

Published by the
Friedrich Ebert Stiftung
South Africa Office
34 Bompas Road, Dunkeld West
Johannesburg, South Africa

P O Box 412664, Craighall 2024
South Africa

Tel 27 11 341 0270
Fax 27 11 341 0271

fessa@fessa.co.za
www.fes.org.za

© Friedrich Ebert Stiftung. All rights reserved. The material in this publication may not be reproduced, stored or transmitted without the prior permission of the copyright holder. Short extracts may be quoted, provided the source is fully acknowledged.

Fist published in June 2001

ISBN 1-919706-12-7

The opinions expressed in this paper do not necessarily reflect the views of the Friedrich Ebert Stiftung, or the organisation which the author represents.

ABOUT THE AUTHOR

Elsabé Klinck (B.Iur, LL.B, BA (Hons) cum laude) has been involved in social security research since 1997. She has lectured at the Universities of the Free State and Vista Distance Education Campus. She is currently legal advisor at the South African Medical Association in

Pretoria.

Transformation and Social Security in South Africa

Elsabé Klinck (B.lur, LL.B, BA (Hons) cum laude), Lecturer, Department of Public Law ,
Faculty of Law , Vista University Distance Education Campus, Pretoria

1 Introduction

Rather than dealing with the issue of transformation in an existing social security system, as is the case in many developed countries, the challenge faced by South Africa is different. It is about the *transformation of a system and society so as to become responsive to the social security needs of the South African population*. In this social security becomes intrinsically linked with a number of very familiar issues, such as poverty and unemployment. The challenge for the successful implementation of any such transformation lies in translating these issues in social security terms, i.e. establishing what their impact will be on (endeavours to establish) various social security models and -programmes. Most South Africans do not know the meaning of social security and subsequently not why a comprehensive, coherent and transformed social security system is needed. Thus a revision of the *conceptual framework* for social security has been identified as one of the objectives the Committee of Inquiry into a Comprehensive Social Security System.

This contribution deals with transformation as a concept and experience in countries that have transformed their social security systems. It also deals with more practical considerations in relation to social security transformation, such as solidarity and poverty.

2 The meaning of social security

There is no single and definite universally-accepted definition of social security. Most definitions incorporate the social risks that social security aims to address, as these risks results in the loss or reduction of income. Berghman (2001) defines social security as

income transfers as a by-pass to social participation where there is either incapacity to work or an unavailability of work. Social security then do not protect the old, the sick, and so forth. It rather serves to prevent that the damages that follow the materialisation of a social risk reflects on the rest of society as a social burden. This shift in the conceptualisation of social security may be very useful in the South African context where people fear the impact that more social security schemes may have on the economy and their personal immediate financial situation.

The ILO Social Security (Minimum Standards) Convention lists medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivor's benefit, as the branches of social security. Social security is divided into social insurance and social assistance, in which the "social" indicates the element of solidarity and the "public" nature (in contrast with "private" insurance) of social security schemes. *Social insurance* is often employment related, where employers and employees (and perhaps the state) make contributions to a specific national or regional or even industry-related fund that will serve as income-replacement in the event of a risk realising for a member of the fund. *Social assistance* is popularly known as social welfare benefits, such as state old age pensions or child care grants, and is often funded by the state through taxes. Within this broad outline, a number of possibilities exist in terms of membership to schemes, beneficiaries, level of benefits and cover, financing the scheme, involvement of the state, etc.

It is within this very general context that the state must respect, protect, promote and fulfill (Constitution Act 1996: section 7(2)) the constitutional right to "access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance" (Constitution Act 1996: section 27). It is clear that South Africa do afford its citizens some social protection in some areas, but a revamp of the system is urgently needed as there is no coherency and the vast majority of South Africans are not cover by most social security provisions in existence.

3 What does transformation in a social security context mean?

Transformation is not about merely exchanging one system for another, or changing a system so that it is different than before. In social security systems transformation denotes a more- or less continuous process, which is intrinsically linked to historical, economical, political and social processes. The notions of “democratisation”, “integration” and “modernisation” thus also spring to mind.

In dealing with transformation of social security the multi-disciplinary nature of the field causes different questions to be asked in relation to the process of transformation. In law the legal order is an object of transformation, but also functions as an instrument of transformation. And in this sense comparative law is of the utmost importance to social security transformation, against the backdrop of particular- and comparable- social and economic circumstances. The legal framework has been seen as instrumental in effecting transformation in the existing social security system. This framework includes the constitutional guarantees of access to social security, administrative justice and equality. Substantive equality will assist greatly in addressing even very recent exclusions from social security protection, such as domestic workers from the Unemployment Insurance Fund. There are various approaches to social security even within a single field of study. Sociologists look at social security through a wider societal lens. They often place emphasis on poverty and the impact of (the absence of) social security on communities. Economists have different viewpoints depending on whether they principally take a neo-liberal, conservative welfare, social democratic welfare, developmental or socialist approach to the economy.

