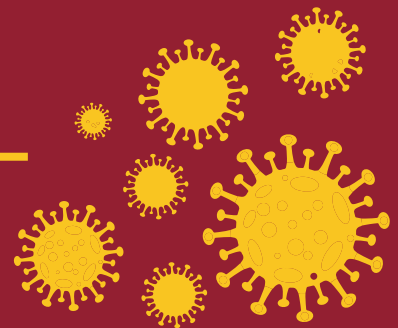


POVERTY IN A PANDEMIC:
A Research Brief on the Impact
of the COVID-19 Pandemic on
Socio-Economic Rights





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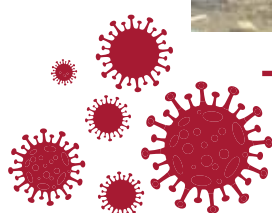


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1. INTRODUCTION

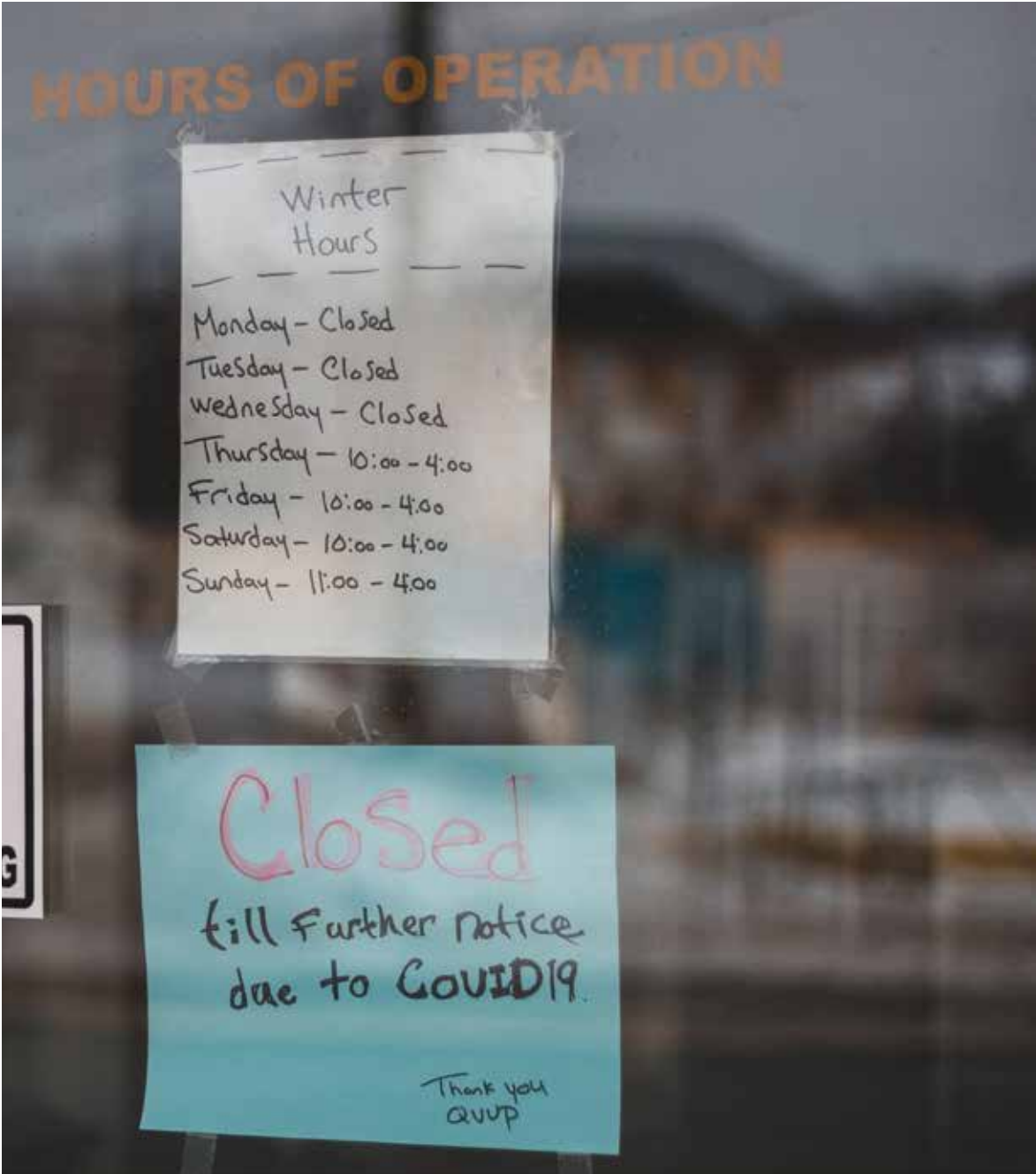
Poverty is one of South Africa's most salient social problems. Its persistence and expansion demonstrate that the policies, programmes and strategies that the government has employed to alleviate poverty have been mostly inadequate in alleviating poverty. It is impossible to deny the intractability of poverty; however, it also cannot be denied that more could be done to alleviate poverty and deal with its consequences. The racial character of poverty, resulting from the apartheid government's economic policies, which deprived Black people of income, resources, opportunities and more, worsens the impact of poverty. South Africa has failed to eliminate the legacy of apartheid and its economic and social policies based on racism and thus remains chronically segregated, with black people, particularly women being the most deprived. The novel coronavirus (COVID-19) pandemic has worsened the circumstances of those already living in poverty and has additionally increased the number of people living in poverty.

Poverty is not confined to a lack of income but is integral to the violation of critical fundamental rights such as housing, food, water and sanitation, education, health and other related rights - a violation of the provisions of the Universal Declaration of Human Rights and myriad additional treaty bodies. A failure by States to act to ensure the timeous and progressive realisation of such rights, through *inter alia* legislation, policies, programmes and the implementation thereof, is a violation of international and often domestic legislation. This indicates that poverty is a human rights violation.¹ The realisation of the positive obligations of the State to provide access to human rights is therefore compulsory.

