in *Grootboom* that the *Constitution* requires the state to devise and implement a comprehensive and co-ordinated programmes and policies to give effect to these rights.¹²¹ Mere legislative measures are not enough, as the state has to act in such a way as to achieve the intended result. Appropriate and well-directed policies and programmes will invariably support legislative measures.¹²² Such programmes and policies must be reasonable in their conception and implementation. The programmes must give effect to, and promote all related constitutional rights and values such as human dignity, equality, freedom, and social justice and must eliminate the large areas of severe deprivation that afflict communities. Olivier avers: "treating

115 See Moyo & Makwaiba 2020:31-58.

116 See *Ngxuza v Permanent Secretary, Department of Welfare, Eastern Cape* 2001 (2) SA 609 (E):par. 9.

117 Du Plessis 2008:32.

118 Van der Walt 1995:191-192.

119 Mpedi 2008:108.

120 See Bryson *et al.* 2014:445-456.

121 *Grootboom*:par. 99.

122 *Grootboom*:par. 42.

human beings with dignity requires the state to act in a reasonable manner towards those claiming social security rights, such as the right to access adequate housing".¹²³

In *Grootboom*, the Constitutional Court expounded on the reasonableness standard of judicial review that applies to measures taken to give effect to socio-economic rights.¹²⁴ In both *Grootboom* and *Khosa*, the Constitutional Court pronounced on the interdependence of rights in the Bill of Rights and the task of evaluating the reasonableness of a policy against its impact on the rights to dignity and equality.¹²⁵ To that aim, a fundamental component of the reasonableness inquiry is whether a law or policy recognises the vulnerable individuals in society and those who are in the greatest need.¹²⁶ If a legislation or policy does not follow this, it would be deemed irrational. In *Khosa*, Mokgoro J expounded on this as follows:

In dealing with the issue of reasonableness, context is all-important. We are concerned here with the right to social security and the exclusion from the scheme of permanent residents who, but for their lack of citizenship, would qualify for the benefits provided under the scheme. In considering whether that exclusion is reasonable, it is relevant to have regard to the purpose served by social security, the impact of the exclusion on permanent residents and the relevance of the citizenship requirement to that purpose.¹²⁷

Similarly, evaluating the government's constitutional obligation to social security against the core values of the *Constitution* requires one to assess the government constitutional mandate. To this end, it can be argued that the government has not yet achieved comprehensive access to social security post-democracy, since millions of South Africans are still grappling with a high rate of unemployment, poverty, and inequalities. In addition, the majority of the working population in South Africa lacks access to a comprehensive social security system that would provide appropriate and long-term social protection. One of the issues deliberated at national level is how to ensure that everyone has access to basic medical care. The National Health Insurance (hereafter, 'NHI') has been discussed for many years and finally, at the time of writing this article, the Health Committee in the National Assembly has approved the final NHI Bill for debate in Parliament.¹²⁸

123 Olivier *et al.* 2003:62.

124 *Grootboom*:par. 39.

125 *Grootboom*:paras. 23-24; *Khosa*:paras. 40-44.

126 *Grootboom*:par. 44.

127 *Khosa*:par. 49.

128 See Parliament of the Republic of South Africa "National Health Insurance ('NHI') Bill", <https://www.parliament.gov.za/press-releases/media-alert-committee-health-adopt-b-bill-national-health-insurance-bill> (accessed on 27 May 2023). The Bill was introduced in Parliament in August 2019 and was subsequently referred to the committee for consideration. The Bill seeks to realise universal health coverage for all. This means that every South African will have a right to access comprehensive healthcare services free of charge at the point of care at accredited health facilities such as clinics, hospitals, and private health practitioners.

