

**A LEGAL ANALYSIS OF THE SOCIAL SECURITY RIGHTS OF DOMESTIC  
WORKERS IN SOUTH AFRICA: ISSUES AND CHALLENGES**

**By**

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**Mini-dissertation submitted in fulfilment of the requirement for the degree of  
Masters in Labour Law**

**In the**

**Faculty of Management and Law**

**School of Law**

**At the**

**University of Limpopo**

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**2022**

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## **Abstract**

This study discusses the legal analysis of social security rights of domestic workers in the South African social security law. The notion social security is concerned with the protection of individuals during the happening of certain event such as unemployment, maternity, disability, old age, sickness, and death. For the purpose of this study, social insurance schemes which arise from the employment relationship will be explored. It is submitted that domestic workers like any other employees should also be afforded social security protection as envisaged in the Constitution of the Republic of South Africa, 1996 (the Constitution). Therefore, domestic workers must also be provided social security rights arising out of their employment. Thus, the research process will involve thorough analysis of statutes, case law, textbooks and scholarly articles dealing with the social security law protection afforded to domestic workers, in particular the social insurance component of social security.

For an exceptionally long time, domestic workers have been excluded from the formal employment sector, which followed that they were automatically excluded from social security protection. Despite section 9 of the Constitution, this espouses non-discrimination and equal treatment of all the workers in South Africa. To this end, there is no comprehensive social security system in South Africa that is capable of providing adequate social protection to domestic workers. For example, most domestic workers have no pension fund, and some are not registered with Unemployment Insurance fund and Compensation for Injuries and Diseases schemes.

## **Key Concepts**

Social security, Social Insurance, Domestic Work, Domestic Workers, Employee

## DECLARATION BY STUDENT

I, **Mr. Matome Johannes Senyolo** do hereby declare that A LEGAL ANALYSIS OF THE SOCIAL SECURITY RIGHTS OF DOMESTIC WORKERS IN SOUTH AFRICA: ISSUES AND CHALLENGES in its entirety is my own original work, and I further declare that all the sources that I have used and quoted have been indicated and acknowledged by means of complete references and that I have never submitted this work or part thereof anywhere for obtaining any qualification in any university.

Mr Senyolo M.J

17 December 2021

## **DEDICATION**

I dedicate this work to the memory of my late grandmother, Selaelo Mokhomola  
*morwedi wa Rasehlomi.*

## ACKNOWLEDGEMENT

I take this opportunity, humble myself, and thank God and my Ancestors for the wisdom and understanding that they have bequeathed in me, which enabled me to understand and craft this work from the beginning to its completion. The courage I had, to commence and to complete, was all because of you. My deepest appreciation to Prof. Clarence Itumeleng Tshoose my supervisor. Thank you for the support and patience you have shown me throughout the journey of writing this mini-dissertation. I thank you, the lion of social security! I also extend my appreciation to the University of Limpopo for allowing me to pursue my dreams.

My special appreciation to all my siblings (Motlatjo, Makoma, Mogale, Motsatsi, Maria, Morongwa and Moyagabo Mohale)

My appreciation to my friend Semenya Elvy Sekwaila, thank you for your words of inspiration and support.

My special gratitude to my parents Moalosi Moses Senyolo and Pulana Mamotlatjo Mohale *morwedi wa Mokhomola*, I am grateful for the unwavering support that you have shown me and the invaluable values and principles you have inculcated in me from childhood to my adulthood. This is also made possible by your unconditional love and the patience you have shown me and for that, *ke a leboga go mmenagane!*

*Le leboga ke nna Matome, thate ya seepe, serema ga tee a lesa*

*Ke sebata, ke motwanapa, ke senyolo sa tshipi sa malapa letshetshe;*

*Tshipi ya bokone ya gata dingwe dia robega;*

*Ke motho wa bo mmasebola sa masupi;*

*Ke boya Ntjelele sekoteng sa manaka di lla;*

*Thaba yeso ga e namelwe, wa namela yona o ka se boye*

*Ke setlogolo sa bo mokhomola madutlela;*

*Batho ba go boya tshobjwe la maraka pula le phetolle;*

*Bare tshobjwe re isa moano, rena re boya sediba sebore tubatse;*

*Kwa ga bo mokokona pula tse pedi, yenwe ya tshwa, yengwe ya metsa;*

*Ke batho ba bo lefara la bo mokhola madutlela, ba go nesa pula go sena phefo*

*Pula yeo e nago ka marotholodi!*

**SEBATAGOMO!!!**

## Chapter 1 : INTRODUCTION OF THE STUDY

### 1.1 Introduction

The significance of the right to social security is that it is a human right that encapsulates social, economic, and political aspect like any other human rights.<sup>1</sup> Social security plays a crucial role in the lives of all employees in South Africa, including domestic workers. To this end, domestic work is one of the oldest and most important occupations for many women and few men in many countries. It is linked to global history of slavery, colonialism, and other forms of servitude.<sup>2</sup> Domestic workers like all other employees in other sectors of employment, are worth of legal protection. The labour and social security law have in the past excluded their scope of application to domestic workers for several reasons; chief amongst them was that the domestic work sector is informal.<sup>3</sup> It is crucial to consider the meaning of social security law. Similarly, the concept social security is used interchangeably with the concept social protection in this study.

Social security is an integral part of labour law, because social insurance protection is dependent on the existence of employment relationship.<sup>4</sup> Therefore, it is in the light of this background that social security is defined as “the policies, which ensures that all people have adequate economic and social protection during unemployment, maternity, child-rearing, ill health, disability and old age through contributory(social insurance) and non-contributory(social assistance) schemes”.<sup>5</sup> It suffices to mention that for the purpose of this study focus will be on the social insurance scheme of employees in particular, domestic workers. Thus, social insurance involves the employee and employer contributing monthly payment to insurance schemes as a form of future security, in the event that an employee is affected in a manner which incapacitated him/her whether temporary or permanently.<sup>6</sup> For example, in the event the employee loses her employment, fall ill, die while performing her duties, falling pregnant and subsequently taking maternity leave, such employee or his/her

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<sup>1</sup> Fombad 2013 *African Journal of International and Comparative law* 1.

<sup>2</sup> Blakett 2012 *American Journal of International law* 780; see also *Mahlangu v Minister of Labour* (2021) 42 ILJ 269 (CC) (hereafter '*Mahlangu v Minister of Labour*') para 110.

<sup>3</sup> Fish 2006 *Journal of Southern African Studies* 122.

<sup>4</sup> McGregor M et al *Social security legislation* 124.

<sup>5</sup> See the above footnote 4.

<sup>6</sup> McGregor M et al *Social security legislation* 126.



dependant are entitled to claim some form of benefit from that insurance or compensation fund.<sup>7</sup>

Since social insurance schemes are crafted for formal employees,<sup>8</sup> it is against this background that there is a need to extend coverage to excluded workers. In this regard, it has been highlighted that despite the good range of social insurance schemes, the majority of workers are excluded from pension benefits.<sup>9</sup> Domestic workers are the typical example of the excluded workers. Thus, the absence of comprehensive social security, which consists of compulsory social insurance that provides for pension benefits amongst others; contribute to the perpetual exclusion of many workers from accessing social security.<sup>10</sup> Thus, the recent abrupt publication and withdrawal of green paper on Comprehensive Social Security and Retirement Reform is rather unfortunate.<sup>11</sup> It is submitted that a comprehensive social security, could address many challenges associated with the exclusionary nature of current social security framework.<sup>12</sup> Indeed, when considering the retirement scheme that could have been crafted for domestic workers. That would give substantial effect to the right of access to social security.<sup>13</sup>

## 1.2 Problem statement

Domestic workers in South Africa have for long been marginalised and excluded from both labour and social security law protection. Despite the advent of democracy, wherein the Constitution of the Republic of South Africa, 1996

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<sup>7</sup> See the above footnote 6.

<sup>8</sup> Plagerson *et al* 2017 <http://hdl.handle.net/10419/186090>; see also Mpedi 2012 *Acta Juridica Journal* 272.

<sup>9</sup> South African Department of Social Development, *Green paper on Comprehensive Social Security And Retirement Reform GN 741 IN GG 45006 of 18 August 2021 1-13*; see Plagerson *et al* 2017 <http://hdl.handle.net/10419/186090>.

<sup>10</sup> South African Department of Social Development, *Green paper on Comprehensive Social Security And Retirement Reform GN 741 IN GG 45006 of 18 August 2021 1-13*; Plagerson *et al* 2017 <http://hdl.handle.net/10419/186090>.

<sup>11</sup> The Minister of Social Development's notice of withdrawal of the *Green paper on Comprehensive Social Security And Retirement Reform GN 741 IN GG 45006 of 18 August 2021*, in terms of GN 789 IN GG 45076 of 31 August 2021.

<sup>12</sup> South African Department of Social Development, *Green paper on Comprehensive Social Security And Retirement Reform GN 741 IN GG 45006 of 18 August 2021 1-13*; see Plagerson *et al* 2017 <http://hdl.handle.net/10419/186090>.

<sup>13</sup> Section 27(1)(c) of the *Constitution of the Republic of South Africa, 1996* (hereafter the Constitution); see Smith and Mpedi *Law, Democracy & Development* 14; see also *Mahlangu v Minister of Labour* para 60.

recognised the right of everyone to have access to social security, most domestic workers are still not afforded the necessary legal protection as compared to other employees.<sup>14</sup> For example, domestic workers have not been covered by Compensation for Occupational Injuries and Diseases Act (COIDA),<sup>15</sup> for the past 25 years until in 2020 wherein the Constitutional Court declared that the provision of COIDA which excluded domestic workers from its application violated section 27(1) (c) of the Constitution.<sup>16</sup>

The case of *Mahlangu* highlighted that the COIDA's exclusion of domestic workers demonstrated the intersectional discrimination based on gender, class, and race, which is reminiscent of an apartheid human rights violation.<sup>17</sup> Thus, the court reiterated the transformative objective of the Constitution by ordering the Labour Department to forthwith include domestic workers under the application of COIDA.<sup>18</sup> It is submitted that the Constitutional Court confirmed the long-awaited confirmation on the right of domestic workers to social security rights, in particular the social insurance benefits.

*Mahlangu* case represents victory for all domestic workers. In fact, the impact of this case shall lie in the implementation of the court order, in particular by the Department of Labour and the employers of domestic workers. Similarly, in the case of the Unemployment Insurance Act 63 of 2001, some domestic workers are not registered with the Unemployment Insurance Fund. Additionally, most domestic workers do not have pension fund benefits.

### **1.3 Aims and Objectives**

The object of the study is to analyse the extension of the social insurance coverage to domestic workers in South Africa. The study further seeks to analyse the level of the implementation of domestic workers' rights. Moreover, the objectives of the study are:

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<sup>14</sup> *Mahlangu v Minister of Labour* para 3.

<sup>15</sup> *Compensation for Occupational Injuries and Diseases Act* 130 of 1993 (Hereafter COIDA).

<sup>16</sup> *Mahlangu v Minister of Labour* para 131.

<sup>17</sup> *Mahlangu v Minister of Labour* paras 74 and 155.

<sup>18</sup> *Mahlangu v Minister of Labour* para 131.

- To critically analyse the South African legal framework of social security law concerning domestic workers within a Constitutional democracy that enshrines the right to access social security.
- To determine the extent to which domestic workers are protected by the social security statutes in South Africa.
- To explore the challenges and prospects of implementing social security rights for domestic workers within the constitutional dispensation.
- To expand and scrutinise the impact of COVID-19 lockdowns on domestic workers.

#### **1.4 Scope and limitation of the study**

The study focuses on the implementation of the social security rights of domestic workers in South Africa. Moreover, it is crucial to mention that this study adopts a comparative analysis with other country such as Germany and Brazil to explore whether South Africa can learn anything from the methods these countries are using to ensure implementation of these rights for domestic workers. This study is not intending to focus much on the labour law part, but it will focus on social security law in particular social insurance.

#### **1.5 Research methodology**

This study uses the qualitative method of research. This method is suited for legal research since it focuses on the materials that are library-based. The method involves evaluating and critically analysing the legal materials such as legal textbooks, statutes, court judgment and legal journal article in contrast to quantitative methods, which involve conducting field experiment and laboratory experiment. The research also considers the International Labour Organisation conventions as a yardstick for the legal framework of social security rights. Therefore, using the qualitative methods will achieve the objective of this study and will furthermore provide a well-founded conclusion of this study.

## 1.6 Literature review

It is established that the social security system can be traced back to 1880s.<sup>19</sup> Similarly, it is also noted that the first country to adopt the system of social insurance through statutes was Germany.<sup>20</sup> Social security was later introduced in Europe and North America for the main purpose of protecting the employees engaged in formal employment, by the influence of Bismarckian's model of social security.<sup>21</sup> Thus, considering the characteristics of Bismarckian's model of social security, it is submitted that it had a fundamental influence on the South African social insurance system. In this light, Mpedi provides that "access to employment-related schemes is to large extent dependent on the existence of the employer employee's relationship as contained in labour statutes".<sup>22</sup> Therefore, workers who are not included under the definition of an "employee" under labour statutes are "excluded and marginalised from the scope and coverage of the employment-based social insurance schemes".<sup>23</sup>

Mpedi and Smith argue that "social protection which includes social insurance is a fundamental right which should be enjoyed by every person, irrespective of the sector or the type of economy in which they are employed".<sup>24</sup> Thus, domestic workers in South Africa have for long, been classified as workers under the informal employment sector.<sup>25</sup> Therefore, it follows that social security schemes under social insurance are tailored for employees under formal employment in contrast to those in the informal sector. The main factor that exacerbates and formalise this exclusion is the legal barrier that does not extend its application to informal workers.<sup>26</sup>

Before 1994, the legal framework of labour and social security law restricted its application only to persons who fell under the definition of an 'employee' under the repealed Labour Relations Act 28 of 1956 and the repealed Basic Conditions of Employment Act 3 of 1983.<sup>27</sup> It is argued that the repealed Workmen's Compensation Act 30 of 1941, which its objective was to compensate loss of income

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<sup>19</sup> Rimlinger 1968 *Journal of Human Resources* 413.

<sup>20</sup> Tshoose *Legal reforms to improve coverage and quality of life for the poor people in South Africa* 4.

<sup>21</sup> Mpedi 2012 *Acta Juridica Journal* 272.

<sup>22</sup> See the above footnote 21.

<sup>23</sup> Mpedi 2012 *Acta Juridica Journal* 272.

<sup>24</sup> Smith and Mpedi 2008 *Law, Democracy & Development* 14.

<sup>25</sup> Smith and Mpedi 2008 *Law, Democracy & Development* 19.

<sup>26</sup> See the above footnote 25.

<sup>27</sup> Flint 1988 *Industrial Law Journal* 187-188.

as results of work-related disability excluded domestic workers.<sup>28</sup> Similarly, the repealed Unemployment Insurance Act, which made provision for contributors to the fund to benefit in the event wherein employees were no longer working or unable to, also excluded domestic workers from its protection.<sup>29</sup>

Therefore, because of the exclusion from social security statutory protection, domestic workers rights thus, fall to be determined by the common law.<sup>30</sup> The challenge with common law. Flint conceded that it was an inadequate source of protection for domestic workers in both procedure and substance because it reinforced the inherent inequalities between the employer and employee.<sup>31</sup> For example, as far as sickness benefit was concerned, a domestic worker was not entitled to the claim benefit during the illness and in the event the illness protracted, the employee could be dismissed.<sup>32</sup>

It is in the context of the above discussion that social security legal framework excluded domestic workers from its protection pre-1994. Thus, since the advent of the Constitutional democracy in South Africa, the Constitution envisages the right to access social security in the Bill of Rights. Thus, it provides that “everyone has the right to access social security, including in instances wherein they are unable to support themselves and their dependents to an appropriate social assistance.”<sup>33</sup>

However, it is imperative to take into cognisance the internal limitation, which provides that “the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right”.<sup>34</sup> Therefore, the Constitution imposes an obligation on the state to promulgate statutes that will have on their objectives the realisation of the right to social security.<sup>35</sup>

It flows from section 27(2) of the Constitution that the Unemployment Insurance Act and the Compensation of Occupational Injuries and Disease Act amongst others gives effect to social security rights. The promulgation of Sectoral Determination No 7: Domestic Workers Sector of 2002 by the Minister of Labour Department in terms

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<sup>28</sup> Section 3(2) of *Workmen’s Compensation Act* 30 of 1941 (hereafter Compensation Act).

<sup>29</sup> *Unemployment Insurance Act* 30 of 1966.

<sup>30</sup> Flint 1988 *Industrial Law Journal* 193.

<sup>31</sup> Flint 1988 *Industrial Law Journal* 194.

<sup>32</sup> Flint 1988 *Industrial Law Journal* 196.

<sup>33</sup> Section 27(1)(c) of the Constitution.

<sup>34</sup> Section 27(2) of the Constitution.

