

**A CRITICAL ANALYSIS OF RETIREMENT REFORM IN SOUTH
AFRICA.**

by

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DECLARATION BY STUDENT

I declare that the mini-dissertation hereby submitted to the University of Limpopo for the degree of Master of Laws (Labour Law) has not been previously submitted by me for a degree at this or any other University; that it is my work in design and in execution, and that all material contained herein has been duly acknowledged.

A handwritten signature in black ink, appearing to read 'S. M. M. M.', written in a cursive style.

Surname, initials (title)

A handwritten date in black ink, written as '08-04-2025'.

Date

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DEDICATION

I dedicate this to my late grandparents Letloba and Ramokone Sebopa for they have believed in me from a very young age and it's all because of their rules and principles that i made it this far, Kea leboga ba bina Kgomo

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CHAPTER 1: INTRODUCTION AND HISTORICAL BACKGROUND

1.1 Introduction

Since the Pension Funds Act (PFA) was passed in 1956, the South African pension fund system has had a unique history.¹ The South African retirement fund industry covers all pension funds and their service providers, such as fund administrators, consultants, insurance brokers, life assurers, investment managers, stockbrokers and professionals such as lawyers, actuaries, and accountants.² The retirement funding system was formalised as early as the 1950s with the enactment of the PFA. The Act came into operation during the apartheid era and offered little relief to most retirement, provident, and pension fund members, thereby necessitating many subsequent reforms.³

Many changes have occurred in post-apartheid South Africa since 1994, necessitating overhauling the retirement funding systems.⁴ The retirement industry is divided into public-sector and private-sector funds, all regulated by different legislation. The PFA primarily regulates the private sector funds, while several public pension funds are controlled by their pieces of legislation. Pension funds are generally established to, among others, collect contributions from members to provide them with pension benefits when they are no longer working and invest monies on behalf of the fund for the benefit of the members.⁵

¹ Act 24 of 1956.

² Marumogae, M 'The need for effective management of pension fund schemes in South Africa in order to protect members' benefits' 2016(79) 614.

³ Nevondwe, L 'South African Social security and retirement reform: a long journey towards the redrafting of the New Pension Funds Act' (2010) 15(4) *Pension an International Journal* 287.

⁴ Joubert, F, & Van der Merwe, T 'Household saving and wealth in South Africa' (2021) 24(1) *South African Journal of Economic and Management Sciences* 10.

⁵ Marumogae, M 'Section 13a of The Pfa: Employer's Failure to Pay Employee's Contribution to the Employee's Pension Fund' (2015) 29(1) *Speculum Juris* 68-85.

In 2004, the National Treasury (NT) issued its first discussion paper, “Retirement Reform” (hereinafter referred to as the “2004 paper”).

The objectives of the 2004 paper had been, amongst others, (a) to encourage individuals to provide adequately for their retirement and the needs of their dependants, (b) to encourage employers and employees to provide for retirement funding as part of the remuneration contract, (c) to ensure that retirement funding arrangements would be cost-efficient, prudently managed, transparent and fair, (d) to promote the retention of purchasing power of pensions by ensuring adequate protection against the effects of inflation, within the resource constraints of the fund, (e) improve standards of fund governance, including trustee knowledge and conduct (f) protection of members’ interest, (g) accountability, and disclosure of material information to members and contributors, and lastly but not least, (h) to provide, through social assistance, an assured basic income entitlement to elderly persons without means.⁶

In 2007, the NT issued a second discussion paper titled “Social Security and Retirement Reforms” (from now on referred to as the “2007 paper”), which outlined seven proposals amongst others, included the governance of retirement funds, reform of the taxation system, establishment of a single fund for all South Africans called National Social Security Provident Fund, wage subsidy and the scrapping of the means test which was used for the old age grant.⁷

The pension fund system felt that the PFA might help to minimise poverty among older people and retired because of the worldwide social security

⁶ Retirement Reform discussion paper, 2004 p4.

⁷ In South Africa, social assistance is subject to means testing, which implies that the South African Social Security Agency (SASSA), established in terms of the Social Assistance Act, 13 of 2004, evaluates the income and assets of the person applying for social assistance to determine whether the person's means are below a stipulated amount. According to SASSA, the means test determines whether a person qualifies to receive a grant, as grants have been meant for those who most need them.

systems in the form of pension plans.⁸ The PFA's main goal was establishing a legal framework for the "registration, incorporation, regulation, and dissolution of pension funds" and other pertinent issues.⁹

1.2 Problem statement

Retirement planning is a crucial aspect of financial stability and well-being, particularly in the context of South Africa, where the socioeconomic landscape poses unique challenges. Despite the introduction of retirement reforms aimed at improving savings rates and providing better financial security for retirees, the effectiveness of these measures remains questionable. The national household saving rate in South Africa is notably low, reflecting broader financial behaviours and economic conditions that impede adequate retirement savings.¹⁰

A critical issue facing South Africa's pension system is that many pension beneficiaries are not saving enough for retirement. As a consequence, they often squander their benefits without adequately planning for the future.¹¹ This lack of savings during their working years results in retirees being financially vulnerable and heavily reliant on old age grants, which are insufficient to maintain the standard of living they had while earning a salary. This situation underscores a broader systemic problem: the failure to save adequately leads to increased poverty among retirees and significantly burdens the state's social security system.¹²

The recently enacted retirement reforms, particularly the Financial Sector Regulation Act of 2017, the Retirement Funds Default Regulations of 2019,

⁸ <https://www.pensionfundsonline.co.uk/content/country-profiles/south-africa>. Accessed on 05 October 2023.

⁹ Section 4 of Act 24 of 1956

¹⁰ National Planning Commission *National Development Plan 2030: Our Future – Make it Work* (Pretoria: National Planning Commission 2019).

¹¹ Merwe, T 'The occupational pillar of the South African pension system' (2004) 21(2) *Development Southern Africa* 303–327

¹² Dhlembeu, N, Kekana, M & Mpinda, M 'The Influence of Financial Literacy on Retirement Planning in South Africa' (2022) 26 *Southern African Business Review* 25.

and the proposed Two-Pot System reforms, are designed to provide pension fund members with enhanced protection against financial mismanagement and loss of assets. These reforms aim to ensure that individuals make informed decisions regarding their retirement savings. Despite these measures, many do not fully realise the benefits of retirement savings—such as mental clarity, reduced debt during and after retirement, and the ability to meet both anticipated and unforeseen financial obligations.¹³

Despite the advantages of retirement savings, such as mental clarity and less debt during and after retirement, South Africa’s national household saving rate is meagre.¹⁴ Employees and retirees can cover sizable anticipated and unforeseen obligations by contributing to and investing in Pension plans.

Research indicates that a lack of financial literacy and awareness significantly contributes to the poor saving habits among South Africans. Studies by Lusardi and Mitchell¹⁵ demonstrate that financial education is crucial in enhancing saving behaviors and retirement planning. Furthermore, empirical evidence from Kotlikoff and Burns¹⁶ suggests that better financial planning can lead to improved retirement outcomes and reduce the reliance on state-provided old age grants.

The recent retirement reforms, while well-intentioned, require more effective implementation and broader financial education to ensure that individuals can make informed decisions and secure their financial futures. Addressing

¹³ Maestas, N ‘Back to Work: Expectations and Realizations of Work after Retirement’ (2010) 45(3) *The Journal of human resources* 718–748.

¹⁴ Rathnasamy, S., & Deodutt, J ‘Exploring Adequate Retirement Funding in South Africa: A KwaZulu-Natal Financial Planner’s View’ (2020) *Journal of Social Science Research* 154-157.

¹⁵ Lusardi, A & Mitchell, O ‘The Economic Importance of Financial Literacy: Theory and Evidence’ (2014) 52(1) *Journal of Economic Literature* 5-44.

¹⁶ Kotlikoff, L, & Burns, S *The Clash of Generations: Saving Ourselves, Our Kids, and Our Economy* (MIT Press 2012).

this issue is imperative for enhancing the overall well-being of retirees and reducing the socio-economic burden on the state.

1.3 Significance of the Study

The study is significant because it will inspire members of retirement funds to invest wisely and save enough to support themselves after retirement. Beneficiaries of this study include law students, non-law students, retirement fund participants, administrators, actuaries, and the retirement funds sector as they stand to gain from the study's modern perspective and advance in their individual careers or academic endeavours. The study's recommendations are intended to persuade the government, non-governmental organisations, policymakers, the retirement funds industry, and legislators to adopt the study's proposed outcome. The study will also help the government evaluate the retirement rules to meet the needs of most retirement fund members who are not saving enough for retirement so that they can live comfortably in their later years.

1.4 Research questions

1. How best can the retirement funding system be improved through retirement reforms?
2. What are the key objectives and motivations behind recent pension law reforms in South Africa, and how do they differ from the previous reforms?
3. How do changes in South African pension law impact pension funds' investment and management strategies.?
4. To what extent do pension law reforms in South Africa address inequality issues, particularly regarding access to retirement benefits and the adequacy of pension provisions for various socio-economic groups?

1.5 Aims and Objectives

The study's primary aim is to evaluate the consequences and effects of the changes made to pension laws in South Africa and identify and analyse the challenges and barriers stakeholders face in the South African pension system because of these reforms.

This research will provide policymakers, regulatory authorities, and other stakeholders with evidence-based insights to guide decision-making and potential improvements in pension legislation. It will also contribute to a better understanding of how pension law reforms can impact retirees' financial security and well-being and how they can be improved to serve this purpose better.

To this end, the main objectives of the study are as follows:

- To assess the impact of pension law reforms on retirement benefits.
- To compare South African reforms with international best practices.
- To evaluate the long-term effects on financial stability

1.6. Literature review

South Africa's pension system has undergone several reforms to address challenges such as inadequate savings, financial illiteracy, and dependency on state-provided old age grants.¹⁷ Despite these interventions, retirement savings remain low, and financial security among retirees is still a concern.

Studies by Lusardi and Mitchel highlight financial literacy as a crucial determinant of effective retirement planning.¹⁸ In South Africa, low financial literacy levels contribute to inadequate pension savings, as many

¹⁷ Dhlembeu, Nyasha Tapiwa, Mamekwa Katlego Kekana, and Mpinda Freddy Mpinda. 2022. "The Influence of Financial Literacy on Retirement Planning in South Africa". *Southern African Business Review* 26 (August):25 pages. <https://doi.org/10.25159/1998-8125/9490>

¹⁸ Lusardi, Annamaria, and Olivia S. Mitchell. 2014. "The Economic Importance of Financial Literacy: Theory and Evidence." *Journal of Economic Literature*, 52 (1): 5–44.

employees fail to understand the long-term benefits of retirement funds.¹⁹ Additionally, limited financial education programs exacerbate the problem, preventing individuals from making informed decisions about their retirement savings.²⁰

South Africa's social security system includes old age grants to alleviate poverty among retirees.²¹ However, Fall argues that these grants are often insufficient to maintain a decent standard of living.²² Studies indicate that many retirees rely on state assistance due to a lack of personal savings, reinforcing the need for stronger financial education and incentives for private savings.²³

Empirical studies suggest that the recent pension reforms have not fully addressed the systemic issues in South Africa's pension system.²⁴ Research by Kotlikoff and Burns emphasises that for pension reforms to be effective, they must be complemented by financial literacy initiatives and policy enforcement mechanisms.²⁵ Similarly, Rusconi and Pick argue that

¹⁹ Van Rooij, M, Lusardi, A & Alessie, R 'Financial literacy and retirement planning in the Netherlands' (2011) 32 *Journal of Economic Psychology* 593-608.

²⁰ Thosiac, Sam-Haendell. (2024). Why is Financial Literacy Important?. SSRN Electronic Journal. 10.2139/ssrn.4864463.

²¹ Mackett, O 'Social Grants as a Tool for Poverty Reduction in South Africa? A Longitudinal Analysis Using the NIDS Survey' (2020) 19 (1) *African Studies Quarterly* 41-64.