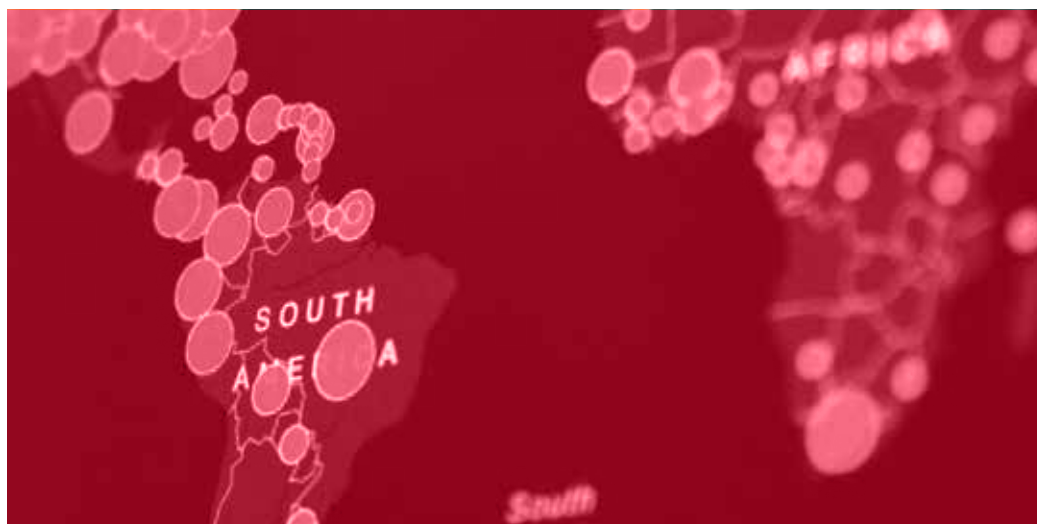
¹ G Khanna 'Poverty: A Violation of Human Rights or Not?' (2013); <https://ssrn.com/abstract=2264371> or <http://dx.doi.org/10.2139/ssrn.2264371>

This research brief will provide an examination of the state of poverty in South Africa and the impact that the COVID-19 pandemic has had on poverty. This will be done by assessing how COVID-19 has negatively affected socio-economic rights, such as education, access to housing, health, social protection, and employment.²

The mandate for this research brief is derived from section 184(2) of the Constitution wherein the Commission is empowered to investigate and report on the observance of human rights; to take steps to secure appropriate redress where human rights have been violated; to research; and to educate. Additionally, section 184(3) is specific in respect of the Commission’s obligation to monitor and assess the progressive realisation of economic and social rights.



2 Note that the reporting period for this brief is from 01 January 2020 to 31 March 2021.



2. BACKGROUND

By March 2021, a million people had been infected and over 50 000 people are reported to have died as a result of the coronavirus 2019 (COVID-19).³ In March 2020, the government was commended for its swift imposition of a national lockdown in terms of the Disaster Management Act, 57 of 2002, which restricted the movement of persons and commercial activity to contain the spread of the pandemic, while preparing the healthcare system for an influx of COVID-19 patients.⁴ Since March 2020, the government has adjusted measures restricting the movement and gathering of persons multiple times, in response to changing needs and changes in infection rates.⁵

The National State of Disaster and the concomitant lockdown has had severe socio-economic consequences for the people of South Africa, including an impact on education and healthcare systems, loss of jobs and loss of income for business owners and informal traders, leading to compounding poverty and inequality.⁶ Among those most vulnerable to the consequences of both the pandemic and the lockdowns were those who are already living in poverty and those with pre-existing medical conditions. A report published by Oxfam found that it could take at least 14 times longer for people who are poor to return to the income level and standard of living they had prior to the pandemic than it will take for wealthy people (which is nine months).⁷

3 <https://sacoronavirus.co.za/>.

4 Department of Co-operative Governance and Traditional Affairs *Classification of a national disaster: COVID-19 (coronavirus)* Government Gazette No. 43096 (15 March 2020).

5 President Cyril Ramaphosa 'State of the Nation Address by President Cyril Ramaphosa, Parliament, Cape Town' (11 February 2021) <https://www.gov.za/speeches/president-cyril-ramaphosa-2021-state-nation-address-11-feb-2021-0000>.

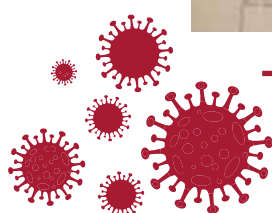
6 Y Tswana 'Lockdown cost 3 million jobs, caused widespread hunger' IOL news (16 July 2020). <https://www.iol.co.za/capetimes/news/lockdown-cost-3-million-jobs-caused-widespread-hunger-51062845>.

7 Oxfam International *The Inequality Virus: Bringing together a world torn apart by coronavirus through a fair, just and sustainable economy* (January 2021) <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621149/bp-the-inequality-virus-250121-en.pdf>.

The Living Conditions Survey of 2015, conducted by Statistics South Africa (Stats SA), showed that 3.1 million people lived below the lower-bound poverty line (then R647 and now R840 per month). The same survey found that 35.1 million adults, about 49.2% of the total population, were living below the upper-bound poverty line (then R992 and now R1 268 per month). People living in Limpopo and the Eastern Cape experienced the highest levels of poverty, with 67% of their residents living in poverty.

While a comprehensive assessment of the effects that both the COVID-19 pandemic and the lockdown has had on the economy, poverty and human rights at this stage would be a limited one, a few preliminary studies illustrating the short-term and possible long-term impacts thereof have been conducted.





3. THE RIGHT TO HEALTHCARE

The National Income Dynamics Study – Coronavirus Rapid Mobile Survey (NIDS-CRAM) survey found that poor people, bear a disproportionately higher burden of poor health.⁸ Income-related health inequality likely worsened during the pandemic as employed people with higher incomes typically engage in work that would permit them to work from home, while low-income and informal workers typically engage in physical labour or semi-skilled work, which requires their presence in the workplace.⁹ Such groups of people who are in remote areas could additionally experience heightened vulnerabilities associated with the inability to pay for travel to access health facilities far from their communities.

Before the COVID-19 pandemic, Stats SA data reported that 92.5% of South Africans believed their health to be good, very good, or excellent.¹⁰ Additionally, 53% of public healthcare users were ‘very satisfied’ with the healthcare institutions while 5.2% were ‘very dissatisfied’.¹¹ In contrast, 92.6% of private healthcare users were ‘very satisfied’ with healthcare institutions, while only 0.6% were ‘very dissatisfied’.¹² Stats SA data estimates that only 16.4% of South Africans belong to a medical aid scheme and can access private healthcare.¹³ The disparity between the number of users in the public healthcare sector and the private healthcare sector means the private healthcare sector is well resourced and can easily provide for the healthcare needs of its clients. Conversely, the public healthcare sector is overburdened and experiences difficulty providing quality healthcare services to

8 C Nwosu and A Oyenubi *Income-related health inequalities associated with COVID-19 in South Africa* (15 July 2020) <https://cramsurvey.org/wp-content/uploads/2020/07/Nwosu-Estimating-income-related-health-inequalities-associated-with-COVID-19.pdf>.

9 Oxfam International (note 5 above).

10 Statistics South Africa *General Household Survey 2018*, 24 <http://www.statssa.gov.za/publications/P0318/P03182018.pdf>.

11 Ibid, 25.

12 Ibid.

13 Ibid, 26.



its users. Such healthcare discrepancies were thrown into sharp relief during the COVID-19 pandemic. While the envisaged National Health Insurance (NHI) will aim to mitigate existing inequalities in healthcare, it has yet to be implemented and the roadmap for its implementation indicates that South Africa is not yet ready for its rollout. The Commission will continue to monitor its conceptualisation and eventual implementation of the NHI.