<sup>35</sup> *Mahlangu v Minister of labour* para 60.

of section 55(1) of the Basic Conditions of Employment Act (hereafter BCEA) as amended, gave rise to the inclusion of domestic workers in social security rights in terms of section 55(4) (m) of BCEA.<sup>36</sup>

Mpedi emphasised that the deeming provision in terms of section 83(1) of BCEA did not extend its coverage to the Unemployment Insurance Act, and thus that left marginalised domestic workers once again excluded from social security protection. Whereas Olivier argued that,

It is clear that a measure of flexibility is built into the regulation of the position of non-typical workers, and that the legislature does not at this stage regard it necessary to regulate their position directly and specifically by way of statute.<sup>37</sup>

It is in the light of the above assertion made by Mpedi and Olivier, that section 83(1) of BCEA has been amended to include the coverage of domestic workers to access benefits from Unemployment Insurance Act 63 of 2001, as amended by the Unemployment Insurance Act 32 of 2003. Thus, the amendment explicitly provided coverage for domestic workers.<sup>38</sup>

Therefore, after the Sectoral Determination 7: Domestic Workers Sector of 2002 was promulgated, the Unemployment Insurance Act 63 of 2001 (UIA) as amended extended its coverage to domestic workers working more than 24 hours per month for any employer.<sup>39</sup> Therefore, domestic workers are currently covered under the UIA and the challenge remained with accessing benefits under the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA).<sup>40</sup>

The exclusion of domestic workers from the COIDA was the continuation of erstwhile apartheid statutes, such as repealed Workmen Compensation Act, because it did not regard this category of workers worthy of social security protection in contrast to

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<sup>36</sup> Section 27(2) of the Constitution; See also Section 55(1) and 55(4) (m) of Basic Conditions of Employment Act 75 of 1997 (hereafter the BCEA). **Error! Reference source not found.**

<sup>37</sup> Olivier 1998 *Industrial Law Journal* 683; see also Mpedi 2012 *AJJ* 276.

<sup>38</sup> Budlender Debbie 2016 "The introduction of a minimum wage for domestic workers in South Africa" International Labour Office working paper 2226-8944 [ISSN], Geneva p 23; see also International Labour Organisation 2016 [https://www.ilo.org/travail/info/publications/WCMS\\_465069/lang--en/index.htm](https://www.ilo.org/travail/info/publications/WCMS_465069/lang-en/index.htm).

<sup>39</sup> Section 3 of *Unemployment Insurance Act* 63 of 2001 as amended; see also Matjeke *et al* 2012 *South African Journal of Human Resource Management* 3.

<sup>40</sup> *Compensation for Occupational Injuries and Diseases Act* 130 of 1993 (Hereafter COIDA).

other employees.<sup>41</sup> The repealed Workmen Compensation Act excluded domestic workers from its application.<sup>42</sup>

Furthermore, COIDA continued to marginalize domestic workers the same way as its predecessor, Workmen Compensation Act. COIDA has been categorised as one of the social security statutes by the court of law.<sup>43</sup> Despite its social importance, even after 1996, this legislation still remained oblivious of the vulnerability of domestic workers, whom the majority are women. Thus, it can be argued that this statute continued to perpetuate the past injustices against women, African women in particular.<sup>44</sup>

In light of the above discussion, women in South Africa suffer from racial, class, and gender discrimination.<sup>45</sup> It is from the mentioned background on the exclusion of domestic workers that the Constitutional Court (CC) decided on the constitutional invalidity of the provision of COIDA that excluded domestic workers from benefiting from their constitutionally entrenched right in terms of section 27(1)(c) of the Constitution.

The case in point is *Mahlangu v Minister of Labour*.<sup>46</sup> In *casu*, these were the facts, Ms Mahlangu, a domestic worker, drowned in the swimming pool of her employer while working. The drowning led to her death. After her death,<sup>47</sup> her dependant enquired about the compensation of her mother's death at the Department of Labour. Thus, the Department informed her that there was no compensation under COIDA which ordinarily accrues to the dependants of the deceased.<sup>48</sup>

The CC in this case, provided that "COIDA is one of the statutes that the Constitution refers as a reasonable legislative measure, within its available resources, to achieve the progressive realisation of the social security rights."<sup>49</sup> Thus, it was noted that excluding domestic workers from benefiting under COIDA was unjustifiable and

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<sup>41</sup> Theo Van der Merwe 1999 *South African Journal of Economic History* 95.

<sup>42</sup> Section 3(2) of the repealed *Compensation Act*.

<sup>43</sup> *Mahlangu v Minister of Labour* para 52.

<sup>44</sup> *Mahlangu v Minister of Labour* para 96.

<sup>45</sup> *Mahlangu v Minister of Labour* para 96.

<sup>46</sup> *Mahlangu v Minister of Labour* para 24.

<sup>47</sup> *Mahlangu v Minister of Labour* para 7.

<sup>48</sup> *Mahlangu v Minister of Labour* para 8.

<sup>49</sup> *Mahlangu v Minister of Labour* para 60.

therefore, constituted an infringement of section 27(1)(c) and section 27(2) of the Constitution.<sup>50</sup>

## **1.7 Definition of key concepts**

### **1.7.1 Domestic worker**

Domestic workers “are persons, who engages in domestic work; in an employment relationship or those who perform domestic work frequently”.<sup>51</sup> Domestic worker is also defined as “an employee who performs domestic work in the home of his or her employer”.<sup>52</sup> Consequently, domestic work is defined as “any work performed in or for household/s and which is largely done by women”.<sup>53</sup>

### **1.7.2 Social security**

Social security is defined as “the policies, which ensures that all people have adequate economic and social protection during unemployment, maternity, child-rearing, ill health, disability and old age through contributory (social insurance) and non-contributory (social assistance) schemes”.<sup>54</sup>

### **1.7.3 Social insurance**

Social insurance entails that “an employee contributes to an insurance fund, and when the employee comes across a specific risk that affects his/her ability to earn an income, the employee may claim some form of benefit from the insurance fund.”<sup>55</sup>

### **1.7.4 Employee**

The concept employee is defined as “any person, excluding an independent contractor, who works for another person or for the state, and who receives, or is entitled to receive, any remuneration; and any other person who in any manner assists in carrying on or conducting the business of an employer”.<sup>56</sup> This definition

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<sup>50</sup> *Mahlangu v Minister of Labour* para 66.

<sup>51</sup> Dabala and Sefara *Italian Labour Law e-Journal* 90.

<sup>52</sup> Section 1(1) of the *Unemployment Insurance Act* 63 of 2001 as amended.

<sup>53</sup> Dabala and Sefara *Italian Labour Law e-Journal* 90.

<sup>54</sup> McGregor M et al *Social security legislation* 124.

<sup>55</sup> McGregor M et al *Social security legislation* 126.

<sup>56</sup> Section 213 of *Labour Relations Act* 66 of 1995; See also Tshoose CI *Speculum Juris Journal* 45.



has the implication of excluding the typical workers such as domestic workers and independent contractors *inter alia*, therefore, there is presumption of an employee in terms of LRA to ascertain whether a specific employment constitute the employment relationship or independent contract. particular employment is that of employment relationship or not.<sup>57</sup> An employee is also defined as “any natural person who receives remuneration or to whom remuneration accrues in respect of services rendered or to be rendered by that person but excludes any independent contractor”.<sup>58</sup>

## **1.8 Chapter-layout**

Chapter one gives a brief description of the study, operating as an introduction to the study. Chapter two discuss the historical background of the social insurance security rights protection of domestic workers. Chapter three outlines and elaborates on the legal framework of social security law in South Africa as far as social insurance of employees is concerned. Chapter four deliberates on the international social security comparative analysis and also consider the social security system of Germany and Brazil in an attempt to explore what lessons South Africa can draw from their legal framework. Chapter five explores and elaborates on the challenges and pitfalls in extending adequate social security protection to South African domestic workers. Chapter six serves as the conclusion of the study and contains the recommendations.

## **1.9 Chapter summary**

This chapter has considered the background of the application of social security protection to domestic workers and how domestic workers were marginalised and excluded from its protection. The legal framework of social security has thus transformed to include domestic workers to a certain extent under its coverage. Therefore, in summation the application of social security coverage for domestic workers in South Africa may be described as one which is inadequate. This study elaborates further in its following chapters on the inadequacy of social security protection for domestic workers.

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<sup>57</sup> Section 200A of *Labour Relations Act* 66 of 1995; see also Tshoose CI *Speculum Juris Journal* 45.

<sup>58</sup> Section 1(1) of the *Unemployment Insurance Act* 63 of 2001 as amended.

## **Chapter 2 : HISTORICAL BACKGROUND AND CONTEXT OF SOCIAL SECURITY FOR DOMESTIC WORKERS**

### **2.1 Introduction**

There is no future without the past; therefore, the present is forever indebted to the past which is the foundational basis of everything. Thus, when considering the background of social security in South Africa, it is of outmost importance to have regard to the historical context of social insurance extension to domestic workers. South Africa's legal framework is characterised by the period of colonialism, apartheid, and post-apartheid democracy. Therefore, the period of colonialism and apartheid were mired by discriminatory statutes and policies giving effect to social security in South Africa<sup>59</sup>.

The consistent trend was that social security provisions were in most crafted to meet the needs of the minority White employees on the expense of majority of Africans in labour markets.<sup>60</sup> Therefore, the social security system was based on the supremacy of race over the need to provide social security to those who were in need and deserving. Thus, the social security system provided protection against various occupational risks through social insurance and in the event social insurance was insufficient, social assistance supplemented it.<sup>61</sup>

### **2.2 The concept of social security and social insurance**

The literature reviewed posits that Bismarck in Germany established the first system of social security.<sup>62</sup> This system was specifically crafted for industrial employees as opposed to the entire population. Thus, even in the labour markets, the focus was on the formal sector employees. Similarly, social insurance in America linked social insurance benefits to formal employment since it was argued that social insurance was established for business imperatives in contrast to the aspect of equity and social expediency.<sup>63</sup> However, what is axiomatic is that Bismarck's main aim when

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<sup>59</sup> Van der Merwe 1999 *South African Journal of Economic History* 99.

<sup>60</sup> Van der Merwe 1999 *South African Journal of Economic History* 99.

<sup>61</sup> Van der Merwe 1999 *South African Journal of Economic History* 99.

<sup>62</sup> Rimlinger 1968 *Journal of Human Resources* 410.

<sup>63</sup> O'Connell M 1993 *Tulane Law Review* 1429; see also Rimlinger 1968 *Journal of Human Resources* 410.

establishing this system was to foster state patronage and to establish a link between employees and the state.<sup>64</sup> Thus, the social insurance was adopted and passed through statute in 1883.<sup>65</sup> It was in this light that Bismarck embarked on a drive to attain subsidy from parliament to ensure that the government contributed to the pension fund and the employees and employers were to share the remaining cost.<sup>66</sup>

It is apparent from Bismarckian's model that the system was meant to target employees in the formal sector. According to Bismarck it was necessary to have employees under the state, through the provision of social insurance benefits. The consistent trend under this model of social security is that social insurance was linked to the relationship between the employer and an employee. Thus, it is submitted that workers in the informal sector, were not extended coverage of social insurance in Germany during this period of 1880s.

## **2.3 The South African social insurance historical background**

### ***2.3.1 The traditional social security (social insurance) system***

South African history is characterised by the period of colonialism and apartheid. However, it is equally important to recognise the period before these periods emerged and consider how South African social security was structured. Due to insufficient data, it is postulated that in pre-colonial regime, the community used to extend assistance to each other in times of sickness, hunger, and unemployment.<sup>67</sup> It is submitted that this model of social security system was rooted on the principle of *Ubuntu* which emphasised solidarity over solitarily within a community.<sup>68</sup>

The traditional social security is simulation to the modern informal sector, which comprises of excluded workers from coverage under social insurance. Consequently, social insurance was crafted to provide social security to employees

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<sup>64</sup> Van der Merwe 1999 *South African Journal of Economic History* 97-98; see Rimlinger 1968 *Journal of Human Resources* 413.

<sup>65</sup> Rimlinger 1968 *Journal of Human Resources* 414.

<sup>66</sup> Rimlinger 968 *Journal of Human Resources* 414.

<sup>67</sup> Van der Merwe 1999 *South African Journal of Economic History* 78.

<sup>68</sup> Tshoose 2009 *African Journal of Legal Studies* 15.

in the formal employment.<sup>69</sup> Therefore, when one scrutinises the system of traditional social security it was focused more on social assistance and less on the social insurance for workers engaged in informal sector.

### **2.3.2 The period of colonial regime**

The period of the rule of the Netherlands,<sup>70</sup> and the British, focused on alleviating poverty through social assistance.<sup>71</sup> Whereas, during the Afrikaner Republic's social security in cape colony was influenced by the European model, this was because the Dutch had the practical knowledge of Germany's social security system.<sup>72</sup> Furthermore, the Afrikaner Republic was also influenced by the fact that most of the Dutch people were working in civil services.

Therefore, the model of Germany's social insurance system, which comprised of insurance against sickness and casualties at work, was relevant to the Afrikaner Republic.<sup>73</sup> After Carnegie Commission's Report in 1930s recommended that social statutes be revised and broaden its scope of coverage.<sup>74</sup> Consequently, in 1937 the Unemployment Insurance Act was passed with limited application to certain occupations.

What was explicit from its provision was the exclusion of domestic workers from its coverage.<sup>75</sup> When the Committee for Social security in 1944 recommended that unemployment insurance be extended to Black people and that benefits be accorded to participants "according to the differentiated scale based on race groups, of which Black were last to be considered". Thus, the government rejected the recommendation.<sup>76</sup> However, in 1946 Unemployment Insurance Act was amended and extended its coverage to Black people in other sectors of employment excluding the domestic workers.<sup>77</sup> Therefore, the social insurance during the colonial period

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<sup>69</sup> Van der Merwe 1999 *South African Journal of Economic History* 78.

<sup>70</sup> Van der Merwe 1999 *South African Journal of Economic History* 78.

<sup>71</sup> Van der Merwe 1999 *South African Journal of Economic History* 80.

<sup>72</sup> Van der Merwe 1999 *South African Journal of Economic History* 85.

<sup>73</sup> Van der Merwe 1999 *South African Journal of Economic History* 85.

<sup>74</sup> Van der Merwe 1999 *South African Journal of Economic History* 90.

<sup>75</sup> See footnote 73 above 91.

<sup>76</sup> See footnote 73 above 94.

<sup>77</sup> See footnote 73 above 94.

was characterised by racial discrimination, when considering the beneficiaries and the quantum of the benefits that was provided.<sup>78</sup>

### **2.3.3 The apartheid era**

During this period, the National Party intensified discrimination through policies against Black people. Thus, it was in this light that in 1949 the amendment of the Unemployment Insurance Act of 1946 excluded most of Black people from its scope of coverage.<sup>79</sup> Thus, it is submitted that it is an incontrovertible fact that the apartheid had a detrimental impact of reinforcing the inequalities within social security system. Thus, Van der Berg as quoted by Van der Merwe observed that, social security system under this period was crafted specifically for White minority, to protect them against various risks such as unemployment and sickness through social insurance and where it falls short, through social assistance.<sup>80</sup> The lack of statutory protection for domestic workers during this period, Cock commented that, it subjected these employees to experience apartheid “in peculiarly humiliating way”.<sup>81</sup>

This meant that domestic workers were left to be regulated by common law. The quandary of common law was that it was insufficient for advancing social security to domestic workers.<sup>82</sup> Thus, even if the common law were to provide social security for domestic workers, still, if they were married under the community of property regime, they would not be able to approach a court of law to enforce their right, because they were regarded as perpetual minor under the guardian of their husband.<sup>83</sup>

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<sup>78</sup> Theo Van der Merwe 1999 *South African Journal of Economic History* 95.

<sup>79</sup> See footnote 73 above 96.

<sup>80</sup> See footnote 73 above 99; see also Seekings 2004 *Review of African political economy* 300.

<sup>81</sup> Cock 1981 *Review of African Political Economy* 74.

<sup>82</sup> Flint 1988 *Industrial Law Journal* 194; See also Delpont 1992 *Comparative and International Law Journal of Southern Africa* 189.

<sup>83</sup> Deborah et al 1983 *Review of African political economy* 103.

## 2.4 Domestic workers' perspective on social insurance

Thus, it was observed that from socio-political perspective, factors that gave rise to the concentration of many Black women in domestic work<sup>84</sup> was the apartheid education policy amongst others.<sup>85</sup> The policy ensured that most Black people had low quality education to none. This implied that most women had no other option but to find refuge in domestic work.<sup>86</sup> Consequently, from the historical point of view social insurance for domestic workers was non-existent.<sup>87</sup> This was reinforced by the nature of the system, which its insurance schemes were formal employment-based.<sup>88</sup> It was in this light that, the Industrial Conciliation Act of 1924, through its provision provided for a definition of an employee. Mariotti noted that the definition excluded most Black people from being recognised as employees.<sup>89</sup> Therefore, it followed that domestic workers were also excluded, and this automatically gave effect to their exclusion from social insurance. For their work, their rights were denied or restricted only for the fact that they were Black.<sup>90</sup>

Thus, the lack of labour statutory protection is tantamount to social security exclusion of workers in the informal occupations, such as domestic work.<sup>91</sup> O'Connell note that even in America, most states excluded domestic workers from both unemployment and compensation fund.<sup>92</sup> Due to the alleged administrative feasibility and that their work did not produce the products that were sold in the market, so they did not benefit the capitalist economy.<sup>93</sup> However, O'Connell provided that the advanced reasons were devoid of substance because, he argued that social insurance system was constricted with an explicit intention to exclude the disadvantaged groups given the fact that most domestic workers were African-American women.<sup>94</sup>

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<sup>84</sup> Cock 1981 *Review of African Political Economy* 63; see Meyiwa 2012 *Agenda: Empowering Women for Gender Equity* 58.

<sup>85</sup> Seekings 2004 *Review of African political economy* 300.

<sup>86</sup> Mariotti 2012 *The Economic History Review* 1104; see Deborah et al 1983 *Review of African political economy*; see also Flint 1988 *Industrial Law Journal* 190; see also Delpont 1992 *Comparative and International Law Journal of Southern Africa* 182.

<sup>87</sup> Flint 1988 *Industrial Law Journal* 188; see also Grant 1997 *Agenda* 61.

<sup>88</sup> Mariotti 2012 *The Economic History Review* 1104.

<sup>89</sup> Mariotti 2012 *The Economic History Review* 1103.

<sup>90</sup> Cock 1981 *Review of African Political Economy* 74.

<sup>91</sup> Olivier 1999 *Industrial Law Journal* 2201; see also Flint 1999 *Industrial Law Journal* 187.