²² Fall, F, Steenkamp, A 'Building an inclusive social protection system in South Africa' (2020) , *OECD Economics Department Working Papers*, No. 1620, OECD Publishing, Paris, <https://doi.org/10.1787/e01d1e09-en>.

²³ Atkinson, A. et al 'Financial Education for Long-term Savings and Investments: Review of Research and Literature' (2015), *OECD Working Papers on Finance, Insurance and Private Pensions*, No. 39, OECD Publishing, Paris, <https://doi.org/10.1787/5jrtqzfl6g9w-en>.

²⁴ Pillay, N, & Fedderke, J 'Characteristics of the South African retirement fund industry' (2022) South African Reserve Bank Working Paper Series, WP/22/17. Retrieved from <https://www.resbank.co.za/en/home/publications/Papers/working-papers>

²⁵ Kotlikoff, L. J., & Burns, S *Spend 'til the End: The Revolutionary Guide to Raising Your Living Standard – Today and When You Retire*. (2016, Simon and Schuster).

regulatory changes alone are insufficient; behavioural and structural challenges must also be addressed.²⁶

Nevondwe perceives the retirement reform as expensive by world standards and offers inadequate protection for individuals, as demonstrated by poor governance and conflicts of interest. Retirement savings are vulnerable to 'leakage' when members fail to protect their benefits and take them in cash. Tax incentives are viewed as inconsistent with social policy and the existing social security framework is seen as fragmented and unaligned with retirement provisions.²⁷

According to Nevondwe, Odeku, and Matotoka, trustees are regularly confronted with difficult decisions. They must be knowledgeable and understand the legal framework in which they operate and the rights of the members under that legal framework. At the core of the PFA lie the rights of the members and trustee duties. These two fundamental aspects are significant in adequately administering the fund and protecting the member's interests.²⁸

According to Marumoagae, "Section 7C (2) of the Pensions Fund Act outlines the general duties of the boards of retirement funds²⁹. Over the years, there has been much debate in the retirement fund industry as to whom the board, as the managing body of the retirement fund, is accountable.³⁰

²⁶ Rusconi, R., & Pick, A 'Civil service pension reform in developing countries: Experiences and lessons' (2020) *OECD Development Policy Papers*, No.33. OECD. <https://doi.org/10.1787/5f5f5f5f-en>

²⁷ Nevondwe, L 'South African Social Security and Retirement Reform: A long journey towards the redrafting of the new Pension Funds Act' 1(2010) 15(4) *Pensions IntJ* 295-296.

²⁸ Matotoka D, Nevondwe L and Odeku K 'Withholding of Pension Benefits in South Africa: A Nightmare for Pension Fund Members' July (2014) 5(15) *Mediterranean Journal of Social Sciences* 650.

²⁹ Marumoagae M 'Do boards of trustees of South African retirement funds owe fiduciary duties to both the funds and fund members? The debate continues' (2012) 15 *Potchefstroom Electronic Journal* 554.

³⁰ *Ibid.*

Low asset build-ups due to low-income levels and high staff turnover exacerbate costs, creating high administration activity rates. Providers are also subject to complex, inefficient, and expensive compliance demands. Group risk benefits offer recurring profitability, and the number of deaths pre-retirement must not be underestimated when designing a framework for the entire population.

The Second Discussion Paper concludes with the following statement: 'These reforms will take several phases to implement fully. Their contribution to poverty reduction and income security will take time, and their impact will be reinforced and magnified from one generation to the next. These investments in social cohesion will be felt long into the future, and South Africans owe it, therefore, to their children to be powerful and critical in their debate'.³¹ There are many uncertainties in the retirement industry; some still believe that the regulator, the Financial Services Board (FSB) is not strong regarding regulation. Reference can be made to the famous scandal, the so-called 'dementia scandal,' in which the trust fund misused the beneficiaries' monies that were placed in trust. Some beneficiaries have not yet been paid.³²

According to Marumogae, there are concerns regarding how boards of trustees manage the affairs of pension funds in South Africa. These concerns range from the performance of investments and growth of fund assets to boards' decisions that may not have been taken in the best interests of the funds and to the detriment of members to having to declare any potential or actual conflict of interest to the board of trustees. These concerns are necessitated by fears of mismanagement of pension funds, which could be detrimental to members of pension funds.

³¹ Møller, V, Roberts, B & Zani, D 'Born Free' Dreams: South African Township Youth Discuss Their Hopes for a Better Life in Future' (2024) 19 *Applied Research Quality Life* 1681–1709.

³² Nevondwe (note 17 above) 296.

This article showed that concerns regarding the mismanagement of pension funds could be addressed by ensuring that those elected and appointed as trustees are provided with the necessary training, which will position them better to manage pension funds. The effect of this is that the trustees must be accountable for their decisions, leading to a greater emphasis on trustee education and training regarding their roles and responsibilities and the requirements of the law.³³

Internationally, countries such as Australia and Chile have implemented mandatory pension savings systems that significantly improve retirement outcomes.³⁴ South Africa's voluntary contribution model contrasts with these approaches, raising questions about whether a mandatory system could enhance long-term financial security for retirees. Studies suggest that integrating international best practices, such as auto-enrollment pension schemes and enhanced employer contributions, could improve savings behaviour in South Africa.³⁵

In the case of *Baverstock v South African Retirement Annuity Fund and another*, according to the complainant, the fund's failure to process his claim timeously led to the accrual of interest, pushing the value above the required threshold. However, the Adjudicator found no delay on the part of the fund. A fund member was due for retirement at the end of the month he reached retirement age. The fund confirmed that the complainant had reached retirement age on 18 July 2021, and his fund value calculation in August 2021 was thus correct.³⁶

³³Marumogae M 'The need for effective management of pension fund schemes in South Africa in order to protect members' benefits' 2016(79) *Journal of Contemporary Roman-Dutch Law* 630.

³⁴ Barr, N 'Reforming Pensions: Myths, Truths, and Policy Choices' (2000) . IMF Working Papers. 00. 10.1111/1468-246X.00122.

³⁵ OECD (2021), *Pensions at a Glance 2021: OECD and G20 Indicators*, OECD Publishing, Paris, <https://doi.org/10.1787/ca401ebd-en>.

³⁶ *Baverstock v South African Retirement Annuity Fund and another* [2023] 4 BPLR 63 (PFA).

On 28 July 2021, the complainant requested that the proceeds of his retirement annuity policies be disinvested and complete payment of the values be made to him. As of 01 August 2021, the values of the policies were R121 356.81 (policy 5701637) and R126 467.79 (policy 6878728). When his request was processed (02 August 2021), the total values of the policies had increased to R247 824.60. He was informed that the total value is above the threshold for a full commutation, which is R247 500.00. The refusal of the fund to pay the entire proceeds of the complainant's retirement annuity policies is the subject matter of the complaint³⁷

In *Burger v Consolidated Retirement Fund for Local Government and another*, the complainant was a member of the first respondent pension fund from September 1982 until his retirement in August 2020. He complained to the Pension Funds Adjudicator that the fund had not adequately informed him of the tax consequences of settling his home loan with a portion of his fund credit.

He alleged that he could not make an informed decision due to inadequate communication. He was charged R80 782 by the South African Revenue Service (SARS). Consequently, upon the fund's failure to provide him with the relevant information, his complaint concerns the alleged maladministration of the fund.³⁸

1.7. Hypotheses

Suppose the government can implement other ways of saving money besides retirement funds. In that case, workers will be able to retire with enough money to sustain their lives after retirement because they will have retirement funds and funds from their savings.

³⁷ *Ibid.*

³⁸ *Burger v Consolidated Retirement Fund for Local Government and another* [2023] 4 BPLR 65 (PFA).

1.8 Research methodology

This research study employs the qualitative methodology of study. The research for this topic involves a combination of primary and secondary sources. The primary sources used in this research include legislative texts, such as national constitutions and judicial rulings, that have both authoritative and influential weight. The distribution of retirement fund benefits in South Africa has been examined using a wide range of secondary sources, including both published and unpublished materials. These resources encompass books, academic papers, reports, journal articles, newspaper articles, and online sources. Such a broad spectrum of materials allows for a comprehensive understanding of the policies, challenges, and best practices related to retirement fund distribution, offering insights into the country's legal, economic, and social dimensions of pension management. The study contains a comprehensive range of social security and labour law literature, including studies undertaken by many international organisations specialising in these specialised domains. The study will also draw lessons from the United Kingdom (UK).

1.9 Chapter outline

The research will be divided into five (5) linked chapters, which are briefly described below:

Chapter one, this chapter serves as an introduction and gives a thorough explanation of the intended research. It provides an overview of the study and a detailed understanding of its purpose. This also considers the study's historical context. **Chapter two** focuses on everyone's right to access social security, including appropriate social assistance, if they cannot support themselves and their dependents. It further focuses on policies and legislation passed by parliament before 1994 and after. It also focuses on children's rights to social services and international covenants that deal with the right to access social security. This chapter will also highlight the

achievements made since 1994 by the government to address everyone's right to access social security and the effects of corruption on social grants.

Chapter three discusses the regulatory structure and related policies for pension funds, focusing on the problem of pension benefit preservation. It necessitates a thorough review of statutes like the PFA, Post Office Act, Transnet Pension Amendment Act, Government Employees Pension Law, and discussion papers on retirement reforms. It offers a broader interaction on this regulation to determine whether preservation of the pension fund benefits is encouraged or restricted.

Chapter four examines the global legal framework that affects and assesses retirement reform in South Africa and the UK. A comparative study between South Africa and the UK. **Chapter five** is the study's concluding chapter, including recommendations. Furthermore, South Africa and the UK are the countries being compared in this chapter. To evaluate if any lessons can be applied to South Africa, it further examines the pension laws from these nations about the maintenance of pension fund benefits. This chapter will also provide a clear roadmap for addressing the challenges of retirement reform in South Africa, combining policy, institutional, and societal approaches to improve the pension system and ensure a more secure retirement for all citizens.

1.10 Chapter Summary

The current chapter functions as an introductory portion that lays the foundation for the dissertation. This article comprehensively examines the topic, including analysing the research's goals and justification. It places particular emphasis on the significant role that occupational retirement funds play within the social and economic landscape of South Africa.

The study examines the available retirement reforms, whether they have a good impact on retirees and their financial security, and the implications for social security, especially after retirement. The study will also discuss in

detail ways that can be implemented to avoid financial insecurity after retirement. Furthermore, the study will include a comparative analysis of the retirement reforms and pension laws of South Africa and the UK.

CHAPTER 2: THE RIGHT TO SOCIAL SECURITY AND PENSION FUNDS.

2.1 Introduction and background of the chapter

2.1.1 Introduction

The Constitution of the Republic of South Africa recognises the right to social security as a fundamental human right. This right is enshrined in section 27 of the Constitution³⁹:

Section 27(1) Everyone has the right to have access to -(a) health care services, including reproductive health care; (b) sufficient food and water; and (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance. (2) The state must take reasonable legislative and other measures within its available resources to progressively realise these rights. (3) No one may be refused emergency medical treatment.⁴⁰

This provision in the Constitution reflects the South African government's commitment to ensuring that all its citizens have access to social security measures that can help them maintain a decent standard of living, especially in times of need.⁴¹ Social security encompasses a range of programs and services aimed at providing economic and social support to individuals and families, such as social assistance grants, unemployment benefits, and other forms of social insurance.⁴²

South Africa's social protection regime, however, has been described as fairly limited, consisting primarily of targeted social assistance programs,

³⁹ Constitution of the Republic of South Africa, 1996

⁴⁰ Ibid.

⁴¹ Liebenberg, S 'The Right to Social Assistance: The Implications of Grootboom for Policy Reform in South Africa' (2023) 17(2) *South African Journal on Human Rights* 232-257.