Another pressing challenge facing the system of social security is the exclusion of eligible children from child benefits, due to administrative errors.¹²⁹ In addition, although child benefits have improved children's well-being, there is a shortage of assistance for parents and young adults, who make up the bulk of the unemployed.¹³⁰ One of the biggest issues South Africa is now facing is its high unemployment rate because a significant portion of the population is uninsured and there is no existing form of income support for adults who face structural unemployment.¹³¹ As for old age and disability benefits, an extension of coverage to introduce a universal benefit and a mandatory social security scheme is being considered.¹³²

Administrative issues are frequent in the various facets of social security. To strengthen the social security system, policy formulation and service delivery must be coordinated.¹³³ This pertains to the fact that social security is administered by a number of departments, and service delivery organizations operate independently of one another with hardly any integration, coordination, or cooperation.¹³⁴

In its early socio-economic rights cases, the Constitutional Court simply presumed, without consideration, that a finding that the state had not taken reasonable steps within its means to achieve the progressive realisation of the right in question precluded a finding that the limitation was nonetheless reasonable and justifiable in accordance with sec. 36. After determining that the state had reneged its responsibilities under secs. 26(2) or 27(2), the Court considered a suitable remedy in line with the provisions of sec. 36.¹³⁵

129 UNICEF, South Africa 2022:9.

130 Statistics South Africa 2022:14-15.

131 Statistics South Africa 2022:14-15.

132 ILO *Social protection floor in South Africa*, <https://www.social-protection.org/gimi/gess/ShowWiki.action?wiki.wikild=852> (accessed on 27 May 2023).

133 Transform 2017:10-14.

134 See Bungler 2010:1-2.

135 *Grootboom; Minister of Health & Others v Treatment Action Campaign & Others No 2* 2002 (5) SA 721 (CC), 2002 (10) BCLR 1033 (CC) ('TAC'). Similarly, no limitation analysis was undertaken in cases in which it was found that administrative action failed the justifiability test in terms of IC sec. 24 or the reasonableness test under sec. 33. See also *Bel Porto School Governing Body & Others v Premier of the Province, Western Cape & Another* 2002 (3) SA 265 (CC); par. 171 (Mokgoro and Sachs JJ note in dissent that justifiability for purposes of limitation analysis generally requires more persuasive evidence than that required for sec. 33.) See also *Masamba v Chairperson, Western Cape Regional Committee, Immigrants Selection Board & Others* 2001 (12) BCLR 1239, 1258D-E, 1259A-C (C). Rautenbach argues that the requirements of sec. 33 should, as far as possible, be reconciled with the requirements of sec. 36. In his view, "sec. 33 particularises the rules in sec. 36 in respect of administrative actions that limit rights". See Rautenbach 2005:641. Nevertheless, for Rautenbach to be correct, the Court must be willing to enforce a stricter standard of review for administrative action.

7. BRIEF THEORETICAL UNDERPINNINGS OF UNIVERSAL ACCESS TO SOCIAL SECURITY

The notion 'universality' means that all people are entitled to human rights at all times.¹³⁶ As Donnelly elucidates, international law recognises that "[h]uman rights are, literally, the rights that one has simply because one is a human being".¹³⁷ 'Inalienability' means that people cannot voluntarily or involuntarily surrender their own human rights or the human rights of others.¹³⁸

The ILO recognises "the importance of the universality of protection, based on social solidarity, for the prevention, reduction of poverty, inequality, social exclusion, insecurity; the promotion of equal opportunity, gender, racial equality as a means to support the transition from informal to formal employment".¹³⁹ The universality in social security is part of a broader social trend. Universality is a defining and one of the more innovative features of the 2030 Agenda for Sustainable Development.¹⁴⁰ The 2030 Agenda is for all people in line with the call to 'leave no one behind', a central pledge by member states.¹⁴¹ In this context, such universal protection can be achieved progressively, including by setting targets and time frames.¹⁴²

As discussed earlier in the preceding paragraphs, the right to have access to social security is enshrined in the Universal Declaration of Human Rights along with education and health. Equity is also emphasised, as reflected in the Universal Health Coverage, 2030 Joint Vision for Healthy Lives and the Incheon Declaration for Education 2030, as well as access and inclusion. These instruments provide that, while those with equal needs should have equal access, those with greater need should have greater opportunities to access.¹⁴³ Applied to social protection, this implies that, while the risk helps determine the type of support, the need should determine the extent of support provided. Nonetheless, equity can be addressed on the side not only of service delivery, but also of service financing. Thus, universal social protection (USP) aims to ensure equitable access to all people and protect them throughout their lives against poverty and risks to their livelihoods and well-being through a nationally defined social protection system of policies and programmes.¹⁴⁴ The challenge is enormous. Given the high rate of unemployment and poverty in South Africa, attaining the goal of USP by 2030 seems out of reach.

