Social Security: a conceptual view

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1 INTRODUCTION

The concept of social security has received new attention in the South African legal system with the inclusion of section 27 of the Constitution of the Republic of South Africa Act 108 of 1996. Section 27(1)(c) grants to everyone the right to access to social security including, if they are unable to support themselves and their dependants, appropriate social assistance.' Section 27(2) says that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

This is not to say that the constitutional imperative has been the primary driving force behind the current interest in social security. It is evident that a more sensitive approach to matters of socio-economic concern since the democratic elections of 1994, the wider international context of the social security paradigm⁻ as well as the need for a much more coherent approach in this area, are all playing a decisive role. More

^{1 &}quot;The right which the Constitution guarantees is the right to have access to social assistance, and not to social assistance as such. This means that the Constitution guarantees each citizen an opportunity to apply for social assistance, but does not guarantee social assistance. The conditions to be met before social assistance is awarded remains the prerogative of government." Van der Merwe 1998:4

² The provisions of the important International Covenant on Economic. Social and Cultural Rights (ICESCR), adopted by the United Nations in 1966, are particularly relevant: Firstly, because of the similarity of formulation (the wording of section 27(1)(c) and 27(2) of the Constitution is largely modelled on the corresponding provisions of the ICESCR). Secondly, South Africa already signed the Covenant in 1994, and ratification is apparently imminent.

importantly, it is the very plight of those who are excluded from the formal framework of social security, particularly the vast majority of the poor and needy who enjoy virtually no entitlements, which has caused concern and has already brought about some reconsideration of the fundamental characteristics of the system.

It would appear that the time has come to undertake a fundamental review and, to the extent necessary, an overhaul of the social security system in South Africa. Various government and other initiatives are presently under way, aiming at the development of a comprehensive approach to social security. The lack of a coherent approach to social security is clearly discernible and needs to be rectified. In a sense the present system suggests an archaic and rigid distinction between social insurance and social assistance. It lets those who are or have been in formal employment benefit from fairly well-developed social insurance coverage, in particular unemployment insurance and workers' compensation, while social assistance (in particular the grant system) remains restricted in coverage, based mainly on a categorial, means-tested approach which provides meager protection against a limited number of risks. There is therefore limited social solidarity in the system, apart from statemandated budgetary allocations to social assistance. The lack of solidarity is exacerbated by the fact that those in formal employment are usually in a position to top up social insurance protection by occupationally based and/ or private coverage against risks such as sickness, disability and old age.

2 OVERVIEW OF ORIGINS OF CONCEPT

The industrial revolution served as the impetus for income protection schemes in Europe. It brought new working conditions and urbanisation, but also solidarity (mostly trade union driven) and state intervention (Berghman 1997:11).

The Bismarck system⁴ favoured a number of employment-based public schemes devised for earnings-related benefits derived from employee and employer (and sometimes also state) contributions (encompassing social insurance). Although based on insurance principles, the insurance is obligatory and the individual premium is not linked to individual risk, as social solidaristic aims are intended. In this regard Berghman (1991:15) indicates that benefits are subject to guaranteed minimum levels and to upper ceilings and are calculated in ways that are partially or entirely independent of contribution levels and records and of the individual or categorial risk.

⁵ See, in particular, the 1998 government-commissioned Poverty and Inequality Report (PIR), which highlights, amongst others, the lack of a coherent strategy on the part of government to deal comprehensively and effectively with the plight of the poor.

⁴ For example the recent introduction of the child support grant at the expense of the long-existing state maintenance grant, is a clear indication of a commitment on the part of government to let more and larger families in the impoverished section of the community benefit from state social assistance measures.

⁵ See Olivier *et al* 1999:13–14 for more information on Bismarck and his influence on the development of social insurance in Europe.

Under the Beveridge system^{*}, emphasis was placed on providing minimum income protection ("a safety net") for the whole population. The basis for allocating social assistance is primarily *need* and is therefore often subject to means testing, although not necessarily so – especially where universal citizen-based or residence-based coverage is extended (Berghman 1997:16).