⁴² Townsend, P 'The Right to Social Security and National Development: Lessons from OECD Experience for Low-Income Countries' (2007) *Issues in Social Protection Discussion Paper No. 18*.

limited social insurance coverage, and privately funded voluntary schemes for health insurance, pensions, and other forms of income protection.⁴³ The fragmented institutional framework for social security policy in the country has made it challenging to implement comprehensive reforms.⁴⁴

The South African Constitution is significant as it highlights the government's responsibility to protect and promote the well-being of its citizens by ensuring that they have access to essential social protection measures.⁴⁵ This right plays a crucial role in addressing poverty, inequality, and social exclusion in the country by providing a safety net for the most vulnerable.⁴⁶

Millions of recipients receive significant respite from social assistance provisions, yet millions of vulnerable individuals remain unaffected and uninvolved.⁴⁷ What is needed is a more integrated and comprehensive system of social protection that can effectively address the widespread poverty, inequality, and unemployment that continue to plague South African society.⁴⁸ The significant expenses associated with the means testing, universal benefits for older people, children, and those with disabilities need to be taken into consideration.⁴⁹

Furthermore, no measures are taken to alleviate the situation of those who do not fit the means test requirements to be eligible for social grants.⁵⁰ It

⁴³ Heever, A 'Case study G: Comprehensive social protection reform in South Africa' (2021) *Edward Elgar Publishing*. <https://doi.org/10.4337/9781839109119.00032>

⁴⁴ Maboshe, M, & Woolard, I 'Revisiting the impact of direct taxes and transfers on poverty and inequality in South Africa' (2018) *Wider Working Paper Series*.

⁴⁵ See Section 27(2) of the Constitution.

⁴⁶ See Section 27(1)(c) of the Constitution.

⁴⁷ Chitonge, H 'Social Protection Challenges in Sub-Saharan Africa: 'Rethinking Regimes and Commitments'' (2012) 71(3) *African Studies* 323-345.

⁴⁸ Guthrie, T 'Family social security benefits in South Africa' (2002) 28(2) *Journal of African Studies* 122-145.

⁴⁹ This was addressed in the Government gazette, green paper on comprehensive social security and retirement reform no.45006 of 18 August 2021.

⁵⁰ Gutura, P, Tanga, P 'The Intended Consequences of the Social Assistance Grants in South Africa' (2014) *Mediterranean Center of Social Sciences* 569-669.

has turned out that the assumption that this group would mostly make money from selling their labour was incorrect.⁵¹

The gap's failure to meet the NDP's social protection floor and constitutional mandate prompted the idea of examining the viability of a basic income grant.⁵² The COVID-19 pandemic and its aftermath have intensified demands for a basic income handout. To resolve the issues with fiscal space, the tax system should be rearranged to ensure sustainability and advance equity.⁵³

Since the country's democratisation, the government of South Africa has been putting policies into place to rectify the systemic injustices left over from the apartheid era, which were defined by restricted access to social safety for all.⁵⁴ There has been good progress in extending health care and social aid and, to a lesser extent, social insurance has been in place to a certain extent since 1994. However, specific reforms must be made so the social security system can comply with constitutional requirements.⁵⁵

A lengthy history of racial discrimination, institutional fragmentation, and unpleasant situations has led to the evolution of arrangements for income security in old age, unemployment insurance, and protection of families in the case of death, disability, or disease of breadwinners' responsibilities shared by the public and private sectors, as well as inconsistent advancements in the acknowledgement of workers' rights.⁵⁶ Despite

⁵¹ Godfrey, E, Gordon, N, Knight, L, Aber, J, Allen, L & Richter, L 'Which eligible households get grants? Demographic correlates of receipt in South Africa' (2016) 36(6) *Development Southern Africa* 774-789.

⁵² IMF 'Fiscal Policy and Income Inequality' (2014) 2014(040) *International Monetary Fund* 68.

⁵³ *Ibid.*

⁵⁴ Madzivhandila, T 'Implementation of Social Policies in South Africa: Stances, Progress and Challenges In 20 Years Of Democracy' (2014) *Mediterranean Center of Social Sciences* 166-770.

⁵⁵ *ibid*

⁵⁶ Coovadia, H, Jewkes, R, Barron, P, Sanders, D, & McIntyre, D 'The health and health system of South Africa: historical roots of current public health challenges' (2009) 374(9692) *Elsevier BV* 817-834.

significant progress, there are still large gaps in the social security system, partly attributed to the coexistence of our economy's developed and developing sectors.⁵⁷

The comprehensive social security reform agenda aims to improve access, coverage, administrative effectiveness, delivery, and transparency to strengthen and consolidate South Africa's social security laws.⁵⁸ The goal of the government is to guarantee that millions of South Africans' lives are enhanced by increased accessibility to social security benefits within a system that addresses a wide range of vulnerabilities related to the life cycle and other issues by being all-encompassing, universal, effective, economical, sustainable, and suitable for everyone.⁵⁹

A comprehensive and adaptable social security system is essential to satisfy everyone's needs, reality, conditions, and means of subsistence.⁶⁰ The green paper⁶¹ covers several policy and institutional issues to address the social security system's wide range of systemic vulnerabilities.⁶² All workers, including self-employed workers, rural workers, digital economy workers, and informal economy workers, also require adequate social security coverage.⁶³

Additionally, there are apparent deficiencies in the quality of life and retirement plans supported by the private sector, and governmental

⁵⁷ See Social security retirement reform second discussion paper of 27 February 2007 by National Treasury.

⁵⁸ Harris, A 'Towards an Economic Strategy for SA' (2023) https://www.scribd.com/document/423411153/Towards-an-Economic-Strategy-for-SA#from_embed > Accessed on 2 August 2024.

⁵⁹ Dekker, A 'Mind the gap: suggestions for bridging the divide between formal and informal social security' (2010) 12(1) *Law, Development & Democracy* 117-131.

⁵⁹ *ibid*

⁶⁰ Simpson, M, McKeever, G and Gray, A 'Social Security Systems Based on Dignity and Respect' (2017) *Equality and Human Rights Commission* 1-110.

⁶¹ on comprehensive social security and retirement reform.

⁶² See the Government gazette, green paper on comprehensive social security and retirement reform no.45006, 18 August 2021

⁶³ *Ibid*.

oversight has not kept up with industry advancements. Earners' wages and savings are not fully covered.⁶⁴

The cost of the vehicles offered to independent contractors is higher than that of similar arrangements in other nations. High levels of "leakage" further erode the quality of coverage: an excessive number of consumers purchase products they later return before they mature, and an excessive number of employees cash in their accrued benefits when they switch jobs.⁶⁵

Several factors, including inadequate authorities' oversight and enforcement capabilities, deficiencies in the governance of certain retirement funds, and a lack of transparency, have caused insufficient safeguarding of members' and pensioners' interests.⁶⁶

2.2 Redistribution of social grants and pension funds

Social grants have existed in South Africa since the beginning of the twentieth century, and black Africans rarely had access to them.⁶⁷ As a consequence of democratisation, all South Africans became eligible for social grants, of which there were also more types; these grants include monthly payments of food relief, child support, foster care, care dependency, and a monthly old age pension.⁶⁸

⁶⁴ Dorfman, M 'Pension patterns in Sub-Saharan Africa; (2015) *Federal Reserve Bank of St. Louis* 1-123.

⁶⁵ Rusconi, R 'Regulating South Africa's retirement funds: The case for clearer objectives' (2021) 24(1) *South African Journal of Economic and Management Sciences* 10; see also Munnell, A & Munnell, A 'The Impact of Leakages from 401(k)s and IRAs' (2015) *RELX Group* < <https://doi.org/10.2139/ssrn.2559812> > Accessed on 10 July 2024.

⁶⁶ See Social Security and retirement reform, Second Discussed Paper. National treasury, 23 February 2007.

⁶⁷ Bahre E 'Liberation and Redistribution: Social Grants, Commercial Insurance, and Religious Riches in South Africa' (2017) 53(2) *Comparative Studies in Society and History* 371.

⁶⁸ MacGregor H 'The Grant Is what I Eat': The Politics of Social Security and Disability in the Post-Apartheid South African State' (2005) 38(1) *Journal of Biosocial Science* 43-45.

2.2.1 Redistribution of Social Grants

In South Africa, where inequality levels are high combined with low levels of labour market participation, social grants have played an essential role in supporting households in attaining a minimum standard of living.⁶⁹ Social grants improve both the welfare of recipients and the families in which they reside. They help the investment in productive capital, both human and capital. Money left over from food and fuel purchases is used for education expenditures, including school fees, transport, uniforms and stationery.⁷⁰

In addition, recipients use social grants in South Africa in several ways. The child support grant (CSG) increases women's labour force participation rates (LFPR).⁷¹ Old age pensions are spent on education in poor households, leading to higher school enrolment rates of girls.⁷² Further, many poor children cannot attend school because of the costs associated with education. Social grants counter these adverse effects by enhancing households' capacity to meet children's educational needs.⁷³

Delany et al. state, "the CSG is the largest social assistance programme in terms of number of beneficiaries reached." The study on the social and economic impact of South Africa's social security system shows evidence that social grants yield positive impacts, including reducing poverty and hunger, promoting job searches, and increasing school attendance.⁷⁴

Grant money is not only used to support beneficiaries; it's also used to provide broader support. Research shows that more than one-third of South

⁶⁹ Durieux M 'The role of social grants in supporting local economic development (LED)' (2012) *Studies in Poverty and Inequality Institute, Policy Brief*.

⁷⁰ *Ibid.*

⁷¹ Eyal K Woolard I 'Female Labour Force Participation and South Africa's Child Support Grant' (2011) *SALDRU*.

⁷² Lund F 'state Social Benefits in South Africa' (1993) 46(1) *International Social Security Review* 46(1): 5-25.

⁷³ Khosa P Kaseke E 'The utilisation of the child support grant by caregivers: the case of Ba Phalaborwa municipality in Limpopo Province' (2017) 53(3) *Social Work* 356-367.

⁷⁴ Department of Social Development 'The social and economic impact of South Africa's Social Security System, Summary Report' (2004) Pretoria: *Economic Policy Research Institute*.

Africans directly and indirectly depend on grant payments. Any disruption of grant payments will, therefore, have a massively detrimental impact on many poor households.⁷⁵

Overall, the redistribution of social grants in South Africa surged to alleviate poverty and inequality in society. This, of course, is enshrined in the constitution of South Africa, Section 27(1) (c) of the Constitution,⁷⁶ which entrenches "the right of everyone to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance."

Section 27(2) of the Constitution states, "the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation" of this right and the other rights enshrined in s 27.

2.2.2 Redistribution of Pension Funds

The PFA⁷⁷ defines pension funds as:

‘Any association of persons established with the object of providing annuities or lump sum payments for members or former members of such associations upon reaching their retirement dates or for the dependants of such members or former members upon the death of such members or former members’.

Pension Funds are vital to the South African economy. The objective of establishing pension funds is visible from the definition of “pension fund organisation” in section 1 of the PFA⁷⁸ and the definitions of a “provident fund” and a “retirement annuity fund” in section 1 of the Income Tax Act.⁷⁹

⁷⁵ *Ibid.*

⁷⁶ The Constitution of South Africa, 1996.

⁷⁷ Act 24 of 1956.

⁷⁸ *Ibid.*

⁷⁹ Act 58 of 1962.

In analysing the distribution of death benefits as one of the Pension funds, understanding the concept of “social security” is crucial to clarify whether these benefits form part of social security and their role in society.⁸⁰

The fact that death benefits do not have a nominee emphasises the government's measures to ensure that people can exercise and enjoy the right to social security.⁸¹ The purpose of the government choosing the beneficiary of the death benefit is to advance the alleviation of poverty and inequality by empowering those who need to realise the objectives of the constitution, particularly sections 27 of the constitution and 37c of the PFA.

2.3 Pension Funds Redress in South Africa

The apartheid era in South Africa left a legacy of inequality, including in the retirement sector.⁸² Pension funds were predominantly structured to benefit the white minority, leaving many black South Africans without adequate retirement savings. The post-apartheid government recognized the need for comprehensive reform to address these disparities.⁸³

The principal legislative framework governing pension funds in South Africa is the PFA No. 24 of 1956, which has undergone several amendments to address issues of fairness and equity. The introduction of the Financial Sector Regulation Act⁸⁴ and the establishment of the Financial Sector Conduct Authority (FSCA) have further strengthened regulatory oversight.