The Wave 1 NIDS-CRAM surveys published in July 2020, found that one in four respondents (23%) reported they were unable to access medication, condoms or contraception during a four-week period and 11% of HIV-positive pregnant mothers surveyed reported that they ran out of anti-retroviral treatment (ART) in May and June 2020.¹⁴ The majority of new and prospective mothers who ran out of ART reported that they did not go to the clinic to collect their treatment, as they were afraid of contacting the Coronavirus.¹⁵ This is a very worrying statistic, given that ART is essential for the prevention of mother-to-child transmission of HIV. Of the pregnant women surveyed, it was found that 16% had gone without antenatal care for a period of two months. This too, is extremely troubling as regular antenatal visits are crucial for the well-being of pregnant women and unborn children – and are essential for the early mitigation of pregnancy-related complications. The long-term public health impact of these interruptions is likely to be greatly detrimental. Robust awareness campaigns by the Department of Health (DoH) was required, to promote an understanding of the safety protocols at public healthcare facilities and the need for continued clinic and hospital visits, particularly for expectant mothers and patients with chronic illness and were missing for the majority of South Africans.

¹⁴ R Burger et al *Examining the unintended health consequences of the COVID-19 pandemic in South Africa* (15 July 2020)

¹⁵ Ibid.

In May 2020, reports by DoH to the Portfolio Committee on Health (PCH) indicated some major successes in the management of the COVID-19 outbreak in South Africa.¹⁶ The PCH congratulated the DoH on the speedy development of field hospitals, particularly in the Western Cape and KwaZulu-Natal. However, the PCH indicated their unhappiness at the slow pace of testing for COVID-19 and the backlog in the procurement of personal protective equipment (PPE).¹⁷

During the second wave of the pandemic (between December 2020 and January 2021) following super spreader events and the December vacation period, the PCH was less impressed with the DoH, citing a failure to adequately prepare for the second wave.¹⁸ In response, the government indicated that hospitals were filled to capacity and that there was a great need for beds, oxygen tanks, and additional staff. Overall, the second wave had brought greater difficulties to already strained health care systems, particularly since a new strain of the virus was infecting larger numbers of people, and the virus had infected a number of healthcare workers. While these were reasonable and acceptable arguments, it is unclear if the DoH was properly prepared for the second wave, which was inevitable given that December, is a typical holiday season in South Africa. There will undoubtedly be lessons learned from the management of this pandemic for application for future planning for third and possible fourth waves of the coronavirus pandemics, other possible pandemics and the implementation of the NHI – many of which the Commission will monitor.

In December 2020, the Office of the High Commission for Human Rights (OHCHR) developed a focus paper on Human Rights and Access to Vaccines. The key messages emanating from this paper were that:

- a) COVID vaccines should be treated as global goods;
- b) The pandemic is a problem requiring a global response;
- c) The unfair distribution and/or hoarding of vaccines disregards international legal norms and the Sustainable Development Goals;
- d) COVID-19 vaccines should be affordable to all and accessible without discrimination;
- e) Vaccine procurement must be prioritised through transparent protocols;
- f) Private profit should not be prioritised over public health;
- g) Non-discriminatory access to accurate health information is essential; and
- h) Pharmaceutical companies, like all companies, have a responsibility to respect human rights.¹⁹

A number of COVID-19 vaccines have been approved for distribution in various countries. Well-resourced countries have already begun vaccinating large segments of their populations, while more than 130 countries are yet to receive vaccines.²⁰ Vaccine allocation and distribution has been skewed in favour of richer countries, particularly those in the global north. According to The Lancet, '[a]s of March 21, 2021, 78% of 447 million deployed doses of COVID-19 vaccines were in only ten countries.'²¹ Lancet expressed dismay at the lack of a human rights element to the vaccine-access discourse globally and the underwhelming plans for the distribution of vaccines to low and middle-income countries.²²

16 Parliamentary Monitoring Group *COVID-19 Response update by Health Ministry/Department; Committee Report on Health Budget* (28 May 2020) Portfolio Committee on Health: <https://pmg.org.za/committee-meeting/30329/>.

17 Ibid.

18 Parliamentary Monitoring Group *Minister on COVID-19 Vaccine Rollout strategy & status of healthcare services in provinces* (07 January 2021) Portfolio Committee on Health: <https://pmg.org.za/committee-meeting/31734/>.

19 OHCHR 'Human Rights and Access to COVID-19 Vaccines' (17 December 2020): https://www.ohchr.org/Documents/Events/COVID-19_AccessVaccines_Guidance.pdf.

20 Al Jazeera 'Developing nations demand equal access to coronavirus vaccines' (10 March 2021) <https://www.aljazeera.com/news/2021/3/10/countries-continue-push-for-equal-access-to-coronavirus-vaccines>.

21 The Lancet 'Human rights and fair access to COVID-19 vaccines: the International AIDS Society–Lancet Commission on Health and Human Rights' (2021): <https://www.thelancet.com/action/showPdf?pii=S0140-6736%2821%2900708-X>.

22 Ibid.

Vaccine rollout has been relatively slow in South Africa, which whether the fault of the national government or international companies and States, amounts to a violation of the right to healthcare as articulated in section 27 of the Constitution. It also violates the spirit of global cooperation, which the OHCHR and other organisations have articulated and which treaty bodies and the Sustainable Development Goals aim to achieve. Professor Glenda Gray, CEO of the South African Medical Research Council indicated that the “current slow pace of vaccination could be attributed largely to the fact that South Africa was still in a pre-roll-out phase, ahead of final registration of the Johnson and Johnson vaccine by the South African Health Products Regulatory Authority (SAHPRA).”²³ However the slow rollout of vaccines in South Africa remains concerning from a health and human rights perspective.

South Africa, together with several developing nations and Médecins Sans Frontières (MSF), proposed in 2020 that the World Trade Organisation (WTO) waive the patents of vaccine manufacturers to increase the global production of vaccines and facilitate access to vaccines for developing nations.²⁴ On 11 March 2021, the WTO denied the proposal for a third time after the United States, United Kingdom, European Union and others objected to the proposal.²⁵ It is unclear at present how this affects the availability of vaccines to South Africa; however, it is unlikely that such a waiver would have had short-term impacts on the availability of vaccines given the complexity involved in the manufacture of the vaccines. Long-term and future access might be affected.