<sup>92</sup> O'Connell 1993 *Tulane Law Review* 1444 and 1446.

<sup>93</sup> O'Connell 1993 *Tulane Law Review* 1445.

<sup>94</sup> O'Connell 1993 *Tulane Law Review* 1449.

According to Cock, domestic workers are typical workers who fell in a legal vacuum due to the nature of their occupation.<sup>95</sup> Furthermore, the lack of regulation left this vulnerable group in extreme position of job insecurity. This was against the backdrop that, they had no access to unemployment insurance, occupational disability, and maternity benefits. Therefore, in the event they were befallen by some of the risks such as termination of employment, they found themselves in a precarious situation of insecurity.<sup>96</sup> As Olivier posits that, the area of concern in South African social security system is the exclusion of the marginalised groups, referring to domestic workers as a typical example.<sup>97</sup>

## 2.5 The enforceability of social security rights of domestic workers

In the case of *Van Vuuren v Pienaar*,<sup>98</sup> the court had to determine whether a school hostel assistant matron was entitled to receive social insurance benefits under Workmen's Compensation Act 30 of 1941. This statute provided medical care and compensation in cases of occupational disablement. The main duty of the matron was to supervise those working in the kitchen and to deal with the well-being of the ill children at the hostel. Thus, the court referred to the definition of the domestic worker suggested by Judge Rocher in *Re Junior Carton Club* 1922 (Britain) and concluded that the matron was a domestic worker and, on such basis, not entitled to any relief under the Compensation Act.<sup>99</sup>

Therefore, historically domestic worker had no enforceable social security rights. The court had at their disposal various statutes which expressly excluded them from social insurance coverage. Delpont posits that labour statutes that excluded domestic workers were Labour Relations Act,<sup>100</sup> Basic Conditions of Employment Act,<sup>101</sup> Unemployment Insurance Act<sup>102</sup> and the Workmen's Compensation Act 30 of

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<sup>95</sup> Cock 1981 *Review of African Political Economy* 69.

<sup>96</sup> Cock 1981 *Review of African Political Economy* 69.

<sup>97</sup> Olivier 1999 *Industrial Law Journal* 2199.

<sup>98</sup> *Van Vuuren v Pienaar* NO 1941 TPD, see also Delpont 1992 *Comparative and International Law Journal of Southern Africa* 185.

<sup>99</sup> Delpont 1992 *Comparative and International Law Journal of Southern Africa* 185.

<sup>100</sup> *Labour Relations Act* 28 of 1956.

<sup>101</sup> *Basic Conditions of Employment Act* 3 of 1983.

<sup>102</sup> *Unemployment Insurance Act* 30 of 1966.

1941.<sup>103</sup> Therefore, the exclusion of domestic workers from these statutes automatically gave effect to non-enforceability of their social security rights.

## **2.6 The constitutional democratic era**

### **2.6.1 *The commencement of recognition of domestic workers***

The democratic dispensation was the era of hope for change however, domestic workers did not experience it like others since they were no manifestation of change in their occupation. Thus, since 1994 the democratic government embarked on a journey to make social policies more redistributive.<sup>104</sup> It was only in 1994 when the Basic Conditions of Employment Act extended its coverage to domestic workers.<sup>105</sup> Thus, this marked the beginning of legal coverage by labour statutes. Even though, one study conducted provided that, some domestic workers commented that their rights were only on a paper, but not effectual.<sup>106</sup> Given the supremacy of the Constitution of 1996; which provides that everyone must be treated equal and that everyone has the right to access social security.<sup>107</sup> Olivier postulates that the exclusion of domestic workers within a constitutional democracy constitute discrimination and violate their right to equality, dignity and social security.<sup>108</sup>

### **2.6.2 *The introduction of social insurance to domestic workers***

The South African Domestic Services and Allied Workers Union (SADSAWU) along with other civil organisation challenged the exclusion of domestic workers from the unemployment insurance fund.<sup>109</sup> The government protracted the process of extending coverage to domestic workers from 1991 to 2001 to heed to the demand of the union. Thus, there was scepticism about extending coverage to domestic

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<sup>103</sup> Delpont 1992 *Comparative and International Law Journal of Southern Africa* 186; see also Flint 1988 *Industrial Law Journal* 188.

<sup>104</sup> Seekings 2004 *Review of African political economy* 301.

<sup>105</sup> Fish 2006 *Journal of Southern African Studies* 116.

<sup>106</sup> Fish 2006 *Journal of Southern African Studies* 117.

<sup>107</sup> *Khoza v Minister of Social Development* 2004 (6) BCLR 569 (CC) para 111 (hereafter Khoza).

<sup>108</sup> Olivier 1999 *Industrial Law Journal* 2203.

<sup>109</sup> Fish 2006 *Journal of Southern African Studies* 122.



workers, based on the lack of compliance by employers due to private nature of the occupation.<sup>110</sup> Additionally, due to their informal sector position. Therefore, in 2001 when the final draft of the Unemployment Insurance Fund Act (UIF) Bill was presented to the committee in parliament, the domestic workers were still excluded from coverage.<sup>111</sup> Thus, the Department of Labour requested additional time to enquire into the administrative implications and challenges involved in this sector.<sup>112</sup>

To intensify their call for the incorporation of domestic workers under the unemployment insurance, the union joined a coalition called Gender Monitoring and Advocacy for the Unemployment Insurance Fund. The coalition challenged the exclusion of domestic workers as the most vulnerable sector of the labour population to be unconstitutional. Furthermore, it criticised the government on basis that its social security ideology was contradictory in that it declared protection for the poor and vulnerable yet at the same time, it precluded the same vulnerable employees from accessing unemployment insurance benefits.<sup>113</sup>

Thus, the secretary general of the union of SADSAWUA, in submission to the committee in parliament, as quoted by Fish said the following:

We ask you to think seriously about domestic workers. You know ever since this slavery started in this country; domestic workers were there. We have been doing the work for all of you, yet when it comes to laws, there is just no way it can be extended to domestic workers ... We find it most problematic that the bill seeks to include the poor while overlooking the poorest of the poor, the domestic worker ... We feel the unemployment insurance is discriminating against us as women... We see women that are working for twenty years. We see them walking in the streets because there are no unemployment benefits for them. There is no pension fund for them... I am asking you this morning, listen with your heart to the domestic worker... think of your mothers because many of you were raised by domestic workers working for you while you are here now... I am asking you this morning, please consider the domestic workers... if it were not for them in your houses, you would not have been here today, if it were not for domestic workers working for the people of Parliament there would be no Parliament today. If it were not for the domestic workers working for the factory boss, there would be no factory today because they need us to run their houses while they are building the economy of the country.<sup>114</sup>

It was against this background that in 2002 the Sectoral Determination 7 of 2002 was introduced. This led to the formal contract of employment and the compulsory registration of domestic workers with Labour Department.<sup>115</sup> Thus, in 2002 the Unemployment insurance Act was amended to fulfil the rights of domestic workers

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<sup>110</sup> See footnote 108 above.

<sup>111</sup> See footnote 108 above.

<sup>112</sup> See footnote 108 above.

<sup>113</sup> Fish 2006 *Journal of Southern African Studies* 123.

<sup>114</sup> Fish 2006 *Journal of Southern African Studies* 123.

<sup>115</sup> Hunt and Samman 2020 *Anti-Trafficking Review* 107.

under social insurance.<sup>116</sup> Therefore, with effect from 2003 the domestic workers working for more than 24 hours for an employer were covered under the provisions of Unemployment Insurance Act of 2001 as amended.<sup>117</sup>

Thus, after two decades of suffering the indignity of being a domestic worker, as a result of exclusion from compensation fund, in the event the employee was befallen by occupational diseases, injury, disablement and death, the Constitutional Court in 2020, declared unconstitutional the exclusion of domestic workers from accessing compensation under Compensation for Occupational Injuries and Diseases Act 130 of 1993. The court aptly ordered the Department of Labour to extend the coverage of compensation fund to domestic workers.<sup>118</sup>

Therefore, it is arguable that post-apartheid period with the emerging of the Constitutional supremacy, ushered in, a new atmosphere in social security, more so for domestic workers. However, the current system of social insurance owes to domestic workers the provision of compulsory retirement scheme, for most domestic workers retire into destitute.<sup>119</sup> Therefore, it is of paramount importance to consider this perennial issue confronting domestic workers.

## 2.7 Chapter summary

This Chapter provided the historical background of social security for domestic workers; it demonstrated their marginalisation and exclusion from labour and social security statutes. The colonial and apartheid era were characterised by racial discrimination in social security, consequently domestic workers were excluded completely from its coverage. In addition, it is shown how the democratic era ushered in a new atmosphere, wherein the constitutional imperatives of equality, dictated that everyone should have access to social security irrespective of their race, gender and class.

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<sup>116</sup> Benjamin 2008 *Industrial Labour Journal* 1544.

<sup>117</sup> Du Toit 2010 *Law, Democracy and Development* 219; Hunt and Samman 2020 *Anti-Trafficking Review* 107.

<sup>118</sup> *Mahlangu v Minister of Labour* para 131.

<sup>119</sup> De Villiers and Taylor 2019 *South African Journal of Human Resource Management* 10; see also Krennerich 2014 *Law and Politics in Africa, Asia and Latin America* 114.

## Chapter 3 : THE LEGAL FRAMEWORK ON SOCIAL SECURITY RIGHTS

### 3.1 Introduction

South Africa is a member of International Labour Organisation.<sup>120</sup> Despite that, South Africa did not ratify the Convention on the (minimum standard) on social security 102 Of 1952.<sup>121</sup> However, the injunction in the Constitution requires the court when interpreting the social security right embodied in the Bill of Rights to have regard to the international law.<sup>122</sup> In addition, In *Khoza v Minister of Social Development*, it was argued that the legislation of social security was directed at realising the objectives of the Constitution and to give effect to South African's international obligation.<sup>123</sup> Consequently, the right to social security have been recognised at the international level, with the adoption of the convention on the minimum standard on social security 102 of 1952 by the International Labour Organisation (ILO), and the Universal Declaration of Human Rights of 1948. Similarly, the Constitution has an entrenched right to have access to social security.<sup>124</sup>

### 3.2 The South African Constitutional context

South African Constitution is a transformative Constitution. Consequently, it is fundamental to consider the pertinent objective of 1996 Constitution, of establishing a non-racial, non-sexism state based on the values of human dignity and equality under the rule of law. This is against the apartheid background that South Africa as a country emanates from. Thus, the preamble of the Constitution captures its background succinctly. As it provides that:

We, the people of South Africa, recognise the injustices of the past; and respect those who have worked to build and develop our country. We therefore through our freely

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[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO::P11310\\_INSTRUMENT\\_ID:312247](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO::P11310_INSTRUMENT_ID:312247). ILO

<sup>121</sup>

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO::P11310\\_INSTRUMENT\\_ID:312247](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO::P11310_INSTRUMENT_ID:312247). ILO

<sup>122</sup> Section 39(1) (c) of the Constitution; see also *Glenister v President of the Republic of South Africa* 2011 (7) BCLR 651 (CC) (hereafter *Glenister v President of the RSA*) para 106.

<sup>123</sup> Khoza para 51.

<sup>124</sup> Section 27(1) (c) of the Constitution.

elected representatives, adopts this Constitution as the supreme law of the Republic so as to – heal the division of the past and establish a society based on democratic values, social justice, and fundamental human rights. And to improve the quality of life of all citizens and free the potential of each person.<sup>125</sup>

When taking domestic workers into the constitutional perspective, they have also worked to build this country. This is against the historical background provided in Chapter 2. The incontrovertible fact is that domestic workers have enabled most people to pursue their economic activities, while they took care of their homes and children. Notwithstanding the racial, gender discrimination and untold suffering they have experienced in the past, domestic workers continue to face all kinds of discrimination. Thus, the factories established, which contributed to the economy of the country, could have not seen the light of the day, but for domestic workers. Therefore, in the case of *Fourie v Minister of Home Affairs*,<sup>126</sup> it was provided as follows:

[T]he founders committed themselves to a conception of our nationhood that was both very wide and very inclusive...It was because the majority of South Africans had experienced the humiliating legal effect of repressive colonial conceptions of race and gender that they determined that henceforth the role of the law would be different for all South Africans. Having themselves experienced the indignity and pain of legally regulated subordination, and the injustice of exclusion and humiliation through law, the majority committed this country to particularly generous Constitutional protections for all South Africans.<sup>127</sup>

Furthermore, the preamble submits that this Constitution is adopted amongst others to heal past divisions, to create a society that is based on social justice and fundamental human rights. Thus, the Constitutional dispensation seeks to move away from the past, which discriminated against some people, Africans in particular. Additionally, this new South Africa, the Constitution requires it to be based on social justice for everyone. The Constitution further, envisions the society with improved quality of life. As Justice Moseneke posits that, our Constitution was created to do more than conferment of formal equality; but to ensure the effectuation of the substantive equality.<sup>128</sup>

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<sup>125</sup> The preamble of the Constitution of the Republic of South Africa, 1996.

<sup>126</sup> *Fourie and Another v Minister of Home Affairs and Others* 2005 (3) BCLR 241 (SCA) (hereafter *Fourie*).

<sup>127</sup> *Fourie* at para 9.

<sup>128</sup> *South African Police Services v Solidarity obo Barnard* (2014) 35 ILJ 2981 (CC) (hereafter *Barnard*) para 28.

### 3.3 The Constitutional framework

In terms of section 23(1) every employee has the right to fair labour practice. Furthermore, section 27(1) provide 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.<sup>129</sup> Whereas section 27(2) provides that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.<sup>130</sup> in *Glenister v President of the Republic of South Africa*,<sup>131</sup> the court provide that section 7(2) of the Constitution, explicitly obligate the state to respect, protect, promote and fulfil the rights enshrined in the Bill of Rights.<sup>132</sup>

Whereas section 231 provides that international law becomes law in South Africa consequent to its enactment into law by national legislation.<sup>133</sup> The courts are enjoined to consider international law when interpreting the Bill of Rights.<sup>134</sup> The Constitution further requires the court when interpreting the social security legislation to prefer a reasonable interpretation of the legislation that is consistent with international law, over any interpretation that is inconsistent with it.<sup>135</sup> Therefore, it is in this context that international law instruments on social security are considered below.

### 3.4 International instruments

#### 3.4.1 *Decent work for Domestic workers Convention 189 of 2011*

In terms of article 14(1) South Africa as a member state is enjoined to take measures through its statutes and regulations to ensure that domestic workers like all other employees enjoy the same conditions in respect of social security protection, maternity and other forms of social insurance included.<sup>136</sup> Furthermore, like South

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<sup>129</sup> Section 27(1) (c) of the *Constitution*.

<sup>130</sup> Section 27(2) of the *Constitution*.

<sup>131</sup> *Glenister v President of the Republic of South Africa* 2011 (7) BCLR 651 (CC).

<sup>132</sup> *Glenister v President of the RSA* para 106.

<sup>133</sup> Section 213(4) of the *Constitution*.

<sup>134</sup> Section 39(1)(b) of the *Constitution*.

<sup>135</sup> Section 233 of the *Constitution*.

<sup>136</sup> Article 14(1) of Decent work for Domestic Workers Convention 189 of 2011 (hereafter the Convention 189 of 2011)

African Constitution, this convention provides that the measures in sub-article 1 may be applied progressively.<sup>137</sup> Article 14 is qualified by article 17 which requires the member states to create effective and accessible complainant mechanisms and means to ensure compliance with national statutes that protect domestic workers.<sup>138</sup> Additionally, the member state is enjoined to develop and implement measures for labour inspection, enforcement and penalties in terms of statutes and regulations.<sup>139</sup> Furthermore, this convention provides that the statutes and regulations that applies to domestic workers must provide for the conditions under which labour inspectors will be allowed to access the household of the employer for inspection and doing so having due regard to the right to privacy.<sup>140</sup>

### **3.4.2 International Covenant on Economic, Social and Cultural Rights of 1966**

South Africa signed this convention on the 3<sup>rd</sup> October 1994 but,<sup>141</sup> only ratified it in January 2015.<sup>142</sup> Thus, since this country has ratified this convention, it has incurred international obligation to act in a manner that promotes its objectives and purposes.<sup>143</sup> Therefore, South Africa is bound to ensure that social security is provided to its citizens in the form of social assistance, including social insurance to employees.<sup>144</sup> This assertion is qualified by article 2 which requires the state members to implement the right to social security in a progressive manner and to its maximum available resources through legislative measures.<sup>145</sup> Thus, the monitoring and enforcement of this covenant lies with the United Nation Committee on Economic, Social and Cultural Rights. Consequently, member states are required to

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<sup>137</sup> Article 14(2) of the Convention 189 of 2011.

<sup>138</sup> Article 17(1) of the Convention 189 of 2011.

<sup>139</sup> Article 17(2) of the Convention 189 of 2011.

<sup>140</sup> Article 17(3) of the Convention 189 of 2011.

<sup>141</sup> Demichelle <http://blogs.sun.ac.za/seraj/files/2012/11/South-Africas-pending-ratification-of-the-ICESCE.pdf>.

<sup>142</sup> South African Human Rights Commission 18 January 2015 <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/305-sahrc-welcomes-government-s-decision-to-ratify-the-international-covenant-on-economic-social-and-cultural-rights-icescr>.

<sup>143</sup> Olivier 1999 *Industrial Law Journal* 2211.