⁸⁰ Sigwadi M 'The Distribution of Retirement Fund Death Benefits in South African Law' (2021) *Unisa*.

⁸¹ Turner, J 'Providing Longevity Insurance Annuities: A Comparison of the Private Sector versus Social Security' (2023) < <https://www.pm-research.com/content/ijiretire/1/2/125>> Accessed on 10 August 2024.

⁸² Ulriksen, M 'A Racialised Social Question: Pension Reform in *Apartheid* South Africa' in Leisering, L (eds), *One Hundred Years of Social Protection. Global Dynamics of Social Policy* (Palgrave Macmillan 2021) 221-262.

⁸³ Seekings, J 'The Effects of Colonialism on Social Protection in South Africa and Botswana' in Schmitt, C (eds), *From Colonialism to International Aid. Global Dynamics of Social Policy* (Palgrave Macmillan 2020) 109-135.

⁸⁴ Act 9 of 2017.

These legislative measures were essential in laying the groundwork for addressing the inequalities that existed within the pension system.

2.3.1 Policy Interventions

Several policy interventions have been implemented to address pension fund inequities. Key initiatives include preservation and portability, minimum benefit provisions, addressing unclaimed benefits, and improving governance and transparency.

One significant measure has been the introduction of policies to ensure the preservation of retirement savings when individuals change jobs. This enhances the portability of pension benefits, allowing workers to maintain their retirement savings across different employment contexts.⁸⁵ Additionally, the PFA mandates minimum benefits to protect members' retirement savings from being eroded by early withdrawals and other financial pressures.⁸⁶

However, despite these protections, unclaimed benefits have been a significant challenge, with many beneficiaries unable to access their funds. In response, the FSCA has implemented measures to trace and disburse unclaimed benefits, improving access for rightful claimants.⁸⁷ Additionally, strengthening the governance of pension funds and enhancing transparency in their operations have also been crucial steps toward ensuring that funds are managed in the best interests of members.⁸⁸ The

⁸⁵ Wickens, M 'Pension Systems (Un)Sustainability and Fiscal Constraints: A Comparative Analysis' (2023) <<https://doi.org/10.2139/ssrn.4678383>> Accessed on 15 July 2024.

⁸⁶ Forteza, Á 'The Portability of Pension Rights: General Principles and the Caribbean Case' (2010)28(2) *Wiley* 237-255.

⁸⁷ Dubihlela, J, Dubihlela, D 'Social Grants Impact on Poverty among the Female-Headed Households in South Africa: A Case Analysis' (2014) 5(8) *Mediterranean Center of Social sciences* 160-167.

⁸⁸ Makina, M 'Pension Funds in South Africa: Leadership Challenges' (2019) 7(2) *Oral History Journal of South Africa*.

King IV Report on Corporate Governance and subsequent regulations have set higher standards for governance in the financial sector.⁸⁹

2.3.2 Challenges in Pension Funds Redress

Despite these interventions, several challenges persist in the redress of pension funds. Economic disparities continue to affect the ability of individuals to save for retirement. Many South Africans, particularly in the informal sector, lack access to formal pension schemes.⁹⁰ This economic inequality underscores the broader socio-economic challenges that the country faces, impacting the effectiveness of pension fund reforms.

The administrative capacity of pension funds and regulatory bodies to effectively manage and disburse funds remains a concern. Delays and inefficiencies in processing claims can hinder the redress process.⁹¹ Moreover, there is a need for greater public awareness and education regarding pension fund benefits and the importance of retirement planning. Many individuals are not fully informed about their rights and the options available to them.⁹²

The efforts to redress pension funds in South Africa have seen notable successes. Establishing the FSCA and implementing rigorous regulatory standards have enhanced the protection of retirement savings. Additionally,

⁸⁹ See Institute of Directors in Southern Africa 'King IV Report on Corporate Governance for South Africa' (2016) *Johannesburg: Institute of Directors in Southern Africa* <<https://www.adams.africa/wp-content/uploads/2016/11/King-IV-Report.pdf>> Accessed on 19 July 2024.

⁹⁰ Masuku, B, Nzewi, O 'The South African informal sector's socio-economic exclusion from basic service provisions: A critique of Buffalo City Metropolitan Municipality's approach to the informal sector' (2021) 32(2) *Journal of Energy in Southern Africa* 59-71.

⁹¹ Croke, K, Goldstein, M, Holla, A 'Can Job Training Decrease Women's Self-Defeating Biases? Experimental Evidence from Nigeria' (2017) *Policy Research Working Paper; No. 8141*. World Bank, Washington, DC.

⁹² Prast, H, Soest, A 'Financial Literacy and Preparation for Retirement' (2016) 51(3) *Springer Science+Business Media* 113-118.

the focus on governance and transparency has led to improved management practices within pension funds.⁹³

Moving forward, addressing the remaining challenges through targeted policy interventions and continuous stakeholder engagement is essential. Expanding coverage to include informal sector workers, improving administrative efficiencies, and enhancing public education will be critical to achieving a more inclusive and equitable pension system.⁹⁴

The redress of pension funds in South Africa is a multifaceted issue that requires a comprehensive approach to address historical injustices and ensure equitable retirement security for all citizens.⁹⁵ While significant progress has been made through legislative and policy interventions, ongoing efforts are needed to overcome persistent challenges. By continuing to enhance governance, transparency, and public awareness, South Africa can build a more just and effective retirement system.⁹⁶

Pension Redress is the provision of compensation to specific classes of government employees who suffered various forms of discrimination by government pension funds under apartheid.⁹⁷ Historically, specific categories of Black, Coloured and Indian public servants were not allowed to contribute to the pension fund. They had to wait before becoming permanent members of the said fund. Therefore, their complete

⁹³ Rathnasamy, S, Deodutt, J 'Exploring Adequate Retirement Funding in South Africa: A KwaZulu-Natal Financial Planner's View' (2020) 154-157.

⁹⁴ Boyetey, D, Boampong, O & Enu-Kwesi, F 'Effect of institutional mechanisms on micropension saving among informal economy workers in the Greater Accra Region of Ghana' (2021) 7(9) *Elsevier BV* e08004-e08004.

⁹⁵ Willows, G 'South African individual retirement savings: An analysis of the social factors' (2019) 22(3) *Wiley* 303-328.

⁹⁶ Sam, K, Dwumoh, J, & Abreh, M 'A Scoping Review of Retirement Planning Research Trends in Sub-Saharan Africa' (2023) 4(3) *EAJESS* 30-44<.

⁹⁷ GEPF 'Fund Talk' (2016) The quarterly newsletter of the GEPF< https://www.gepf.co.za/wp-content/uploads/2019/07/FUNDTALK_First_Edition_Web_2016.pdf > accessed on 27 February 2024.

pensionable services were not recognised even though they had rendered them.⁹⁸

Several rulings of the pension funds adjudicator indicate that the retirement fund industry has failed to serve the members' best interests. In reaction to these findings, service providers have agreed with the Minister of Finance to set aside R3 billion to refund members subjected to unfair confiscatory penalties.⁹⁹

As a result of such discrimination, the government enforced section 27(2) of the constitution by employing resolutions through the Public Service Coordinating Bargaining Council (hence 'PSCBC'). On the matter of pension redress, two PSCBC Resolutions were passed to provide compensation to government employees who suffered various forms of discrimination by government pension funds under apartheid.¹⁰⁰

The motive is to enforce section 27(2) of the constitution: 'The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights'. The priority is to treat social security rights as a recognised right that will assist in alleviating poverty and inequality in South Africa.

2.4 Chapter Summary

Social grants and pension funds are a huge part of social security rights that aim for the same outcomes, primarily to alleviate poverty and inequality and promote a balanced lifestyle and access to food, education and sanitation.

The right to social security encompasses the right to access and maintain benefits without discrimination to secure protection from a lack of work-

⁹⁸ PSC 'Civil Servants Pension Redress Movement Petition; State of readiness to conduct lifestyle audits in the public service' (16 March 2022) *PSC financial misconduct report; with Deputy Minister* <https://pmg.org.za/committee-meeting/34593/> > accessed on 26 February 2024.

⁹⁹ 'South African Pension Fund Conversions: Dealing with Environmental Change' (2007) *Acta Commercii*.

¹⁰⁰ PSCBC Resolution 7 of 2000 and PSCBC Resolution 6 of 2001.

related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or the death of a family member and unaffordable health care to promote wellness and human rights.

The pension and social grants redress result from the recognition of social security rights, which seek to complement section 7(2) of the constitution, which states: 'The state must respect, protect, promote and fulfil the rights in the Bill of Rights.

CHAPTER 3: RETIREMENT REFORM: POLICY FRAMEWORK, CHALLENGES AND PROSPECTS

3.1 Introduction

The South African law that protects retirement fund members' retirement benefits from the reach of their creditors is contained in several statutes.¹⁰¹ Relevant provisions in these statutes provide special protection for retirement benefits. These provisions are intended to ensure members can sustain themselves during retirement. In other words, "[the effect of these provisions is to establish a general rule protection ... pensioners from being deprived of their source of income in their retirement".¹⁰²

The protection provided for retirement benefits makes diminishing them challenging. It maximises their chances of being used to prevent poverty during retirement, a social function. It has been correctly argued that "pension funds ... are different from other financial intermediaries since they have a financial and economic role and an essential social function."¹⁰³

In South Africa, the most common method for investing and saving towards retirement for formally employed persons is through contributions to retirement funds over time. "[T]here are three predominant ... vehicles for retirement savings: pension funds, provident funds, and retirement annuity funds. These funds operate with the main objective of accumulating savings [over time] to maintain one's lifestyle after retirement ..."¹⁰⁴

This section encompasses a spectrum of considerations, from designing pension and retirement savings plans to implementing policies to ensure

¹⁰¹ See section 27 of the Government employee pension law

¹⁰² Manamela, T 'South Africa's occupational retirement system: a comparative social security perspective' (unpublished LLD thesis, University of South Africa, 2015) at 281.

¹⁰³ Queisser M 'The role of pension funds in the stabilisation of the domestic financial sector' (1999) 165 in Brooks DH & Queisser M (eds) *Financial liberalisation in Asia: analysis and prospects Mandaluyong: OECD*.

¹⁰⁴ Willows G, Burgers T, West D "A comparison of retirement saving using discretionary investment and Regulation 28" (2018) 21 (1) *South African Journal of Economic and Management Sciences* 1.

financial security and well-being for elderly citizens. In this exploration of retirement reform, we delve into the intricate policy frameworks governing retirement, examine the challenges confronting these systems, and assess the prospects for achieving sustainable and equitable retirement solutions in the face of ongoing demographic shifts and economic uncertainties.

3.2 Policy and Legislative Framework

The South African retirement industry is not regulated by a single uniform statute but by several laws that regulate different retirement funds.¹⁰⁵

Section 21(1) of the Government Employee Pension Law¹⁰⁶(GEPL), section 7 of the Transnet PFA¹⁰⁷ (TPFA), section 10B (1) of the Post and Telecommunication-Related Matters Act¹⁰⁸ (POTRMA), section 2 of the General Pensions Act¹⁰⁹ (GPA) and section 37A (1) of the PFA contain the South African law that aims to protect members' retirement benefits from the reach of their creditors. While these provisions are drafted almost similarly, they contain essential differences, demonstrating that they do not necessarily provide the same protection. Section 21(1) of the GEP Law provides that:

"... no benefit or right in respect of a benefit payable under this Act shall be capable of being assigned or transferred or otherwise ceded or pledged or hypothecated or, save as is provided in section 26 or 40 of the Maintenance Act. 1998 and section 7 (8) of the Divorce Act, 1979 (Act No. 70 of 1979), be liable to be attached or subjected to any form of execution under a judgment or order of a court of law".

This provision prohibits the assignment, transfer, cession, pledge, and hypothecation of pension benefits or rights to it. It also endeavours to protect

¹⁰⁵ Marumoagae C 'Liability to pay retirement benefits when contributions were not paid to the retirement fund' (2017) 20 *Potchefstroom Electronic Law Journal* 4.