It is not only so-called experts that contribute to transformation. Communities at grass roots levels feel the need for social protection most acutely and must be included in transformation efforts. Rural and other marginalised communities often possess well-organised social information systems and intervention strategies that should be utilised. Community projects that grew organically from this need should be utilised as social security mechanisms (Skosana 2001).

Ordinary South Africans are reported (UNDP 2000) to define the key elements of transformation as:

- _ practicability and visibility;
- _ meeting the basic needs;
- _ rural development;
- _ freedom, including political, social and economic freedom and the right to vote;
- _ national unity (solidarity);
- _ women's empowerment;
- _ eradicating poverty and inequality, eradicating the apartheid legacy and redistributing of wealth;
- _ government creation of an enabling environment for people to participate in their own development;
- _ transmission of information to the masses;
- _ NGO participation and people's organisation at grassroots level;
- _ political debate;
- _ a human rights culture; and
- _ individual liberties and control.

Each of these key indicators can be translated in social security language. For example: social assistance aims to meet people's *basic needs* where they themselves cannot do so, thus also contributing to the eradication of poverty. Social security has been defined as *redistributive* in nature. This happens where cross-subsidisation takes place or when social assistance is funded by taxes. The backdrop to this is that South Africa is the third most unequal society in the developing world. Only in the upper income levels are racial boundaries falling away. In many developing countries, such as India and Tanzania, pilot social security projects have had success due to the involvement of *NGO's and grassroots' level organisations*. This links to the above-mentioned desire of ordinary South Africans for an enabling environment in which they can take charge of their own lives. The entrenchment of *socio-economic rights* as human rights has already been (at least partially) successfully enforced in a number of court cases. The exclusion of *rural people* and those in the informal sector from most social security programmes is widely acknowledged as a fundamental problem.

Many South Africans see transformation as slow, contradictory and insufficiently participatory. On the other hand, many (and relatively more wealthy) citizens view the

underlying principles of solidarity and redistribution in a negative light. Thus we have seen a meteoric rise in private insurance endeavours marketed as “you pay only for yourself”, “your premiums do not subsidise other high-risk persons” and “what you do not use, we pay back to you”. Transformation therefore requires a change in attitude and perception.

4 What is being transformed and whereto?

It may be decided that the whole social security system need to be transformed due to the broadness of “access to social security” and the extent of poverty and unemployment. A narrower objective may also be defined. Issue is, the objective of the transformation should be clear. It could be widely formulated to entail social inclusion and -integration, or redistribution. The objectives should be based on scientific and rational considerations, bearing in mind that historical roots and tradition play an important part in the destination envisaged by various role-players. The objective should preferably address social, historical, political and economic concerns. It is submitted that, in the South African context, social security transformation should, in the end, serve human- and economic development. Transformation in- and of the social security system should empower the South African people both through its process and outcomes. In this sense empowerment means that the conditions that foster powerlessness are identified and removed (UNDP 2000).

Existing structures and institutions of social security have to be addressed as well. Some countries in transformation have chosen to create new programmes parallel to old ones, whilst others convert (“reform”) old ones or merely transfer assets or change rules. Transformation is all about how one will reach the goal (i.e. the future social security system) that one has set. In this it has been suggested that one should look at the basic ideas in relation to social security and the basic elements in various schemes (Von Maydell 2001).

5 Phases of transformation

The following phases can be identified in a process of transformation (Von Maydell 1998):

1. Description and analysis of the point of departure with a formulation of the specific need for reform, including immediate crises.
2. Basic decisions in relation to the transformation, considering the change in system or the further development of the system (i.e. decisions of principle).
3. Construction of the model in terms of which the transformation is to take place, which is a concretisation of the basic decisions made (i.e. decisions of measures).
4. Law-making process.
5. Implementation of the reform/transformation, bearing in mind prerequisites for success and other disciplines involved in such a programme.
6. Evaluation of the reform.

Transformation may involve only single institutions or organs, or perhaps even society at large. It is submitted that involving society at large is the only option for South Africa in view of the importance of the principle of solidarity in social security systems. Von Maydel (2001) warns that it is difficult for people to grasp a new situation and that too fast-paced reforms may leave people behind. This also highlights the need for thorough research and political as prerequisites for success.

Schmähl (1998) explains the process of transformation as starting from the existing situation which gives rise to the making of decisions on concepts and objectives. From there, within certain boundaries (such as economic circumstances, etc.) decisions are taken on social security measures. These are then implemented and should have some effect. The decisions taken create expectations and the effect of the social protection measures is encountered by reaction from the population. Ideological issues have to be clarified and expressed in the form of decisions of *principle*. Clarification has to be achieved on, for example, the (perceived) conflicts between economy (profit!) and people, between human development and growth and whether government expenditure on human development is seen as consumption or investment. Decisions on social security *measures* should be based on reliable information and research, on expert opinions and the needs of people at grassroots level.