<sup>144</sup> Article 9 of the International covenant on Economic, Social and Cultural Rights of 1966 (hereafter ICESCR)

<sup>145</sup> Article 2(1) of ICESCR.

report on the progress made on the implementation of social security every 4 years to the committee.<sup>146</sup>

### **3.4.3 Universal Declaration of Human Rights of 1948 (UDHR)**

This declaration has non-binding effect but, has the compelling effect of influencing the promotion of human Rights. In terms of article 22, social security is a human right.<sup>147</sup> Furthermore, this declaration provides that everyone as a member of society has a right to social security in the form of social insurance amongst others. This is supported by article 25 which state that:

Everyone has a right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control.<sup>148</sup>

It has been contended that the principles of Universal Declaration of Human Rights are rules of customary international human rights law.<sup>149</sup> This view is based on the premises that the provisions of UDHR have been incorporated in many legal instruments and has also been affirmed by various court of its special status in human rights law, including in South African courts. Therefore, an aggrieved party may rely on its provision since customary international law applies in South Africa automatically; for so long as it is consistent with the Constitution and the Act of parliament.<sup>150</sup>

As demonstrated in the case of *Mahlangu v Minister of Labour*, the Constitutional court when adjudicating on the dispute involving the exclusion of domestic workers, from the provision of social insurance under COIDA; it had regard to both article 22 and 25(2) of the Universal Declaration of Human Rights when interpreting section

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<sup>146</sup> Lamarche and Van Rensburg 2005 *Socio-Economic Rights in South Africa* 156.

<sup>147</sup> The Universal Declaration of Human Rights of 1948 (hereafter the UDHR 1948).

<sup>148</sup> Article 22(2) of the UDCHR 1948.

<sup>149</sup> Waldock 1965 *International and Comparative Law Quarterly Supplementary* 15; see also Fombad 2013 *African Journal of International and Comparative Law* 8.

<sup>150</sup> Fombad 2013 *African Journal of International and Comparative Law* 8; see also section 232 of the *Constitution*, which provides that customary international law, is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

27(1)(c) of the Constitution.<sup>151</sup> Thus, it is submitted that, the Constitutional Court have recognised that the right to social insurance is a human right.<sup>152</sup>

### 3.5 The Constitution on social security right

It is submitted that South African's social security system is unique in Southern Africa because, it flows directly from the Constitution.<sup>153</sup> It is significant to comprehend the scope of social security in terms of section 27(1) in the context of national effort, to build a democratic and just society following the demise of apartheid. Moreover, to do away with the racial differentiation relating to the social security benefits.<sup>154</sup>

Thus, section 27(1)(c) guarantees every employee access to social security right in the form of social insurance. This was also aptly stated, by Victor AJ, when he stated that, the right to have access to social security embodies the social assistance due to injury or disease that is work-related or the death of a breadwinner consequent to such injury or disease. Additionally, he observed that this right is an integral part of economic, social, and cultural aspects and therefore, that it is indispensable for human dignity and equality.<sup>155</sup>

Consequently, in terms of section 27(2) of the Constitution, the state is enjoined to take reasonable legislative and other measures to achieve the right to access social security in a progressive manner.<sup>156</sup> It has been established in the jurisprudence of social security rights that section 27(1) (c) must be read together with section 27(2).<sup>157</sup> Therefore, the right to access social security must be given effect by the statutes, in the context of this study, such statutes include amongst others; the Unemployment Insurance Act and the COIDA. Furthermore, it has been remarked in *Grootboom* that these two subsections must be read together as defining the scope

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<sup>151</sup> *Mahlangu v Minister of Labour* para 36.

<sup>152</sup> *Mahlangu v Minister of Labour* para 36.

<sup>153</sup> Kaseke 2010 *International Social Work* 160.

<sup>154</sup> Kaseke 2010 *International Social Work* 160.

<sup>155</sup> *Mahlangu v Minister of Labour* para 48.

<sup>156</sup> Section 27(2) of the *Constitution*.

<sup>157</sup> *Minister of Health v Treatment Action Campaign* 2002 (10) BCLR 1033 (CC) para 39.



of the positive obligations on the state to respect, protect and promote and fulfil this right.<sup>158</sup>

Section 27(2) embodies an internal limitation of the right to have access to social security, because the government is only required to achieve it within its reasonable available resources and in a progressive manner.<sup>159</sup> However, it has been argued that the internal limitation under section 27(2) does not follow that the state is not accountable for ensuring the implementation of the right to access social security.<sup>160</sup> Thus, in order for the government to argue for limitation of the right, it must first pass the muster of section 36 of the Constitution.<sup>161</sup>

Therefore, the social security rights in the form of social insurance are extended to employees in terms of section 27(1) (c). It is in this regard that the statutes that give effect to social insurance are the Unemployment Insurance Act and Compensation for Occupational Injuries and Disease Act and will be explored hereunder.

### **3.6 The Unemployment Insurance Act as amended**

This legislation gives effect to the constitutional right to have access to social insurance. The chief purpose of this Act is to ameliorate the harmful socio and economic effects of unemployment.<sup>162</sup> For the purpose of this study the following contingencies will be explored; unemployment, illness, and maternity benefits under this Act.

This statute explicitly provides to the employees and their dependant unemployment, illness, maternity, adoption, and dependant's benefits.<sup>163</sup> Therefore, in terms of section 16, the employee qualifies for unemployment benefits in the event of loss of employment. Thus, the reason for unemployment ranges from the termination of the employment to the dismissal of the employee based on employer's operational

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<sup>158</sup> *Government of the Republic of South Africa v Grootboom* 2000 (11) BCLR 1169 (CC) para 39; see Fombad 2013 *African Journal of International and Comparative law* 23; see also section 7(2) of the *Constitution*; see also *Glenister v President of RSA* para 107.

<sup>159</sup> Section 27(2) of the *Constitution*.

<sup>160</sup> Kaseke 2010 *International Social Work* 160.

<sup>161</sup> *Khoza* paras 83 and 84.

<sup>162</sup> Section 2 of the *Unemployment Insurance Act* 63 of 2001 as amended (hereafter referred as the UIA).

<sup>163</sup> Section 12(1) of the UIA.

requirement.<sup>164</sup> The employee, who voluntarily resigns from his/her employment, is not entitled to this benefit. However, in the case of domestic workers, they are entitled to benefits even in the event wherein their employment, is terminated by the death of their employer.<sup>165</sup>

Whereas, in terms of section 20, employees are entitled to benefits due to illness, in the event wherein the illness protracts for more than 14 days. Thus, the employee is required to show that he is unable to perform his or her work due to the illness.<sup>166</sup> While in terms of section 24, the female employees are entitled to maternity benefit, and the maximum period of maternity leave is four months.<sup>167</sup>

The above provisions are subject to section 14, which provides that the employee will not be entitled to claim benefits under UIA if such employee is also a recipient under COIDA, as a result of work-related disease or injury which caused the partial or total unemployment of the contributor.<sup>168</sup> Thus, this provision's main objective is to avert the double-dipping by employees.

### **3.7 Compensation for Occupational Injuries and Disease Act**

The purpose of this statute is to give effect to section 27(2) read with section 27(1) (c) of the Constitution. The paramount aim of this Act, consequently, is to provide compensation when certain event arises, such as the injuries, disease that are work-related and the death that may arise out of the accident at work or from such occupational injuries and/or diseases.

Thus, in terms of section 22 employees have the right to claim compensation in the event, they are involved in an accident during the course of employment; where such accident results in injury and ultimately death, his or her dependants will be entitled to claim the benefits.<sup>169</sup> Additionally, those employees who contract diseases during the course of their work are entitled for compensation in that regard.<sup>170</sup> Similarly, employees who are involved in an accident at the workplace, their employer must ensure that they are admitted to hospital and the medical cost will be paid in terms of

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<sup>164</sup> Section 16(1)(a) of the UIA.

<sup>165</sup> Section 16(1)(a)(iv) of UIA.

<sup>166</sup> Section 20(1) of the UIA; see also section 20(2) of the UIA.

<sup>167</sup> Section 24 of UIA.

<sup>168</sup> Section 14 of UIA.

<sup>169</sup> Section 22(1) of the COIDA.

<sup>170</sup> Section 65 of the COIDA.

this Act.<sup>171</sup> The employee who as a result of the injury, become disabled either temporary or permanently will be entitled to pension benefits. However, in terms of temporary disablement, such disablement must last for more than three days in order to receive the pension benefits.<sup>172</sup>

It is against the outlined statutory framework of social security, that social insurance is provided to South African employees, except those who are specifically excluded by the statutes. For example, domestic workers are excluded from the coverage of COIDA under section 1.<sup>173</sup> However, this study note the recent development after the decision in the case of *Mahlangu v Minister of Labour*, which declared the exclusion of domestic workers from COIDA unconstitutional and invalid. Thus, it is conceivable that the long journey inside the tunnel is approaching to the light.

### **3.8 The coverage of domestic workers under social insurance**

Domestic workers, as submitted under the historical background, were initially excluded from the coverage of social insurance.<sup>174</sup> It was only in 2003 that domestic workers were covered under the Unemployment Insurance Fund (UIF) through the amendment of Unemployment Insurance Act of 2001.<sup>175</sup> Therefore, domestic workers like other employees, have the same benefits in terms of UIA.<sup>176</sup>

The Compensation for Occupational Injuries and Disease Act of 1993, did not apply to domestic workers for the past 24 years since the advent of the democratic Constitution of 1996.<sup>177</sup> Thus, in 2018 the Department of Labour and Employment proposed to extend COIDA to domestic workers but, before such could materialise there was a court case in the High Court adjudicating on the exclusionary nature of the statute.<sup>178</sup> Therefore, in 2019 the High court in the case of *Mahlangu v Minister*

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<sup>171</sup> Section 72(1) and (2) of COIDA.

<sup>172</sup> Section 222(2) of COIDA.

<sup>173</sup> *Mahlangu v Minister of Labour* para 6.

<sup>174</sup> Dupper and Govindjee 2011 *Stellenbosch Law Review* 776.

<sup>175</sup> Grant 1997 *Agenda* 28; see also Du Toit 2010 *Law, Democracy and Development Journal* 219.

<sup>176</sup> The *Unemployment Insurance Act* provides domestic workers with benefits as contemplated therein.

<sup>177</sup> *Mahlangu v Minister of Labour* para 3.

<sup>178</sup> Hunt and Samman 2020 *Anti-Trafficking Review* 107 and 108.

of *Labour* held that the exclusion of domestic workers from the application of COIDA was unconstitutional and therefore invalid.<sup>179</sup>

Consequently, the application to the Constitutional Court for the confirmation, of constitutional invalidity of the provision was made.<sup>180</sup> And the Court had to determine whether COIDA was a social security statute, and in doing so, the court referred to the case of *Jooste v Store Supermarket Trading (Pty) Ltd*,<sup>181</sup> where it was stated that COIDA is an important social legislation.<sup>182</sup> Furthermore, the court noted that COIDA's paramount purpose is to provide compensation to employees, who suffers occupational injuries and diseases, and/or alternatively death that occurs as a result of an accident, illness or disablement that arises in the course of employment.<sup>183</sup>

Thereafter, the court stated that "COIDA should be read and understood within the Constitutional framework of section 27 and its objective to achieve substantive equality."<sup>184</sup> Thus, the court proceeded to determine the scope of the right to social security and argued that, when determining the scope, it is important to have regard to section 39(1)(a) of the Constitution. As it was said in *Khoza v Minister of Social Development*,<sup>185</sup> that socio-economic rights must be provided to everyone on an equal footing, thus these rights are held by everyone.<sup>186</sup> This is due to the Constitutional injunction which seeks to redress the past injustices. It suffices to mention that the court after analysing all the relevant facts and the law; confirmed the unconstitutional invalidity of the provision of COIDA, which excluded domestic workers from its application.<sup>187</sup> Additionally, it held that the declaration of invalidity of COIDA will have immediate and retrospective effect from 27 April 1994.<sup>188</sup>

It was against this background, that the Department of Labour and Employment, published Government Notice which gave effect to the Constitutional Court decision

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<sup>179</sup> Hunt and Samman 2020 *Anti-Trafficking Review* 107 and 108.

<sup>180</sup> Section 172(2) of the *Constitution*, this provision grants the Constitutional Court the exclusive authority to confirm the Constitutional invalidity of the Act of parliament.

<sup>181</sup> *Jooste v Store Supermarket Trading (Pty) Ltd* (1999) 20 ILJ 525 (CC).

<sup>182</sup> *Jooste v Store Supermarket Trading (Pty) Ltd* (1999) 20 ILJ 525 (CC) para 9; see also *Mahlangu v Minister of Labour* para 52.

<sup>183</sup> *Jooste v Store Supermarket Trading (Pty) Ltd* (1999) 20 ILJ 525 (CC) para 14.

<sup>184</sup> *Mahlangu v Minister of Labour* para 52.

<sup>185</sup> 2004 (6) SA 505 (cc).

<sup>186</sup> *Khoza* para 42.

<sup>187</sup> *Mahlangu v Minister of Labour* para 131.

<sup>188</sup> *Mahlangu v Minister of Labour* para 131.

of 19 November 2020.<sup>189</sup> Thus, the notice in the government gazette provides that all employers of domestic workers are to be registered in terms of section 80 of COIDA. The Commissioner of the Compensation fund in terms of section 6A(b) published this information on the 10<sup>th</sup> of February 2021 informing the employers of domestic workers for the registration of claims in terms of section 39 of COIDA. Therefore, this marked the commencement of the coverage of domestic workers under COIDA.<sup>190</sup> Thus, the domestic workers are currently extended coverage under COIDA through a regulation, as the amendment of the statutes is still underway. Therefore, domestic workers are currently entitled to the benefits as outlined above, relating to occupational diseases, injuries, disablement, and death under COIDA.<sup>191</sup>

### **3.9 Chapter summary**

The social security legal framework within the constitutional dispensation, has the objective of providing social justice and ensuring that the constitutional imperative of equality is realised. Thus, it is apparent that the constitutional dispensation seeks to ensure that the values of equality and human dignity are realised. Consequently, section 27 of the Constitution guarantee everyone the right to access social security and that is to be realised through Unemployment Insurance Act and COIDA. Therefore, from the international and constitutional perspective domestic workers are also entitled to social insurance benefits and they are extended to them through social security statutes.

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<sup>189</sup> The Department of Employment and Labour 10 March 2021 [www.gpwonline.co.za](http://www.gpwonline.co.za).

<sup>190</sup> GN 44250 in GG of 669 10 March 2021; see also The Department of Employment and Labour 10 March 2021 [www.gpwonline.co.za](http://www.gpwonline.co.za).

<sup>191</sup> Sections 22, 65 and section 72 of COIDA.

## Chapter 4 : INTERNATIONAL SOCIAL SECURITY COMPARATIVE ANALYSIS

### 4.1 Introduction

South Africa is not an island; it is part of the international community. Therefore, it also makes use of international instruments in its domestic court; this has been conspicuous in various Constitutional court cases.<sup>192</sup> In *Khoza v Minister of Social Development*, it was argued that the legislation of social security was directed at realising the objectives of the Constitution and to give effect to South African's international obligation.<sup>193</sup> In addition, in *S v Makwanyane* the court provided that, both the binding and non-binding international conventions are important for interpreting the provisions of legislation, this find premise in section 39 of the Constitution.<sup>194</sup> Therefore, it is important to compare the South African social security system and the standards set by International Labour Organisation on social security law. Furthermore, provide a bird view of foreign countries' social security system, for the purposing of drawing valuable lessons, from their social security systems.

### 4.2 International and foreign law in South Africa

South Africa has a hybrid approach to the application of the international law in its domestic affairs. This assertion find authority under the Constitution where it is specifically expressed that an international agreement will only have force in South Africa after it has been approved by parliament,<sup>195</sup> unless such agreement is of executive nature. Some provide that the international law must be domesticated before it can have force in South Africa, unless is a self-executing treaty.<sup>196</sup> As discussed in chapter three, the Constitution enjoins the court and tribunals to have regard to international law when interpreting the Bill of Rights.<sup>197</sup> Whereas customary

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<sup>192</sup> *S v Makwanyane* 1995 (6) BCLR 665 (CC) paras 34, 35 and 37 (hereafter Makwanyane).

<sup>193</sup> *Khoza* para 51.

<sup>194</sup> *Makwanyane* para 35.

<sup>195</sup> Section 231(2) and (3) of the Constitution; see also Fourie ES 2008 *Potchefstroom Electronic Law Journal* 133.

<sup>196</sup> Viljoen *International law* 349; see also section 131(4) of the Constitution.

<sup>197</sup> Section 39(1)(b) of the Constitution.

international law, is law in the Republic, only if it is consistent with the Constitution and an Act of parliament.<sup>198</sup>

Having outlined the status of international law in the Republic, the courts, tribunals and forums when interpreting the law; are enjoined to prefer the interpretation that is consistent with the international law over the one which is inconsistent with it.<sup>199</sup> Therefore, it is axiomatic that South Africa, patronise the monist approach regarding the interpretation whereas, adopting the dualist approach, concerning the direct application of a particular international agreement or treaty in South African courts. This is bolstered by section 39(1) (b) and section 231(2) of the Constitution.

Whereas in respect of foreign law, the Constitution provides that the court when interpreting the Bill of Rights may consider foreign law.<sup>200</sup> Thus, in the context of textual interpretation, it is apparent that the word 'may' provide the judiciary with an election whether to conform or to forgo the foreign law. Therefore, foreign law is not binding in the Republic, the courts are not bound by it. As it was provided in the case of *Makwanyane* that, the judiciary may only derive assistance from international and foreign case law, but they are not bound by it. Since South African court are enjoined to interpret the Constitution of the Republic in the manner which takes into consideration its history and legal system as a whole.<sup>201</sup>

### **4.3 Background of international standards on social security law**

Social security law is incorporated under the treaty of Versailles of 1919 (the Constitution of the ILO). Thus, it has been submitted that the period between 1919 to 1944 social security at the international level was concerned more with social insurance. Through social insurance, the objective of social security was to establish the compulsory insurance schemes. Thus, it is postulated that from the inception the social security has always considered the rights of employees when initiating social security. This is reinforced by the initial nature of social security which encapsulated:

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<sup>198</sup> Section 232 of the Constitution.