¹⁰⁶ Act 21 of 1996.

¹⁰⁷ Act 62 of 1990.

¹⁰⁸ Act 44 of 1958.

¹⁰⁹ Act 29 of 1979.

members' retirement benefits from their creditors. In other words, this provision protects retirement benefits due to members or their beneficiaries or the rights that such members or their beneficiaries have regarding those benefits.¹¹⁰

Out of all similar provisions from different statutes that protect retirement benefits, section 37A (1) of the PFA is the only provision that has received fair judicial¹¹¹ and academic¹¹² recognition. Section 37A (1) of the PFA provides:

"No benefit provided for in the rules of a registered fund (including an annuity purchased or to be purchased by the said fund from an insurer for a member), or right to such benefit, or right in respect of contributions made by or on behalf of a member, shall, notwithstanding anything to the contrary contained in the rules of such a fund, be capable of being reduced, transferred or otherwise ceded, or of being pledged or hypothecated, or be liable to be attached or subjected to any form of execution under a judgment or order of a court of law, or to the extent of not more than three thousand rand per annum, be capable of being taken into account in a determination of a judgment debtor's financial position in terms of section 65 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)

This section appears to provide more retirement benefits protection than other pension law-related statutes. Unlike provisions in other pension law statutes, this provision starts by referring to the benefits that are expressly provided for in the rules of retirement funds it regulates.¹¹³

¹¹⁰ Marumoage C 'Overview of the legislative protection of retirement benefits against transfer, reduction, hypothecation and attachment in South Africa' (2021) 25 *Law, Democracy and Development* 411-439.

¹¹¹ *Sentinel Retirement Fund & another v Masoanganye* (1003/2017) [2018] ZASCA 126 (27 September 2018) at para 1 and *M v M & another* (230/2016) [2016] ZAFSHC 132 (4 August 2016) at para 8.

¹¹² Manamela, E 'You break, you pay': pension benefits deductions for damage caused to the employer by the employee' (2013) 25 *SA Merc LJ* 578.

¹¹³ Marumoage (note 98 above) 439.

3.3 Retirement Reform

The retirement savings culture of South Africans first started attracting the attention of the authorities in the 90s. However, there are references to discussions on the topic as early as the 80s. This led to a focus in legislation during the 2000s where the intention was to protect retirement fund members from themselves to better secure their retirement years.¹¹⁴

Retirement reform is a government strategy that encourages employees to save and provide adequate retirement to ensure that they retire comfortably and have income that lasts for their lives in retirement.¹¹⁵ It encourages employers to offer employees retirement savings plans as part of the employment contract. Ensure that employees receive good value for money for their retirement savings and are treated fairly, that their savings are prudently and diligently managed, and that they are kept informed of their retirement savings.¹¹⁶ Improve standards of retirement fund governance, including trustee knowledge and conduct and the protection of members' interests.¹¹⁷

Most people in formal sector jobs contribute to pension, provident, or retirement annuity funds, and some people save enough in this way to live adequately in retirement.¹¹⁸ However, many South Africans do not save or leave it too late in their careers to save enough for retirement. This is partly because many working people cash in their pension savings when they

¹¹⁴ Glacier 'Retirement reform' (2024) *glacier insights* <<https://www.glacierinsights.co.za/blog/retirement-insights/retirement-reform#:~:text=The%20main%20reasons%20for%20the.preservation%20and%20retirement%20annuity%20fun>> Accessed on 20 March 2024.

¹¹⁵ Clark, R, Morrill, M, & Allen, S 'Effectiveness of Employer-Provided Financial Information: Hiring to Retiring' (2012) 102(3) *American Economic Association* 314-318.

¹¹⁶ Brown, E 'Lessons from the Efforts to Manage the Shift Away from Defined Benefit Plans to Defined Contribution Plans in Australia, the United Kingdom, and the United States' (2014) 53 *American Business Law Journal* 315 (Summer 2016 Forthcoming).

¹¹⁷ National Treasury "Frequently asked questions on retirement reform" *department of National Treasury* <https://www.treasury.gov.za/publications/retirementreform/FAQ%20on%20Retirement%20OReform.pdf> Accessed on 20 March 2024.

¹¹⁸ Nevondwe L "South African Social Security and Retirement Reform: A long journey towards the redrafting of the new Pension Funds Act" (2010) *Pensions Int J* 15, 287–296

change jobs or have informal or irregular employment, making saving difficult.¹¹⁹

3.3.1 Challenges

One of the government's principal objectives regarding the retirement reform program is to encourage savings to replace income on retirement, disablement, or death through long-term insurance arrangements. However, the problems related to retirement savings in South Africa are that some people cash in their savings when they lose their jobs because their unemployment benefits are insufficient. Some people find it necessary to draw on their savings to meet medical costs in the event of an injury or ill health.

Several challenges have been identified that could lead to those within South Africa unable to financially support themselves and their family members when they retire. The first common challenge is poverty due to unemployment, which makes it almost impossible to save for retirement. Secondly, some employees cannot access retirement funds because South African employers are not legally bound to provide them with access to retirement funding. Thirdly, there is always a possibility that employees will move from one employment to another. In most instances, when employees with access to retirement funding exit their jobs, they do not preserve their retirement benefits.¹²⁰

Lastly, recurring charges levied by retirement funds on assets under management, which individual members generally bear, play a significant role in the ultimate retirement benefits individual members of retirement funds will receive when they exit their funds. According to the National

¹¹⁹ *Ibid.*

¹²⁰ See National Treasury (2012) at 8, where it was stated that "only about 10 per cent of South Africans are able to maintain their pre-retirement level of consumption after they stop working - primarily because preservation rates are low. There are several reasons for low levels of preservation. Before they retire, many workers, especially younger and lower-paid employees, withdraw their entire retirement fund balance when they leave an employer. Despite recent changes in the way these withdrawals are taxed to incentivise preservation, this trend has continued".

Treasury, "[i]n South Africa's retirement system, recurring charges, which reduce the fund's investment return, are borne entirely by members in the form of lower benefits when they retire".¹²¹

However, because of these potential risks that may diminish retirement benefits that members will ultimately receive when they retire, the South African legislature has established a legislative framework to protect these benefits. Over the years, the South African government has also adopted broad objectives of retirement policy, which, among others, seek to "encourage individuals to provide adequately for their retirement and the needs of their dependants".¹²² The government has also encouraged employers and employees to "provide for retirement funding as part of the remuneration contract".¹²³ These policy considerations result from the realisation that "most South Africans do not save adequately for retirement and only about half the country's workers belong to a retirement fund".¹²⁴

The protection provided for retirement benefits makes it challenging to diminish these benefits. It maximises their chances of being used to prevent poverty during retirement, a social function. It has been correctly argued that "pension funds ... are different from other financial intermediaries since they have a financial and economic role and an important social function".¹²⁵ While it is true that retirement benefits are generally protected from members' creditors before they accrue to members, there appears to be no consensus on whether creditors can claim accrued retirement benefits while still in the custody of retirement funds for the satisfaction of their debts. This

¹²¹ National Treasury "Charges in South African retirement funds" (2013) 18 available at <http://www.treasury.gov.za/public%20comments/Charges%20in%20South%20African%20Retirement%20Funds.pdf> accessed 20 March 2024.

¹²² National Treasury "Retirement fund reform: A discussion paper" (December 2004) 4 available at <http://www.treasury.gov.za/public%20comments/Retirement%20Fund%20Reform%20A%20Discussion%20Paper.pdf> (accessed 10 January 2021)

¹²³ See National Treasury (2004) at 4.

¹²⁴ See National Treasury (2012) at 3.

¹²⁵ Queisser M "The role of pension funds in the stabilisation of the domestic financial sector" in Brooks DH & Queisser M (eds) *Financial liberalisation in Asia: analysis and prospects* Mandaluyong: OECD (1999) 165.

controversy makes it necessary to investigate the extent and nature of the legislative protection of retirement benefits in South Africa.

3.3.2 Prospects of Retirement Reform

The retirement reform system harbours a lot of prospects which will seek to benefit individuals who benefit from the pension fund coffers. The retirement reform discussion¹²⁶ paper outlines in numbers the reform policy's objectives that aim to revamp the overall pension payouts. A few of these objectives are “to encourage individuals to provide adequately for their retirement and the needs of their dependants”, “to encourage employers and employees to provide for retirement funding as part of the remuneration contract”, “to ensure that retirement funding arrangements are cost-efficient, prudently managed, transparent and fair”, and “to promote the retention of purchasing power of pensions through protection against the effects of inflation, within the resource constraints of the fund.”

The objectives mentioned above bring about prospects that fund members will enjoy. The immediate impact of the retirement reform will allow contributors to access some of their retirement savings, which could provide a near-term lift to consumption, though Munnell, Webb and Hou¹²⁷ highlight that early access to pension savings often leads to inadequate retirement income, increasing the risk of old-age poverty.

Furthermore, Antolín et al¹²⁸ indicate that early withdrawals tend to disproportionately impact lower-income individuals, who are more likely to access their savings due to financial hardship. This exacerbates inequality in retirement outcomes, as wealthier individuals are more likely to preserve their savings and thus secure better post-retirement income.

¹²⁶ The Retirement reform discussion paper

¹²⁷ Munnell, A, Webb, A & Hou, W 'How Much Should People Save?' (2014) 14(11) *Center for Retirement Research* 1-8.

¹²⁸ Antolín, P, Payet, S & Yermo, J 'Assessing the Labour, Financial and Demographic Risks to Retirement Income from Defined-Contribution Pensions' (2011) 2010(2) *OECD Journal: Financial Market Trends* 1-30.

Another critical issue is that early withdrawals can also lead to higher public spending in the future. According to Barr and Diamond,¹²⁹ governments might need to provide more social assistance to individuals who depleted their savings prematurely and are left without sufficient income in their retirement years. This places additional pressure on public pension systems and social welfare programs, straining national budgets.

However, the Tax-free savings accounts introduced on 01 March 2015 sought to complement retirement savings by ensuring members would not rely only on their retirement savings, especially in emergencies.¹³⁰

For a retirement system to be considered successful, it must provide retirement benefits that enable retirees to maintain a standard of living that is widely regarded as acceptable. To an extent, this requires adequate funding by the employer and employee throughout the employee's working life.¹³¹ As much as increased savings would bolster economic growth, there is evidence that savings play an essential role in addressing intergenerational poverty.¹³²

Proposals to enhance short—and medium-term savings are under consideration. The current regulatory framework allows individuals to use their retirement assets to meet short—and medium-term consumption living needs. Low rates of preservation indicate that this function is essential for many people.¹³³

¹²⁹ Barr, N and Diamond *Reforming Pensions: Principles and Policy Choices* (Online Ed, Oxford Academic New York, 2009).

¹³⁰ Makhubela O, Thela T 'A Journey to Reform the Retirement System: South Africa's Experience and Perspective' 2024 APSA https://www.africapsa.org/wp-content/uploads/2024/02/pinBox-Book_A-Journey-to-Reform-the-Retirement-System-South-Africas.pdf

¹³¹ Ibid.

¹³² Searle B, koppe S 'Assets, Savings and Wealth, and Poverty: A Review of Evidence' 2014 *Joseph Rowntree Foundation Social Policy, Social Work and Social Justice Research Collection*.

¹³³ National Treasury discussion document titled strengthening savings, published on 14 May 2012, page 13, and See also Kgatla, P 'Social Security and Retirement Reforms in South Africa: Prospects and Challenges' 2013 *ULspace Dissertation* 1-68.

People employed in the formal sector will be obliged to make additional contributions to occupational retirement funds or individual retirement funds out of their earnings above the earnings ceiling up to a monetary cap. This will allow individuals to save for an adequate income replacement after retirement.¹³⁴

Furthermore, there is a preservation of money as a government measure. When employees change jobs, their balances can remain in their employer's fund or be transferred to a preservation fund or their new employer's fund rather than be withdrawn in cash.¹³⁵

Preservation is the requirement that money saved for retirement through a pension, provident or retirement annuity fund should remain in such a fund or be rolled over into another similar savings vehicle without incurring taxes or penalties until the person retires in the ordinary course of their career, reaches the age of 55 or retires on the grounds of permanent disability.¹³⁶

The government also seeks to harmonise the members' annuities, protecting them from outliving their assets. This means that employees who retire at 55 or those who retire due to a disability can still access annuities that the government would harmonise upon depleting portions of the retirement funds.