The mental and physical health effect of the COVID-19 pandemic and its ensuing national lockdowns has highlighted the need for equity in access to healthcare services both at the national and international level. According to Dr. Salim Safurdeen Abdool Karim, Co-Chairperson of the South African Ministerial Advisory Committee for COVID-19, in early 2020, there were 7.9 million people living with HIV and about a 250 000 cases of tuberculosis (TB) in South Africa in 2018. COVID-19 added severe strain to the already overburdened health care system, particularly for people with comorbidities such as HIV or TB, who are at higher risk of developing severe COVID-19 illness. This was indeed true for the national health system and improvements in the management of the healthcare system are required to address the fault lines of poverty and inequality in the health system in South Africa. It is important to note that there is a bi-directional relationship between HIV (and indirectly TB) and poverty. HIV is an outcome of poverty due to poor access to healthcare services and information and propels unskilled workers into migrant work or sex work.²⁶ Similarly, HIV can drive a person into poverty from poor economic productivity, lost school and more.²⁷

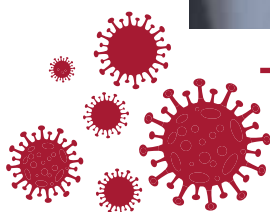
23 T Cremer ‘List outlining eligibility for ‘Phase 2’ vaccination roll-out to be released soon’ Cremer Media (5 March 2021).

24 Ibid.

25 A Karpan ‘WTO fails to reach deal on COVID IP waiver proposal, again’ Law 360 (11 March 2021): <https://www.law360.com/articles/1363457/wto-fails-to-reach-deal-on-covid-ip-waiver-proposal-again>.

26 International Labour Organisation ‘HIV/AIDS and poverty: the critical connection’ (2005).

27 Ibid.



4. THE RIGHT TO EDUCATION

The right to education offers a multitude of opportunities at an individual level not for only personal development, but in the context of poverty, an opportunity for better employment prospects and income, which can lead to social mobility.²⁸ States which invest in advancing the right to education, improve their overall long-term prospects of growth and stability. Post-apartheid, South Africa has gained tremendous ground in providing close to universal access to education. Despite these gains however, the Commission has long decried the state of access and infrastructure most pronounced in areas marked by poverty.²⁹ Access to education in general was adversely affected by the lockdown as all schools in the country were closed.³⁰ The temporary and long-term impact of a loss of school-going days, especially for children in early education is devastating.

As the lockdown measures were eased, schools reopened. In July 2020, four months after the national state of disaster was declared, Stats SA reported that 72.9% of learners were participating in home schooling during the lockdown.³¹ There were however disparities between home schooling for children in public schools (particularly in poorer areas, rural areas and informal settlements) and those in private schools. Of those learners that attend private school, 83.5% participated in home schooling during the lockdown, while the same was true for only 67.1% of children who attend public

28 I Ozturk 'The Role of Education in Economic Development: A Theoretical Perspective' (2008) *Journal of Rural Development and Administration* XXXIII(1).

29 South African Human Rights Commission *Report of the Public Hearing on the Right to Basic Education* (2006) <https://www.sahrc.org.za/home/21/files/Reports/Right%20to%20basic%20education%202006.pdf>.

30 Department of Basic Education 'Statement by the Minister of Basic Education, Mrs Angie Motshekga at the inter-ministerial media briefing on the COVID-19 following the announcement by President Cyril Ramaphosa' (16 March 2020) <https://www.education.gov.za/Newsroom/MediaReleases/English/tabid/2322/ctl/Details/mid/8847/ItemID/7811/Default.aspx>.

31 Stats SA *Social impact of COVID-19 (Wave 3): Mobility, Migration, and Education in South Africa* (27 July 2020) <http://www.statssa.gov.za/publications/Report-00-08-04/Report-00-08-04July2020.pdf>

school.³² Of the respondents, 51% said they used educational material sent to them by their school.³³ A small percentage of approximately 5% of respondents indicated they had used material on radio, while 28% made use of the material on television and 46% of respondents indicated that they used online material that was made available by the Department of Basic Education (DBE).³⁴ More than three-quarters of respondents (75,9%) reported that they had smartphones that could be used for home learning while 36,1% had access to tablets and 61,2% could use laptops to support home learning.³⁵

The NIDS-CRAM survey results indicated that in November 2020, 98% of survey respondents indicated that their children were physically attending school.³⁶ These figures are, however, limited as the survey asked whether children had been to school in the past week. Many schools opened but opened on a rotational basis, while more affluent schools adopted mixed learning systems. The latter approach included online lessons, while poorer schools, (quintiles one to three) could not adopt such measures as many children have limited access to electricity, computers, and the internet.³⁷ Therefore, while a child may have attended school at least once a week, it is unlikely that optimal learning could take place at home on the remaining school days. Noting that the right to access education is a right immediately realisation in South African law, the impact of serious limitations on actual learning has not been contested through the courts.

The impossibility of social distancing in public schools, especially quintile one, two and three schools, which are largely overcrowded and under-resourced, further disadvantaged learners from families, who live in poverty as they lost more school days than learners did from better-resourced schools.³⁸ Furthermore, the re-opening of schools in the midst of a pandemic, while urgently needed further highlighted and exacerbated existing inequalities in the education system. Access to PPE was inconsistent within and amongst provinces and poor infrastructure in many schools hindered re-opening efforts.³⁹ Government's efforts at ensuring access to basic education during a pandemic were varied and the result on the effectiveness thereof fall out of the scope of this study, but will be examined by the Commission in the coming year.

Access to water and sanitation at rural and peri-urban schools has been a challenge for a number of years. The Commission has previously directed that the DBE take urgent measures to supply all public schools with sufficient water and decent sanitation.⁴⁰ In 2014, the DBE undertook to provide portable water and adequate sanitation to all public schools by the end of the 2014/2015 financial year.⁴¹ The progress made on implementing this recommendation has been wholly inadequate as public schools still experience water and sanitation backlogs. This has exacerbated existing inequalities in the education system. Access to water and sanitation is essential in the absence of a pandemic for hygiene and health purposes. These services are completely indispensable due to the need for regular hand washing, disinfecting and social distancing.

32 Ibid.

33 Ibid.

34 Ibid.

35 Ibid.

36 N Mohohlwane et al School during the COVID-19 pandemic: An update from the Wave 3 of the NIDS-CRAM data (17 February 2021).

37 Stats SA (note 8 above).

38 N Mohohlwane (note 28 above).

39 Amnesty International 'Failing to Learn the Lessons: The Impact of Covid-19 on a Broken and Unequal Education System' (2021): <https://www.amnesty.org/download/Documents/AFR5333442021ENGLISH.PDF>.

40 South African Human Rights Commission *Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa: 2014* <https://www.sahrc.org.za/home/21/files/FINAL%204th%20Proof%204%20March%20-%20Water%20%20Sanitation%20low%20res%20%282%29.pdf>.