The Scandinavian model, in contrast, maintains relatively minimal universal protection to all citizens and residents. It is funded by taxation, based on accepted moral and humanitarian principles and not merely on market forces (sometimes referred to as a demogrant⁷ system). It presupposes high employment and a good system of taxation and tax-collection (Terreblanche 1998;7–8).

In the USA "social security" refers to the federal social insurance system and social welfare benefits, insuring not only against loss of income but also against new costs incurred, such as child-rearing.

3 DEFINITION

3.1 General

The definition of social security is flexible, reflecting a country-specific content, and is subject to constant change and development over time. Structural and cultural factors, amongst others, determine the specific content of social security in a country on any given time (Berghman 1991:10–11). Social security is not a fixed concept, but reflects both similarities and variety. Similarities exist especially with regard to the list of social contingencies, also referred to as "core elements" against which protection is provided – for example unemployment and employment injuries.

South African policy documents and academic writings provide numerous definitions of social security. Many definitions include an enumeration of social risks," while others are defined in terms of the involvement of the state," employers and/or the private sector, or in terms of the aims¹⁰ and/or benefits or financing of the scheme.

⁶ For more information on the Beveridge system, see Olivier et al (1999:15).

⁷ Financed by taxes, but is associated with a certain recognised social risk rather than with a certain need – (Pieters 1993:6).

⁸ Such as The Social Security (Minimum Standards) Convention No 102 of 1952 of the ILO (hereafter ILO Convention 102). The South African White Paper for Social Welfare, Government Notice 1108 in *Government Gazette* 18166 of 8 August 1997 defines social security as "policies that ensure adequate economic and social protection during unemployment, ill health, maternity, child rearing, widowhood, disability and old age" and social assistance as dealing with old age, disability, child and family care and poverty relief.

⁹ Barker and Holzhausen (1996:138) define social security as "a system of assistance guaranteed by the state . . .".

3.2 The modern concept of social security

Social security has to be distinguished from the wider concept of "social protection". Social protection denotes a general system of basic social support which is no longer linked to the regular employment relationship and which is founded on the conviction that society as a whole is responsible for its weaker members – in other words, a system of general welfare support and protection (Von Maydell 1997:1034). Where social security is equated to "social protection", which, in turn, is defined as "income protection programmes"¹¹, it may limit the broader approach that includes, for example, HIV strategies.

It is suggested that – instead of describing a patch-work of schemes that may fit experiences of social protection – social, fiscal and occupational welfare, collectively and individually, be taken into account when developing a coherent social security policy. It is also suggested that the emphasis in social security should be shifted from the curative12 to preventative. This will entail a three-tiered approach to social security, that is prevention, reparation and compensation. The ILO also propagates the inclusion of preventative measures in the concept of social security (ILO 1984:219).

The more limited definition of social insurance that is mostly related to formal employment " is inadequate for South Africa with its high unemployment rate. It excludes informal, atypical and self-employment, as well as large sectors that only recently and gradually became part of the regulated labour force, such as domestic workers. Whole areas of employment, such as large parts of the taxi industry, currently fall outside any social security sphere. Schemes focused on such sectors should be set up.¹⁴

3.3 A broad definition and other human rights

It should be borne in mind that some aspects covered in terms of a broader definition of social security may not be covered by section 27(1)(c) of the Constitution for example, the right to access to housing. The same goes for the right to property and especially the rights of children to social services and social security-related aspects, that are neither limited by an "access to" nor by a "reasonable and progressive measures" qualifier. This may have implications for the measure of success in litigation on these issues.

¹⁰ Chapter 7 of the Welfare White Paper emphasises poverty prevention, poverty alleviation, social compensation and income reduction as the domains of social security.

¹¹ See Glossary Welfare White Paper 1997.

¹² An emphasis on "income protection" may be interpreted as curative, as is the case with most social assistance projects and schemes.

¹³ Which also has its deficiencies, as discussed by Olivier (1999:1201-1203).

¹⁴ Examples are found in, amongst others, the EU.