Retirement reform will push and require good governance and mandate trustees to act on their roles. Members contribute in the present to save for the future.¹³⁷ They have a right to expect their funds to be managed prudently, in their best interests and per the law. Several recent high-profile

¹³⁴ National Treasury 'Social security and retirement reform' 2007 second discussion paper 2007 para 64.

¹³⁵ Retirement reform proposal, Simeka Consultants, May 2012, page 4.

¹³⁶ National Treasury, A safer financial sector to serve South Africa better, 23 February 2011, p50. See National Treasury, Preservation, portability and governance for retirement funds, 21 September 2012.

¹³⁷ 9 National Treasury, strengthening retirement savings, an overview of the proposals announced in the 2012 Budget Speech.

lapses highlight a broader problem with fund governance that, if unchecked, will damage the trust underpinning the system.¹³⁸

3.4 Chapter Summary

The landscape of retirement reform presents a complex interplay of policy frameworks, challenges, and prospects. The urgency of the matter is clear—we need to envision a future where retirement funding arrangements are not just effective, but also cost-efficient. This is crucial to provide retirement savings and related benefits to members.¹³⁹

¹³⁸ Retirement reform proposal, Simeka consultants, May 2012.

¹³⁹ Nevondwe L, South African Social security and retirement reform a long journey towards the redrafting of the New Pension Funds Act, *Pensions, an International Journal*, Palgrave Macmillan Publishers, UK, Vol 15, issue 4, November 2010, pages 295- 296.

CHAPTER 4: INTERNATIONAL LAW AND PENSION FUND LAW

4.1 Introduction

International law and principles have significantly influenced South Africa's pension system and retirement reform efforts.¹⁴⁰ As the country seeks to address the challenges of an ageing population and ensure the financial security of its citizens in their later years, it has looked to international frameworks and best practices to guide its policymaking.¹⁴¹

The influence of international law on South Africa's pension system is profound. The constitutional right to social security, a critical international source, is enshrined in the South African Constitution. This guarantee has been a driving force behind the country's efforts to expand and strengthen its pension and retirement system, underscoring the importance of international law in this context.¹⁴²

International human rights treaties, such as the International Covenant on Economic, Social and Cultural Rights, have also provided a basis for advancing the right to social security in South Africa.¹⁴³ These agreements, which South Africa has ratified, obligate the government to take steps to realise the right to social security for all its citizens.

The lessons from South Africa's experience, where the right to social security is constitutionally entrenched and international law is used as a tool for reform, are not just valuable, but empowering. They offer a roadmap for

¹⁴⁰ Fombad, C 'An Overview of the Constitutional Framework of the Right to Social Security with Special Reference to South Africa' (2013) 21(1) *Edinburgh University Press* 1-31.

¹⁴¹ World Bank 'Averting the old age crisis : policies to protect the old and promote growth' (English). *Washington, D.C. : World Bank Group* <<http://documents.worldbank.org/curated/en/973571468174557899/Averting-the-old-age-crisis-policies-to-protect-the-old-and-promote-growth>> (Accessed on 24 June 2024).

¹⁴² See Section 27(2) of the Constitution.

¹⁴³ Fombad (note 128 above) 31.

other African countries, providing them with the tools to strengthen their own pension systems and ensure the financial security of their citizens.

4.2 Current International Law Instruments on Pension Law

The international law framework on pension law is a comprehensive system, involving various guidelines, conventions, and recommendations established by international organisations. This system is designed to guide the global development and implementation of pension systems, providing a robust foundation for pension reform.¹⁴⁴

These laws include International Labour Organization (ILO) Conventions and Recommendations, which have passed the ILO Convention No. 102 (Social Security (Minimum Standards) Convention, 1952), which establishes minimum standards for social security, including old-age benefits and defines the scope and level of benefits, conditions for entitlement, and the administration of social security systems. Van Ginneken¹⁴⁵ on global social security reforms stresses the importance of ILO standards in guiding countries to extend social protection, particularly for aging populations. Similarly, Cichon¹⁴⁶ discusses the broader implications of these conventions in providing a framework for sustainable pension reforms worldwide. These frameworks ensure that even in times of economic strain, basic social security standards are met

The ILO Recommendation No. 131 (Invalidity, Old-Age and Survivors' Benefits Recommendation, 1967) provides guidance on the structure and coverage of pension systems and suggests measures to ensure that pension systems are comprehensive, adequate, and financially sustainable.

¹⁴⁴ Holzmann, R, Alonso-García, J, Labit H, & Villegas, A 'Ndc Schemes and Heterogeneity in Longevity: Proposals for Redesign' (2017) 10 *SSRN Electronic Journal*.

¹⁴⁵ Mckinnon, R 'Social security and the crisis' (2010) 63(2) *International Social Security Review*.

¹⁴⁶ Cichon, M *Financing social protection* (International Labour Organization 2004).

The ILO Convention No. 128 (Invalidity, Old-Age and Survivors' Benefits Convention, 1967) sets higher standards than Convention No. 102, particularly regarding the level of benefits and the conditions for entitlement.

Furthermore, the international framework adheres to the United Nations (UN) principles, as established in the Universal Declaration of Human Rights (UDHR) of 1948. Article 22 of the UDHR recognises the right to social security, while Article 25 states that everyone has the right to an adequate standard of living for health and well-being, including essential social services and security in the event of unemployment, sickness, disability, widowhood, old age, or other circumstances beyond their control that result in a lack of livelihood.¹⁴⁷ These articles further reinforces the right to social security and an adequate standard of living, forming part of the international legal framework that influences pension systems globally.¹⁴⁸

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, recognises the right of everyone to social security, including social insurance, while Article 11 emphasizes the right to an adequate standard of living, which includes the right to social protection.

The Framework involves the Organization for Economic Cooperation and Development (OECD) Guidelines. Which passed the OECD Core Principles of Private Pension Regulation to provide a framework for the regulation and supervision of private pension systems and emphasises the need for transparency, protection of beneficiaries, and financial sustainability of pension systems. The OECD Roadmap for the Good Design of Defined Contribution Pension Plans¹⁴⁹ offers guidelines for the design of defined contribution pension plans, focusing on ensuring adequate retirement income, protecting members, and promoting efficient plan administration and further provides guidance on pension reform and the sustainability of

¹⁴⁷ See Article 25 of the UDHR.

¹⁴⁸ Hartley, D 'Social Policy and Human Rights: Re-thinking the Engagement' (2008) 7(1) *Social Policy and Society* 10.

¹⁴⁹ OECD Recommendation: Adopted by OECD Council on 23 February 2022.

pension systems as part of broader economic and financial policy advice to member countries.

These international frameworks and guidelines provide a comprehensive foundation for countries to design, implement, and reform their pension systems, ensuring they are fair, sustainable, and adequate for their populations.

4.3 International law and South African domestic law on pension

South Africa has a well-developed social security system, including a robust pension system that provides old-age income support to its citizens.¹⁵⁰ The country's pension system is governed by both international law and domestic legislation, which work in tandem to ensure the protection of pension rights for individuals.

From an international law perspective, South Africa is a signatory to various human rights treaties and conventions that enshrine the right to social security, including pensions.¹⁵¹ The country's constitutional framework also firmly establishes the right to social security, with Section 27 of the Constitution guaranteeing "everyone" the right of access to social security, including appropriate social assistance if they are unable to support themselves and their dependents.

The South African domestic legal framework on pensions is primarily governed by the PFA and the GEPL.¹⁵² These laws establish the structure and governance of both private and public pension schemes in the country,

¹⁵⁰ Thovoethin, P, Ewalefoh, J 'Universal old-age pension: Can Africa overcome its challenges?' (2018) 6(1) *Africa's Public Service Delivery & Performance Review* 1-7.

¹⁵¹ Brockerhoff, S 'A Review of the Development of Social Security Policy in South Africa' (2013) *Studies in Poverty and Inequality Institute*.

¹⁵² Fombad, C 'An Overview of the Constitutional Framework of the Right to Social Security with Special Reference to South Africa' (2013) 21(1) *Edinburgh University Press* 1-31.

providing a comprehensive legal foundation for pension administration and benefits.¹⁵³

While the formal pension system in South Africa is relatively robust, there remains a significant gap in pension coverage, particularly among vulnerable populations such as the poor, informal workers, and those in rural areas.¹⁵⁴ This gap in coverage has led to the emergence of informal social security mechanisms, such as community-based savings and mutual aid schemes, which work to bridge the divide between the formal and informal sectors.¹⁵⁵

However, these informal systems often lack the legal protections and regulatory oversight of the formal pension system, leaving participants vulnerable to financial instability and exploitation. Addressing these disparities in pension coverage will require a multifaceted approach that not only expands the formal system, but also integrates and supports the informal mechanisms that many vulnerable populations rely on for old-age income security.¹⁵⁶

Scholars have argued that a more integrated approach is needed to harmonize the formal and informal social security systems in South Africa, one that "sees economically active people as placed at different points of a continuum from formal to informal employment".¹⁵⁷ Such an approach would keep open a role for multiple stakeholders - especially employers and

¹⁵³ Dekker, A 'Mind the gap: suggestions for bridging the divide between formal and informal social security' (2010) 12(1) *Law, Democracy & Development* 1-15.

¹⁵⁴ Mark, D 'Pension Patterns in Sub-Saharan Africa' (2015) *Social Protection and Labor Discussion paper no 1503*.

¹⁵⁵ Masanyiwa, Z, Masha, E & Mamboya, S 'Factors Influencing Participation of Informal Sector Workers in Formal Social Security Schemes in Dodoma City, Tanzania' (2020) 8(6) *Scientific Research Publishing* 229-242.

¹⁵⁶ Rofman, Rafael, Ignacio Apella, and Evelyn Veza, eds. 2015. *Beyond Contributory Pensions: Fourteen Experiences with Coverage Expansion in Latin America*. Directions in Development. Washington, DC: World Bank

¹⁵⁷ Lund, F 'Social security and the changing labour market: Access for non-standard and informal workers in South Africa' (2002) 28(2) *Social Dynamics* 177-206.

owners of capital - in extending social security coverage to informal and non-standard workers.

Overall, the South African pension system reflects a blend of international human rights standards and domestic legal frameworks, working to provide old-age income support to its citizens. However, ongoing challenges around coverage and the need for greater coordination between formal and informal systems point to the importance of continued policy refinement and innovation.¹⁵⁸

4.4 Comparative Analysis of Pension Law Between South Africa and the UK

Pension systems are critical for ensuring financial security in old age. Both South Africa and the UK have developed distinct pension frameworks shaped by their unique socio-economic contexts. This section provides a comparative analysis of the pension laws in South Africa and the UK, examining their structure, coverage, benefits, reforms, administration, funding, and portability. By highlighting the strengths and weaknesses of each system, this analysis aims to provide insights into how different pension frameworks address the challenges of providing adequate retirement income.

4.4.1 Pension system structure

South Africa operates a three-pillar pension system comprising a non-contributory state old-age pension (SOAP), mandatory occupational schemes, and voluntary savings.¹⁵⁹ The SOAP is a means-tested social grant provided to individuals over 60 years old who meet specific income and asset thresholds.¹⁶⁰ Employers are encouraged, though not mandated, to offer retirement savings plans through provident or pension funds.

¹⁵⁸ Dekker (note 141 above) 15.

¹⁵⁹ Van Zyl, E 'Old Age Pensions in South Africa' (2003) 56 *International Social Security Review* 101-120.

¹⁶⁰ Skosana, N 'Social Protection in South Africa. A Quest for an Appropriate Dispensation through a Minimum Employment Guarantee Scheme' (2016) *University of Cape town* 1-78.