41 Ibid, 15.



The Commission conducted an electronic survey on school readiness for reopening in August 2020.⁴² The survey received a total of 5 374 responses from all the nine provinces. Of concern was that 271 of the respondents reported that their schools do not have access to water and 624 respondents reported not having sufficient facilities for washing hands with water and soap.⁴³ The majority of the schools with water challenges were in Limpopo, the Eastern Cape, and KwaZulu-Natal.⁴⁴

Children who live in poverty were particularly affected by the closure of schools as many of them benefit from the National School Nutrition Programme (NSNP), which guarantees them at least one meal a day during the week. The absolute need of this anti-hunger policy was greatly highlighted during the pandemic. Equal Education and two school governing bodies instituted legal action against the Minister of Basic Education and other respondents seeking the continuation of the NSNP, which had been suspended during the national lockdown.⁴⁵ The Court ordered the Minister and MECs to:

*Ensure that the NSNP is implemented in such a manner that it provides daily meals to all qualifying learners, to ensure proper exercise of the rights of learner to education and to enhance their learning capacity, whether they are attending school or studying away from school as a result of the COVID-19 pandemic.*⁴⁶

This progressive judgment directly links the NSNP, and therefore the right to food, to the right to education. The judgment makes specific reference to General Comment no 19 of the Committee on the Rights of the Child, which provides that the state should not take deliberate retrogressive measures in relation to economic, social, and cultural rights, unless fully justified. It further recognises the government's duty to provide food to learners, which extends beyond those who are physically present in schools, but to those schooling at home as well. The suspension of the NSNP during the closure of schools was therefore interpreted by the court as a violation of both the right to education and the right to food. The judgment champions children's rights by highlighting the inextricable link between the rights to food and education.

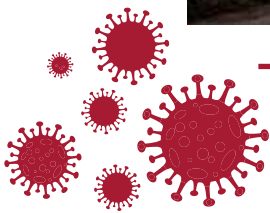
42 South African Human Rights Commission 'Press Release: SAHRC conducts electronic survey on school readiness'(21 September 2020) <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/2462-press-release-sahrc-conducts-electronic-survey-on-schools-readiness>.

43 Ibid.

44 Ibid.

45 *Equal Education and Others v Minister of Basic Education and Others* 2021 (1) SA 198 (GP).

46 Ibid.



5. THE RIGHT TO HOUSING

The enforcement of a national lockdown at the beginning of the COVID-19 pandemic in South Africa included a moratorium on evictions for certain levels of lockdown.⁴⁷ The regulations published on 26 March 2020, when the national lockdown commenced, stated that “all evictions and the execution of attachment orders, both movable and immovable, including the removal of movable assets and sales in execution is suspended with immediate effect for the duration of the lockdown”.⁴⁸ Empirical evidence, however, has shown that evictions continued, despite the moratorium, and in contravention of the law.

In what can only be described as one of the most callous acts of human rights abuse in democratic South Africa, the country was horrified when a video depicting a naked man (Mr. Bulelani Qolani) being dragged out of a shack in an informal settlement went viral on the internet.⁴⁹ The video illuminated that even in a democratic society founded on the values of freedom, dignity, and equality, human rights abuses similar to those enforced by the apartheid government to subdue and humiliate black people, persist. This eviction was among several other evictions carried out by the City of Cape Town (CoCT), without a court order, during the national state of disaster.⁵⁰

The Commission and others instituted legal action against the CoCT to interdict and restrain the CoCT from evicting people without a court order during the state of disaster and from using excessive force, destroying, and/or confiscating the property of the evictee(s) during the eviction process.⁵¹

⁴⁷ Department of Co-Operative Governance and Traditional Affairs *Directions issued in terms of Regulation 10 of the Regulations under the Disaster Management Act, 2002* Government Gazette No: 43167, (26 March 2020).

⁴⁸ Ibid.

⁴⁹ R Howa & T Tembo ‘WATCH: Cape Town enforcement officers violently eject naked man from shack’ IOL news (1 July 2020) <https://www.iol.co.za/news/south-africa/watch-cape-town-enforcement-officers-violently-eject-naked-man-from-shack-50240058>.

⁵⁰ *South African Human Rights Commission and Others v City of Cape Town and Others* (8631/2020) [2020] ZAWCHC 84 para 1.

⁵¹ Para 2.

The court granted an interim interdict in favour of the Commission and awarded Mr Qolani monetary compensation for the destruction of his home.⁵² There was, however, no remedy for the restoration of dignity, or the dignity of the myriad South Africans, who are either evicted or live with the threat of eviction daily.

At the beginning of the National State of Disaster, the Commission joined a multi-stakeholder platform convened by the National Department of Human Settlements (DHS), civil society organisations and housing tribunals and housing foundations. The platform, for consultation, sought to discuss the DHS's response to the impacts of COVID-19 on people living in poorly serviced, dense, and crowded informal and other settlements. The consultations dealt with issues of de-densification, evictions, and informal settlement upgrading and other housing challenges.

Concerns around the lag in the provision of housing for large numbers of poor people, comprising largely back yard dwellers, hostel dwellers, informal communities, child headed households, which were already a significant challenge in post-apartheid South Africa; was severely affected by the pandemic. Within this milieu, government was made acutely aware of living conditions where people lived in unsafe structures, with poor ventilation, in confined spaces unable to observe distancing, and without ready access to adequate water and sanitation. In the context of the pandemic, these conditions lent to an immediate and heightened impact by the pandemic for people who are vulnerable and poor, beyond future plans for the provision of housing and accommodation which meets norms and standards.

The right of access to adequate housing is a basic human right, which is essential for the realisation of numerous other rights. The government's failure to meet its Upgrading Informal Settlements Programme targets is unreasonable and not only normalises informal living arrangements, but amounts to a failure to progressively realise the right to housing as envisaged by section 26 of the Constitution.⁵³ In the 2019/2020 financial year, the Department of Human Settlements failed to upgrade 25% of the number of households in informal settlements it had targeted for upgrading.⁵⁴ This demonstrates a failure to progressively realise the rights to adequate housing.

Illegal evictions, which are particularly prevalent in low-income residential areas, need to be addressed while the country works towards the progressive realisation of the right housing for everyone. Various laws and policies are aimed at preventing illegal evictions - the practice, however, continues.

In May 2020, the Equality and Economic and Social Rights sub-units of the Commission produced a policy brief on the de-densification of informal settlements.⁵⁵ The brief highlighted the urgent need for the upgrading of informal settlements and the provision of basic services to such communities. The brief also raised the concern about the inability of residents in informal settlements to social distance and difficulty with tracing, tracking and testing for COVID-19 in such dense and informal environments. Despite policies and plans for de-densification and *in-situ* upgrading of informal settlements since 2010, there has been very little action by the DHS. In June, following cases of Covid-19 in Alexandra Township in Sandton, Johannesburg, residents expressed frustration at the slow pace of de-densification, promised relocations and upgrading.⁵⁶ Similar frustrations have been

52 Para 78.

53 The purpose of the programme is to incrementally improve, formalise and incorporate into the city informal residential areas by extending land tenure security, infrastructure and services to residents. See Department of Human Settlements *National Housing Code 2009*.

54 Department of Human Settlements *Annual Report 2019-2020*, 50.

55 South African Human Rights Commission 'COVID-19 Policy Brief on the De-Densification of Informal Settlements' (2020) Unpublished.