136 United Nations 2003:1-4.

137 Donnelly 2013:10.

138 Donnelly 2013:10.

139 ILO 2012:8.

140 Van Vuuren *et al.* 2022:142-153.

141 United Nations 2030a.

142 ILO 2012:4.

143 See Bernard 1962:110-131.

144 Brito 2019: Unknown.

Achieving USP by 2030 would require not only a drastically increased amount of domestic resources, using both new and existing sources of funding and increasing efficiency, but also international support.¹⁴⁵ To make this possible, the perception of social protection needs to change, so that providing social protection for all is prioritised. For this to happen, it is necessary to advocate for social protection as a key component of inclusive economic growth and change perceptions that portray it as handout.¹⁴⁶

In addition, for USP framework to work, the World Bank and ILO recommend recalibrating certain decision regarding the fiscal space. For example, re-allocating public expenditures (subsidies); increasing tax revenues; expanding the collection of social security contributions; fighting illicit financial flows; lobbying for increased aid and transfers; tapping into fiscal and foreign exchange reserves; restructuring debt, and adopting a more accommodative macroeconomic framework (tolerance to some inflation, fiscal deficit).¹⁴⁷

The ILO endorses the two-dimensional strategy for the extension of social security, as defined in its Resolution and Conclusions of 2011 and further strengthened by Recommendation No. 202. According to the ILO, the extension of social security comprises the following elements,¹⁴⁸ namely to establish and maintain social protection floors as a fundamental element of national social security systems (horizontal dimension), and to pursue strategies for the extension of social security that progressively ensure higher levels of social security to as many people as possible, guided by ILO social security standards (vertical dimension).¹⁴⁹

8. CONCLUSION

The value-based formulation to the protection and interpretation of the right to have access to social security provides an important means of setting out the policy intent that will drive normative legislative framework on access to social security. The key strategic objectives of a value-based approach to

145 See Vyas-Doorgapersad 2020:7-10.

146 United Nations 2018.

147 World Bank and ILO 2016:14-16. See also Vyas-Doorgapersad 2020:7-10.

148 ILO 2012:3-4.

149 ILO 2012:3-4. The idea of "progressive realisation" has two parts. The first is a minimum core obligation to prioritize achieving the minimally adequate levels of provision necessary to meet basic needs. The second is a duty on the part of the State to take actions to gradually increase the adequacy of the provision of the resource. In the context of housing, progressive realisation refers to the progression from the realization of a person's minimal interest in not being exposed to the elements to the realisation of his or her maximal interest in having a place to live where he or she can develop as people. A step toward progressive realization entails a rise in the suitability of housing for addressing human needs. It does not mean that some people get housing right now, while others wait; rather, it implies that everyone has a right to minimum housing provisions, which the government must steadily enhance over time. The concept that the socio-economic rights included in the Final Constitution have an aspirational character but, like other rights, also impose responsibilities as a matter of priority for the supply of particular commodities makes sense when viewed in the context of such an interpretation.

social security must be informed by the constitutional imperative to create a society that has human dignity, the achievement of equality, the advancement of human dignity, and *ubuntu*.¹⁵⁰ In the third Bram Fischer memorial lecture, Justice Chaskalson aptly summarised the essence of human dignity in the interpretation of social security rights:

... these rights are rooted in respect for human dignity, for how can there be dignity in a life lived without access to housing, health care, food, water or in the case of persons unable to support themselves, without appropriate assistance. In the light of our history the recognition and realisation of the evolving demands of human dignity in our society – a society under transformation – is of particular importance for the type of society we have in the future.¹⁵¹

Finally, it is clear from this discussion that the right of access to social security and social assistance for those unable to support themselves and their dependants is entrenched because contemporary South Africa is a society that values human beings and wants to ensure that people are afforded their basic needs. It is important that society must seek to ensure that the necessities of life are accessible to all, if it is to be a society in which human dignity, freedom, equality, and *ubuntu* are foundational.¹⁵²

More importantly, this article has shown that courts are required to acknowledge these values and principles when interpreting fundamental rights enshrined in the *Constitution*, in particular the right to have access to social security. The value-based approach to the interpretation and protection of the right to have access to social security can reasonably serve as the foundation for determining the scope of social security rights, against the backdrop of the transformative purpose of the *Constitution*, which seeks to heal the injustices of the past and address the contemporary effects of apartheid and colonialism.