Voluntary savings are facilitated through private pension funds and retirement annuities.¹⁶¹

The SOAP is widely accessible, with a take-up rate of nearly 90% among the historically disadvantaged African population.¹⁶² While the value of the pension is relatively low in terms of real income, it is generous compared to other developing countries.¹⁶³ The program has had a significant impact on reducing household poverty, particularly in Black South African households.¹⁶⁴

The UK's pension system consists of a three-tier structure, including the state pension, workplace pensions, and private pensions. The state pension includes the Basic State Pension and the New State Pension for those reaching state pension age after April 6, 2016, both based on National Insurance contributions.¹⁶⁵ Under the state pension system, the Basic State Pension provides a flat-rate weekly payment to eligible retirees, while the New State Pension offers a higher, earnings-related payment. Automatic enrolment into occupational pension schemes is mandatory for eligible employees, with employers required to contribute a minimum percentage of the employee's salary.¹⁶⁶ These workplace pensions are a key component of the UK's pension framework, supplementing the state pension. Individuals can also save through personal pension schemes, such as

¹⁶¹ See National Treasury of RSA 'Retirement Reform Discussion Paper' (December, 2004)

¹⁶² Kwena, R, Turner, J 'Extending pension and savings scheme coverage to the informal sector: Kenya's Mbao Pension Plan' (2013) 66 *Int Soc Secur Rev* 79-99.

¹⁶³ Uzoh, B, Anekwe, S 'The Contributory Pension Scheme and the Fate of Retired and Retiring Nigerian Workers' (2018) 8(3). PLEASE GOOGLE THIS ARTICLE AND CITE OUT HOW TO PROPERLY CITE IT BY INCLUDING NAME OF THE JOURNAL ETC

¹⁶⁴ Muchiri, S, Garen, J Social Transfer Benefits and Retirement Decisions: Evidence from South Africa' (2017) 86(1) *Wiley-Blackwell* 23-52.

¹⁶⁵ DWP 'Your new State Pension explained'. (2014, November 17) < <https://www.gov.uk/government/publications/your-new-state-pension-explained>> (Accessed on 01 June 2024).

¹⁶⁶ Department of Public Expenditure and Reform 'Single Public Service Pension Scheme' (October 2021) < <https://singlepensionscheme.gov.ie/overview/>> (Accessed on 01 June 2024).

stakeholder and self-invested personal pensions, which offer additional flexibility and investment options for retirement planning.¹⁶⁷

4.4.2 Coverage

In South Africa, the SOAP provides coverage for low-income and indigent elderly citizens. However, occupational and private pensions primarily cover the formally employed sector, leaving a significant portion of informal sector workers without pension coverage.¹⁶⁸ Conversely, the UK's state pension system offers universal coverage for individuals with sufficient National Insurance contributions. The introduction of automatic enrolment has significantly increased coverage across the workforce, ensuring that most employees are included in workplace pensions.¹⁶⁹

Despite South Africa's progressive social pension program, challenges persist in ensuring equitable access and impact. While the pension system has historically been racially stratified, the post-apartheid government has made efforts to achieve parity in benefits across ethnic groups.¹⁷⁰ Furthermore, the means-testing criteria have been criticized for excluding some of the most vulnerable individuals, particularly in rural areas.¹⁷¹ To address these disparities, a comprehensive approach that accounts for the diverse nature of the South African labour market, including informal and non-standard workers, is necessary.

4.4.3 Reforms

Recent reforms in South Africa focus on improving coverage and adequacy, including proposals to consolidate the fragmented pension industry and

¹⁶⁷ Nevondwe, L 'South African Social Security and Retirement Reform: A long journey towards the redrafting of the new Pension Funds Act' (2010) 15(4) *Springer Nature* 287-296.

¹⁶⁸ Hendricks, F 'The Private Affairs of Public Pensions in South Africa' (2008) *Debt, Development and Corporatization* 220-247.

¹⁶⁹ Pensions Regulator 'Automatic Enrolment' (2021) Retrieved from <https://www.thepensionsregulator.gov.uk> > (Accessed on 01 June 2024).

¹⁷⁰ *Ibid* 220-247.

¹⁷¹ van Rensburg H 'South Africa's protracted struggle for equal distribution and equitable access - still not there' (2014) 12 *Human resources for health* 26.

introduce mandatory preservation of retirement savings.¹⁷² Challenges include high unemployment and a large informal sector, which complicate comprehensive coverage efforts and raise concerns about the financial sustainability of SOAP.¹⁷³

The UK has introduced significant reforms, such as the New State Pension, which simplified the state pension system, and automatic enrolment, which increased workplace pension participation.¹⁷⁴ However, challenges remain in ensuring adequate retirement income, given the shift from defined benefit to defined contribution schemes, and addressing gaps in coverage for self-employed individuals and those with interrupted work histories.¹⁷⁵

Ultimately, pension systems in both South Africa and the UK face the challenge of adapting to evolving labour market dynamics and ensuring equitable access to retirement income support, particularly for vulnerable populations.¹⁷⁶

4.4.4 Administration and Government

In South Africa, the South African Social Security Agency (SASSA) administers the SOAP, while pension funds are regulated by the Financial Sector Conduct Authority (FSCA) and the Prudential Authority under the Reserve Bank.¹⁷⁷ In the UK, the Department for Work and Pensions (DWP) oversees the state pension system, with the Pensions Regulator (TPR)

¹⁷² National Treasury 'Encouraging South African households to save more for retirement' (14 December 2021) <https://www.treasury.gov.za/comm_media/press/2021/2021121401%20Two-pot%20system%20retirement%20proposal%20and%20auto%20enrolment.pdf> Accessed on 22 July 2024.

¹⁷³ Yu, S, Ohnsorge, F 'The challenges of informality' (2019) *World Bank* <<https://blogs.worldbank.org/en/developmenttalk/challenges-informality>> Accessed on 22 July 2024.

¹⁷⁴ Cribb, J, Karjalainen, H & O'Brien, L 'Pensions: five key decisions for the next government' (2024) *Pensions Review*

¹⁷⁵ European Commission 'Progress and key challenges in the delivery of adequate and sustainable pensions in Europe' (2010) *European Economy Occasional Paper 71*.

¹⁷⁶ Clements, B 'Equitable and Sustainable Pension Systems' (2014) *In Equitable and Sustainable Pensions*. USA: IMF 1-27.

¹⁷⁷ FSCA 'Annual Report 2021/2022' (August 2022)

ensuring compliance and protecting members' benefits. The Financial Conduct Authority (FCA) oversees personal pensions.¹⁷⁸

4.4.5 Benefits

The SOAP in South Africa offers a flat-rate benefit aimed at providing basic income support. The benefit levels of occupational and private pensions vary based on contributions and fund performance.¹⁷⁹ In the UK, the New State Pension provides a flat-rate benefit for those with sufficient contributions. Additional state pension schemes (SERPS and S2P) cater to those with accrued benefits pre-reform. Workplace and private pension benefits depend on the scheme type (defined benefit or defined contribution) and contributions made.¹⁸⁰

4.4.6 Fundability and Sustainability

The SOAP in South Africa is funded by general taxation, raising sustainability concerns due to fiscal constraints and a growing elderly population. Occupational and private pensions rely on employer and employee contributions, with investment returns influencing fund performance.¹⁸¹ The UK's state pension is funded through National Insurance contributions, with demographic shifts and an ageing population posing sustainability challenges. Workplace and private pensions are funded through contributions and investment returns, increasingly relying on defined contribution schemes.¹⁸²

¹⁷⁸ Committee of Public Accounts 'The Department for Work & Pensions Annual Report and Accounts 2022–23' (December 2023) (4) *House of Commons: UK* <<https://committees.parliament.uk/publications/42434/documents/210942/default/>> Accessed on 24 July 2024.

¹⁷⁹ Barr, N and Diamond, P *Reforming Pensions: Principles and Policy Choices* (online Ed, Oxford Academic, 1 Sept. 2009).

¹⁸⁰ Blake, D *Pension Economics* (Wiley 2006) 272.

¹⁸¹ Skosana (note 148 above) 78.

¹⁸² OECD, 'Pensions at a Glance 2023: OECD and G20 Indicators' (2023) *OECD Publishing*, Paris, <https://doi.org/10.1787/678055dd-en>.

4.4.7 Overview

This comparative analysis highlights the distinct approaches and challenges faced by South Africa and the UK in providing adequate and sustainable pension systems. South Africa's system is marked by strong non-contributory pensions but limited coverage for informal workers, while the UK's comprehensive coverage and robust regulatory framework are tempered by concerns about the adequacy of defined contribution schemes. Understanding these differences can provide valuable lessons for pension reform and the development of more inclusive and sustainable retirement systems globally.

4.5 Chapter Summary

Chapter 4 has illuminated the pivotal role of international law in shaping national pension systems, with a particular focus on South Africa and the UK. The exploration of international instruments, such as the International Labour Organization (ILO) Conventions, United Nations (UN) declarations, and Organization for Economic Cooperation and Development (OECD) guidelines, underscores the global commitment to ensuring adequate, sustainable, and equitable pension provisions. These international standards, which include pension coverage, adequacy, and sustainability guidelines, provide a framework that countries can adapt to their specific socio-economic contexts, promoting best practices in designing and implementing pension systems.

South Africa's alignment with international norms is evident in its efforts to improve pension coverage and adequacy, mainly through the SOAP and recent reforms to consolidate the pension industry. Despite these efforts, challenges remain, especially in extending coverage to informal sector workers and ensuring the financial sustainability of the pension system. Conversely, the UK's comprehensive three-tier pension system, bolstered by automatic enrolment and robust regulatory frameworks, demonstrates significant progress in increasing coverage and participation. However, the

UK needs help, particularly regarding the adequacy of retirement income in the shift from defined benefit to defined contribution schemes.

The comparative analysis between South Africa and the UK reveals commonalities and divergences in addressing pension-related issues. While the UK's approach provides valuable lessons in regulatory oversight and automatic enrolment, South Africa's focus on non-contributory pensions highlights the importance of social safety nets. Both countries must continue to adapt and reform their systems to address demographic changes and economic pressures, ensuring that all citizens can achieve financial security in retirement. This chapter thus underscores the importance of international legal frameworks in guiding national policies and fostering more effective and inclusive pension systems worldwide.

Chapter 5: Conclusion and Recommendations

5.1 Introduction

In this final chapter, we synthesise the findings from our exploration of South Africa's pension system and offer targeted recommendations to address the identified challenges. The previous chapters have illustrated the intricate dynamics between international law, domestic policy frameworks, and the socio-economic realities that shape retirement security in South Africa. We have examined the constitutional underpinnings, the impact of international treaties, and the comparative analysis of the UK's pension system, revealing both strengths and persistent gaps. Building on this comprehensive analysis, this chapter aims to provide a clear path forward, outlining actionable recommendations that combine policy reform, institutional strengthening, and societal engagement. These recommendations are designed to enhance South Africa's pension system's coverage, adequacy, and sustainability, ensuring a secure and dignified retirement for all its citizens.

5.2 Chapter conclusions

5.2.1 Chapter 1

The opening chapter has laid a comprehensive foundation by charting the historical evolution of South Africa's pension fund system from its inception under the PFA of 1956 to the present day. The development of this system, initially shaped by the socio-political context of apartheid, has undergone significant reforms to address the needs and challenges of a post-apartheid society. Despite these reforms, critical issues remain, particularly concerning the adequacy of retirement savings and the sustainability of pension funds.

The problem statement highlights a significant concern: many South African pension fund members do not save enough for retirement, often squandering their benefits without securing their future financial stability. This issue is exacerbated by a low national household saving rate, leading to financial insecurity and a reliance on inadequate old age grants. The chapter underscores the need for effective retirement reforms to enhance the financial security of retirees and reduce poverty among the elderly.

The significance of this study is emphasized by its potential to influence various stakeholders, including policymakers, retirement fund participants, and the broader retirement fund industry. By providing a modern perspective and evidence-based insights, the study aims to inspire better investment and saving practices among retirement fund members and inform policy decisions that can improve the overall pension system.