56 D Webster 'Relocation rears its head: Bringing de-densification home in Alexandra' *Mail and Guardian* (29 June 2020).

expressed across the country.⁵⁷ The Commission will continue to engage the Department of Human Settlements on the presence and poor management of informal settlements.

The Commission worked with Open Society Foundations (OSF), other organisations and stakeholders to develop a Model Emergency Housing legislation, in response to existing needs. Following the outbreak of the COVID-19 pandemic, people were directed to stay at home, while many of those people lost their homes due a loss of income and their inability to pay their rent or housing bond. Some individuals and families, in precarious housing situations were greatly affected by a loss of housing and shelter, resulting in exacerbated vulnerability. The model legislation seeks to provide activists and lawmakers with sample legal provisions that could be used to protect the right to housing during the COVID-19 pandemic and the economic crisis consequent to it.⁵⁸ It is hoped that the model legislation provides a best practice minimum framework globally to protect the right to housing, where such rights are rendered even more precarious and vulnerable in the face of exceptional circumstances such as pandemics. Such minimum standards and protections will greatly advance efforts to better protect persons and to hold government to account vulnerable to evictions, unacceptably large numbers of persons who are homeless, those who live in informal settlements, and many others; and by NHRIs to hold the state accountable.

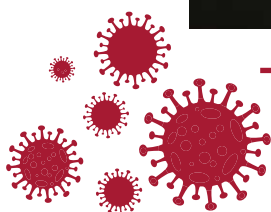
The rural/urban divide caused by apartheid spatial development patterns is a concerning phenomenon in South Africa. People who live in rural communities live on the margins of the country and are largely deprived of access to many of the opportunities available in urban areas. People who live in rural communities are less likely to have access to clean and reliable water sources or sanitation.⁵⁹ There remain disparities in the availability and quality of healthcare services between rural and urban areas. In rural areas, healthcare facilities are sparse and may not have the necessary facilities to offer a wide range of services needed by people.⁶⁰ This disparity will likely have adverse implications for equitable vaccine roll out, as rural areas will not have adequate infrastructure to vaccinate everyone. Spatial justice is essential for the realisation of this right, people ought to live dignified lives and have equitable access to economic and social services regardless of where they live. The Commission's rural development focal area will continue to work with civil society organisations and the State to improve health, housing and other service delivery outcomes in rural and peri-urban areas in South Africa.

57 See for example K Palm 'Dunoon Residents Left Frustrated by Slow Pace of De-Densification Project' *Eyewitness News* 7 September 2020).

58 Open Society Foundations 'Model Emergency Housing Legislation: Protecting the Right to Housing during COVID-19' (2020).

59 South African Human Rights Commission (note 31 above).

60 South African Human Rights Commission *Access to Emergency Medical Services in the Eastern Cape Hearing Report* 2015 <https://www.sahrc.org.za/home/21/files/SAHRC%20Report%20on%20Access%20to%20Emergency%20Medical%20Services%20in%20the%20Eastern%20Cape....pdf>.



6. THE RIGHT TO SOCIAL PROTECTION

Investing in an effective social security system is essential in fostering development that is inclusive, equitable, and sustainable.⁶¹ In addition, "... several kinds of social protection programmes contribute to income generation and enable recipients to accumulate and protect assets, building their resilience in the face of shocks and increasing their chances of escaping extreme poverty."⁶² It is apparent that the social security system in South Africa has assisted with specific elements of poverty, but has failed to lift people out of poverty. No clear research is available to demonstrate whether the social security system has changed the experience and reality of poverty. However, it is apparent that the number of people falling into poverty is steadily increasing.⁶³ Despite billions of Rands being spent on social security over decades, poverty rates have remained stagnant. The COVID-19 pandemic comes at a time when South Africa is reeling from poor delivery the loss of resources to corruption, a growing population, and immense adverse economic pressure. The impact has been that an unacceptably large number of people, including children, older persons and persons with disabilities experience food insecurity and struggle to provide for their basic needs.⁶⁴

61 S Brockerhoff 'A review of the development of social security policy in South Africa' (July 2013) SPII <http://spii.org.za/wp-content/uploads/2018/02/2013-07-SPII-Working-Paper-6-Review-of-Social-Security-Policy.pdf>.

62 UNGA 'Human Rights and Extreme Poverty' (09 August 2010): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N10/478/79/PDF/N1047879.pdf?OpenElement>.

63 Ibid 11.

64 Statistics South Africa 'General Household Survey 2019' (17 December 2020) 60 <http://www.statssa.gov.za/publications/P0318/P03182019.pdf>.



To mitigate the economic hardship caused by the national lockdown, the government implemented several social security measures to support people who were adversely or at risk of being adversely affected by the limitations placed on economic activities. For people who are formally employed and registered with the Unemployment Insurance Fund (UIF), the government implemented the Temporary Employer-Employee Relief Scheme (TERS), which provided payments to workers whose income had been negatively affected by the national lockdown.⁶⁵ Recipients of the Child Support Grant (CSG) received a top up amount of R500 per month per caregiver, in addition to the R440 grant per child.⁶⁶ Other recipients of social grants also received top ups of R250 per month.⁶⁷ The TERS and CSG top up grants, which were granted to those in need, ceased before the end of 2020, despite the lack of economic recovery. The NIDS-CRAM surveys conducted in the second half of 2020 following the pandemic and lockdown found that household hunger increased across the country with 18% of households surveyed in November/December reporting that they had experienced hunger; which the authors partially attributed to the phasing out of government support.⁶⁸ The phasing out of significant emergency social protection while the economy is still in recovery could have severe short-term and long-term consequences. It will greatly compromise the health and physical and mental well-being of people in economic distress.

65 Department of Employment and Labour 'Unemployment and Labour on UIF Coronavirus COVID-19 TERS payments' (27 October 2020) <https://www.gov.za/speeches/unemployment-and-labour-uif-coronavirus-COVID-19-payment-funds-exceed-r51-billion-27-oct>.

66 Cyril Ramaphosa 'Statement by President Cyril Ramaphosa on further economic and social measures in response to the COVID-19 epidemic' (21 April 2020) <http://www.thepresidency.gov.za/speeches/statement-president-cyril-ramaphosa-further-economic-and-social-measures-response-COVID-19>.

67 Ibid.

68 S van der Berg et al *Hunger in South Africa during 2020: Results from wave 3 of NIDS-CRAM* (17 February 2021), 3 <https://cramsurvey.org/wp-content/uploads/2021/02/10.-Van-der-Berg-S.-Patel-L.-Bridgman-G.-2021-Hunger-in-South-Africa-during-2020-Results-from-Wave-3-of-NIDS-CRAM-1.pdf>.