<sup>199</sup> Section 233 of the Constitution.

<sup>200</sup> Section 39(1) (c) of the *Constitution*.

<sup>201</sup> *Makwanyane* Para 39.

unemployment, occupational diseases, and industrial accident schemes amongst others.<sup>202</sup>

It was the 1942 Beveridge Report, which introduced the comprehensive universal concept of social security, which also provided for social assistance. Consequently, the Social Security (Minimum Standard) Convention 102 of 1952 was adopted.<sup>203</sup> South Africa is a proud member of International Labour Organisation, yet it has not ratified the convention 102 of 1952, which is regarded as the benchmark for international social security law.<sup>204</sup> It suffices to mention that, the convention provides for sickness, maternity, unemployment and employment injury benefits.<sup>205</sup> Therefore, South Africa is not bound by this convention, although it is submitted that it is observed by this country to a certain level. It is against this background that it has been argued that this convention may serve as guidance, where there is uncertainty on the interpretation of the statutes when adjudicating on social security disputes in South African courts.<sup>206</sup>

Convention, 1952 is also referred to, as mother convention of social security. This is in light of the fact that there have been many conventions adopted to give effect to its general provisions, in more detailed manner. For example, the Maternity Protection Convention 183 of 2000, this convention provides maternity benefits to all women, even those working in informal sector.<sup>207</sup> However, South Africa is yet to ratify this convention too. It is submitted that given the gap in the Unemployment Insurance Act, where it excludes domestic workers, who works less than 24 hours per month for one employer or more.<sup>208</sup> This, convention would close that *lacuna*, if this country ratifies this it.<sup>209</sup>

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<sup>202</sup> Korda and Pennings F 2008 *European Journal of Social Security* 133.

<sup>203</sup> Korda and Pennings 2008 *European Journal of Social Security* 133.

<sup>204</sup> ILO [https://www.ilo.org/secsoc/areas-of-work/legal-advice/WCMS\\_205340/ang--en/index.htm](https://www.ilo.org/secsoc/areas-of-work/legal-advice/WCMS_205340/ang--en/index.htm).

<sup>205</sup> Social Security (Minimum Standards) convention, 1952.

<sup>206</sup> Korda M and Pennings F 2008 *European Journal of Social Security* 143.

<sup>207</sup> Article 2 of Maternity Protection Convention 183 of 2000.

<sup>208</sup> Dupper et al 2011 *Institutes of Municipal Engineering of Southern Africa* 452.

<sup>209</sup> Fourie 2008 *Potchefstroom Electronic Law Journal* 138.



#### 4.4 The social security system of Brazil

Brazil is one of the Latin American countries. This country was considered as one of the pioneers of social insurance in South America, in early 1920s. Its system of social security was described as stratified because, it was characterised by the assumed male breadwinner as opposed to female-breadwinners. The social security protection was truncated on formal employees;<sup>210</sup> this meant that domestic workers were not protected. Thus, through the evolution of the economic change, in 1970 the insurance schemes were extended and covered over 70 percent of the labour force.<sup>211</sup>

It is noted that before 1970s, social insurance was limited to formal employees. Therefore, those in informal sector were not protected.<sup>212</sup> However, domestic workers in 1970s were included under the separate *Prorural/Funrural* schemes of social security.<sup>213</sup> However, as a result of the Constitution of 1988, in 1991 domestic workers were extended coverage under the general schemes of social insurance due to the Constitutional equality imperatives, through the Laws 8212 and 821.<sup>214</sup> Thus, the statute provides that domestic workers are defined as one, who provides continuous and non-profit services to a person or family at their home.<sup>215</sup>

#### 4.5 The Constitution of 1988 as amended by Amendment 72

The Brazil Constitution's preamble recognises the need to ensure the exercise of social and individual rights, liberty, and security as supreme values in Brazil.<sup>216</sup> Given the brief outline of the exclusion and partial inclusion as provided in the background; the Constitution explicitly provides protection to domestic workers. Thus, domestic workers have an explicit right to social insurance benefits under the

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<sup>210</sup> Barrientos and Santibanez 2009 *Journal of Latin American Studies* 6.

<sup>211</sup> Barrientos and Santibanez 2009 *Journal of Latin American Studies* 5.

<sup>212</sup> Barrientos and Santibanez 2009 *Journal of Latin American Studies* 2.

<sup>213</sup> Nitsch and Schwarzer [https://www.ilo.org/secsoc/information-resources/publications-and-tools/Discussionpapers/WCMS\\_207711/lang--en/index.htm](https://www.ilo.org/secsoc/information-resources/publications-and-tools/Discussionpapers/WCMS_207711/lang--en/index.htm) (Hereafter Nitsch Manfred and Schwarzer Helmut).

<sup>214</sup> Nitsch Manfred and Schwarzer Helmut 20.

<sup>215</sup> Law 5859/1972; see also Costa, Joana Simões; Barbosa, Ana Luiza Neves de Holanda; Hirata, Guilherme Issamu (2016): Effects of domestic worker legislation reform in Brazil, Working Paper, No. 149, International Policy Centre for Inclusive Growth (IPC-IG), Brasilia 2 (Hereafter Effects of domestic worker legislation reform in Brazil, Working Paper 2016).

<sup>216</sup> The preamble of the Constitution of 1988 as amendment 72.

Constitution. These changes were initiated by the amendment of the Constitution in 2012.<sup>217</sup>

#### 4.6 Social security rights of domestic workers

In terms of article 7, domestic workers have the right to unemployment, and occupational accident insurance, which is paid by the employer.<sup>218</sup> Additionally, unlike South Africa, Brazil provides the domestic workers with compulsory retirement pension benefits.<sup>219</sup> It is submitted that this provision integrates domestic workers into comprehensive social security system. This is against the background, that in contrast to the period prior the amendment, wherein domestic workers were not fully covered by social insurance to the same extent as other employees, the so-called formal employees. It is submitted that domestic workers are ensured under social security system of Brazil, as provided by article 201 that:

Social security shall be organised in the form of a general regime, characterised by contribution and mandatory affiliation, observing the criteria that preserve the financial and actuarial equilibrium, and shall provide for, as defined by law: Coverage of the events of illness, disability, death and advanced age; Maternity protection, especially for pregnant women; Protection for the involuntary unemployed; A pension for the death of an insured man or woman, for the spouse or companion, and dependents.<sup>220</sup>

For domestic workers to be integrated under the comprehensive social insurance, it took 25 years before the amendment 72 came to their rescue. Some of the above rights were immediately obtained whereas; others came in effect in 2015 through the enabling law.<sup>221</sup> In order for domestic workers to be covered by social insurance they must be registered and be in possession of the working document/card that shows social security contribution and participation.<sup>222</sup> Furthermore, the amendment placed measures to ensure compliance with the rights of domestic workers, as enshrined in

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<sup>217</sup> Effects of domestic worker legislation reform in Brazil, Working Paper 2016 5.

<sup>218</sup> Article 7 of the Constitution Amendment 72.

<sup>219</sup> Article 7 of the Constitution Amendment 72.

<sup>220</sup> Article 201 of the Constitution Amendment 72.

<sup>221</sup> ILO 2016 [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_506167.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_506167.pdf) (Hereafter Initial effects of Constitutional Amendment 72 on domestic work in Brazil).

<sup>222</sup> Kaizo and Pinhanez 2014 *Public Administration and Development* 6; see also Costanzi *et al* 2013 *International Labour Review* 551.

the Constitution. Thus, employers who fail to formalise the employment contract by recording it in the work booklet; will be liable to pay a fine.<sup>223</sup>

It is submitted that the government of Brazil through article 1 of the Constitution, have an obligation to ensure the effectuation of domestic workers' rights.<sup>224</sup> Similarly, article 5 enjoins the government to ensure that everyone is treated equal before the law, unless in exceptional cases permitted by the law.<sup>225</sup> Furthermore, everyone is guaranteed the inviolability of their right to equality and security. Thus, this entails that domestic workers have equal rights as other employees under the Constitution.<sup>226</sup>

Therefore, it is noted that the Constitutional Amendment 72, based on the study conducted between 2012 and 2014, had a significant impact on the formalisation of domestic work.<sup>227</sup> This in turn, gave rise to more working card of domestic workers being signed by their employers. Thus, signed working card, guarantees the employee access to social insurance benefits; and compliance by the employer to effect contributions to relevant schemes.<sup>228</sup>

#### **4.7 Social insurance for domestic workers in Germany**

As a point of departure, in Germany domestic workers have no special definition, but are defined as employee under its labour statutes.<sup>229</sup> Therefore, it is against this backdrop, that when social security system in Germany provides that it is compulsory for employees to form part and participate in social insurance, it also includes domestic workers.

In terms of article 20 of the Constitution of Germany, it is provided that Germany is a democratic and social state. Therefore, it is submitted that, it has an obligation to ensure that its people have the right to social security. According to ILO, domestic workers in this country are covered under the same statutes as other employees.

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<sup>223</sup> Initial effects of Constitutional Amendment 72 on domestic work in Brazil.

<sup>224</sup> Article 1 of the Constitution Amendment 72.

<sup>225</sup> Article 5 of the Constitution Amendment 72.

<sup>226</sup> Article 5(i) of the Constitution Amendment 72.

<sup>227</sup> Effects of domestic worker legislation reform in Brazil, Working Paper 2016 19.

<sup>228</sup> Effects of domestic worker legislation reform in Brazil, Working Paper 2016 19.

<sup>229</sup> Trebilcock 2018 *International Journal of Comparative Labour Law and Industrial Relations* 164.

Thus, it has been submitted that the law was used to reduce informal work in domestic services, and that was done by reducing social contributions and tax exemptions. In Germany, domestic workers are covered for sickness, unemployment injury, Maternity, and for retirement.

According to the government of Germany, it provided that domestic workers are equally protected through various schemes available to all employees.<sup>230</sup> It elucidated on this assertion by providing that domestic workers have the right to health, unemployment, accident, and pension insurance benefits.<sup>231</sup> However, this country excludes domestic workers, who are engaged in mini-jobs for various employers from compulsory social insurance; as far as health insurance is concerned.<sup>232</sup> Health insurance schemes, provides for illness and maternity benefits. What is clear is that despite their exclusion from health insurance, the domestic workers engaged in min-jobs are still obligated to have pension insurance and contribute to it.<sup>233</sup> Thus, the registration of domestic workers is a crucial point of departure for accessing protection under the compulsory insurance against various risks.<sup>234</sup>

#### **4.8 Challenges confronted by Brazil and Germany under social insurance**

In Brazil, the social insurance provides adequate social insurance to domestic workers through the statutes. In Brazil it is only domestic workers who are registered and had their work card signed by their employers who access full benefits under the compulsory social insurance.<sup>235</sup> However, domestic workers who does the daily work (*diaristas*) for different employers as opposed to those who works on monthly basis

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[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3300808:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3300808:NO) (Hereafter Domestic Workers Convention, 2011 (No.189) – Germany (Ratification: 2013)).

<sup>231</sup> Trebilcock Anne 2018 *International Journal of Comparative Labour Law and Industrial Relations* 170.

<sup>232</sup> Domestic Workers Convention, 2011 (No.189) – Germany (Ratification: 2013).

<sup>233</sup> Domestic Workers Convention, 2011 (No.189) – Germany (Ratification: 2013).

<sup>234</sup> Trebilcock Anne 2018 *International Journal of Comparative Labour Law and Industrial Relations* 171.

<sup>235</sup> Effects of domestic worker legislation reform in Brazil, Working Paper 2016 8.

(*mensalistas*); most of them are not registered and therefore, do not fall under compulsory social security insurance.<sup>236</sup>

consequently, it is argued that the Constitutional Amendment 72 had no impact on *diaristas* but, rather on those who work on monthly basis.<sup>237</sup> However, it is postulated that the formalisation of domestic workers' labour rights, had the implication that employers who fails to sign the work card, will face increased penalty; more so in instances where domestic workers are to resort to court to enforce their rights.<sup>238</sup> Therefore, it is submitted that, the increased formalisation of domestic work in Brazil, is tantamount to increased access to social insurance benefits and such, could ameliorate the impact of domestic workers with multiple employers.

Whereas, in Germany, even though the data on the level of domestic workers that have full access to social insurance is insufficient. It is noted that out of 3 million domestic workers, as determined in 2016 about 75 and 85 percent of all domestic workers are undeclared. Thus, it is provided that only about 47 000 working in private household have full social insurance coverage; while about 300 000 domestic workers engaged in the so-called mini-jobs enjoy most of the benefits under the social insurance to a certain extent.<sup>239</sup>

Thus, according to Trebilcock, domestic workers who are engaged in domestic work but, who work for different employers; the government has made arrangements, which provides a model of contract of employment and automatic deductions through a bank, to pay wages and social security contributions.<sup>240</sup> However, Gender Equality Commission, raised its concern about the exclusion of domestic workers excluded from compulsory insurance, on the basis that they perform mini-jobs. The commission remarked that, this will have a detrimental impact on these workers in the future, as they will be awarded low pension benefits. Therefore, the Commission recommended equitable uniform contribution to the social insurance in Germany.<sup>241</sup>

Furthermore, Germany excluded the live-in domestic workers from the scope of convention 189 of 2011. Reason being that it is difficult to distinguish their working

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<sup>236</sup> Effects of domestic worker legislation reform in Brazil, Working Paper 2016 3.

<sup>237</sup> Effects of domestic worker legislation reform in Brazil, Working Paper 2016 3.

<sup>238</sup> Effects of domestic worker legislation reform in Brazil, Working Paper 2016 19.

<sup>239</sup> Trebilcock 2018 *International Journal of Comparative Labour Law and Industrial Relations* 157.

<sup>240</sup> Trebilcock 2018 *International Journal of Comparative Labour Law and Industrial Relations* 158.

<sup>241</sup> Trebilcock 2018 *International Journal of Comparative Labour Law and Industrial Relations* 170.

and leisure time, thus they are not able to regulate them, as far as working hours are concerned. In terms of article 14 of Convention 189, domestic workers should be afforded social security benefits on equal footing as other employees.<sup>242</sup> Thus, this decision was criticised by some, who argued that the government failed to have regard to article 2(2) of convention 189, which provides for exclusion of a limited category 'from its scope'.<sup>243</sup>

#### **4.9 Lessons for South Africa**

Notwithstanding the challenges confronting Brazil and Germany, South Africa can learn from these countries, in introducing the pension scheme under social insurance to ensure that domestic workers have access to retirement benefits when they reach the retirement age. Furthermore, South Africa may introduce the model of employment contract which will ensure that the employers of domestic workers pay for their social insurance through automatic bank deductions.

#### **4.10 Chapter summary**

The international social security law serves a fundamental function of providing the minimum standard which the international community must follow, when adopting social security statutes in their respective countries. This chapter demonstrated that in Brazil the inclusion of domestic workers under the constitution, guaranteed them the constitutional right to social insurance. Whereas in Germany, the government placed measures to ensure that even domestic workers who works for various employers are covered by social insurance.

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<sup>242</sup> Trebilcock 2018 *International Journal of Comparative Labour Law and Industrial Relations* 164.

<sup>243</sup> Trebilcock 2018 *International Journal of Comparative Labour Law and Industrial Relations* 164.

## Chapter 5 : THE CHALLENGES AND PITFALLS IN SOCIAL SECURITY PROTECTION

### 5.1 Introduction

According to International Labour Organisation (ILO), globally, domestic workers are excluded from social security coverage. Furthermore, it noted that even in countries where such coverage is extended, domestic workers enjoy less favourable coverage, as contrast to other employees. It is submitted that, this subject these employees to inequality and abject poverty, in the event of termination of employment; without unemployment and pension insurance.<sup>244</sup>

Consequently, it is estimated that there are about 67.1 million domestic workers globally and 75 per cent of them are employed under the informal sector. It is noted that most of these employees are women, who amongst other things, deserve maternity benefits, when such time to give birth arises. Thus, globally out of 176 countries, only 70 countries provide statutory social security protection to domestic workers. However, it is argued that legal entitlement of social security must not be deemed to be synonymous with effective coverage, wherein domestic workers enjoy the social insurance benefits. The ILO aptly concede that, indeed, despite the statutory protection, most domestic workers enjoy less benefits and this is more so in developing countries.<sup>245</sup>

Social insurance's main objective in South Africa is to ensure that employees are covered in the event of sickness, unemployment, occupational injury amongst others.<sup>246</sup> Thus, social insurance should provide insurance to all employees in the Republic through various mechanisms.<sup>247</sup> However, that is not the case, since most employees in the informal sector are not covered,<sup>248</sup> and even those who are covered they do not enjoy all benefits of social insurance, that comprises of unemployment fund, compensation fund and pension fund.

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<sup>244</sup> De Villiers and Taylor 2019 *SA Journal of Human Resource Management* 9.

<sup>245</sup> Behrendt et al [https://www.social-protection.org/gimi/Emodule.action;jsessionid=viHrrmaKViUVF234aBU\\_-I5YabaTmZgzlVtC5Lv0vTskEek8yG22!-1491252213?id=58](https://www.social-protection.org/gimi/Emodule.action;jsessionid=viHrrmaKViUVF234aBU_-I5YabaTmZgzlVtC5Lv0vTskEek8yG22!-1491252213?id=58).

<sup>246</sup> Kaseke 2010 *International Social Work* 161.

<sup>247</sup> Section 9 of the Constitution; see also section 27(2) of the Constitution.

<sup>248</sup> Kaseke 2010 *International Social Work* 161; see also Mpedi and Smith 2010 *Law, Democracy & Development* 1.