4 SOCIAL INSURANCE AND SOCIAL ASSISTANCE

4.1 General

There has recently been a convergence of social insurance and social assistance schemes, increasingly leading to a variety of mixed systems (for example, social insurance has in some instances been extended to provide more universal coverage). This flows logically from, and is often prompted by, the fact that the same contingency (eg health) may have both social assistance and social insurance components.

Private social insurance can fruitfully be used as a point of reference for social security, being based on four assumptions: (a) it is based on a voluntary contract; (b) the individual premium is related to the individual risk; (c) the contract will be honoured; and (d) redistribution is only available to those to whom the contingency occurs (Berghman 1997:14).

4.2 "Risks" or social contingencies

There has always been some correspondence between the risks and schemes referred to as "branches" of social security (ILO Convention 102; Pieters 1993:2). In South Africa it may even be necessary to extend "risk" to include "disadvantage" or "damage".

The ILO Convention 102 of 1952 lists the classic risks, compelling ratifying countries to establish a minimum of three branches, including at least one branch for unemployment, old age, invalidity, employment injury or survivors, minimum standards of coverage and benefits. The South African Welfare White Paper lists old age, disability, child and family care and poverty relief under social assistance and, under social protection includes unemployment, ill health, maternity, child-rearing, widowhood, disability and old age (White Paper Glossary 1997). The "omission" of medical care and employment injury is attributed to the fact that the departments of Health and Labour¹⁶ are basically responsible for these risks, even though they are as much part of social security as any of the other contingencies. The responsibility for social security is, therefore, spread over various departments, which serves to emphasise the necessity of a coherent and co-ordinated approach to what is essentially covered by a single human right.

Whereas the ILO definition (1997:5–6) refers to social security as public measures, the concept of social security in the Welfare White Paper (1997:par 2) also includes private measures, constituting social protection in the widest sense of the word. However, one should be careful not to include private charity (for example, poverty relief or accommodation provided by private employers) of a voluntary and discretionary nature

¹⁵ The Department of Labour's Social Plan Government Notice 1590 in Government Gazette 20305 of 23 July 1999 affirms the concepts of social security and solidarity. Three sets of measures are set out, amongst others "measures to assist the affected individuals and communities to find alternative ... employment or sustainable livelihoods". The Employment Strategy Framework (at 2 3 4) aims towards improved and more cost-efficient systems of social security and better and more accessible social services in the medium-to long-term (http://www.polity.org.za/govdocs/misc/jobs/jobs/ramework.html).

within social security. Olivier (1999:10) describes this definition by the White Paper as a welcome attempt to describe a comprehensive social security system. According to the White Paper (1997:48) the South African social security system has four elements: private savings (people who voluntarily save for unexpected contingencies), social insurance (for example joint contributions to pension or provident funds), social assistance (eg non-contributory and income tested benefits provided by the state to groups such as the elderly) and social relief (short-term measures to help people over a particular crisis). Absent in the Welfare White Paper are the slots for social compensation schemes (eg Special Pensions Act 69 of 1996) and assistance by private welfare organisations.

Even though similarities exist with regard to the list of social contingencies referred to in the various definitions, the concept of social security has to be determined not in terms of the existing schemes, but in terms of the aims these schemes are intended for. The focus should not be on a list of social risks but on a set of policy instruments that are devised to elaborate a certain aim (Berghman 1991:16–17). Also from another perspective it would appear insufficient to describe social security merely with reference to the contingencies or risks covered. An overall aim that directs and informs the social security concept and the areas covered by it has to serve as the point of departure. Within the context of such an overall aim a distinct social security system can be developed, without being restricted to a mere contingency or risk-category approach.

It is, therefore, more appropriate, from the point of view of establishing a principled approach and delimiting the extent of coverage of the concept, to define the social security concept with reference to the state or situation that social security aims at or strives to attain.

Berghman suggests that such overall aim or ideal should be to strive for a state of (complete) protection against human damage (1991:18, 20). The concept "damage" should be interpreted broadly to cover both loss of labour income and loss of health or well-being. Such a broadened concept of social security covers not merely the fiscal and occupational welfare of the individual concerned but also the handicap the damaged person encounters in his or her contacts with his or her human and material environment – that is, his or her social welfare (Berghman 1991:17–18). A social security system which does not deal effectively with the social deprivation, exclusion or marginalisation of an affected individual or community is doomed to eventual failure as it does not address social insecurity at its roots.