Section 13 of the Social Assistance Act makes provision for the Social Relief of Distress Grant (SRDG).⁶⁹ The Regulations of the Social Assistance Act set out the eligibility criteria for SRDG. Following the COVID-19 pandemic, unemployed people, people who engage in informal trade, waste pickers, domestic workers, taxi drivers, and other workers who engage in precarious work were disproportionately affected, as they did not meet the requirements for the social security benefits given to formalised workers. The only social security benefits such individuals could claim was that provided through the novel COVID-19 Social Relief of Distress Grant of R350 per month.⁷⁰ The requirements for this grant were that the applicant must be a citizen, permanent resident or refugee, resident within South Africa, unemployed not receiving any income, not receiving any social grant, not receiving any unemployment insurance benefit, not receiving a stipend from the National Student Financial Aid Scheme, not receiving any other government COVID-19 support and not resident in a government funded or subsidised institution.

While the special COVID-19 SRDG was an extraordinary measure on the part of government, it is important to note that the R350 social relief grant is markedly lower than the R585 Food Poverty Line, which is the amount of money needed for an individual to afford basic food items in order to sustain life.⁷¹ It falls far below what a person needs in order to sustain life and this makes its material impact questionable.

The government has recently affirmed its commitment to consider the introduction of a basic income grant (BIG) in South Africa in an effort to alleviate poverty.⁷² In 2018, the Commission published a policy brief detailing the absolute necessity and urgency of implementing a BIG in line with the country's international and national obligations in relation to social assistance.⁷³ It is therefore encouraging that the government has begun assessments of the viability of implementing the BIG, in line with the Commission's recommendations in its 2018 policy brief. Although still to be tested in a court of law, the Commission believes that the failure by the State to provide a BIG is a violation of Section 27 of the Constitution, which guarantees everyone the right to have access to social security when they are unable to support themselves.

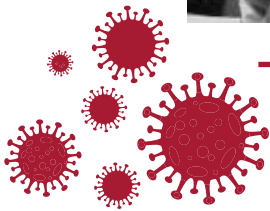
69 Social Assistance Act 13 of 2004.

70 The Special COVID-19 Social Relief of Distress grant is issued to all South Africans, permanent residents, refugees and Zimbabwean and Angolan special permit holders who have no income or other social grant during the pandemic. It was initially intended to be issued for three months and was extended a number of times. See <https://www.gov.za/covid-19/individuals-and-households/social-grants-coronavirus-covid-19>.

71 Statistics South Africa 'Food Poverty Lines, 2020' <http://www.statssa.gov.za/publications/P03101/P031012020.pdf>.

72 Business Tech 'Government to look at basic income grant for South Africa: Ramaphosa' <https://businesstech.co.za/news/finance/459738/government-to-look-at-basic-income-grant-for-south-africa-ramaphosa/>.

73 South African Human Rights Commission *Basic Income Grant* (2017-2018) <https://www.sahrc.org.za/home/21/files/A%20Policy%20Brief%20on%20a%20Basic%20Income%20Grant%202017-2018.pdf>.



7. EMPLOYMENT

Unemployment and poverty are inextricably linked. At a very basic level, employment can lift an individual or household out of poverty and allow an individual or household to access economic and social rights and basic services. Article 6 of the International Covenant on Economic Social and Cultural Rights (ICESCR) recognises the right to work. While the Constitution does not specifically recognise the right to work, it does recognise the right to fair labour conditions. Furthermore, the Constitutional Court has twice recognised the right to work and its link to one's dignity. In *Affordable Medicines Trust v Minister of Health*, the Court stated that:

Freedom to choose a vocation is intrinsic to the nature of a society based on human dignity as contemplated by the Constitution. One's work is part of one's identity and is constitutive of one's dignity. Every individual has a right to take up any activity which he or she believes himself or herself prepared to undertake as a profession and to make that activity the very basis of his or her life. And there is a relationship between work and the human personality as a whole. "It is a relationship that shapes and completes the individual over a lifetime of devoted activity; it is the foundation of a person's existence."⁷⁴

In addition, in *South African Informal Traders Forum v City of Johannesburg*, the Court found in favour of informal traders, who were being forcibly removed and denied the right to trade, by the City of Johannesburg. The Court found in favour of the Informal Traders Forum and stated that "[t]he ability of people to earn money and support themselves and their families is an important component of the right to human dignity. Without it [traders] faced 'humiliation and degradation,'" and the "City denied

⁷⁴ *Affordable Medicines Trust and Others v Minister of Health and Another* (CCT27/04) [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC) (11 March 2005) 59.



their breadwinners' lawful entitlement to conduct their businesses.”⁷⁵ Furthermore, the Court was scathing of the actions by the City of Johannesburg, which it stated had “gone about achieving its objectives in flagrant disregard of the traders' rights”⁷⁶

Stats SA's two instruments – the Labour Force Survey (LFS) and the Quarterly Employment Survey (QES) reflects employment statistics. The LFS reflects employment information from households that includes agricultural workers, self-employed workers, unpaid family workers, and private household workers. The QES measures formal employment, excluding the agricultural sector. According to the quarter two LFS, the number of employed people decreased by 2.2 million between the first and second quarters of 2020, which was the largest quarter on quarter decline in the survey's history.⁷⁷ The number of unemployed people also decreased. However, this curious shift was due mainly to people in the “unemployed” category moving to the “not economically active” category. The decrease in the unemployed category of persons could mean that people may have stopped actively seeking work.⁷⁸

Despite the significant job losses in employment between quarter one and quarter two of 2020, quarters three and four showed a recovery of approximately 870 000 employed persons – which is not a significant upturn compared with the loss of 2.2 million jobs in quarter two, but a large number nevertheless, given the poor state of the economy.⁷⁹ However, according to the NIDS-CRAM survey, “October active employment as a proportion of the adult population recovered close to February pre-pandemic levels.⁸⁰ The reason for the differing findings is that the sample of people used in the NIDS-CRAM survey happened to experience a faster employment recovery. The report nevertheless states, “This is still a recovery amongst a substantial part of the national population.”⁸¹ It is hoped that the upcoming Stats SA LFS will verify these results.

75 South African Informal Traders Forum and Others v City of Johannesburg and Others; South African National Traders Retail Association v City of Johannesburg and Others (CCT 173/13 ; CCT 174/14) [2014] ZACC 8; 2014 (6) BCLR 726 (CC); 2014 (4) SA 371 (CC) (4 April 2014) 3.

76 Ibid 7.

77 Statistics South Africa 'Quarterly Labour Force Survey Quarter 2: 2020 (2020): <http://www.statssa.gov.za/publications/P0211/P02112ndQuarter2020.pdf>.

78 Ibid.

79 Statistics South Africa 'Quarterly Labour Force Survey Quarter 4: 2020 (2020): <http://www.statssa.gov.za/publications/P0211/P02114thQuarter2020.pdf>.