6 The role of the law in transformation

The role of the law in transformation deserves special attention. In South Africa section 27 of the Constitution compels legislative- and other measures in relation to social security. This implies transformation as a constitutional imperative. But what is the role of the law (Nußberger 2000)? Laws are needed to formalise and support a transformed system. In utilising the law as a tool for- and in transformation, empirical and descriptive analyses are required. Comparative law is usually used in this phase, but brings about difficulties. Comparable jurisdictions may include countries who are themselves in transformation and whose legal systems then consist of both “transitional”- and “old” law. In this a comparison of *systems* or *structures* is imperative. Transitional social security law in countries in transformation is marked by its provisional nature, its experimental character and only partial realisation of its provisions due to structural and financial difficulties. It is submitted that South Africa cannot afford (in terms of financial, political and social considerations) transitional legislation in this sense. The law, as a transformation tool, has to take account of society and how prepared and involved it is in the envisaged reforms. However, those who stand to “lose” something by means of the implementation of a transformed social security system are likely to be more vocal and empowered to voice opposition than those who stand to benefit “more”. Thus the pre-legislative process, especially in balancing competing interests, is of critical importance in social security transformation. In the search for solutions to the problem of transformation in social security, reformers have to consider transplanting a system unto their own country, taking over certain elements from other legal cultures or so-called “negative comparative law” as possible options.

According to Nußberger (2000) transplanting a system is much more difficult where the specific system has been prompted by very specific historical and political factors. The history of the solution to social security needs is different in countries that moved from socialism/Marxism to capitalism than the particular origins of “western” social security in the 19th century. These are, in turn different when compared to systems instituted with the support of international institutions such as the World Bank. Transplanting a system has implications in terms of institutional support and infrastructure, as well as resources (human and other). Solidarity (or the absence thereof) and generally accepted norms of society have to be considered.

Reformers should be wary of principled differences. These include different Constitutional systems, differences in claims for compensation in private law and the role of administrative law concepts such as “legitimate expectation”. Difficulties in relation to special systems or institutions required by such partial transplantation are to be considered as well. Hänlein (1998) lists some prerequisites for a successful transplant of law. These include the quality of the law to be transplanted, including linguistic clarity, precision in translations and clarity on legal concepts. Fitting the law into the existing legal doctrine in terms of case law and legal development is very important. The application of the law in its new environment aids its reception by means of commentaries, training materials and so forth. Staff in the executive and the judiciary and the public at large should be educated as to the implementation of the law. Lastly, the transplanted law should be given time to reach equilibrium, especially if the law is met with resistance and perhaps changed through interpretation.

“Negative comparative law” (Nußberger 2000) refers to the method by which other social security systems are studied so that similar flaws or errors can be evaded or countered in advance. This is mostly what has taken place in the social security law arena up until now. The advantage of this approach is that by analysing the failures or flaws reformers could construct new solutions creating a new pool of ideas in relation to social security.

Before transplanting a system South Africa should take note of the specific circumstances and legal tradition in that country or countries. In looking at other developing countries not only do ideology and history play a crucial role, but also the specific economic situation. It can rightly be said that South Africa differs from most developing- *and* developed countries in relation to the mix of (lack of) social cohesion, economic circumstances, poverty, etc.

7 Some examples of social security transformation in certain countries

A short description will be given of some transformation issues and questions that have surfaced in other countries. As Hoffer (1998) points out, the transformation in countries such as Sweden, the USA and Singapore is economically totally different. However,

questions asked in relation to transformation provide insight in what South Africans at least have to consider in relation to social security transformation. He points to certain common aspects in transforming societies:

- (a) Social security is taking a backseat in relation to other issues in the first phase of transformation in the country. This may also be the case in South Africa, where issues concerning HIV/Aids, education and crime are seen as priorities.
- (b) There is a crisis in the tax base of the state.
- (c) A greater emphasis is placed on *insurance* in relation to old age. This means that people should be insured through some private or public scheme so as to prevent them being dependent on social assistance.
- (d) There is a failure to draw new sectors into the net of contributions.
- (e) Old age insurance is prioritised *vis á vis* other branches of social security. This means that social insurance often start with addressing the “branch” of old age, rather than the real needs experienced by people of a certain age in certain circumstances.
- (f) There is backtracking from a besieged old age insurance to safety-net poverty prevention and fully funded systems.