To conclude, it is submitted that courts, in adjudicating social security rights, should bear in mind the social and economic requirements of the underprivileged while interpreting those rules that guarantee social security rights. They can influence the government to advance and enhance the social and economic circumstances of the disadvantaged by infusing a value-based approach to the interpretation and protection of the right to have access to social security or rather becoming active in their advocacy.¹⁵³

150 Sec. 1(a) of the *Constitution*.

151 Chaskalson 2000:204-205; Goolam 2001:52.

152 *Grootboom*: par. 44, as quoted in *Khosa*: par. 52.

153 See Govindjee 2013:75.

BIBLIOGRAPHY

ACKERMANN L

2012. *Human dignity: Lodestar for equality in South Africa*. Cape Town: Juta & Co Ltd.

ALLSOP AO

2016. Values in law: How they influence and shape rules and the application of law. *Federal Judicial Scholarship*:par. 4.

BARAK A

2015. *Human dignity in South African constitutional law*. In A Barak 2015: 243-279. <https://doi.org/10.1017/CBO9781316106327.019>

BARAK A.

2015. *Human dignity: The constitutional value and the constitutional right*. Cambridge: Cambridge University Press. <https://doi.org/10.1017/CBO9781316106327>

BASSON Y

2020. The compliance of the South African social security system with the international covenant on economic, social and cultural rights. *Obiter* 41(4):867-868. <https://doi.org/10.17159/obiter.v41i4.10491>

BERNARD W

1962. *The idea of equality in philosophy, politics, and society*. London: Basil Blackwell.

BOHLER-MULLER N, COSSER M AND PIENAAR G

2018. *Making the road by walking: The evolution of the South African constitution*. Pretoria: Pretoria University Law Press.

BRITO R

2019. *Universal social protection: Achievements, challenges and opportunities*. <https://socialprotection.org/discover/blog/universal-social-protection-achievements-challenges-and-opportunities> (accessed on 23 January 2023).

BROWN W

2011. The most we can hope for...: Human rights and the politics of fatalism. In AS Rathore and A Cistelecan (eds.) 2011:132-146.

BRYSON JM, CROSBY BC & BLOOMBERG L

2014. Public value governance: Moving beyond traditional public administration and the new public management. *Public Administration Review* 74(4):445-456. <https://doi.org/10.1111/puar.12238>

BUNGER MSW

2010. Defining service coordination: A social work perspective. *Journal of Social Service Research* 36(5):1-2. <https://doi.org/10.1080/01488376.2010.510931>

CARACCILO B

2014. *Incorporating the informal sector in social protection programmes for universal realisation of the rights to social security*. <https://socialprotection-humanrights.org/expertcom/incorporating-the-informal-sector-in-social-protection-programmes-for-universal-realization-of-the-rights-to-social-security> (accessed on 15 January 2023).

CARPENTER G

1995. Internal modifiers and other qualifications in Bills of Rights – Some problems of interpretation. *SA Publiekreg/SA Public Law* 10(2):260-282.

CHASKALSON A

2000. Human dignity as a foundational value of our constitutional order. *South African Journal of Human Rights* 16(2):193-205. <https://doi.org/10.1080/02587203.2000.11827594>

COOMANS F

2005. Reviewing implementation of social and economic rights: An assessment of the “reasonableness” test as developed by the South African Constitutional Court. *Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht* 65:173-181.

CORRIN J

2009. From horizontal and vertical to lateral and extending the effects of human rights in the post-colonial legal systems of the South Pacific. *International and Comparative Law Quarterly* 58(1):31-71. <https://doi.org/10.1017/S0020589308000857>

DAVIS D, CHEADLE H & HAYSOM N (EDS.)

1997. *Fundamental rights in the Constitution: Commentary and cases*. Cape Town: Juta.

DLUDLA S

2023. South Africa’s unemployment rate remains highest in world. *IOL News*. <https://www.iol.co.za/business-report/economy/south-africas-unemployment-rate-remains-highest-in-world-6f892261-5da0-450d-975c-65a0953f6d06> (accessed on 16 June 2023).

