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**2020 COVID-19 ECONOMICS AND HUMAN RIGHTS FACT SHEET #2**

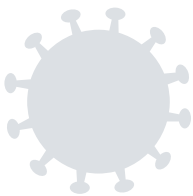
# UNEMPLOYMENT AND PRECARIETY DURING COVID-19

**The Right to Work and the Right to Just  
and Favourable Conditions of Work**



*This fact sheet is  
endorsed by the  
Solidarity Center.*





## INTRODUCTION

South Africa faces a major unemployment crisis, alongside a deeply unequal employment system. The COVID-19 pandemic has worsened this crisis, exacerbated by the weak, and poorly implemented, protections offered by government. At the same time, an unsafe reopening of the economy could jeopardise rights at work, placing many workers and their families at risk.

In 2018, South Africa was reviewed by the **United Nations Committee on Social, Economic and Cultural Rights** (“The Committee”) on its human rights obligations under the **International Covenant on Economic, Social and Cultural Rights** (ICESCR), ratified in 2015.

The Committee’s assessment of how South Africa is implementing its commitments are even more important in light of the social and economic crisis caused by the COVID-19 pandemic. The South African government must balance the importance of mitigating the public health crisis without ignoring these commitments.

This fact sheet focuses on two important aspects of the ICESCR: Article 6 on the right to work and Article 7 on the right to just and favourable conditions of work.<sup>1</sup> Together these can be taken as signifying a right to decent work.<sup>2</sup> They cover rights to work as well as rights at work.

The former – the right to work – is far less familiar in South Africa and does not feature in our Constitution. But is critical, as it places a positive obligation on the state to ensure everyone has access to decent employment opportunities, including by directly providing decent employment to those without access.

Guaranteeing the right to decent work in the context COVID-19 – ensuring access to work that doesn’t place the lives of workers in danger – requires an approach that takes account of how wellbeing and economic performance are interlinked.<sup>3</sup>

This fact sheet highlights the Committee’s concerns with regards to these rights and how they may be exacerbated by the COVID-19 crisis. It also details the recommendations of the Committee regarding these rights, and sets out proposed actions for addressing them.

1. In general, these should also be thought of alongside Article 8 which guarantees rights regarding trade union representation and the right to strike, i.e. collective rights at work.

2. McLaren, D. 2017. Indicators to Monitor the Progressive Realisation of the Right to Decent Work in South Africa. Studies in Poverty and Inequality Institute, Working Paper 15.

3. For a more detailed account of this see also: Smith et al. 2020. Towards a Safer, More Equitable Opening of the Economy. IEJ COVID-19 Response Policy Brief #2.