The chapter's research questions and objectives focus on improving the retirement funding system through reforms, evaluating the impact of these reforms on fund performance and risk management, and addressing inequality in access to retirement benefits. A comparative analysis with international best practices, particularly those of the UK, is also a key objective, aimed at identifying lessons that can be applied to the South African context.

The literature review and methodology sections outline the theoretical and empirical framework for the study, drawing from a broad range of primary and secondary sources. The study's approach combines legislative analysis with a comparative perspective, aiming to provide a holistic understanding of the challenges and opportunities within South Africa's retirement funding system. This chapter sets the stage for a detailed exploration of these themes in the subsequent chapters, ultimately aiming to provide actionable recommendations for improving retirement security in South Africa.

5.2.2 Chapter 2

The right to social security, as enshrined in the South African Constitution, reflects the government's critical commitment to ensuring the well-being of its citizens. Chapter 2 of the Constitution, detailing the Bill of Rights, emphasizes access to social security, including health care services, sufficient food and water, and appropriate social assistance for those unable to support themselves. This commitment underlines the government's role in addressing poverty, inequality, and social exclusion by providing essential social protection measures to its citizens, particularly the most vulnerable.

Despite significant strides in extending social assistance since the country's democratization, there are still gaps in the social security system. These gaps are due to a history of racial discrimination, institutional fragmentation, and economic disparities. Millions of vulnerable individuals remain excluded from social assistance, and the means testing required for eligibility can be prohibitive. The ongoing issues with poverty and unemployment have led to discussions about the viability of a basic income grant, particularly in the wake of the COVID-19 pandemic. Comprehensive social security reform is necessary to improve access, coverage, and effectiveness in delivering benefits.

Social grants and pension funds are pivotal in reducing poverty and inequality. Social grants provide a lifeline for many households, enhancing their capacity to meet basic needs such as food, education, and healthcare. Pension funds, essential to the South African economy, offer financial security to retirees and their dependents. However, the pension system has faced challenges, including historical discrimination and inadequate oversight, necessitating reforms to ensure fair treatment and protection for all members.

In summary, the chapter highlights the importance of social security and pension funds in promoting social justice and economic stability in South Africa. The government's efforts to enhance these systems reflect a broader

commitment to fulfilling constitutional mandates and addressing the socio-economic disparities that persist in the country. Achieving a more inclusive and effective social security system is crucial for improving the quality of life for all South Africans and ensuring equitable access to essential services and support.

5.2.3 Chapter 3

The landscape of retirement reform in South Africa is intricate, reflecting a blend of policy frameworks, challenges, and promising prospects. The country's legislative framework, consisting of various statutes such as the GEPL, the PFA, and others, is designed to protect retirement benefits from creditors. This legal protection aims to ensure that retirement savings serve their social function of preventing poverty among retirees, underlining the essential financial and economic role of pension funds.

Despite the legislative measures in place, several challenges hinder the effectiveness of retirement savings in South Africa. Issues such as unemployment, insufficient retirement savings, and the practice of cashing in retirement funds upon job changes undermine the potential for long-term financial security. Additionally, recurring charges on retirement fund assets and the lack of compulsory retirement funding arrangements for all employees exacerbate these challenges. These issues highlight the need for continued efforts to improve the retirement savings culture and policies in the country.

The prospects for retirement reform are encouraging, with the government's strategy aiming to enhance retirement savings and ensure financial security for retirees. Proposed reforms include encouraging individuals and employers to contribute to retirement funds, ensuring cost-efficiency and transparency in fund management, and promoting the preservation of retirement savings. These measures are intended to address both short-term financial needs and long-term retirement security, potentially lifting households out of poverty and providing a safety net for future retirees.

Overall, the chapter underscores the importance of a comprehensive and robust retirement reform framework that balances immediate financial needs with long-term savings goals. Effective governance, transparent management, and legislative protection are crucial for ensuring that retirement savings serve their intended purpose of providing financial stability and preventing poverty in retirement. The ongoing efforts and proposed reforms are steps towards achieving a sustainable and equitable retirement system in South Africa.

5.2.4 Chapter 4

Chapter 4 delves into the significant influence of international law on South Africa's pension system, emphasizing how global frameworks and human rights treaties shape national policies. The incorporation of international principles, such as those from the International Covenant on Economic, Social and Cultural Rights, underscores the commitment to ensuring social security and financial stability for all citizens. This alignment with international standards has driven South Africa's efforts to reform and enhance its pension system, showcasing the profound impact of global norms on national policymaking.

The chapter further explores various international legal instruments that guide pension systems worldwide, including the conventions and recommendations from the International Labour Organization (ILO) and guidelines from the Organization for Economic Cooperation and Development (OECD). These instruments provide a comprehensive foundation for developing pension systems that are equitable, sustainable, and adequate. South Africa's adherence to these standards reflects its dedication to aligning with global best practices in pension provision and reform.

In comparing South Africa and the UK, the chapter highlights distinct approaches to pension systems, each shaped by unique socio-economic contexts. South Africa's non-contributory state old-age pension (SOAP)

plays a crucial role in providing basic income support to the elderly, though challenges remain in covering informal sector workers. Conversely, the UK's three-tier pension system, which includes automatic enrolment and a strong regulatory framework, demonstrates significant progress in increasing coverage and participation, albeit with concerns about the adequacy of defined contribution schemes.

The comparative analysis reveals both countries' strengths and challenges in their pension systems. South Africa's focus on non-contributory pensions underscores the importance of social safety nets, while the UK's regulatory oversight and automatic enrolment provide valuable lessons for enhancing coverage and participation. Both nations face the ongoing challenge of adapting their systems to demographic changes and economic pressures, aiming to ensure financial security for their aging populations.

Ultimately, Chapter 4 underscores the critical role of international legal frameworks in guiding national pension policies. By adapting these global standards to their specific contexts, countries can develop more effective, inclusive, and sustainable pension systems. The experiences of South Africa and the UK offer valuable insights for other nations seeking to improve their pension systems, highlighting the importance of international cooperation and adherence to global norms in achieving financial security for all citizens.

5.3 General Conclusion

The examination of South Africa's pension system and its evolution highlights the profound impact of historical context, legislative frameworks, and international law on shaping retirement security for its citizens. Chapter 2 detailed the socio-political landscape that influenced South Africa's pension policies, emphasizing the legacy of apartheid and the ongoing efforts to address the inequalities it entrenched. The historical overview

underscores how past injustices have necessitated comprehensive reforms to ensure a more inclusive and equitable pension system.

Chapter 3 delved into the legislative underpinnings of South Africa's pension system, showcasing the intricate balance between public and private sector provisions. The PFA of 1956 and the GEPL of 1996 provide the structural framework for pension administration and regulation. This chapter highlighted the strengths of South Africa's formal pension structures while also pointing out the significant gaps in coverage, particularly for informal sector workers. The need for legislative reforms to bridge these gaps and extend social security coverage to all citizens was made clear.

Chapter 4 expanded the scope of analysis by exploring the influence of international law on South Africa's pension system. International frameworks, such as the International Labour Organization (ILO) Conventions and the United Nations (UN) declarations, play a crucial role in guiding national policies. South Africa's commitment to these international standards reflects its dedication to ensuring adequate and sustainable pension provisions. The comparative analysis with the UK provided insights into different approaches to pension systems, highlighting both successes and challenges in achieving comprehensive coverage and adequacy.

The synthesis of these chapters reveals a complex but coherent narrative of South Africa's pension system development. The historical context provides the backdrop for understanding current legislative frameworks, while international law offers a roadmap for future reforms. The persistent challenges, particularly in extending coverage to informal sector workers and ensuring the financial sustainability of the pension system, highlight the need for ongoing policy innovation and reform.

In conclusion, South Africa's journey toward a more inclusive and equitable pension system is a testament to the interplay between history, legislation, and international influence. The experiences documented in these chapters underscore the importance of a multi-faceted approach that addresses

historical inequalities, leverages robust legal frameworks, and aligns with global best practices. As South Africa continues to navigate its socio-economic challenges, the insights gained from this analysis provide valuable lessons for other nations striving to improve their pension systems and ensure financial security for all citizens.

5.4 Recommendations

To address the persistent challenges in South Africa's pension system and ensure a more secure retirement for all citizens, a multi-pronged approach combining policy, institutional, and societal strategies is essential. The following recommendations aim to improve coverage, sustainability, and adequacy of retirement provisions in South Africa.

5.4.1 Expanding Coverage to Informal Sector Workers

The gap in pension coverage for informal sector workers is a significant concern. Policies should be developed to integrate informal workers into the formal pension system. This could involve creating flexible contribution schemes that accommodate irregular income patterns typical of informal sector employment. Additionally, incentivising informal workers to join retirement savings plans through tax breaks or government matching contributions could enhance participation.

5.4.2. Strengthening Legal Frameworks

The existing PFA of 1956 and Government Employees Pension Law of 1996 should be updated to reflect contemporary economic realities and extend protections to currently underserved populations. Legal reforms could include mandating employer participation in retirement savings plans and establishing minimum contribution levels for both employers and employees to ensure consistent savings accumulation.

5.4.3. Enhancing Financial Literacy

A significant barrier to effective retirement planning is the lack of financial literacy among the general population. Nationwide educational campaigns

should be launched to inform citizens about the importance of retirement savings, how pension systems work, and the benefits of early and consistent contributions. These programs should be tailored to reach all demographics, including those in rural and underserved urban areas.

5.4.4. Improving Administrative Efficiency

Administrative inefficiencies can undermine the effectiveness of pension systems. Streamlining the processes within the South African Social Security Agency (SASSA) and the Financial Sector Conduct Authority (FSCA) is crucial. This could involve adopting advanced technologies for better data management, ensuring timely benefit disbursements, and reducing bureaucratic hurdles that beneficiaries face.

5.4.5. Encouraging Private Sector Participation

While public pensions provide a safety net, encouraging greater private sector involvement can enhance the overall pension landscape. Policies should incentivise employers to establish and contribute to occupational pension schemes. This can be achieved through tax incentives, regulatory support, and public-private partnerships aimed at developing innovative pension products tailored to different workforce segments.

5.4.6 Ensuring Financial Sustainability

The financial sustainability of pension systems is critical, especially with a growing elderly population. It is imperative to develop long-term strategies that balance benefits with available resources. This includes periodically reviewing and adjusting contribution rates, retirement ages, and benefit levels based on actuarial assessments and demographic projections to maintain system solvency.

5.4.7. Integrating Informal and Formal Systems

There is a need for a more integrated approach that harmonizes formal and informal social security mechanisms. Recognizing and supporting community-based savings and mutual aid schemes can provide a bridge for informal workers to transition into the formal pension system. Policies

should facilitate the integration of these informal systems with formal pension structures to offer comprehensive coverage and legal protections.

5.4.8 Leveraging International Best Practices

South Africa should continue to align its pension reforms with international standards set by organizations such as the International Labour Organization (ILO) and the Organization for Economic Cooperation and Development (OECD). Adopting best practices from other countries, particularly those with similar socio-economic contexts, can offer valuable insights into effective pension system design and implementation.

5.4.9. Promoting Inclusivity and Equity

Ensuring that the pension system is inclusive and equitable is paramount. Special attention must be given to vulnerable groups such as women, rural populations, and the unemployed. Tailored policies that address the unique challenges faced by these groups, such as gender-specific retirement savings initiatives and rural pension schemes, can help bridge the equity gap.

5.4.10. Continuous Policy Review and Adaptation

Finally, the dynamic nature of socio-economic conditions necessitates a continuous review and adaptation of pension policies. Establishing an independent body to regularly assess the performance of the pension system, conduct research, and provide evidence-based recommendations can help ensure that reforms are responsive to emerging challenges and opportunities.

By implementing these recommendations, South Africa can create a more robust, inclusive, and sustainable pension system that ensures financial security for all citizens in their retirement years. This comprehensive approach, which integrates policy reforms, institutional improvements, and societal engagement, is essential for addressing the multifaceted challenges of retirement reform in the country.

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