DONNELLY J

2013. *Universal human rights in theory and practice*. 2nd edition. Ithaca, NY: Cornell University Press. <https://doi.org/10.7591/9780801467493>

DROR Y

1957. Values and the law. *The Antioch Review* 17(4):440-454. <https://doi.org/10.2307/4610000>

DU PLESSIS L

2008. Interpretation. In Wolman S and Bishop M (ed.) 2008:32-45. <https://doi.org/10.4314/tvl.v45i1.29822>

EWINYU A, MASIKANE F & WEBSTER E

2021. *Working alone in South Africa: A tale of increased precarity and deepened inequality*. Southern Centre for Inequality Study, Working Paper No. 27:3-13. <https://www.wits.ac.za/media/wits-university/pdf> (accessed on 10 December 2022).

FEUDJOU A

2014. Foreign aid and economic growth in South Africa. Unpublished Master of Commerce in Development Finance Degree, University of Cape Town. https://open.uct.ac.za/bitstream/handle/11427/28997/thesis_com_2014_feudjou_alain.pdf?sequence=1 (accessed on 10 December 2022).

FOURIE E

2017. Perspectives on workers in the informal economy in the SADC region. *Revue de Droit Comparé du Travail et de la Sécurité Sociale* 4:76-95. <https://doi.org/10.4000/rdctss.2245>

FRANCES D & WEBSTER E

2019. Poverty and inequality in South Africa: Critical reflections. *Development Southern Africa* 36(6):788-802. <https://doi.org/10.1080/0376835X.2019.1666703>

FREDMAN S

2016. Substantive equality revisited. *International Journal of Constitutional Law* 14(3):712-738. <https://doi.org/10.1093/icon/mow043>

FUO O & DU PLESSIS A

2015. In the face of judicial deference: Taking the "minimum core" of socio-economic rights to the local government sphere. *Law, Democracy and Development* 19(1):3-16. <https://doi.org/10.4314/ldd.v19i1>.

GOVINDJEE A

2013. Adjudication of socio-economic rights by the Constitutional Court of South Africa: Walking the tightrope between activism and deference? *National Law School of India Review* 25(1):62-80.

GARCIA B & GRUAT J

2003. *Social protection a life cycle continuum investment for social justice, poverty reduction and sustainable development*. <https://www.ilo.org/public/english/protection/download/lifecycl/lifecycle.pdf>. (accessed on 10 December 2022).

GOOLAM N

2001. Human dignity – Our supreme constitutional value. *Potchefstroom Electronic Review* 4(1):43-55. <https://doi.org/10.4314/pej.v4i1.43490>

HADIPRAYITNO I

2020. Legal complexity and state obligations to the right to food: Towards an analytical shift of progressive realisation. *International Journal of Legal Discourse* 5(1):17-32. <https://doi.org/10.1515/ijld-2020-2026>

HASSON KJ

2003. Religious liberty and human dignity: A tale of two declarations. *Harvard Journal of Law & Public Policy* 27(1):81-92.

HEYWOOD M

2021. Economic policy and the socio-economic rights in the South African Constitution, 1996-2021: Why don't they talk to each other? *Constitutional Court Review* 11(1):1-19. <https://doi.org/10.2989/CCR.2021.0013>

IGNATIEFF M

2001. *Human rights as politics and idolatry*. Princeton, NJ: Princeton University Press. <https://doi.org/10.1515/9781400842841>

ILO (INTERNATIONAL LABOUR ORGANISATION)

2019. *ILO 100: Social protection*. Chapter 5. <https://www.ilo.org/100/en/story/protection> (accessed on 10 December 2022).

2021. *World Social Protection Report 2020-2022: Social protection at the crossroads – In pursuit of a better future*. International Labour Office, Geneva. <https://www.ilo.org> (accessed on 10 December 2022).

2012. *Social security for all building social protection floors and comprehensive social security systems*. https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_secsec_34188.pdf (accessed on 23 January 2023).

2011. *Social protection floor in South Africa*. <https://www.social-protection.org/gimi/gess/RessourcePDF.action?ressource.ressourceId=25710> (accessed on 23 January 2023).

2017. *World Social Protection Report 2017-2019: Universal social protection to achieve the Sustainable Development Goals*. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_604882.pdf (accessed on 23 January 2023).