4.3 Contributions, benefits and beneficiaries

The principle upon which benefits are made accessible to groups can be *need* (eg being available for the most needy rather than a general entitlement) and/or the occurrence, or even possibility¹⁶, of *risks*. Where there is

¹⁶ When a preventative approach is taken.

little or insufficient social insurance (eg, in South Africa, in the case of unemployment or maternity benefits), social assistance is legitimately expected to fill the gap. This places a heavy burden on public revenue being the main source of social assistance funding.

Beneficiaries of social assistance will be those chosen by policy-makers, bearing in mind the possibility of constitutional challenges; whilst social insurance covers only those insured. It is, however, possible to compel the establishment of funds (employment-related or not), as well as membership thereof (eg retirement schemes). Case law may impact on the scope of benefits in social security systems, such as the recent Constitutional Court judgment declaring soldiers to be "workers".

Benefits can be means-related, can "top up" real or potential incomes or can be of a fixed amount ("flat rate") irrespective of income or means. The Welfare White Paper states that social assistance is non-contributory and income-tested, covering parents and children who cannot provide for their own *minimum* needs as well.¹⁶ It is submitted that not all forms of social assistance are in fact (or at least properly) income-tested and that uncertainty exists as to what is meant by this test. There is also an important link between social security benefit levels and minimum wages that has to be borne in mind.

Social insurance has deviated from private insurance schemes in that the voluntary contract has been replaced by an insurance obligation with constitutional roots; and benefits are linked to categorised contributions (no individual premiums), maximum benefit levels and an inter-generational aspect.

4.4 Source of financing

Two main sources of financing are firstly; by contributions (by or on behalf of the insured) wholly or partly and secondly; by financing through public funds (eg revenue raised by taxation on goods and services and income tax). Social assistance is publicly funded but the more limited the funds, the less the cover and/or benefits. Sometimes public funds are used to cover specific needs universally, without a means test. These are called "demogrants" and are usually in response to social contingencies such as child-rearing or disability.

With social insurance, individuals, employers and/or government contribute and benefits are allocated automatically and can be linked to the amount of contributions. This may perpetuate existing inequalities which

¹⁷ South African National Defence Union ν Minister of Defence and Chief of the South African National Defence Force 1999 (6) BCLR 615 (CC).

¹⁸ Par 2(c).

¹⁹ There is a growing trend in medical schemes linked to employment that benefits and contributions are "individual" and what is not used is paid into a "savings account", so there is no or limited vertical or cross-generational funding within the scheme. This is symptomatic of a decrease in solidarity.

means those with good salaries will make higher contributions and receive better benefits (Terreblanche 1998:4–5; 32–33). This may be what is meant by the Welfare White Paper's "income distribution" domain of social security (par 1).

5 SOLIDARITY AND SOCIAL EXCLUSION

Some measure of (social) solidarity is required for the effective functioning of a social security system. The ILO declares in this regard:

"It is not possible to have social security, worthy of the name, without a consciousness of national solidarity and perhaps – tomorrow – international solidarity. The effort of developing social security must therefore be accompanied by continuing efforts to promote this crucial sense of shared responsibility." (ILO 1984:115)

It is submitted that a well-structured and properly regulated measure of social solidarity across the system is imperative in the South African context, given the huge disparities in the system as it is presently structured. This might entail the imposition of compulsory membership of schemes that fulfill social security aims, and the introduction of a graduated scale of benefits (Pieters 1993:5-6; Berghman 1997:11). The principle of *ubuntu*² is entrenched in our constitutional jurisprudence and serves as a South African variant of the principle of social solidarity (Welfare White Paper par 24).