Therefore, this chapter provide an overview of socio-economic challenges in South Africa, with the objective of determining the impact they have on the lack or the inadequate coverage of domestic workers under social insurance. Additionally, challenges and pitfalls concerning the adequate coverage will be discussed. The chapter will conclude with scrutinising the impact that Covid-19 lockdowns had on domestic workers.

## **5.2 Socio-economic challenges in South Africa: An overview**

This country is confronted by triple socio-economic challenges, relating to poverty, unemployment, and inequality.<sup>249</sup> According to the World Bank, South Africa has a dual economy, (comprising of formal and informal employment); considered to be the most unequal in the world.<sup>250</sup> Furthermore, it is argued that, this is attributed to the legacy of exclusion and the nature of economic growth, the one which is unable to create sufficient employment opportunities.<sup>251</sup> In this light, domestic workers are considered as workers under informal sector, one which is characterised by lack of job security.<sup>252</sup> Thus, since the advent of democracy, the government had dedicated itself to establish equal society, including in the employment sector.<sup>253</sup>

## **5.3 The inequalities in the labour sector**

The democratic South Africa is on a journey pursuing equality for its entire people, more particularly, those who have suffered the discrimination of the past injustices.<sup>254</sup> Thus, the same applies to employees who have been and are still marginalised,<sup>255</sup> in the context of social security coverage. De Villiers and Taylor provide that, Statistics South Africa in 2019, estimated that, the domestic work

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<sup>249</sup> Babalwa and Khambule 2016 [https://www.g20-insights.org/policy\\_briefs/inequalities-undermine-social-cohesion-case-study-south-africa/](https://www.g20-insights.org/policy_briefs/inequalities-undermine-social-cohesion-case-study-south-africa/).

<sup>250</sup> The World Bank March 2021 <https://www.worldbank.org/en/country/southafrica/overview>.

<sup>251</sup> The World Bank March 2021 <https://www.worldbank.org/en/country/southafrica/overview>; see also Babalwa and Khambule May 2016 [https://www.g20-insights.org/policy\\_briefs/inequalities-undermine-social-cohesion-case-study-south-africa/](https://www.g20-insights.org/policy_briefs/inequalities-undermine-social-cohesion-case-study-south-africa/).

<sup>252</sup> De Villiers and Taylor 2019 *SA Journal of Human Resource Management* 2.

<sup>253</sup> De Villiers and Taylor 2019 *SA Journal of Human Resource Management* 1.

<sup>254</sup> *South African Police Service v Solidarity obo Barnard* (2014) 35 ILJ 2981 (CC) (hereafter *Solidarity obo Barnard*).

<sup>255</sup> *Employment Equity Act* 55 of 1998.



comprised of approximately 953 000 Black women.<sup>256</sup> How do the socio-economic factors feature in this study? The answer lies in the inequalities that mushroom in the social security coverage and protection. The labour sector, like other sectors of life, such as politics, government, and family; what is consistent across the spectrum is the need for equality in order to lead a life of quality.<sup>257</sup> Therefore, it is against this background that the overview of socio-economic challenges regarding inequality is provided.

Some authors, who wrote on challenges confronting domestic workers in South Africa, captured the perennial issue of inequality succinctly,<sup>258</sup> by quoting the United Nations Development Programme: Human Development Report on Gender Equality Index which provided that:

Disadvantages facing women and girls are a major source of inequality. All too, often, women and girls are discriminated against in health, education, and labour market – with negative repercussions on their freedom.<sup>259</sup>

Thus, in the case of *South African Police Service v Solidarity obo Barnard*,<sup>260</sup> it was remarked that South African Constitution is based on values of human dignity and the achievement of equality in a non-sexist, non-racial society under the rule of law.<sup>261</sup> Thus, it follows that the value and right of equality guarantees everyone equal enjoyment and the protection of the law.<sup>262</sup> Furthermore, Moseneke J posits that “unlike other Constitutions, ours was designed to do more than conferment of formal equality.”<sup>263</sup>

Therefore, the inequality in labour sector, raise its ugly head, immediately when the distinction between the formal and informal employment is made. Thus, De Villiers note that in South Africa, there is formal and informal employment, whereby the former, provides stable employment with adequate remuneration and social insurance; whereas the latter is characterised by poor working conditions; with no or inadequate job security.<sup>264</sup> In addition, domestic workers are typical example of employees under the informal sector, therefore, are domestic workers provided

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<sup>256</sup> De Villiers and Taylor 2019 *SA Journal of Human Resource Management* 1.

<sup>257</sup> The Preamble of *the Constitution of the Republic of South Africa*, 1996.

<sup>258</sup> Meyiwa 2012 *Agenda* 56; see also Fish 2006 *Journal of Southern African Studies* 108.

<sup>259</sup> Meyiwa 2012 *Agenda* 56.

<sup>260</sup> (2014) 35 ILJ 2981 (CC).

<sup>261</sup> *Solidarity obo Barnard* para 28; see also section 1 of the *Constitution*.

<sup>262</sup> Section 9 of the *Constitution*.

<sup>263</sup> *Solidarity obo Barnard* para 28; see also section 9(2) of the *Constitution*.

<sup>264</sup> De Villiers and Taylor 2019 *SA Journal of Human Resource Management* 1-2.

inadequate social insurance for being categorised as informal workers? Or because, they are challenges and pitfalls that South Africa is confronted with?

## **5.4 Challenges and pitfalls in social insurance coverage and protection**

### **5.4.1 The informality of the economy**

Mpedi and Smith assert that most employees and their dependants who fall under informal economy are excluded from social insurance.<sup>265</sup> The ILO describes the informal economy as follows:

All economic activities by workers and economic units that are – in law or in practice not covered or insufficiently covered by formal arrangements. Their activities are not included in the law, which means that they are operating outside the formal reach of the law; or they are not covered in practice, which means that, although they are operating within the formal reach of the law, the law is not applied or not enforced; or the law discourages compliance because it is inappropriate, burdensome, or imposes excessive costs.<sup>266</sup>

Most employees in the informal sector are automatically excluded from the coverage of social insurance; this is because they fall under informal economy as opposed to a formal one. The labour law framework does not extend most of its coverage to informal employees. The consistent argument by the government is that this sector is difficult if not impossible to regulate, owing to its disorganised nature and for the fact that some employees do not always have stable monthly income. Thus, that is at odd with the contributory element of social insurance schemes.<sup>267</sup>

### **5.4.2 The statutory coverage**

Mpedi and Smith notes that, social security coverage through compulsory social insurance system in most developing countries is residual.<sup>268</sup> When considering South African social insurance system, it is formal sector orientated and thus does not extend to the employees in the informal economy.<sup>269</sup> Therefore, it is submitted that the labour and social security statutes serve as an impediment to the

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<sup>265</sup> Mpedi and Smith 2010 *Law, Democracy & Development* 14.

<sup>266</sup> ILO [https://www.ilo.org/global/topics/dw4sd/themes/informal-economy/WCMS\\_080105/lang-en/index.htm](https://www.ilo.org/global/topics/dw4sd/themes/informal-economy/WCMS_080105/lang-en/index.htm); see also Mpedi and Smith 2010 *Law, Democracy & Development* 5.

<sup>267</sup> Mpedi and Smith 2010 *Law, Democracy & Development* 19.

<sup>268</sup> Mpedi and Nyenti 2012 *Potchefstroom Electronic Law Journal* 271; see also Mpedi and Smith 2010 *Law, Democracy & Development* 19.

<sup>269</sup> Mpedi and Smith 2010 *Law, Democracy & Development* 19.

participation in social security for employees in the informal sector. This is reinforced by the use of the concept of an employee,<sup>270</sup> which in various statutes explicitly excludes most employees under the informal economy.

For example, domestic workers were excluded from COIDA, through its provision that exclude them from being recognised as employees for the purpose of accessing compensation fund.<sup>271</sup> Furthermore, what exacerbates this exclusion is the fact that, the social insurance system does not provide for voluntary participation in its various schemes, ranging from unemployment insurance to compensation fund.<sup>272</sup> Based on the legal framework, domestic workers are covered under unemployment insurance; however, those who work less than 24 hours a month for one employer or more are explicitly excluded from unemployment insurance coverage.<sup>273</sup> Thus, this affects domestic workers who work in various household, for less than 24 hours per month.<sup>274</sup>

Additionally, ILO notes that indeed most domestic workers are either excluded or partially covered under social insurance globally. Furthermore, the ILO raises concern that despite the coverage by statutes, often their provisions such as minimum working hours lead to automatic exclusion from social insurance protection. For example, in Brazil, domestic workers who work for two days a week per employer are excluded from compulsory social insurance.<sup>275</sup>

### **5.4.3 The administrative challenges**

In South Africa, the Department of Employment and Labour administer the social insurance. The ILO note that, some administrative barriers are due to the cost involved in administering by the department and the complex procedures involved concerning registration and payment by the employers.<sup>276</sup> Whereas some observed that, the difficulties in the informal sector are due to the lack of an intermediary

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<sup>270</sup> Mpedi and Smith 2010 *Law, Democracy & Development* 19.

<sup>271</sup> Section 1(xix)(v) of *Compensation for Occupational Injuries and Diseases Act* 130 of 1993; see also *Mahlangu v Minister of Labour* para 6.

<sup>272</sup> Mpedi and Smith 2010 *Law, Democracy & Development* 19.

<sup>273</sup> Section 3(1)(a) of *Unemployment Insurance Act* 63 of 2001.

<sup>274</sup> SweepSouth 2021 <https://blog.sweepsouth.com/2021/06/28/pay-working-conditions-for-domestic-workers-across-africa/>.

<sup>275</sup> Behrendt et al I5YabaTmZgzIVtC5Lv0vTSkEek8yG22! -1491252213?id=58.

<sup>276</sup> ILO 2021 <https://www.social-protection.org/gimi/gess/ResourcePDF.action?id=55723>.

between the workers and the Department of Labour.<sup>277</sup> This is because in the formal sector the employers play a fundamental role of intermediary between the employee and social insurance schemes.<sup>278</sup>

This is against the backdrop that, the social insurance system is characterised by the feature of a “contributor” which is the employer and an employee. The employer is responsible for registering the employee with social insurance schemes and to make the required payments.<sup>279</sup> This is more so, that under compensation fund, only employers pay contribution as opposed to the unemployment insurance fund whereby both the employer and employee contributes. Thus, the ILO argues that the absence of administrative mechanism adapted to accommodate part-time and employees who works for multiple employers, have the potential of perpetual exclusion from social insurance protection.<sup>280</sup>

However, as this study concedes that this is a challenge, at the same time interrogates the successful extension of unemployment insurance fund to domestic workers in 2003. As Mpedi and Smith posits, the inclusion of domestic workers under the UIF has been progressive not withstanding its own imperfections.<sup>281</sup> Therefore, this study submits that if both, the Department of Labour and employers of domestic workers, were able to make a success story with the unemployment insurance, thus the same can be done with compensation fund and ultimately the compulsory retirement scheme.

#### **5.4.4 Limited contributory capacity by employees**

The ILO postulates that due to minimal levels of domestic workers’ remuneration, they often find themselves unable to make contributions out of the little they have. Additionally, it is also noted that even some domestic workers’ employers are sometimes the low-income earners and therefore this affects their ability to contribute to insurance schemes, despite their mandatory element.<sup>282</sup> Indeed, social

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<sup>277</sup> Mpedi and Smith 2010 *Law, Democracy & Development* 20.

<sup>278</sup> See footnote 276 above.

<sup>279</sup> See footnote 276 above.

<sup>280</sup> ILO 2021 <https://www.social-protection.org/gimi/gess/ResoursePDF.action?id=55723>.

<sup>281</sup> Mpedi and Smith 2010 *Law, Democracy & Development* 20.

<sup>282</sup> ILO 2021 <https://www.social-protection.org/gimi/gess/ResoursePDF.action?id=55723>.

insurance benefits are conditional, since they are based on contributions by employers and employees. Thus, due to the irregular income of some employees in the informal economy, their contributory capacity is often limited.<sup>283</sup>

Whereas, in the formal sector; both the employer and employee contribute to social insurance. Therefore, this accordingly means that most workers in informal sector will bear the sole responsibility of contributing to the social insurance. What becomes more apparently difficult is the fact that in the formal sector the employer is the one who is responsible to pay compensation fund in terms of COIDA solely.<sup>284</sup>

However, when considering domestic workers in South Africa, it is apparent that the issue of contributory capacity may be present but, it does not automatically follow that it is an unassailable impediment. This is against the fact that the National Minimum Wage Act,<sup>285</sup> provides for minimum wage for domestic workers.<sup>286</sup> Therefore, based on this submission, what remains, is that the lack of compliance with statutes, might masquerade as the limited capacity to contribute to social insurance schemes.

#### **5.4.5 Lack or insufficient enforcement and the compliance with the law**

The Department of Labour is responsible for monitoring the compliance of the labour statutes, such as BCEA, UIA and COIDA. The monitoring of compliance is done by labour inspectors.<sup>287</sup> These inspectors have the right to enter in the workplace to determine whether there is compliance of labour statutes.<sup>288</sup> However, these inspectors are not allowed to enter the home of an employer of a domestic worker without the consent of the employer or occupier, therefore the employer's consent is important in this regard.<sup>289</sup> Additionally, this present a challenge to inspectors because, some employers may decline access for these inspections to be conducted.

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<sup>283</sup> Mpedi and Smith 2010 *Law, Democracy & Development* 20.

<sup>284</sup> Mpedi and Smith 2010 *Law, Democracy & Development* 20.

<sup>285</sup> Act 9 of 2018.

<sup>286</sup> Section 3 of *National Minimum Wage Act* 9 of 2018.

<sup>286</sup> ILO 2021 Social protection spotlight available at <https://www.social-protection.org/gimi/gess/ResourcePDF.action?id=55723>.

<sup>287</sup> Section 64 of BCEA.

<sup>288</sup> Section 65(1) of BCEA.

<sup>289</sup> Section 65(2) of BCEA.

However, the inspector who has reasonable ground to believe that there is non-compliance by an employer of the domestic worker, such inspector may approach the Labour Court to seek an authorisation to enter such private household for the purpose of monitoring and enforcing compliance.<sup>290</sup> However, this option of authorisation is seldomly used by inspectors, as opposed to the consent approach. Furthermore, the seldom use of court authorisation is submitted that, is due to the fact that the labour inspector must show cause that there is reasonable ground, to believe that such employer is in violation of labour statutes because, when the court grant this authorisation, it also takes into consideration the employer's right to privacy; not to have their person or home searched without a just cause.<sup>291</sup>

Additionally, the ILO observed that due to the private nature of domestic work, it is difficult to conduct inspection. This assertion find support in that on one hand the right of employers to privacy more often competes with the obligation of inspectors to ensure compliance on the other hand. Furthermore, the ILO is cognisant of the significant financial and time resources involved in conducting inspections; owing to the dispersion of domestic workers.<sup>292</sup>

Therefore, notwithstanding the social security statutory coverage, some domestic workers are not registered with unemployment fund.<sup>293</sup> Consequently, this raises the issue of non-compliance by employers to register employees with social insurance schemes.<sup>294</sup> It is provided that, non-compliance with relevant statutes, exacerbates the power imbalances in the relationship between the employer and domestic worker. Furthermore, due to the nature of this occupation, some employers inconsistently comply with some statutes such as Unemployment insurance Act.<sup>295</sup> ILO remarked that the lack or residual registration of domestic workers by their employers; renders the compulsory social insurance superfluous, because notwithstanding the mandatory registration, some employer nevertheless still fail to register domestic workers; whether unwittingly or intentionally.<sup>296</sup>

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<sup>290</sup> Section 65(3) of BCEA.

<sup>291</sup> Section 14 of the *Constitution*.

<sup>292</sup> ILO October 2021 <https://www.social-protection.org/gimi/gess/ResourcePDF.action?id=55723>.

<sup>293</sup> Meyiwa 2012 *Agenda* 55.

<sup>294</sup> De Villiers and Taylor 2019 *SA Journal of Human Resource Management* 7.

<sup>295</sup> De Villiers and Taylor 2019 *SA Journal of Human Resource Management* 7.

<sup>296</sup> ILO October 2021 <https://www.social-protection.org/gimi/gess/ResourcePDF.action?id=55723>.

This challenge has also been noted, by the President of the Republic of South Africa, Mr Ramaphosa, as he remarked that, the challenge of non-compliance and enforcement is due to insufficient number of labour inspectors, however, he stated that: the government will endeavour to hire more inspectors to ensure that the rights of domestic workers are complied with, by their employers. Furthermore, he remarked that this is necessary because despite the legal coverage for domestic workers, some employers continue 'to disregard the statutes due to the nature and location of domestic work'.<sup>297</sup>

#### **5.4.6 Lack and insufficient information and organisation**

The ILO emphasise that lack of access to information about the social security rights of domestic workers and the responsibilities of employers is a pitfall that may be underestimated but, plays a significant role in ensuring the extension and effectuation of social security rights for these employees and it also conscientizes employers as to their responsibilities in terms of social security statutes.<sup>298</sup> Indeed, as it is submitted that given the fact that some domestic workers works for employers who are illiterate, and all they know is that an employee must be paid a salary at the end of the month, and then, the rest is history. One of the functions of labour inspectors is to provide guidance and advice to both the employer and employee, on their obligations and rights, respectively.<sup>299</sup> Consequently, the inspectors have the statutory role to play in informing the domestic workers and their employers on their rights and obligations under Unemployment Insurance Act and the COIDA.

In addition, Mashiane, the president of United Domestic Workers of South Africa, provided that, due to inadequate information, some employers refuse to sign the compensation form; in order for domestic workers to receive the compensation benefits under COIDA.<sup>300</sup> This makes the entire process of claiming the benefits difficult because, the cooperation of the employer is required in order to complete the claiming process. Furthermore, lack of expeditious education to employers by

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<sup>297</sup> Khumalo 2021 <https://www.news24.com/news24/southafrica/news/domestic-worker-salaries-take-centre-stage-as-ramaphosa-woos-women-voters-ahead-of-polls-20211028>.