Issue (d) in relation to South Africa point to the failure to draw, for example, the taxi industry into the formal economic system, or to sufficiently regulate the plight of domestic- and agricultural workers. In relation to prioritisation (issue (e)), it is noteworthy that ILO pilot projects in Tanzania found that old age social security is *not* the greatest priority in the informal sector. Short-term protection according to the varied needs during a year or certain cycles is regarded as much more valuable (Fultz and Pieris: 1999). It seems that in countries in transformation, those driving transformation processes can easily miss the target. Government prioritisation should serve to empower people and should address their real needs. The failure of the “trial and error” approach to social security, where there is no objective, but an immediate attempt to solve a social security problem or need, has to be considered. Nußberger (2000) refers to examples where the previous, soviet model of social security was dropped with the promise of a better system. Expectations and claims rose and the legislation soon proved to be a law on paper only. As an interim measure uniform pensions were paid out with the aim of later differentiating in this regard. Thus three phases were needed in order to achieve some social protection. This does not mean that social security is to be realised in a single attempt, but rather that a principled and rational approach

has to be followed. For South Africa this means that the social security systems has to be looked at as a whole. We have to decide on issues of principle, then on measures that are appropriate given the factual situation, legal system and execution of such a system. Von Maydell (2001) suggests that South Africa draw up its list of priorities and start with those, of course within a bigger picture of its future aims. South Africa cannot afford raising the hopes of people or having a failed scheme in place. The Chilean system has been hailed as a great success from various quarters. It however has had the result that many people are disillusioned, as, now 20 years later, less benefits are paid out than under the previous pay-as-you-go system.

There are more positive stories. In his description of the transformation of the Polish health insurance system, Knieps (1998) starts by analysing the historical roots of Polish health insurance, the essential structural flaws in the health sector, the barriers to fundamental structural reform and the problem of dealing with different schools of thought and consultants. The stocktaking phase of the analysis of transformation in Russia in terms of social security focuses on a number of aspects (Hoffer: 1998). These include:

- (a) Political aims (one of which, very much like the constitutionalisation of socio-economic rights in South Africa, is the entrenchment of the welfare state principle as a constitutional aim. Unlike South Africa it has weak institutionalised “checks and balances”);
- (b) Institutional- and legal reforms (in which social security reform was but a side issue and the question remains whether the “new” employment fund will be able to handle increasing unemployment);
- (c) Basic social data (such as how many employees are in fact covered by old age insurance, etc.) and performance in terms of social security; and
- (d) The influence of social and community factors on social politics (for example, if people trust the system, the existence of corruption, tax evasion, etc.).

8 The role of international and regional organisations in social security transformation

In general, aspects such as international- or regional developments are important. For example, in the South African context, the Southern African Development Community is a major force to be considered. For example: If, and how will closer economic ties influence the (choices made in relation to) social security system reforms? How will a freer flow of labour influence any such system? How will we address xenophobic fears in social security debates?

International organisations and communities can influence social security transformation by-

- (a) Setting examples (which may be flawed if based on unfounded perceptions of uncontextualised systems and perceived successes);
- (b) Placing duties on a country by means of multi-lateral agreements (such as, in South Africa's case, being a signatory to the Convention on the Rights of the Child that greatly assists in the realisation of social security for children);
- (c) Conditional provision of credit by powerful organisations such as the World Bank, which is hugely controversial. Criticism includes that they set criteria that are not orientated towards poverty alleviation and they effectively force countries into economic systems not suitable for them.
- (d) Technical assistance in the form of workshops, pilot projects, and the like, often by the ILO and or experts in the field sponsored by foundations or developed countries.

9 Solidarity

Solidarity is regarded as the value underpinning social security. Solidarity refers to the creation of a scheme in which people are bound together with others in facing a specific threat, such as death, old age or unemployment. Solidarity is, basically, about contributing and benefiting within the net of that solidarity. People contribute to the scheme because they know that if the same fate hits them, they, or their families, will benefit from the scheme and the solidarity in which the risk is pooled. Or they know that if most people contribute to an insurance scheme for as long as they can from their own funds, the burden on the social welfare system, and by implication on general taxes, will be less. It is easy to see how bankrupt social security funds, lack of trust and consequent contribution evasions or false claims can erode solidarity and subsequently a whole social security scheme. Thus solidarity

entails a shared vision for South Africa and how that vision is to be achieved. This vision has to be preceded by an interest in social security, access to information, education and capacity building in order to create an understanding of the issue. Then good governance, collective responsibility, shared monitoring of institutional transformation and social delivery is named as instrumental in translating a vision into reality. South Africa should also be clear on the interplay between statutory social security, private social security and occupational social security (Berghmann 2001). If a shared vision is to succeed, all role-players should focus on a common priority, for example, poverty. Collective responsibility then entails shared action in addressing income poverty (employer-employee-contributions are suggested). It also entails meaningful and empowering economic access; asset development and the capacity to manage assets. Access to education and social- and economic integration also have to be addressed.

It is reported that socio-cultural frameworks determine up to 20% of the developmental options of a society (Hoffer 1998). The lack of internal pressure and public debate on social security issues have been mentioned as serious hurdles for social security transformation and should signal a warning to South Africa as well. Berghman (2001) sets types of values required for a transforming social security system into an appropriate one. These include cultural values, i.e. what we think and perceive, or, put differently, the legitimacy of the (proposed) system. Structural values are what is and what we have, i.e. feasibility of the proposed system. Policy-making values refer to government and the value of majority and minority views. Culture (in the sense of public consciousness and social attitudes, behaviour and expectations) plays a huge role in transformation. The study by Hoffer (1998) on the modernisation of social security in Russia shows that a negative remnant of the previous system is an attitude of expectation and entitlement. Before the real transformation began there was a naïve belief that the “normal, civilised market economy” would address social problems. Mistrusting even new institutions, people relied on closer circles to solve difficulties, thus contributing to the non-realisation of social trust and solidarity.