# THE COMMITTEE'S CONCERNS EXACERBATED BY COVID-19



## COMMITTEE'S CONCERN



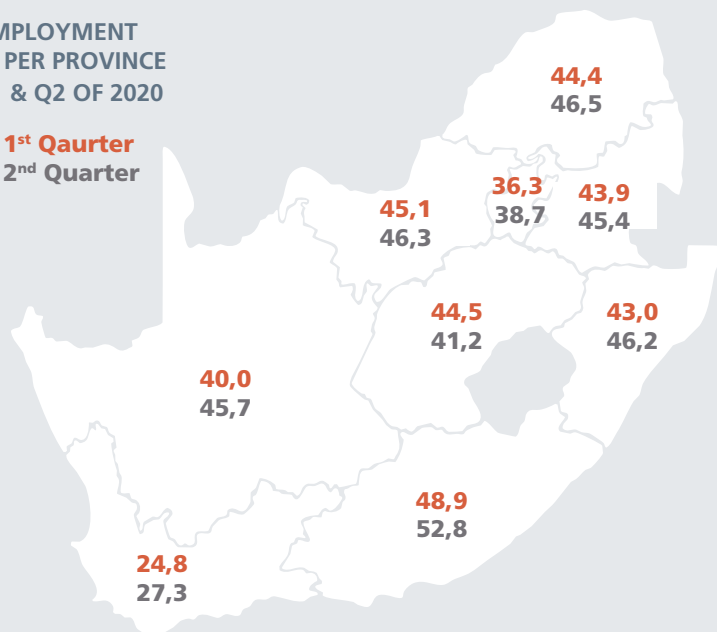
## IMPACT OF COVID-19

### High unemployment and a deeply unequal labour system

- South Africa has one of the highest unemployment rates in the world, the Committee noted. According to the most recent Quarterly Labour Force Survey (QLFS) for the second quarter of 2020,<sup>4</sup> South Africa's official expanded unemployment rate (EUR) figure was 42,3%.
- When this data is disaggregated it highlights deep inequalities in terms of race and gender, as well across provinces. **Unemployment is consistently higher for women than it is for men.** In Q2 of 2020: the EUR for women was 45,7% and for men was 38,9%.
- In Q2 of 2020, the EUR for black/Africans was 46,3% compared to 14,3% for whites.
- The vast majority of businesses – all but essential services – were forced to shut temporarily. In many instances, workers were forced to take leave, in some instances without pay. Support to businesses has been inadequate<sup>5</sup>, threatening long-term employment prospects especially in labour-intensive industries like manufacturing.<sup>6</sup>
- The NIDS-CRAM survey estimated that between February and April 2020, approximately 3 million jobs were lost.<sup>7</sup> Similarly, StatsSA noted that 2,2 million jobs were shed in Q2 of 2020. It is difficult to predict how many of these will be permanent in the medium term. One estimate suggests 1.77 million jobs are at risk over the next 24 months.<sup>8</sup>
- The same survey showed the **gendered nature of the job losses with 2/3 being lost by women.**<sup>9</sup>

#### UNEMPLOYMENT RATE PER PROVINCE IN Q1 & Q2 OF 2020

Q1 = 1<sup>st</sup> Quarter  
Q2 = 2<sup>nd</sup> Quarter



WOMEN

45,7%



MEN

38,9%

UNEMPLOYMENT RATE PER GENDER IN Q2 OF 2020

4. Throughout this fact sheet we use the expanded definition of unemployment which includes discouraged workers i.e. those who are not employed, want to work but are not actively looking for a job. Unless otherwise stated, all employment related statistics in this fact sheet are compiled from the Quarterly Labour Force Survey from Q2 of 2020 available on the Stats SA website.

5. For a full assessment of the government's economic and social response to COVID-19 see: <https://iej.org.za/south-africas-covid-19-rescue-package-scorecard/>.

6. A rapid response survey of businesses across various sectors by Stats SA) found that 30.6% felt they could survive for less than a month without turnover. Only 8.2% said they could survive longer than 3 months.

7. Spaull et al. 2020. NIDS-CRAM Wave 1 Synthesis Report: Overview and Findings. Retrieved from: <https://cramsurvey.org/wp-content/uploads/2020/07/Spaull-et-al.-NIDS-CRAM-Wave-1-Synthesis-Report-Overview-and-Findings-1.pdf>

8. Strauss et al. 2020. The impacts from a COVID-19 shock to South Africa's economy and labour market. ILO Rapid Country Assessment: South Africa.

9. Casale, D. and Posel, D. 2020. Gender and the early effects of the COVID-19 Crisis in the paid and unpaid economies in South Africa. Retrieved from: <https://cramsurvey.org/wp-content/uploads/2020/07/Casale-Gender-the-early-effects-of-the-COVID-19-crisis-in-the-paid-unpaid-economies-in-South-Africa.pdf>





Poor conditions of employment and a high degree of precarity

- The Committee expressed concern that the coverage of the Unemployment Insurance Fund (UIF) “remains low and excludes workers in the informal economy, seasonal workers and the self-employed”. The rights under **Articles 6 and 7 of the Covenant**, however, apply to all workers and not just those in formal employment.
- The UIF entitles formerly employed and registered workers to partial salary coverage, for a limited period of time, if they go on maternity leave or are laid off. Despite the obligation on employers to register their employees, only 61.4% of employed persons in South Africa are covered.<sup>10</sup>
- Domestic workers are particularly at risk given the precarity of their employment situation, with many not having written contracts. Approximately one third of domestic workers are not registered with the UIF.<sup>11</sup>
- The Committee also noted the high number of workers who are in the informal economy and so do not have access to UIF, sufficient social protections, or labour rights. In addition, they raised concerns regarding the increased casualisation of employment in the formal sector.
- There remains a shortage of labour inspectors to monitor compliance with labour legislation.

- Given the extreme disruptions to business caused by the lockdown, unemployment insurance is particularly important during the COVID-19 pandemic. However, many of the lockdown measures did not adequately protect informal workers. By IEJ estimates, there are around 15.1 million people or **9.3 million households who are living below R6,000 per month (p/m)** and are not eligible for any grants, are not registered for UIF and not in formal employment.
- Survey data<sup>12</sup> on the impact of the lockdown indicates that there was a decline in hours worked across the informal economy.<sup>13</sup>
- This decline was gendered: the decline in hours worked for the typical woman worker was 49% for and 25% for men.<sup>14</sup>
- For women in informal self-employment, typical earnings decreased by nearly 70% between February and April.<sup>15</sup>
- In May 2020, the Department of Labour reported that 60% of businesses inspected were non-compliant with the Occupational Health and Safety Act. The rate of compliance was even lower for SOEs and government departments at 50%.<sup>16</sup>

The reopening of the economy in June 2020 saw 95% of the workforce eligible to return to work and coincided with a surge in COVID-19 infections. As of early August 2020, South Africa had the fifth highest number of cases in the world.