<sup>298</sup> ILO October 2021 <https://www.social-protection.org/gimi/gess/ResourcePDF.action?id=55723>.

<sup>299</sup> Section 64 of BCEA.

<sup>300</sup> Mafata 2021 <https://www.dailymaverick.co.za/article/2021-06-18-domestic-workers-celebrate-workplace-gains-while-reiterating-call-for-coida-claims-period-to-be-extended/>.

Labour Department about COIDA exacerbates this challenge. However, Mashiane provided that some employers after they had been explained about COIDA and its process, do sign the forms to enable their domestic workers to claim from the compensation fund.<sup>301</sup> Therefore, some employers and domestic workers lacks the appropriate knowledge about social insurance, thus the Department of Labour must endeavour to educate them in this regard.

### **5.5 The impact of Covid-19 lockdown on domestic workers**

South Africa is not the world, but part of the global community. Therefore, as the Covid-19 virus emerged and affected the international community, so was South Africa. Thus, due to the contagious nature of the virus, most countries had to become innovative and establish measures to curb the spreads. Thus, most countries resorted to various measures, including the implementation of national lockdowns, South Africa made no exception to this measure.<sup>302</sup> Thus, this signified a shift from normal arrangement of life to the so-called a new norm. As Ndlovu and Tshoose posits that the global pandemic had a severe implication in various areas of life; they bolstered their assertion by indicating the effects that the pandemic had on the population, in respect of the employment and social security aspects.<sup>303</sup>

### **5.6 The impact of lockdowns on social security for domestic workers**

According to the ILO, an estimation of 1.6 billion workers in the informal economy, were affected by the lockdown restrictions globally. Informal sector employment is not intertwined with access to social security, in contrast to formal employment. Therefore, it was noted that, most of workers under the informal sector suffered the most, due to lack or insufficient access to social security in the form of social insurance.<sup>304</sup> However, the pandemic, notwithstanding its repercussions had the

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<sup>301</sup> Ntseku 2021 <https://www.iol.co.za/capeargus/news/little-has-changed-for-domestic-workers-a-year-after-court-judgment-union-says-99e0ffb6-9c7b-42cd-85cd-c1a5c81dfa5f>.

<sup>302</sup> Ndlovu and Tshoose 2021 *SA Mercantile Law Journal* 27.

<sup>303</sup> Ndlovu and Tshoose 2021 *SA Mercantile Law Journal* 27.

<sup>304</sup> ILO 2020 [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_743032.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_743032.pdf).



impact of exposing the gaps in social security coverage internationally, regionally, and nationally.<sup>305</sup>

Consequently, the ILO noted that amongst the occupations that have been most affected, was the domestic work.<sup>306</sup> The lockdown for most employees meant working few hours to none in order to adhere to the lockdown regulations. Thus, in South Africa during level 5 lockdown, most employees, domestic workers included, were not permitted to report to work, the lockdown restrictions permitted only those in essential services.<sup>307</sup> As a result, some domestic workers were dismissed from employment at the commencement of the lockdown.<sup>308</sup>

Thus, it is noted that ILO had initially remarked that the pandemic menaced the livelihoods of more than fifty-five million domestic workers globally. The lockdowns brought to the fore, the vulnerability of domestic workers and demonstrated how disempowered they are.<sup>309</sup> Some observed that, what aggravated the impact of lockdowns, on the lives of workers in the informal sector, was due to the absence of social insurance.<sup>310</sup> The ILO noted that in spite of the access to social assistance, social insurance customarily provides high levels of protection.<sup>311</sup> Therefore, the absence of social insurance benefits under lockdown was a double yoke to carry, by informal workers.

## 5.7 Domestic workers' access to social insurance benefits

As a result of the pandemic, most domestic workers lost their employment,<sup>312</sup> and had to rely on social insurance. However, they could not access it, due to several

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<sup>305</sup> Ndlovu and Tshoose 2021 *SA Mercantile Law Journal* 27; see also ILO 2020 [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_743032.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_743032.pdf).

<sup>306</sup> ILO 2020 <https://www.social-protection.org/gimi/ShowWiki.action?id=3417>.

<sup>307</sup> Casale and Sheherd July 2021 at [https://scholar.google.com/scholar?scilib=1&hl=en&as\\_sdt=0,5#d=gs\\_qabs&u=%23p%3D\\_2J84gqQA1AJ](https://scholar.google.com/scholar?scilib=1&hl=en&as_sdt=0,5#d=gs_qabs&u=%23p%3D_2J84gqQA1AJ); see also Mullagee Frairuz 2021 <https://repository.uwc.ac.za/handle/10566/6012>.

<sup>308</sup> Mullagee 2021 <https://repository.uwc.ac.za/handle/10566/6012>.

<sup>309</sup> Mullagee 2021 <https://repository.uwc.ac.za/handle/10566/6012>.

<sup>310</sup> Ndlovu and Tshoose 2021 *SA Mercantile Law Journal* 28.

<sup>311</sup> Behrendt and Nguyen 2020 [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms\\_824092.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_824092.pdf).

<sup>312</sup> Bhorat et al 2021 [https://scholar.google.com/scholar?start=0&hl=en&as\\_sdt=0,5&scilib=1#d=gs\\_qabs&u=%23p%3DT7Vzpwpcok8J](https://scholar.google.com/scholar?start=0&hl=en&as_sdt=0,5&scilib=1#d=gs_qabs&u=%23p%3DT7Vzpwpcok8J).

reasons chief amongst them was nonregistration with Unemployment Insurance Fund.<sup>313</sup> As ILO, succinctly argued that the lack of social security through social insurance place employees and their dependants in the most vulnerable situation.<sup>314</sup>

Thus, both United Domestic Workers of South Africa (UDWSA) and Izwi Domestic workers provided that most domestic workers were unable to access social relief under UIF. That was against the backdrop that these unions postulated that, less than 20 per cent of domestic workers were registered by their employers.<sup>315</sup> Consequently, the Unemployment insurance fund-Temporary employer employee relief scheme, that was introduced in April 2020, to allow employers who were unable to pay their employees to claim from UIF,<sup>316</sup> made no significant impact to some domestic workers.<sup>317</sup> Since, those who experienced difficulties in accessing ordinary UIF were also unable to access the UIF-Temporary Employers/employees Relief Schemes benefits.<sup>318</sup> Thus, it is submitted that most domestic workers were left in destitute.<sup>319</sup>

Therefore, the lockdown imposed as a measure of curbing the spread of virus, had immerse detrimental impact on domestic workers. It thus, deprived them of their dignity to provide and fend for their families. The study takes cognisance of the fact that domestic workers were not a special case concerning the loss of employment. However, for the fact that most of them could not access social insurance, due to lack of registration by their employers, it makes them a special case in this regard. As was stated by the president of UDWSA Mashiane that:

What is happening to domestic workers at this time during this pandemic is depressing and devastating. She added on another occasion speaking power to the truth, for the need to treat domestic workers with respect and dignity, when she was interviewed on Power Fm in August 2020, she said that "Treat them the way you like to be treated yourself".<sup>320</sup>

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<sup>313</sup> Mullagee 2021 <https://repository.uwc.ac.za/handle/10566/6012>.

<sup>314</sup> Behrendt and Nguyen 2020 [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms\\_824092](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_824092).

<sup>315</sup> Gordon and Parry 2020 <https://doi.org/10.1111/gwao.12565>; see also Mullagee 2021 <https://repository.uwc.ac.za/handle/10566/6012>.

<sup>316</sup> Ndlovu Lonias and Tshoose CI 2021 SA Mercantile Law Journal 36; see also Casale and Sheherd 2021 [https://scholar.google.com/scholar?scilib=1&hl=en&as\\_sdt=0,5#d=gs\\_qabs&u=%23p%3D\\_2J84gqQA1AJ](https://scholar.google.com/scholar?scilib=1&hl=en&as_sdt=0,5#d=gs_qabs&u=%23p%3D_2J84gqQA1AJ).

<sup>317</sup> Mullagee 2021 <https://repository.uwc.ac.za/handle/10566/6012>; see also Gordon and Parry 2020 <https://doi.org/10.1111/gwao.12565> accessed 09 November 2021.

<sup>318</sup> Mullagee 2021 <https://repository.uwc.ac.za/handle/10566/6012>.

<sup>319</sup> Mullagee 2021 <https://repository.uwc.ac.za/handle/10566/6012>.

<sup>320</sup> Mullagee 2021 <https://repository.uwc.ac.za/handle/10566/6012>.

The ILO commended South Africa as one of the developing countries that had placed in measures of social insurance for domestic workers, having regard to the statutory entitlement of domestic workers to access social security in times of uncertainties, such as those presented by the Covid-19 lockdowns.<sup>321</sup> However, it is apparent that the statutory entitlement to social insurance is not tantamount to full protection and enjoyment of social security benefits; there are challenges and pitfalls that serve as an impediment to the realisation of social security rights of domestic workers in South Africa.

## **5.8 Chapter summary**

Thus, this chapter demonstrated that the inequality in the labour market is still rife, when considering access to social insurance. Most informal workers are excluded from social insurance. However, domestic workers are extended inadequate coverage. The reason for inadequate extension of social insurance coverage is due to the challenges and pitfalls that the social insurance is confronted with. While Covid-19 lockdowns had a severe impact on domestic workers; where some of them lost their employment, and where unable to access social insurance benefits because of non-registration with Unemployment Insurance Fund.

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<sup>321</sup> Behrendt and Nguyen [https://www.ilo.org/wcmstp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms\\_824092.pdf](https://www.ilo.org/wcmstp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_824092.pdf).

## Chapter 6 : CONCLUSIONS AND RECOMMENDATIONS

### 6.1 Introduction

The social security right is equal to human dignity. This study has demonstrated the importance of social security during unemployment, disability, and illness. Thus, without social security for human being, there can be no human dignity. The social security's main objective is to ameliorate the effects of poverty and inequality that most people face during unemployment. Therefore, having access to a comprehensive social security is crucial for domestic workers and other employees. It is against this background that this study makes the conclusion and the recommendations below.

### 6.2 Conclusion

Lack of comprehensive social security in South Africa, led to most workers in the informal sector vulnerable due to lack of social insurance protection. This study has thus, shown that the South African social security for domestic workers is inadequate and this is demonstrated by limited coverage and lack of mandatory pension scheme for most employees to secure their livelihood post retirement. Thus, social security right is a human right that is entrenched in the Universal Declaration of Human Rights. Consequently, everyone by a virtue of being a human being is entitled to social security through social assistance and social insurance. The main objective of social insurance is to ensure that employees who come across some contingencies such as unemployment, occupational sickness, or injury and ultimately die are financially covered, or their dependants are covered should the employee die; to avoid the harsh conditions of poverty due to lack of financial security.

Consequently, the current method of providing social insurance only to employees in the formal sector, and the lack of comprehensive social security constrain social security from providing adequate social insurance to domestic workers.<sup>322</sup> This is at odd with the objective of social security. Thus, social insurance is fundamental to the

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<sup>322</sup> Kaseke 2010 *International Social Work* 167.

alleviation of poverty and inequality in the society; therefore, all employees should be allowed to participate and benefits from the social insurance schemes.

In summation, the study has considered the background of the application of social security protection to domestic workers and how domestic workers were marginalised and excluded from its protection. The historical background demonstrated the perennial issue of exclusion from social security. However, the advent of the constitutional dispensation ushered in a new atmosphere wherein domestic workers were also extended unemployment insurance benefits. Therefore, the legal framework of social security has thus transformed to include domestic workers to a certain extent under its coverage. However, the application and the implementation of social security rights for domestic workers in South Africa is a perennial issue. Due to the fact that some domestic worker, are not registered with the insurance and compensation fund. Furthermore, most domestic workers do not have access to retirement pension scheme.

### **6.3 Recommendations**

Considering the above discussion, it is apparent that the South African social insurance extension and coverage to domestic workers is inadequate. This is due to various challenges that limit the application and extension and are an impediment to the implementation of the social insurance to domestic workers. The challenges range from statutory exclusion to lack of compliance by the employers with the social security statutes. Therefore, the following recommendations are important.

This study recommends the introduction of social protection system, which includes social assistance, social insurance and employment creation as recommended by Taylor Committee Report.<sup>323</sup> The characteristic of social protection is that it is comprehensive and it seeks to achieve the objective of social policy, which is social inclusion. Thus, everyone in the country would have access to social security as envisaged by the Constitution. This would ensure that social insurance is expanded to accommodate those in the informal sector and the unemployed.<sup>324</sup> Furthermore,

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<sup>323</sup> Kaseke 2010 *International Social Work* 165.

<sup>324</sup> Kaseke 2010 *International Social Work* 166.

the social protection would ensure that mandatory pension scheme is incorporated into social insurance thereby broadening its scope.<sup>325</sup>

Furthermore, the social insurance needs to be integrated into one system of social security. It is proposed that the system must provide for mandatory insurance and pension benefits.<sup>326</sup> Thus, this will require a consolidation of social insurance into a unified system as opposed to the current fragmented social insurance schemes. The inclusion of mandatory statutory pension will fill the current gap in the social security. However, the proposed system must be adequate and affordable to ensure social inclusion. When considering the aspect of affordability, it is submitted that the government must subsidise the contribution cost of lower income earners. Therefore, that would provide domestic workers with the protection and the benefits under social insurance.<sup>327</sup>

Consequently, the National Social Security Fund (NSSF) is proposed as the consolidated system of social security.<sup>328</sup> The NSSF would introduce the mandatory public social security fund that will be based on social security principles of risk pooling and social solidarity as proposed by the Department of Social Development.<sup>329</sup> The fund will provide unemployment, sickness, occupational disability, and retirement's benefits. Thus, the National Social Security Fund would require workers to contribute between 8-12 per cent of their income monthly. Thus, it is proposed that workers earning below 13 000.00 per annum will be exempted from contributing to the National Fund but, will continue to pay UIF. Therefore, it is submitted that workers such as domestic workers would require the government to subsidise their contribution to the National Social Security Fund.<sup>330</sup>

Furthermore, the National Planning commission proposed that the government must provide subsidy to low-income earners formal and informal workers. It further, recommended that suitable mechanism to enable informal workers with volatile and

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<sup>325</sup> See footnote 323 above.

<sup>326</sup> Inter-Departmental Task Team on Social Security and Retirement Reform 2012 Comprehensive social security in South Africa, Discussion Document 21.

<sup>327</sup> Refer to the above footnote.

<sup>328</sup> Inter-Departmental Task Team on Social Security and Retirement Reform 2012 Comprehensive social security in South Africa, Discussion Document 22.

<sup>329</sup> Inter-Departmental Task Team on Social Security and Retirement Reform 2012 Comprehensive social security in South Africa, Discussion Document 24.

<sup>330</sup> Inter-Departmental Task Team on Social Security and Retirement Reform 2012 Comprehensive social security in South Africa, Discussion Document 24.

broken contribution pattern to participate, with appropriate co-contribution subsidies provided. Consequently, this will ensure inclusive social security participation and protection of domestic workers.<sup>331</sup>

In addition, the National Development Plan recommended that South Africa should implement the comprehensive social security and retirement reform system. Therefore, such comprehensive system must be characterised by sustainability, affordability, and appropriateness to meet the needs of the people of South Africa. As a result, that would include the establishment of the National Social Security Fund as proposed.<sup>332</sup>

This study further, proposes the introduction of partial and voluntary contribution to the social insurance, this will improve and close the gap in social security, in particular for workers in the informal sector.<sup>333</sup> Additionally, the Department of employment and labour should intensify its enforcement measures to ensure compliance of the regulatory framework by the employers of domestic workers.<sup>334</sup>

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<sup>331</sup> South African Department of Social Development, Green paper on Comprehensive Social Security and Retirement Reform GN 741 IN GG 45006 of 18 August 2021 1-13.

<sup>332</sup> National Planning Commission, A Review of the National Development Plan 2030, 53.

<sup>333</sup> Mpedi and Nyenti *Law, Development & Democracy* 29.

<sup>334</sup> De Villiers and Taylor *SA Journal of Human Resource Management* 10.

## **Bibliography**

### **Book chapters**

McGregor M, Dekker A, Budeli-Nemakonde M, Germishuys-Burchel W, Manamela ME, Manamela TE, Tshoose CI “Social security legislation” in *Labour Law Rules* 3<sup>rd</sup> ed 2017 (Siber Ink Cape Town 2017) 122-149.

Viljoen F “international protection of human rights” in Strydom H, Gewers C, Juma L, Kemp G, Ruppel O, Scholtz W, Viljoen F and Vrancken P 1st edition *International Law* (Oxford University Press Southern African (Pty) Ltd. 2016) 316-358.

### **Books**

Grogan J *Workplace Law* 12<sup>th</sup> ed (Juta Cape Town 2017).

McGregor M, Dekker A and Budeli-Nemakonde M *Labour Law Rules* 3<sup>rd</sup> ed (Siber Ink Cape Town 2017).

Strydom H, Gewers C and Juma L *International Law* 1<sup>st</sup> edition (Oxford University Press Southern African (Pty) Ltd Cape Town 2016).

Van Eck S, Bamu P and Chungu C *Reflection on Labour Law from Southern African Perspective* 1<sup>st</sup> ed (Juta Cape Town 2020)

### **Journal articles**

Barrientos A. and Santibanez C “New reforms of social assistance and evolution of social protection in Latin America” 2009 Vol. 41(1) *Journal of Latin American Studies* 1-26.

Benjamin P “Informal work and labour Rights in South Africa” 2008 Vol. 29(7) *Industrial Labour Journal* 1579-1604.