KANT I

1997. *Groundwork of the metaphysics of morals*. Cambridge: Cambridge University Press. <https://doi.org/10.1017/CBO9780511809590>

KODELJA Z

2016. Equality of opportunity and equality of outcome. *Centre for Educational Policy Studies Journal* 6(2):9-24. <https://doi.org/10.26529/cepsj.85>

KREMNIETZ M, STEINER T & LANG

2020. *Proportionality in action: Comparative and empirical perspectives on the judicial practice*. Cambridge: Cambridge University Press. <https://doi.org/10.1017/9781108596268>

KRETZMER D & KLEIN E (EDS.)

2002. *The concept of human dignity in human rights discourse*. The Hague: Kluwer Law International. <https://doi.org/10.1163/9789004478190>

LIEBENBERG A

1997. Housing. In Davis D, Cheadle H & Haysom N (eds.) 1997:350-351.

LIEBENBERG S

2002. South Africa's evolving jurisprudence on socio-economic rights: An effective tool in challenging poverty. *Law, Democracy and Development* 6(2):159-190.

MALAN N

2005. *The realisation of rights to social security by non-state actors: Normative requirements and horizontal institutions in South Africa*. Paper presented at the Conference: SA-Norway perspectives on Social Security: CICLASS, University of Johannesburg. https://www.researchgate.net/publication/279850783_The_realization_of_rights_to_social_security_by_non-state_actors_Normative_requirements_and_horizontal_institutions_in_South_Africa (accessed on 31 January 2022).

MALHERBE K

2001. Stretching solidarity too far: The impact of fraud and corruption on social security in South Africa. *Law, Democracy and Development* 5(1):109-124.

MALOKA T & OKPALUBA C

2019. Making your bed as an independent contractor but refusing 'to lie on it': Freelancer opportunism. *SA Mercantile Law Journal* 31(1):54-75.

MATHABANE M

2018. *The lessons of ubuntu: How an African philosophy can inspire racial healing in America*. New York: Skyhorse Publishing.

MATTHEWS T, GROENEWALD C & MOOLMAN B

2022. *The Covid-19 social relief of distress grant, basic income support, and social protection in South Africa*. The Black Sash. <https://www.blackssash.org.za> (accessed on 10 January 2023).

MCCRUDEN C

2008. Human dignity and judicial interpretation of human rights. *The European Journal of International Law* 19(4):655-724. <https://doi.org/10.1093/ejil/chn043>

**MCGREGOR M, DEKKER A, BUDELI-NEMANKONDE M,
GERMISHUYS-BURCHELL W, MANAMELA E, MANAMELA T &
TSHOOSE C**

2021. *Labour law rules*. 4th edition. Cape Town: Juta.

MIGHELI M

2017. *Ubuntu* and social capital: A strong relationship and a possible instrument of socio-economic development. *Cambridge Journal of Economics* 41(4):1213-1232. <https://doi.org/10.1093/cje/bew070>

MOYO A & MAKWAIBA BS

2020. The role of founding values and principles in constitutional and statutory interpretation: Lessons for Zimbabwe. *Africa Journal of Comparative Constitutional Law* 1:31-58. <https://doi.org/10.47348/AJCL/2020/a2>

MPEDI G

2008. The role of religious values in extending social protection: A South African perspective. *Acta Theologica* 28(1):105-125. <https://doi.org/10.4314/actat.v28i1.48870>

MUBANGIZI JC

2021. Poor lives matter: COVID-19 and the plight of vulnerable groups with specific reference to poverty and inequality in South Africa. *Journal of African Law* 65(2):1-22. <https://doi.org/10.1017/S0021855321000292>

MUROVE M

2009. *African ethics: An anthology of comparative and applied ethics*. Scottsville, South Africa: University of KwaZulu-Natal Press.

**NATIONAL DEVELOPMENT PLAN & UNITED NATIONS
INTERNATIONAL CHILDREN'S EMERGENCY FUND**

2022. *The social protection floor in South Africa, NDP vision 2030: Measuring progress of the proposed elements*. <https://www.nationalplanningcommission.org.za> (accessed on 10 December 2022).

NEWAJ K

2023: A critical evaluation of whether benefits provided for in COIDA fall within the ambit of the constitutional right to access social security protected in section 27(1)(c) of the Constitution. *Obiter* 44(1):126-133. <https://doi.org/10.17159/obiter.v44i1.15951>

NYENTI M

2013. Access to justice in the South African social security system: Towards a conceptual approach. *De Jure Law Journal* 46(4):901-916.