On a practical level Berghman (2001) divides the solidarity principle in terms of *scope* and *intensity*. These are two very important factors that begg consideration in South Africa. The scope of solidarity refers to who is involved in social security. This includes its organisation

nationally, regionally and/or locally (through municipalities, CBO's and NGO's) and the inclusion or exclusion of sectors such as domestic workers, contract-employees, etc. In terms of intensity the actuarial formula (risk = probability x damage), coupled with contributions and benefits are to be considered. Here the issues of cross-subsidisation and contributions that are linked to income rather than the risk, are pertinent. Traditionally the risk determined the level of contributions, the damage the level of benefits. Any shifts in social security schemes (often prompted by shifts in labour markets, rising unemployment and the move from the industrial age to the information age) would necessarily entail a detailed analysis of these aspects. The European approach recently therefore has focussed on reintegration rather than consumption of curative transfers. Risks that threaten social cohesion most should be addressed first.

10 Poverty

The poor have often been blamed for their poverty, even in South Africa, which is seen as the consequence of some form of personal inadequacy such as fecklessness or idleness. Most studies, however, explain the existence of poverty in terms of the social and economic structures of industrialised societies. The perception that the poor are responsible for their predicament underpins reluctance to accept social security responsibility or to support empowerment efforts. People believe that they possess something that the poor don't and that, when faced with a similar situation, *they* would be better off because they are better people! It is said that it will take very long before the benefits of economic growth will trickle down to provide the poor with social security (UNDP 2000). Thus a basic income grant, linked to GDP, has been proposed by some trade unions.

About 45% of South Africans live below the poverty line, i.e. with an income less than R353 per month, of which most (61%) are black, female-headed (60%) households and rural (72%). 10 million people live in households earning less than R193,77 per month (UNDP 2000). Even the most generous estimates would leave 30% of the very poor and 40% of poor households without any access to social security. Poverty is also a stress factor in any attempt at reaching a sense of solidarity in South Africa. Not only does it lead to feelings of alienation and fragmentation on the side of the poor, but also on the part of those more

fortunate blaming the poor for crime, slow economic growth and the likes, whilst others ignore the reality of the plight of the poor.

Access to land is a related issue. It does not necessarily contribute to the GDP, but enhances the standard of living for many, as it is used to provide food. Land is also linked with the informal- and rural sectors, which are seriously marginalised in social security terms. But less than 1% of land has been redistributed in terms of the South African land reform programme. Access to land assists women in economic empowerment. In addition to land, infrastructure and support are however also needed. The urban sprawl and the issue of a lack of proper and reliable public transport, as well as the cost of transport as a percentage of income are major obstacles when persons are looking for employment.

The Basic Income Grant is suggested (Le Roux 2001) to address poverty and the unwillingness of the “have’s” to contribute much more towards the “have-not’s”. 20% of South Africans can afford private insurance and 70% are (supposed to be) reliant on social assistance. As richer families spent more than poorer families, it has been suggested that this grant be financed through an increase of 5% in value added tax (i.e. the general tax on goods sold). As it would be difficult to determine income, it has been suggested that the grant be universal in nature (i.e. for “have’s” and “have-not’s”) and amount to R500 per month for a family of 5.

11 Employment/labour and social security

Labour has three dimensions: labour as earnings, labour as effect (self-realisation and betterment) and labour in social context, i.e. labour as communication, contact, social integration (Zacher 1999). Labour is achievement, responsibility and freedom. Where there are deficits in relation to labour, such as where a worker-father dies, the state and community have to intervene. This intervention may take the form of social security measures. Such intervention is not so easy in the wake of social exclusion, the casualisation of the workforce, out-sourcing and the informal sector (Mhone 2001). For a period of time an employer can be expected to carry the burden of a sick employee, but after a certain time the burden has to be spread over a larger field based on solidarity (Zacher 1999). As many

social insurance systems in the classic tradition are based on contributions made by employees, employers (and possibly the state), unemployment has a huge effect on possible transformation in relation to social security. Labour (and the ensuing contributions from income) therefore becomes the gateway to social insurance. But social security then in turn becomes the (temporary) guarantee of income in the event of unemployment. This means that South Africa have to look at “labour” differently, so as to get to a suitable scheme of social security that suits these labour patterns. Most South Africans do not have long-term employment, has more than one employer or work only during certain times of a year or works in the informal sector as a self-employed person. Whereas the unavailability of employment far surpass the incapacity to work in the South African setting, social security rights should perhaps also accrue unto those willing to contribute to society and not only unto those formally employed (Berghman 2001). Other factors that prompt a new look at “employment” include (Mhone 2001):

- § Individual income is not dependent on a single person and his/her willingness to work, a whole set of factors impact on employment/unemployment; therefore there should be a link between macro-economic- and social policy.
- § Re-education and re-training is necessary in view of a diminishing pool of suitable candidates for employment; markets may re-produce existing societal inequalities, thus suggesting that the establishment of employment agencies are needed rather than a larger unemployment insurance fund.
- § Globalisation does not only entail the expansion of cross-border markets, but the need for solidarity in an international sense.