Pieters (1993:2) defines social security as the body of arrangements shaping *solidarity* with people facing (the threat of) lack of earnings.²⁷ However, solidarity has weakened, prompting the need for promoting a sense of shared responsibility (ILO 1986:115). Tax-payers, employers and individual contributors are often negative about social security implications.²⁷ However, *ubuntu* and nation-building may be said to be (South) African equivalents to solidarity (Terreblanche 1998:31).

It is argued that in developing countries social security is necessary not as a result of some feeling of solidarity, but rather due to the deprivation and vulnerable status of most people (Dreze & Sen 1991:43).

Socio-cultural repercussions also occur in "good" social security systems. Social security may serve as a disincentive to work, look for work or create employment.²³ Hence also the link with, for example, minimum wages.

A spin-off of solidarity is the prevention of social exclusion, that is embodied by a lack of meaningful participation in society. Social security should actually enhance people's ability to participate in society and to be

²⁰ Ubuntu means "people are people through other people."

²¹ Authors' own emphasis.

²² One example is low maternity benefits, for which not employers but government takes the primary responsibility.

²³ A suggestion of this may be found where reports show that approximately five people are sustained by a single pensioner's old age grant income (Welfare White Paper 49 par 7). Dealing with these perceived ills now forms an integral part of the latest social security strategies in many developed countries.

self-sufficient.³⁴ The effects of social exclusion are self-evident. Criminality, homelessness and poverty in turn lead to a decline of general physical and psychological welfare.

6 SOCIAL PROTECTION AND PREVENTION

Often social insurance schemes provide inappropriate protection as only the most recent earnings, and not future losses, are taken into account. The implication is that a major part of the damage has to be borne by the person affected (Berghman 1991:9). To this, one could add that a monetary ceiling often applies and that the beneficiary is usually entitled to only a percentage of the (maximum) amount(s) set by regulation. Generally speaking, in many systems social security has only partially succeeded in providing a guaranteed basic standard of living (ILO 1989:20, 24). As a rule these remarks are also largely true of the South African system (eg unemployment insurance, compensation for occupational injuries and diseases), subject to some exceptions (some Road Accident Fund payments).

The inability of most social security systems to provide comprehensive compensation is one of the factors which have increasingly, together with considerations of policy and principle, led to a radical rethinking of social security goals and policies. It is now generally accepted in social security thinking and policy-making that social security is not merely curative (in the sense of providing compensation), but also preventative and remedial in nature (Pieters 1993:2–4). The focus should be on the causes of social insecurity (in the form of, amongst others, social exclusion or marginalisation) rather than on (merely dealing with) the effects.

This implies that measures aimed at preventing human damage (eg employment creation policies; health and safety regulation; preventative health care) and remedying or repairing damage (eg reskilling or retraining; labour market and social integration) should be adopted as an integral part of the social security system, alongside compensatory measures. In fact, one could only speak of comprehensive coverage and true indemnification where, as part of social security:

- firstly, reasonable measures have been taken to prevent human damage and to keep human damage as minimal as possible;
- secondly, reasonable steps have been put in place to repair such damage; and
- thirdly, reasonable compensation is provided if and to the extent that damage appears to be irreparable (Berghman 1991:20).

²⁴ Thus in several countries many unemployment grants are linked to participation in training programmes and/or proof of attempts to find or create employment. This is already occurring in the case of health care for the disabled (Welfare White Paper par 50). See also Cantillon (1997:24–25).

7 PUBLIC OR PRIVATE NATURE OF SOCIAL SECURITY

Does the social security concept merely cover measures of a public nature? Traditionally this has been so. However, modern social security thinking suggests that an operational division of social security is needed. It is thus suggested that social, fiscal and occupational welfare measures, collectively and individually, whether public or private or of mixed public and private origin, be taken into account when developing coherent social security policies. In a country such as South Africa an approach like this may not only be advisable, but also necessary, in order to fully utilise limited resources. The Welfare White Paper also advocates such an approach (Chapter 7 par 1).

This implies that a functional definition of social security be adopted which includes all instruments, schemes or institutions representing functional alternatives for the publicly recognised schemes – that is, all instruments available to society for guaranteeing social security.