80 Nwosu and Oyenubi (note 6 above).

81 Ibid.

Unfortunately, the number of unemployed persons also increased in quarter four by approximately 700 000 to 7.2 million people when compared with quarter three of 2020, while the number of discouraged work-seekers increased by 234 000 during the same period.⁸² Accordingly, the current unemployment rate is 32.5%, and 42.6% under the expanded definition of unemployment – meaning that South Africa has one of the highest unemployed rates in the world.⁸³ Almost half of all job seekers in the Eastern Cape are unemployed.⁸⁴

According to Ismail, most job losses occurred in the informal sector, mainly in community and social services, suggesting “mostly lower-income jobs were impacted by the pandemic”.⁸⁵ While such sectors are very flexible and could result in quick recoveries, given South Africa’s staggering poverty level, even short-term losses in employment could have devastating impacts on the lives of people, including their ability to access food, healthcare, education and more.

In 2018, the Committee on Economic, Social and Cultural Rights (CESCR) in its concluding observations and recommendations (SA COBS) to South Africa’s country report submission, expressed concern at the large number of workers, including the self-employed, that are working in the informal economy without labour rights and with insufficient social protection. The CESCR expressed further concern at the lack of legislative framework regulating the informal economy, exposing workers therein to the risk of abuse from employers and abuse from law enforcement authorities. In response, the CESCR recommended that the State:

- a) “Introduce a legislative framework to regulate the informal economy with a view to protecting workers therein from abuse and harassment, including by law enforcement officials;
- b) Expand the coverage of the labour and social security legislation to these workers;
- c) Facilitate the transition of workers in the informal economy to the formal economy, taking into account the International Labour Conference Recommendation No. 204 on the transition from the informal to the formal economy;
- d) Prevent and mitigate the casualization or externalization of work in the formal economy;
- e) Strengthen the enforcement of the Amendments to the Labour Relations Act to this effect; and
- f) Collect information on the informal economy, including its scale and working conditions of workers therein, on a regular basis.”⁸⁶

To date the Commission is not aware of any steps to implement these recommendations, but is monitoring the implementation of SA COBS by the state. To this end, the Commission has disseminated same and requested information from State departments on the steps that they have taken toward the implementation thereof. Worryingly, many State departments were not aware of the SA COBS, and had not planned for, or implemented the recommendations.⁸⁷ Additionally, the Commission has continued calls for the implementation of a BIG (mentioned above) as a poverty-alleviation tool; particularly given that, the Social Relief of Distress grant is a short term mechanism for relief.⁸⁸ While there appears to be acceptance of a BIG in principle, it is hoped that its implementation will be expedited, given the high unemployment, poverty, and inequality rates in South Africa.

82 Ibid.

83 Ibid.

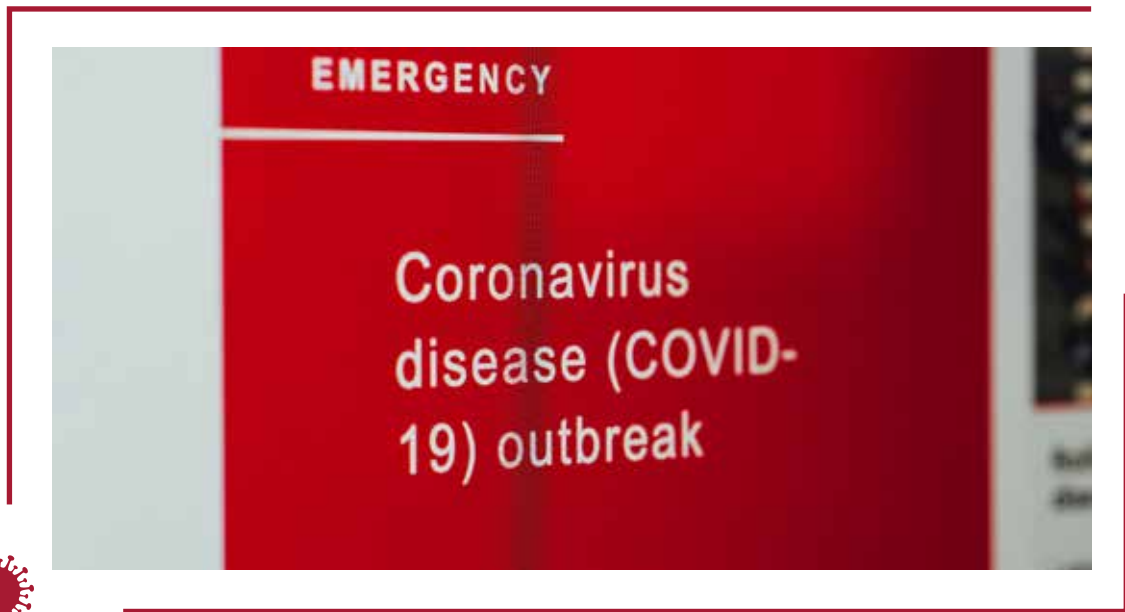
84 Ibid.

85 S Ismail *Recovery after the COVID crisis – SA Consumer Sector Outlook* (2021) Primaresearch.

86 CESCR ‘Concluding observations on the initial report of South Africa’ (12 October 2018) E/C.12/ZAF/CO/1.

87 The Commission hosted a dissemination seminar on 27 November 2019 and a State report-back workshop on 27 February 2020.

88 South African Human Rights Commission (note 52 above).



8. CONCLUSION

The COVID-19 pandemic has highlighted that states like South Africa, which have historically embedded poverty and inequality, and which have developing middle income economies, are severely comprised both in response to the pandemic, and in the realisation of their transformation agendas. The pandemic is a clarion call however, of the need to address poverty in all its dimensions, and has demonstrated how inextricably linked every person is to the well-being of every other person regardless of social identity and economic category. Responses to the social and economic consequences caused by COVID-19 demonstrate the urgency and priorities, which need to be adopted to mitigate the impact of the pandemic on vulnerable persons. Such mitigatory efforts will support programs toward short and medium term recovery and the ultimate objective of eradicating poverty and inequality. This research brief has shown that COVID-19 has both caused poverty and at the same time deepened the impact of poverty. This unprecedented event bodes ill for the enjoyment of constitutionally guaranteed rights and living standards in the country and should be the frame, which is authentically and closely considered, to inform recovery and transformation agendas in the future.

There has never been a more urgent need to deal with the systemic causes of poverty than the present. Such efforts require the implementation of existing legislation, policies and programmes through a pro-poor lens, and the introduction of new, progressive, targeted programmes that ensure the realisation of economic and social rights and, thereby, socio-economic transformation. An integrated response that is pro-poor is essential to address entrenched poverty and to limit the number of South Africans, who are already vulnerable, from falling into greater depths of poverty and suffering from the associated impacts on their rights and dignity. In the absence of such immediate responses, countries like South Africa, will continue to post daily mortality rates as a limited lens through which to measure the loss of life caused by the pandemic and thereby exclude loss of life caused through poverty in the face of the pandemic.







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