Statistics in relation to labour affirm the lack of access to social security by huge sectors of society. Apart from the fact that 52% of black women- and 42,5% of black men in South Africa are unemployed (UNDP 2000), many of those employed are employed in the informal sector or in sectors in which there is virtually no provision for social security. The informal sector comprises 17% of the employed population, of which 70% are women. In dealing with the informal sector the household-level becomes instrumental in affecting social security transformation. Not only do women fulfil unpaid social security tasks by caring for the elderly, the sick and for the children of those in their households or family who are employed, but their spending patterns also are more aimed towards social wellbeing (Unicef 1997).

Zacher (1999) divides the complex problem of unemployment in even more detailed concepts, so as to approach the subject more rationally. On a general level, unemployment relates to the imbalance between the greater number of people who want to and the smaller number of people who can actually exercise their desire to work. On an individual level the imbalance is between the individual's interest and potential and the supply of those jobs. Apart from these there are the short- and long-term unemployed, unemployment amongst youths and/or amongst the elderly, unemployment of the self-employed, unemployment of those who wish to be employed, although they do not have to, and so forth. In relation to South Africa critical debate should further delineate the issue of social security and unemployment. For example, are those in the urban and rural informal sectors respectively, "unemployed"?

"Internalised and externalised solutions" (Zacher 1999) in relation to unemployment, as it applies to the formal sector, do not exist in the informal sector. "Internalised solutions" refer to, for example, the law preventing accidents at work or that an employer must grant an employee paid sick leave or the legal duty of a person to support his or her dependants do not apply to the same extent in the informal sector. "Externalised solutions" include situations where employer, employee and government must contribute towards an accident fund or that there is a grant in terms of which dependants can be cared for do not exist or are not accessed by people in the informal sector.

12 The state, its institutions and the people

The parallel processes of transformation, i.e. of people and politics on the one hand and of the economy on the other, are often marred by conflict. For example, privatisation of state assets is said to be necessary, but is likely to cost more jobs and place more pressure on social assistance. Values in business may influence the success of social security measures. For example, in one study South African companies saw interest rates and economic growth as much more important than wage levels and good labour relations in terms of investment (UNDP 2000). Therefore it is likely that changes in employment-related social security, which requires, amongst others, increased contributions or the

implementation of new formulas in relation to employee benefits, is to be met with resistance in terms of economic considerations. The institutionalisation of participation and decision-making for as many South African as possible may contribute to solving these fundamental conflicts. Another issue that is important for the real transformation of South Africa is the translation of economic growth into improvements of the quality of life. Economic growth and human development should be linked if transformation is to be achieved. Economic growth does not necessarily lead to human development or *vice versa*, but if no links are established and fostered, the one tends to undermine the other. The indicators used to measure development, such as the HDI, are important. The HDI measures GDP, literacy/education and life expectancy. But in this the UNDP-Report (2000) points to gross *provincial* disparities: Gauteng and the Western Cape alone would rank much better than when added to the rest of the provinces' HDI ratings. Thus apart from infrastructure and resources and assets, there is a definite link between rural- and former homeland areas and the HDI. And apart from infrastructure and resources, rural areas suffer from lack of access to opportunities and information. HIV will have a negative impact on the HDI and it is stated that HIV will reverse any gains made in other policies in terms of human development.

Various state institutions have to initiate, implement and/or oversee social security policies, -programmes and -projects. These institutions have to be democratic, accountable and responsive, as is required by the Constitution Act of 1996. This necessitates monitoring and corrective action so as to transform the policies, programmes, projects and systems where required. However, the public at large needs to be engaged in these functions. The failures of various transformed social security funds in Russia, for example, can be contributed to a lack of interest on an organisational level (Hoffer 1998). The role of the state in transformation should be understood (Nußberger 2000). For example, who is (primarily and secondarily), responsible for child caring or how is the state to be involved where private insurance fails? The state also has to be trusted by the people; otherwise social security systems will be fraught with evasions committed "in good conscience".