This reopening was done on the basis that it was necessary to mitigate the economic impact of the lockdown. While it is clear that the lockdown had devastating socio-economic impact reopening that discounts workers’ rights threatens to be just as debilitating.

Rather, the approach should integrate health, socio-economic and economic concerns, instead of posing these

as competing objectives.<sup>17</sup> This would fit with South Africa’s obligation to ensure the right to decent work as enshrined in **Article 6 and 7 of the ICESCR**.

	Percentage confirmed UIF contribution	Percentage entitled to paid sick leave	Percentage with a written contract	Percentage with a permanent contract
<b>Both sexes</b>	64	77	85	68
<b>Women</b>	61	77	85	66
<b>Men</b>	67	78	85	69

Calculated using the latest QLFS statistics for the 2nd quarter 2020

10. Runciman, C. (2020, April 22). Gaps in South Africa’s relief scheme leave some workers with no income. The Conversation. Retrieved from: <https://theconversation.com/gaps-in-south-africas-relief-scheme-leave-some-workers-with-no-income-136403>

11. Liao, K. (2019, June 13). One third of domestic workers are still not registered for UIF. GroundUp. Retrieved from: <https://www.groundup.org.za/article/one-third-domestic-workers-are-still-not-registered-uif/>. Domestic workers are also not covered by the Compensation for Occupational Injuries and Diseases Act and there is no mechanism for unannounced labour inspections in domestic settings, nor are there mechanisms for domestic workers to make formal complaints about their working conditions. These issues were raised by the Committee in their report on South Africa.

12. This estimate was calculated using data from the National Income Dynamic Survey Wave 5. See: <https://iej.org.za/covid-19-an-emergency-rescue-package-for-south-africa/>

13. Rogan, M and Skinner, C. 2020. The COVID-19 crisis and the South African informal economy: ‘Locked out’ of livelihoods and employment. Retrieved from: <https://cramsury.org/wp-content/uploads/2020/07/Rogan-Covid-crisis-and-the-South-African-informal-economy.pdf>

14. Ibid.

15. Ibid.

16. Department of Employment and Labour. (2020, May 12). Employment and Labour on compliance by organisations with Coronavirus COVID-19 regulations. Retrieved from: <https://www.gov.za/speeches/employment-and-labour-compliance-organisations-coronavirus-covid-19-regulations-12-may-2020>

17. For a detailed account of this argument see Smith et al. 2020.





## WHAT ARE SOUTH AFRICA'S OBLIGATIONS UNDER INTERNATIONAL LAW?

ICESCR Articles 6 and 7 give more concrete instructions on how South Africa should be regulating work:

### ARTICLE 6

1. The States Parties to the present Covenant recognize the right to work, which includes the **right of everyone to the opportunity to gain his living by work** which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions **safeguarding fundamental political and economic freedoms to the individual.**

### ARTICLE 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- a. Remuneration which provides all workers, as a minimum, with:
  - i. **Fair wages and equal remuneration for work of equal value** without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - ii. **A decent living for themselves and their families** in accordance with the provisions of the present Covenant;
- b. **Safe and healthy working conditions;**
- c. **Equal opportunity** for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- d. **Rest, leisure** and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.



## WHAT DID THE COMMITTEE RECOMMEND?

### Unemployment

**Regarding unemployment**, the Committee recommended that South Africa take every effort to reduce the high rates of unemployment, especially for young people and people with disabilities.

### Precarious employment

**Regarding precarious employment**, the Committee made a number of important recommendations:

- Introduce a legislative framework to regulate the informal economy with a view to protecting workers from abuse, including by law enforcement officials.
- Extend coverage of labour and social security legislation to these workers.
- Facilitate the transition of informal workers into the formal economy.
- Present and mitigate the casualisation or externalisation of work in the formal economy.
- Collect information on the informal economy on a regular basis.

### Conditions of work

**Regarding conditions of work**, the Committee also made a number of recommendations:

- Apply the minimum wage across all sectors and ensure that it is continuously raised in line with cost of living increases.
- Intensify efforts to close the gender pay gap.
- Increase the level of funding for the Directorate of Inspection and Enforcement services and ensure that there are a sufficient number of qualified labour inspectors.
- Ensures that all workers are able to effectively participate in the decision-making process related to their working conditions.

The Committee made a number of additional recommendations on specific sectors, including **mining, agriculture and sex work.**



## WHAT HAS THE SOUTH AFRICAN GOVERNMENT DONE?

As it stands, few of the recommended protections have been put in place. It is clear that the pandemic does not absolve South Africa of the responsibility to implement the Committee’s recommendations.

Rather, South Africa must take special action to protect worker’s rights. In their statement on the pandemic, the Committee reiterated this, noting:

“States should take immediate measures to **protect the jobs, pensions and other social benefits of workers** during the pandemic, and to mitigate its economic impacts, through, for example, **subsidizing wages, providing tax relief and establishing supplementary**

**social security and income protection programmes.**”<sup>18</sup>  
The South African government was praised for swift action in instituting a country-wide lockdown. But accompanying socio-economic measures have been limited and were delayed.