Blakett A “Current Development: The Decent Work for Domestic Workers Convention and Recommendations’ 2011 Vol. 106 *The American Journal of International law* 778-794.

Cock J “Disposable Nannies: Domestic servant in the political economy in South Africa” 1981 *Review of African Political Economy* 63-83.

Costanzi RN et al 551 “Extending social security coverage to self-employed workers in Brazil” 2013 Vol. 152(3-4) *International Labour Review* 549-558.



Dabala D.M and Sefara A.A “Domestic Workers’ Treatment under Ethiopian and South African Laws” 2020 vol.13 *Italian Labour Law e-Journal* 90-105.

Deborah G et al “Class, Race and Gender: Domestic workers in South Africa” 1983 Issue No. 27/28 *Review of African political economy* 86-108.

Delport E “The legal position of domestic workers: A comparative perspective” 1992 Vol. 25(2) *Comparative and International Law Journal of Southern Africa* 182-207.

De Villiers B and Taylor M “Promoting a positive work experience for South African domestic workers” 2019 Vol. 17(0) *SA Journal of Human Resource Management* 1-13.

Du Toit Darcy “Extending the frontiers of employment regulation: The case of domestic employment in South Africa” 2010 Vol.14 *Law, Democracy and Development Journal* 205-230.

Dupper O and Govindjee A “Constitutional perspective on unemployment security and the right to work in South Africa” 2011 Vol. 22(3) *Stellenbosch Law Review* 775-803.

Dupper O, Govindjee Avinash and Olivier Marius “Extending coverage of the unemployment insurance-system in South Africa” 2011 Vol. 36(1) *Institute of Municipal Engineering of Southern Africa* 438-462.

Fish NJ “Engendering Democracy: Domestic labour and coalition-building in South Africa” 2006 Vol. 36(1) *Journal of Southern African Studies* 107-127.

Flint S “The Protection of Domestic Workers in South Africa: A Comparative Study” 1988 Vol. 9 *Industrial Law Journal* 187-201.

Fourie ES “Non-Standard Workers: The South African context, international law and regulation by the European Union” 2008 Vol 11(4) *Potchefstroom Electronic Law Journal* 1-152.

Fombad C “An Overview of the Constitutional Framework of the Right to Social Security with Special Reference to South Africa’ 2013 vol. 21 *African Journal of International and Comparative law* 1-31.

Grant B “Domestic workers: Employees or servants?” 1997 Vol. 13 (35) *Agenda* 61-65.

Hunt A and Samman E “Domestic work and the Gig Economy in South Africa: Old wine in new bottles?” 2020 Vol. 15 *Anti-Trafficking Review* 102-121.

Kaizo B and Pinhanez M “Brazil’s social security system: Prospective Trajectory and Reform alternatives” 2014 Vol. 34(4) *Public Administration and Development* 1-16.

Kaseke E "The Role of Social Security in South Africa." 2010 vol. 53(2) *International Social Work* 159-168.

Krennerich M "Social Security-Just as much a human right to developing countries and emerging markets" 2014 Vol. 47(1) *Law and Politics in Africa, Asia, and Latin America* 105-123.

Korda and Pennings F "The legal Character of international social security standards" 2008 Vol. 10 (2) *European Journal of Social Security* 131-158.

Matjeke A, Viljoen J.M and Blaauw P.F "The effect of labour market regulation on domestic workers in Orchards and Soshanguve, Pretoria" 2012 Vol. 10(1) *South African Journal of Human Resource Management* 1-11.

Mariotti M "Labour Market during apartheid in South Africa" 2012 Vol. 65(3) *Economic History Review* 1100-1122.

Meyiwa T "Domestic workers' rights in global development indicators" 2012 Vol.26(1) *Agenda: Empowering Women for Gender Equity* 54-66.

Mpedi L.G "The Evolving relationship between labour law and social security" 2012 Vol. 2012 *Acta Juridica Journal* 270-285.

Mpedi and Nyenti "The impact of SADC social protection instruments on the setting up of a minimum social protection floor in Southern African countries" 2012 Vol. 15(1) *Potchefstroom Electronic Law Journal* 244-281.

Mpedi and Smith "Social protection for developing countries: Can social insurance be more relevant for those working in the informal economy?" 2010 Vol. 14 *Law, Democracy & Development* 1-33.

Ndlovu Lonias and Tshoose CI 2021 "Covid-19 and employment law in South Africa: Comparative perspective on selected themes" 2021 Vol. 33(1) *SA Mercantile Law Journal* 25-55.

O'Connell ME "On the fringe: Rethinking the link between wages and benefits" 1993 Vol.65(5) *Tulane Law Review* 1421-1530.

Olivier M "Critical Issues in South African Social Security: The Need for Creating a Social Security Paradigm for the Excluded and the Marginalized" 1999 Vol 20(10) *Industrial Law Journal* 2199-2212.

Olivier MP "Extending labour law and social security protection: The predicament of the atypical employed 1998 Vol. 20(10) *Industrial Law Journal* 2199-2217.

Rimlinger G.V "The concept of social insurance" 1968 Vol. 3(4) *Journal of Human Resources* 409-415.

Rimlinger G 'Social change in social security in Germany' 1968 Vol. 3(4) *Journal of Human Resource* 409-421.

Seekings J "Trade Unions, Social policy and class compromise in post-apartheid South Africa" 2004 Vol. 31(100) *Review of African political economy* 299-312.

Smith and Mpedi “Social protection for developing countries: Can social insurance be more relevant for those working in the informal economy?” 2008 Vol. 14 *Law, Democracy & Development* 1-33.

Trebilcock A “Challenges in Germany’s Implementation of the ILO Decent Work for Domestic Workers Convention” 2018 Vol. 34(2) *International Journal of Comparative Labour Law and Industrial Relations* 149–176.

Tshoose CI “The employers’ vicarious liability in deviation cases: Some thoughts from the judgment of *Stallion Security v Van Staden* 2019 40 ILJ 2695 (SCA)” 2020 Vol.34 (1) *Speculum Juris Journal* 42-50.

Tshoose CI “The emerging role of the constitutional value of ubuntu for informal social security in South Africa” (2009) Vol. 3(1) *African Journal of Legal Studies* 12-19.

Van der Merwe T “Events, views and ideologies which shaped social security in South Africa” 1999 Vol. 12(1-2) *South African Journal of Economic History* 77-102.

Waldock H “Human rights in contemporary international law and the significance of the European Convention” 1965 Vol.11(1) *International and Comparative Law Quarterly Supplementary* 1-23.

## **Statutes**

Constitution of the Republic of South Africa, 1996.

Basic Conditions of Employment Act 75 of 1997.

Compensation for Occupational Injuries and Diseases Act 130 of 1993.

Industrial Conciliation Act 11 of 1924.

Industrial Conciliation Act 28 of 1956.

Labour Relations Act 66 of 1995.

National Minimum Wage Act 9 of 2018.

Repealed Unemployment Insurance Act 30 of 1966.

Repealed Workmen’s Compensation Act 102 of 1930 of 194.

Unemployment Insurance Act 30 of 1966.

Workmen’s Compensation Act 30 of 1941.

## **International Instruments**

Decent work for Domestic Workers Convention 189 of 2011.

International covenant on Economic, Social and Cultural Rights of 1966.

The Social security (minimum standards) convention 102 of 1952

The Universal Declaration of Human Rights of 1948.

### **Case law**

*Fourie and Another v Minister of Home Affairs and Others* 2005 (3) BCLR 241 (SCA).

*Glenister v President of the Republic of South Africa* (2011) (7) BCLR 651 (CC).

*Government of the Republic of South Africa v Grootboom* (2000) (11) BCLR 1169 (CC).

*Jooste v Store Supermarket Trading (Pty) Ltd* (1999) 20 ILJ 525 (CC).

*Khoza v Minister of Social Development* (2004) (6) SA 505 (CC).

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

*Minister of Health v Treatment Action Campaign* (2002) (10) BCLR 1033 (CC).

*S v Makwanyane* (1995) (6) BCLR 665 (CC).

*South African Police Services v Solidarity obo Barnard* (2014) 35 ILJ 2981 (CC).

*Van Vuuren v Pienaar NO* 1941 TPD.

### **Government publication**

South African Department of Social Development, Green paper on Comprehensive Social Security And Retirement Reform GN 741 IN GG 45006 of 18 August 2021 1-13.

GN 44250 in GG of 669 10 March 2021.

### **Thesis**

Tshoose CI *Social Assistance: Legal reforms to improve coverage and quality of life for the poor people in South Africa* (LLD-thesis at the University of South Africa 2016).

### **Report, Discussion papers, Green Papers**

Debbie Budlender "The introduction of a minimum wage for domestic workers in South Africa: Conditions of work and employment series No. 72 publication of the

International Labour Office Working paper 2226-8944 [ISSN] Geneva, 31 March 2016.

Inter-Departmental Task Team on Social Security and Retirement Reform, Comprehensive social security in South Africa, towards integrated and comprehensive social security in South Africa, Discussion Document March 2012, available at [https://static.pmg.org.za/161128Comprehensive\\_Social\\_Security\\_in\\_South\\_Africa.pdf](https://static.pmg.org.za/161128Comprehensive_Social_Security_in_South_Africa.pdf) accessed on 11 December 2021.

National Planning Commission, A Review of the National Development Plan 2030, Advancing implementing towards a more capable nation of the Republic of South Africa, 2020, available at <https://www.nationalplanningcommission.org.za/assets/Documents/NDP%20REVIEW.pdf> accessed 11 December 2021.

Plagerson S, Hochfeld T and Stuart L 2017 Moving towards redistributive and transformative social security? Gendered social and economic outcomes in South Africa, UNRISD Working Paper, No. 2017-11, United Nations Research Institute for Social Development (UNRISD), Geneva <http://hdl.handle.net/10419/186090> accessed on 8 September 2021.

Taylor Committee Report - Department of Social Development Committee of Inquiry into a Comprehensive System of Social Security for South Africa Transforming the Present - Protecting the Future Draft Consolidated Report Pretoria 2002,36.

South African Department of Social Development, Green paper on Comprehensive Social Security And Retirement Reform GN 741 IN GG 45006 of 18 August 2021 1-13, available at <https://businesstech.co.za/news/wp-content/uploads/2021/08/Green-Paper.pdf> accessed 11 December.

## **Internet sources**

Babalwa Siswana and Isaac Khambule 2016 “How Inequalities undermine Social Cohesion: A Case study of South Africa” available at [https://www.g20-insights.org/policy\\_briefs/inequalities-undermine-social-cohesion-case-study-south-africa/](https://www.g20-insights.org/policy_briefs/inequalities-undermine-social-cohesion-case-study-south-africa/) accessed on the 04 November 2021.

Behrendt C and Nguyen Q 2020 “Extending social protection to informal workers in the COVID-19 crisis. Country responses and policy considerations, Social Protection Spotlight” available at [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms\\_824092.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_824092.pdf) accessed on 09 November 2021.

Behrendt C, Cartoceti G Nguyen QA and Plaza MS date unknown “Extending social security to domestic workers” available at [https://www.social-protection.org/gimi/Emodule.action;jsessionid=viHrrmaKViUVF234aBU\\_-](https://www.social-protection.org/gimi/Emodule.action;jsessionid=viHrrmaKViUVF234aBU_-)

I5YabaTmZgzlVtC5Lv0vTSkEek8yG22!-1491252213?id=58 accessed 04 November 2021.

Bhorat H, Hill R, Köhler T, and Stanwix B 2021 Development Policy Research Unit “Covid-19 and the labour markets: Estimating the employments effects of South Africans national lockdown” available at [https://scholar.google.com/scholar?start=0&hl=en&as\\_sdt=0,5&scilib=1#d=gs\\_qabs&u=%23p%3DT7Vzpwpcok8J](https://scholar.google.com/scholar?start=0&hl=en&as_sdt=0,5&scilib=1#d=gs_qabs&u=%23p%3DT7Vzpwpcok8J) accessed on 09 November 2021.

Casale D and Sheherd D July 2021 “The gendered effects of the Covid-19 crisis and ongoing lockdown in SA: Evidence from NIDS-CRAM waves 1-3, National Income Dynamics Study working paper available at [https://scholar.google.com/scholar?scilib=1&hl=en&as\\_sdt=0,5#d=gs\\_qabs&u=%23p%3D\\_2J84gqQA1AJ](https://scholar.google.com/scholar?scilib=1&hl=en&as_sdt=0,5#d=gs_qabs&u=%23p%3D_2J84gqQA1AJ) accessed on 09 November 2021.

Demichelle P 2012 “South Africa’s pending ratification of the international covenant on Economic, Social and Cultural Rights: What are the Implications?” <http://blogs.sun.ac.za/seraj/files/2012/11/South-Africas-pending-ratification-of-the-ICESCE.pdf> accessed on 07 October 2021.

Gordon E and Parry BR 2020 Gender Work Organ: The shadow pandemic: Inequitable impacts of Covid-19 in South Africa” available at <https://doi.org/10.1111/gwao.12565> accessed 09 November 2021.

ILO date unknown [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO::P11310\\_INSTRUMENT\\_ID:312247](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO::P11310_INSTRUMENT_ID:312247) accessed on 05 October 2021.

ILO date unknown [https://www.ilo.org/secsoc/areas-of-work/legal-advice/WCMS\\_205340/ang--en/index.htm](https://www.ilo.org/secsoc/areas-of-work/legal-advice/WCMS_205340/ang--en/index.htm) accessed on 23 October 2021.

ILO 2016 [https://www.ilo.org/travail/info/publications/WCMS\\_465069/lang--en/index.htm](https://www.ilo.org/travail/info/publications/WCMS_465069/lang--en/index.htm) accessed 9 September 2021.

ILO 2016 Initial effects of Constitutional Amendment 72 on domestic work in Brazil, 2 International Labour Office, Inclusive Labour Markets, Labour Relations and Working Conditions Branch, Geneva available at [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_506167.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_506167.pdf) accessed 8 October 2021.

ILO date unknown Resolution concerning decent work and informal economy available at [https://www.ilo.org/global/topics/dw4sd/themes/informal-economy/WCMS\\_080105/lang--en/index.htm](https://www.ilo.org/global/topics/dw4sd/themes/informal-economy/WCMS_080105/lang--en/index.htm) accessed 04 November 2021.

ILO 2017 Domestic Workers Convention, 2011 (No.189) – Germany (Ratification:2013) Report of the Committee of Experts on the Application of Conventions and Recommendation, International Labour Conference, 106th session,

2017, Report III (Part 1A) available at [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3300808:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3300808:NO) accessed 12 October 2021 (Hereafter Domestic Workers Convention, 2011 (No.189) – Germany (Ratification:2013)).

ILO 2020 ‘COVID-19 Crisis and the Informal Economy: Immediate Responses and Policy Challenges’ available at <https://www.social-protection.org/gimi/ShowWiki.action?id=3417> accessed 09 November 2021.

ILO 2020 Monitor: COVID-19 and the World of Work’. Third Edition Updated Estimates and Analysis available at [https://www.ilo.org./wcm5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_743032.pdf](https://www.ilo.org./wcm5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_743032.pdf) accessed on 10 November 2021.

ILO 2020 ‘Social Protection for Migrant Workers: A Necessary Response to the Covid-19 Crisis’ available at <https://www.social-protection.org/gimi/ShowWiki.action?id=3417> accessed on 09 November 2021.

ILO 2021 Social protection spotlight available at <https://www.social-protection.org/gimi/gess/ResoursePDF.action?id=55723> published 04 October and accessed 4 November 2021.

Khumalo J 2021 ‘Domestic worker salaries take centre stage as Ramaphosa woos women voters ahead of polls’ <https://www.news24.com/news24/southafrica/news/domestic-worker-salaries-take-centre-stage-as-ramaphosa-woos-women-voters-ahead-of-polls-20211028> accessed on 25 November 2021.

Mafata M 2021 ‘Domestic workers celebrate workplace gains while reiterating call for Coida claims period to be extended’ <https://www.dailymaverick.co.za/article/2021-06-18-domestic-workers-celebrate-workplace-gains-while-reiterating-call-for-coida-claims-period-to-be-extended/> accessed on 25 November 2021.

Mullagee F 2021 “Covid-19 casts a shadow over domestic workers” available at <https://repository.uwc.ac.za/handle/10566/6012> accessed 09 November 2021.

Nitsch M and Schwarzer H 2004 “Recent developments in financing social security in Latin America” available at [https://www.ilo.org/secsoc/information-resources/publications-and-tools/Discussionpapers/WCMS\\_207711/lang-en/index.htm](https://www.ilo.org/secsoc/information-resources/publications-and-tools/Discussionpapers/WCMS_207711/lang-en/index.htm) accessed 1 November 2021.

Ntseku M 2021 ‘Little has changed for domestic workers a year after court judgment, union says’ <https://www.iol.co.za/capeargus/news/little-has-changed-for-domestic-workers-a-year-after-court-judgment-union-says-99e0ffb6-9c7b-42cd-85cd-c1a5c81dfa5f> accessed on 25 November 2021.

SweepSouth 2021 Pay and working conditions for domestic workers across Africa available at <https://blog.sweepsouth.com/2021/06/28/pay-working-conditions-for-domestic-workers-across-africa/> accessed on the 04 Nov 2021.

South African Human Rights Commission 2015 <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/305-sahrc-welcomes-government-s-decision-to-ratify-the-international-covenant-on-economic-social-and-cultural-rights-icescr> accessed 07 October 2021.

The Department of Employment and Labour 2021 [www.gpwonline.co.za](http://www.gpwonline.co.za) accessed 05 October 2021.

The World Bank 2021 Overview of key development challenges available at <https://www.worldbank.org/en/country/southafrica/overview> accessed on 04 November 2021.