The decentralised system of governance and the creation of the principle of co-operative governance should assist in alleviating poverty, empowering people and promoting development as objectives of social security. However, the three-sphere system of

government has not necessarily led to coherence and efficiency in the provision of services. In the constitutional system local governments are "developmental agents", provincial governments (with different political emphases) are weaker and dependent on national government, which is generally much stronger. For example, provincial budget deficits in social assistance and health care in some provinces are notoriously well known. The coordination and coherence of provincial- and local executive (policy- and implementing) powers and -empowerment will therefore be a crucial aspect to address in relation to social security provision. The relationship between government and NGO's that provide much-needed social assistance in rural areas should also be evaluated (and valued!). Many of these NGO's complain of a lack of funds and reduced state subsidies, arguing that they are fulfilling an essential function government cannot. The recommendations made by the UNDP Report (2000) in relation to institutional change and transformation for Human Development are applicable to social security issues as well. It includes:

- Space for greater involvement in budgetary processes.

- Enhancing parliament's capacity to oversee law - and policy-making.

- Strengthening public participation.

- Promoting links between traditional and constitutional forms of government.

Moreover, a rational, accessible system of public financing is needed through which to implement social security initiatives.

This is not to say that a social security system needs to be state-run or funded by public monies alone. The system needs to take into account (and be monitored) in terms of social need, public policy, resource allocation by the *fiscus*, actual expenditure and social impact in terms of human development. But of the revenue cake to be shared by government, the largest slices go to debt and interest repayments. Apart from spending more than comparable developing countries on social security, South Africa's outputs in terms of social services are low (UNDP 2000). Provinces cannot budget and manage financial resources in terms of costs and services and, apart from the allocation formula, intra- and inter-provincial inequalities have not been addressed on the relevant levels.

Policy transformation without institutional or structural transformation is futile. In spite of both policy and financial transformation in education, curricula has changed very little and most

well-off white schools have merely co-opted a few black children from the new upper-middle-class. The majority of children still have to cope with inadequate facilities, inadequately trained teachers and curricula not geared towards South Africa's needs. Schemes aimed at addressing inequalities are still seen as "special measures" (and not as mainstream imperatives) aimed to address immediate needs and not at transformation of the system and its structures (UNDP 2000).

Various institutions hailed as institutions supporting democracy in terms of chapter 9 of the Constitution have the power to embark on initiatives aimed at information sharing, consultation and education. These institutions should assist in focusing energies towards the transformation of social security by popularising the idea and by assessing the impact of various social security models on their various mandates. The Commission for Gender Equality would have to investigate the impact of social security proposals in terms of gender and integrate into its empowerment initiatives aspects of social security. Another institution that may contribute significantly in effecting transformation in social security, is Nedlac. The role already played by the Human Rights Commission in terms of, amongst others, its annual reports to Parliament in the areas of social security awareness and transformation is of particular importance. This however needs to be publicised and popularised more vigorously.

The decentralisation of power to civil society is a key feature of transformation. People should be able to take charge of their lives and livelihoods. People should be offered choices, should be informed and empowered. As shown above, ordinary South African expect transformation to involve people at grassroots-level. Efforts at popularising social security at school level should be supported and enhanced to assist in social awareness. This could form part of a broader human rights- and social (citizenship) skills development course. Thus education is a cornerstone in transformation at a grassroots- and household level. In some provinces 50% of the adult population is illiterate (UNDP 2000). This not only poses challenges to this group in relation to access to employment and so forth, but also in relation to empowerment endeavours, such as implementing basic social security schemes in such communities.

13 Conclusion

Preconditions in order to transform the South African social security scenario thus entail addressing a number of critical areas. Without these, any attempt at developing a comprehensive social security system in South Africa is bound to fail. These areas are:

- _ An understanding of the concept of social security and how it relates to social justice (Nußberger 2000).
- _ Solidarity, including popularising the idea of social security and pointing out the benefits for society at large.
- _ Social integration through enhanced infrastructure, education, and so forth.
- _ Addressing gender inequality.
- _ Rural development and Empowerment.
- _ The formalisation of the informal sector (or: access to social security by the informal sector).

Apart from these, important methodological considerations in relation to transformation are required. The conceptual framework and basic decisions as to the ideological stance are to be decided upon. Inter-disciplinary studies are to be focussed on solving social security needs and the law, as a tool of transformation, has to be utilised bearing in mind pitfalls in relation to comparative law specifically and country comparisons in general. Reliable and sufficiently differentiated statistics are needed to work from.

Transplanting systems or parts of systems should be carefully considered. The same goes for assistance or pressure from international organisations or fellow states. They may, with the best intentions possible, want to help, but may contribute to confusion or perhaps put express or implied political or economic *quid pro quo*'s on South Africa.

The panel at the closure of the International Workshop on Social Security Transformation in South Africa (Joahannesburg, 24-25 January 2001) reached the following conclusions, many of which correspond to research already concluded and international opinions on the matter:

- § One should start at a grassroots level and take care not to neglect these important "points of departure" and inputs to be made by communities.