From this it follows that one should not only have to take into account a range of relevant state-provided social and fiscal measures, but also other collective, individual and/or private arrangements which serve a social security purpose. Depending on the circumstances, non-traditional forms of protection such as study grants, housing benefits, food and the provision of transport, can in this way be made part of the social security concept. Informal arrangements, forms of family solidarity and private insurance aimed at guaranteeing social security could also be integrated within the broader social security framework (ILO 1989:19; Berghman 1991:18). This is of particular importance to developing countries, where the traditional social security contingency approach is often either unaffordable or unable to address essential issues and perceived needs associated with social insecurity at the core level (Olivier *et al* 1999:17–18).

A view which includes private arrangements within the broader framework of social security would have to consider the constitutional limitations that may exist in this regard. The application of the right to access to social security (s 27(1)(c) of the Constitution) to the private sphere does not follow automatically as a matter of fact or law. This will only be possible if the qualifying conditions for private sphere application set out in section 8(2) and (3) of the Constitution are met, taking into account the nature of the right and of any corresponding duty that may be imposed. In general, private insurance should not be regarded as social security in the constitutional sense. This means that government intervention should be limited but not necessarily ruled out. The manner in which inroads into traditional concepts of property law have been made by land legislation may be illustrative in this regard.²²

It is necessary to take stock of existing and envisaged social security measures. A differentiated breakdown of state involvement is also necessary. It may include a spectrum ranging from regulation (legislative and

²⁵ In terms of general constitutional and human rights theory the state can intervene where some public interest is at stake or where an institution fulfills a public duty.

policy intervention) to advocacy or lobbying.² from instituting to contributing to new or existing measures. The extent of government intervention will be crucial in determining the constitutionality of its conduct and its fulfillment of its duties in terms of sections 7(2) and 27(2). Thus, some actions may be regarded as approaches to enhancing social security, but without creating any subjective rights or any corresponding duties.

A wider view of the social security concept would, logically speaking, also require an integrated, comprehensive and coordinated approach to social security (as is advocated by the Welfare White Paper, Chapter 7 par 45). It makes no sense to view the different parts, measures and objectives of the system in isolation, as there exists a close interrelationship between them and as modifications and developments in one area often have implications for other areas.

An integrated approach would also enable one to identify disparities in the system as a whole, which is necessary because the structure of the present system clearly strengthens and perpetuates forms of inequality and patterns of social exclusion and deprivation. It would further enhance proper and equitable financing, indicating from an overall perspective which funding mechanisms are available or absent. A further example is that it would be possible to determine how and where to introduce saving measures in the system in such a way that the broad aim of social security for all is not jeopardised.

Considerable savings can also be attained in the area of social assistance (old age) grants if membership of occupational retirement schemes is made compulsory and if a statutory obligation to transfer and preserve retirement contributions in the event of a job transfer and/or termination of services is introduced.

Finally, adopting an integrated perspective would enable policy-makers to develop medium- and long-term strategies and policies in order to give effect to the constitutional obligation to take reasonable steps, within the state's available resources, to ensure the progressive realisation of the right to access to social security (s 27(2) of the Constitution). This would, of course, also necessitate administrative co-ordination of the system.

8 SOCIAL AND LABOUR MARKET INTEGRATION

Social and labour market integration should as a matter of principle and policy be regarded as an integral part and primary goal of social security. Berghman indicates that obligatory social security schemes are elaborated in such a way that insurability and entitlement to benefits are made conditional on work effort as in this way, social security schemes confirm and socially reinforce work efforts (1997:11).

²⁶ Lobbying financial institutions to promote private savings is an example. However, this does not create any subjective rights for an individual towards such an institution, similar to those granted by s 27(1)(c).

Social security, therefore, operates as a bypass mechanism only in those cases where integration into the labour market is no longer possible or desirable. If this (labour market integration) is accepted as a goal of social security, greater emphasis must also be placed on rehabilitation effort under schemes (eg compensation for occupational injuries and diseases).