2016. Role of constitutional principles and values in the development of social protection in South Africa. *Global Social Policy* 16(2):201-204. <https://doi.org/10.1177/1468018116646031>

OLIVIER M & JANSE VAN RENSBURG L

2000. Protection and enforcement of the right to social security. *Law, Democracy and Development* 4(1):87-97.

OLIVIER M, SMIT N & KALULA E

2003. *Social security: A legal analysis*. 1st edition. Durban, South Africa: LexisNexis, Butterworths.

ORTIZ I, SCHMITT V & LOVELEEN D (EDS.)

2016. *Social protection floors*. Volume 1: *Universal schemes*. International Labour Organization. <https://www.ilo.org> (accessed on 10 December 2022).

ORTIZ I, CHOWDHURY A, DURÁN-VALVERDE F, MUZAFFAR T & URBAN S

2019. *Fiscal space for social protection: A handbook for assessing financing options* (ILO). https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_727261.pdf (accessed on 10 March 2023).

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

2023. *National Health Insurance ('NHI') Bill*. <https://www.parliament.gov.za/press-releases/media-alert-committee-health-adopt-b-bill-national-health-insurance-bill> (accessed on 27 May 2023).

RATHORE AS & CISTELECAN A (EDS.)

2011. *Wronging rights? Philosophical challenges for human rights*. New Delhi, India: Routledge. <https://doi.org/10.4324/9780203814031>

RAUTENBACH IM

2005. The limitation of rights and reasonableness in the right to just administrative action and the rights to access to adequate housing, health services and social security. *Tydskrif vir die Suid-Afrikaanse Reg* 2005(4): 627-654.

RAPATSA M

2019. Dignity as a social virtue and legal right: Towards a socio-politically conscious and humanitarian view. *Scientific Journal for Theory and Practice of Socio-economic Development* 8(15):13-22.

RAZAVI S

2022. Making the right to social security a reality for all workers. *The Indian Journal of Labour Economics* 65(2):269-294. <https://doi.org/10.1007/s41027-022-00378-6>

SHAHABOONIN F, OLADOPI D & VAN WYK A

2023. Historic spatial inequality and poverty along racial lines in South Africa. *International Journal of Economics and Financial Issues* 13(1):102-111. <https://doi.org/10.32479/ijefi.13803>

SHOBA M & ZUBANE P

2022. The role of non-state actors in policymaking in South Africa: Business and media. *Journal of African Foreign Affairs* 9(2):7-24. <https://doi.org/10.31920/2056-5658/2022/v9n2a1>

SIMPSON M, MCKEEVER G & GRAY AM

2017. *Social security systems based on dignity and respect*. Equality and Human Rights Commission, Scotland. https://www.equalityhumanrights.com/sites/default/files/social_security_systems_based_on_dignity_and_respect.pdf (accessed on 12 February 2023).

SMIT N & MPEDI G

2010. Social protection for developing countries: Can social insurance be more relevant for those working in the informal economy. *Law, Democracy and Development* 14:1-29. <https://doi.org/10.4314/ldd.v14i1.4>

SOSSIN L

2003. The supremacy of God, human dignity, and the charter of rights and freedoms. *University of New Brunswick Law Journal* 52: 227-241.

STACEY R

2020. Proportionality analysis by the South African Constitutional Court. In Kremnitzer M, Steiner T & Lang A (eds.) 2020:193-284. <https://doi.org/10.1017/9781108596268.006>

STARCK C

2002. The religious and philosophical background of human dignity and its place in modern constitutions. In D Kretzmer and E Klein (eds.) 2002: 179-193. https://doi.org/10.1163/9789004478190_013

STATISTICS SOUTH AFRICA

2022. *Beyond unemployment – Time-related underemployment in the South African labour market*. <https://www.statssa.gov.za/?p=16312> (accessed on 31 January 2022).

2022. *Statistics South Africa Quarterly Labour Force Survey (QLFS), 1st Quarter*. <https://www.statssa.gov.za/publications/P0211/P02111stQuarter2022.pdf> (accessed on 15 August 2023).