- § There should be a structure process with a clear vision and way, with a list of priorities (as it would be impossible to address everything at once!) that nonetheless fits into the greater programme and vision.
- § One should not try to do too much and be too detailed, and there should be a clear direction and focus. Thus is decision needs to be taken on the major focus.
- § Social security, as guaranteed in the Constitution should protect all people and South Africa should stick to its international obligations, most notably the ratification of the International Covenant of Economic, Social and Cultural Rights.
- § More test cases should be brought before the courts so that jurisprudence could assist in the transformation of the system and national institutions, such as the Human Rights Commission should play a role in the monitoring of the progressive realisation of social security rights.
- § The major dualities in the South African society should be considered, e.g. between state and society, between the urban and the rural, class differences, against the backdrop of redistribution and equality/equity.
- § The informal sector should be formalised, people should contribute and the social *insurance* scheme expanded.
- § The Basic Income Grant should perhaps rather be an Integration Grant Scheme.
- § Institutional capacity lacks, and complaints on the administration and distribution of old age pensions are overwhelming. On the other hand it was also stated that a targeted low-income grant would be impossible to administer and control.
- § The administration of social security by CBO's should be considered.
- § Empowerment should be a key aspect of transformation.
- § Vulnerable groups such as children and those suffering from the effects of HIV/Aids, either as personally affected or as a family member or dependent, are to be included in transformation endeavours.
- § International and regional perspectives are not to be excluded, as issues such as refugees and non-citizens are often linked to social protection.

Bibliography

Berghman *Core values in transforming social security: international experience*. Paper delivered at the International Workshop on Social Security Transformation in South Africa, Johannesburg 24-25 January 2001.

Collins Dictionary of Sociology (2000).

Fultz and Pieris (ILO) *Social Security Schemes in Southern Africa. An overview of proposals for further development* (1999).

Hänlein "Sozialrechtsvergleichung als Rezeptionsforschung" *ZIAS* 1998 (1) 104-108.

Hoffer "Modernisierung sozialer Sicherheit in Rußland" *ZIAS* 1998 (1) 29-45.

ICFTU "Conclusions and recommendations" (unpublished) *Conference on Enhancing the Trade Union Role in Social Security Systems in English-Speaking African Countries* Nairobi 15-17 September 1999

ILO *Introduction to Social Security* (1989).

Knieps "Transformationsprozesse im Gesundheitswesen- Die Einführung einer sozialen Krankenversicherung in Polen" *ZIAS* 1998 (1) 11-20.

Le Roux *Economic perspectives on social security transformation* Paper delivered at the International Workshop on Social Security Transformation in South Africa, Johannesburg 24-25 January 2001.

Mhone *Social security and labour market imperatives*. Paper delivered at the International Workshop on Social Security Transformation in South Africa, Johannesburg 24-25 January 2001.

Nußberger "Die Rolle von Recht und Rechtswissenschaft" *ZIAS* 1998 (1) 95-103.

Nußberger "Rahmenvorgaben zur Entwicklung des Sozialrechts in den Transformationsstaaten" in *Transformation von Systemen sozialer Sicherheit in Mittel- und Osteuropa* (2000) 229-241.

Olivier, Okpaluba, Smit and Thompson (eds) *Social Security. General Principles* (1999).

Olivier et al *Social Insurance and social assistance: towards a coherent approach. A report to the Department of Welfare, South Africa* December 1999.

Pieters *Introduction into the Basic Principles of Social Security* (1993).

Queisser "Der Einfluß Internationaler Organisationen auf den Transformationsprozeß" in *Transformation von Systemen sozialer Sicherheit in Mittel- und Osteuropa* (2000) 243-257.

Schmähl "Transformationsprozesse als Herausforderung für die wirtschafts- und sozialwissenschaftliche Forschung: Auf der Suche nach Ansatzpunkten für die breitere Erklärungsansätze" *ZIAS* 1998 (1) 67-76.

Skosana *The role of advocacy and civil society groups in social security transformation*. Paper delivered at the International Workshop on Social Security Transformation in South Africa, Johannesburg 24-25 January 2001.

Taylor *Policy Framework for social security transformation in South Africa and the role of the Committee of Enquiry*. Paper delivered at the International Workshop on Social Security Transformation in South Africa, Johannesburg 24-25 January 2001.

UNDP *Transformation for human development: South Africa 2000*.

Unicef *Give us Credit. How access to loans and basic social services can enrich and empower people* (1997).

Voigt "Methodische Konzepte zur Reform sozialer Sicherungssysteme" *ZIAS* 1998 (1) 53-66.

Von Maydell "Transformation von Systemen sozialer Sicherheit" *Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht (ZIAS)* 1998 (1) 5-10.

Von Maydell *Social security transformation: preconditions, pitfalls, policy-making and process*. Paper delivered at the International Workshop on Social Security Transformation in South Africa, Johannesburg 24-25 January 2001.

Zacher "Der Wandel der Arbeit und der sozialen Sicherheit im internationalen Vergleich" *ZIAS* 1999 (1) 1-47.