In short, they are far from sufficient to guarantee the right to decent work, especially in the context of such a devastating crisis.

OBLIGATION	GOVERNMENT RESPONSE	LIMITATION IN RESPONSE	PROPOSED ACTION
<b>Provide adequate income and health protections to all workers</b>	<ul style="list-style-type: none"> <li>Instituted a special COVID-19 Temporary Employee Relief Scheme (TERS) which allows for funds to be paid to workers who have experienced full or partial income losses as a result of firms closures during the pandemic.</li> </ul>	<ul style="list-style-type: none"> <li>Many firms, including those not compliant with UIF regulations, did not apply for these funds.<sup>19</sup> Subsequent regulatory changes have compelled employers to apply but reports indicate that capacity constraints mean payouts are delayed.</li> <li>TERS only covers from 38% to 60% of a worker’s salary – up to a maximum amount of R6 730. This will be inadequate for many households to meet their cost of living requirements.</li> <li>TERS only applies to those in formal employment.</li> <li>TERS claims extend only until 15 September</li> </ul>	<ul style="list-style-type: none"> <li>Extend TERS scheme beyond 15 August expiry date.</li> <li>Simplify application and payment processes.</li> <li>Increase the income support to 80% of income, in line with international practice.</li> <li>As per existing CESC recommendations: expand the coverage of UIF benefits to all workers, regardless of their status.</li> <li>Institute better oversight of employers to ensure that workers are being afforded the protections owed to them under the law.</li> </ul>
<b>Put in place measures to ensure better compliance with labour regulations</b>	<ul style="list-style-type: none"> <li>No meaningful extra monitoring of workplace compliance is taking place.</li> </ul>	<ul style="list-style-type: none"> <li>The COVID-19 crisis demands even greater adherence to health and safety precautions than in normal times. The mining industry is illustrative of this. As of 22 July, in the North West, 88% of the province’s confirmed cases were identified in the two district municipalities most associated with mining despite them making up only 64% of the population.<sup>20</sup></li> </ul>	<ul style="list-style-type: none"> <li>Increase the level of funding allocated to the Directorate of Inspection and Enforcement.</li> <li>Increase the number of qualified labour inspectors.</li> <li>Ensure better compliance with labour inspectorate rules.</li> <li>Democratise the return to work including giving workers representation on committees that monitor compliance.<sup>21</sup></li> </ul>

18. UN Committee on Economic, Social and Cultural Rights (UNCESCR). (2020, April 17). Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights. Retrieved from: <https://undocs.org/E/C.12/2020/1>

19. Runciman, C and Dor, L. 2020. Profit or workers lives? Employer responses to the Covid-19 pandemic. Centre for Social Change. Retrieved from: [https://biz-file.com/ff/2004/Final\\_Employer\\_responses\\_to\\_covid\\_report.pdf](https://biz-file.com/ff/2004/Final_Employer_responses_to_covid_report.pdf)

20. Overy, N. (2020, August 5). Mineral Council denies mines are COVID-19 hotspots. New Frame. Retrieved from: <https://www.newframe.com/mineral-council-denies-mines-are-covid-19-hotspots/>

21. For a detailed account of this argument see Smith et al. 2020.







## CONCLUSION

The above gives an indication of some of the specific measures that the South African government needs to institute in order to guarantee the right to work and the right to just and favourable conditions of work. These obligations demand that workers' rights are protected while at work and requires that government implements immediate rescue measures alongside a macro-economic policy framework that can tackle South Africa's unemployment crisis.

**Article 6 and 7** require that we think about work and the economy in a way that integrates health and economic objectives, accounting for social comorbidities rooted in South Africa's extreme inequality. This in turn requires that the indivisibility and interdependence of all human rights is recognised at this time.

The South African government must mobilise the maximum available resources to protect rights during the crisis, but must also ensure such protections remain beyond it.

In the words of the Committee:

"[We call] upon all States parties to ensure that the extraordinary mobilization of resources to deal with the COVID-19 pandemic provides the impetus for long-term resource mobilization towards the full and equal enjoyment of the economic, social and cultural rights enshrined in the Covenant.

In so doing, they will lay the foundation for achieving the ideal enshrined in the Universal Declaration of Human Rights of achieving a world of free human beings enjoying 'freedom from fear and want'.

Mechanisms to facilitate national and international cooperation and solidarity, as well as substantial investments in the institutions and programmes necessary for the realization of economic, social and cultural rights, will ensure that the world is better prepared for future pandemics and disasters."<sup>22</sup>

22. UNCESCR. (2020, April 17).

## KEY REFERENCES

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