9 CONCLUSION

It is suggested that the setting of goals for a social security system at national level is important. This will give clarity to and drive the reform of social security (Von Maydell 1997:1038–1039). Several other issues of principle should for reasons of policy and clarity be decided upon and made known – for example the model(s) which will be applied, the funding sources and financing procedures, the type and scope of benefits, and underlying principles such as links with the labour market, scope of coverage, and so forth (Von Maydell 1997:1038–1057).

Of course, goal-setting is informed by the specific constitutional regulation of social security in a particular country. In the South African context this implies that regard must be had to the constitutional obligation to effect progressive realisation of the right to access to social security.²⁷ to the importance of incorporating constitutional values such as human dignity in the reformed social security system, the role occupied by other associated fundamental rights (eg housing and health), and the impact of general constitutional principles and rights (eg property and privacy).

Although praiseworthy, the emphasis placed by the Welfare White Paper on poverty may actually limit the operational success of a social security system. Introducing a poverty-line test for the allocation of benefits in schemes, whether contributory or not, prompts more investigation. It is likely that those above the poverty line who are without extensive means may fall through the cracks, being unable to qualify for coverage but also unable to insure themselves properly. Research in developed economies with advanced social security systems has shown that poverty levels are rather stable with only mild responses to economic growth or unemployment (Cantillon *et al* 1997:22). Incentives to get above the poverty line should also be introduced *as part of* the social security system. Poverty prevention and alleviation *is* not social security; it is only one aim of social security, begging preventative and curative measures. A clear overarching objective of social security, encompassing all sectors, is suggested.

Sources

Berghman J "Basic Concepts of Social Security" in *Social Security in Europe* Brussels: Bruylant-Maklu (1991)

Berghman J "The resurgence of poverty and the struggle against exclusion: A new challenge for social security?" 1997 International Social Security Review (vol 50) 3–21

²⁷ See ss 7(1) and 27(2) of the Constitution.

Barker F and Holzhausen M South African Labour Glossary Juta (1996)

Cantillon B, Marx, I and Van den Bosch K *Poverty in Advanced Economies: Trends and Policy Issues* Paper delivered at Social Security Group Training (Antwerp 1997)

Department of Labour Social Plan GN 1590 in GG 20305 of 1999-07-23

- Department of Labour *Employment Strategy Framework* obtained on 1999-09-08 at http://www.polity.org.za/govdocs/misc/jobs/jobsframework.html
- Department of Welfare White Paper for Social Welfare GN 1108 in GG 18166 1997-08-08
- Drezé JP and Sen AK Social Security in Developing Countries Clarendon Press (1991)
- ILO Social Security (Minimum Standards) Convention 102 of 1952
- ILO Into the twenty-first century: the development of social security (Geneva 1984)
- ILO Introduction to Social Security (Geneva 1989)

ILO Social Security Financing (Geneva 1997)

- Olivier M "Critical issues in South African Social Security: The need for creating a social security paradigm for the excluded and the marginalised" 1999 *Industrial Law Journal* (20) 1199
- Olivier M et al Social Security Law: General Principles (Butterworths Durban 1999)
- Olivier M et al Social Insurance and Social Assistance: Towards a Coherent Approach (A report to the Department of Welfare, South Africa) (FES & Centre for International and Comparative Labour (and Social Security) Law Johannesburg 1999)
- Pieters D Introduction into the Basic Principles of Social Security (Deventer 1993)
- Terreblanche SJ A Comparison of the Social Security Systems of Sweden. Germany and the United States: Possible lessons for South Africa Paper delivered at a seminar on Social Transformation Processes: Conditions using the example of social security systems Johannesburg (1998)
- Van der Merwe D Social Welfare Law in the South African Social Security System Johannesburg (1998)
- Von Maydell B "Fundamental Approaches and Concepts of Social Security" in Blanpain R *Law in Motion* (The Hague 1997)

The Constitution of the Republic of South Africa Act 108 of 1996

The Special Pensions Act 69 of 1996

South African National Defence Union v Minister of Defence and Chief of the South African National Defence Force 1999 (6) BCLR 615 (CC)

Soobramoney v Minister of Health (Kwazulu-Natal) 1998 1 SA 765 (CC).