TRANSFORM

2017. *Coordination of social protection systems – Manual for a leadership and transformation curriculum on building and managing social protection floors in Africa*. <http://socialprotection.org/institutions> (accessed on 12 February 2023).

TSHOOSE CI

2009. The emerging role of the constitutional value of *ubuntu* for informal social security in South Africa. *African Journal of Legal Studies* 3(1):12-19. <https://doi.org/10.1163/221097312X13397499736822>

2022. Appraisal of selected themes on the impact of international standards on labour and social security law in South Africa. *Potchefstroom Electronic Review* 25(1):1-43. <https://doi.org/10.17159/1727-3781/2022/v25ia11969>

UNICEF, SOUTH AFRICA

2022. *An update study on the exclusion error rate for children who are eligible to receive the child support grant*. <https://www.unicef.org/southafrica/media/7971/file/%20ZAF-update-study-exclusion-error-children-eligible-receive-child-support-grant-June-2023.pdf>. (accessed on 14 October 2023).

UNITED NATIONS 2030 AGENDA

2003. *The human rights-based approach to development cooperation towards a common understanding among UN Agencies*. <https://unsdg.un.org/resources/human-rights-based-approach-development-cooperation-towards-common-understanding-among-un> (accessed on 12 February 2023).

2018. *Promoting inclusion through social protection. Report on the World Social Situation*. <https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2018/06/rwss2018-full-advanced-copy.pdf> (accessed on 23 January 2023).

2030a. United Nations transforming our world: The 2030 Agenda for Sustainable Development. <https://sdgs.un.org/2030agenda> (accessed on 23 January 2023).

VAN DEN HEEVER A

2021. *Social security/protection in South Africa*. Wits School of Governance. <https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/wits-school-of-governance/documents/Social%20Protection.pdf> (accessed on 10 December 2022).

VAN DER WALT AJ

1995. Tradition on trial: A critical analysis of the civil-law tradition in South African property law. *South African Journal of Human Rights* 11(2):191-192. <https://doi.org/10.1080/02587203.1995.11827559>

VAN VUUREN D, ZIMM C, BUSCH S, KRIEGLER E, LEININGER J, MESSNER D, NAKICENOVIC N, ROCKSTROM J, RIAHI K, SPERLING F, BOSETTI V, CORNELL S, GAFFNEY O, LUCAS P, POPP A, RUHE C, VON SCHILLER A, SCHMIDT J & SOERGEL B

2022. Defining a sustainable development target space for 2030 and 2050. *One Earth* 5(2):142-153. <https://doi.org/10.1016/j.oneear.2022.01.003>

VONK G & BAMBROUGH E

2020. The human rights approach to social assistance: Normative principles and system characteristics. *European Journal of Social Security* 22(4):376-389. <https://doi.org/10.1177/1388262720971297>

VYAS-DOORGAPERSAD S

2020. Social protection interventions to attain sustainable development goal one in South Africa. *Administratio Publica* 28(2):7-10.

WINCHESTER MS, KING B & RISHWORTH A

2021. It is not enough: Local experiences of social grants, economic precarity, and health inequity in Mpumalanga, South Africa. *Wellbeing, Space and Society* 2:4-5. <https://doi.org/10.1016/j.wss.2021.100044>

WOLMAN S & BISHOP M (EDS.)

2008. *Constitutional law of South Africa*. 2nd edition. Cape Town: Juta.

WORLD BANK & ILO

2016. *Universal social protection to achieve the SDGs*. <https://www.social-protection.org/gimi/gess/RessourcePDF.action?id=54051> (accessed on 23 January 2023).

WRIGHT G, NOBLE M, NTSHONGWANA P, NEVES D & BARNES H

2014. *The role of social security in respecting and protecting dignity of lone mothers in South Africa*. Report of the Oxford Centre for the Analysis of South African Social Policy, University of Oxford. <https://core.ac.uk/download/pdf/43542923.pdf> (accessed on 12 February 2023). <https://doi.org/10.35648/20.500.12413/11781/ii200>

WRIGHT G, NEVES D, NTSHONGWANA P & NOBLE M

2015. Social assistance and dignity: South African women's experiences of the child support grant. *Development Southern Africa* 32(4):443-457. <https://doi.org/10.1080/0376835X.2015.1039711>