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**MEDIA STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION
CONCERNING ITS RELEASE OF DISCUSSION PAPER 153 ON PROJECT 143:
INVESTIGATION INTO MATERNITY AND PARENTAL BENEFITS FOR SELF-
EMPLOYED WORKERS IN THE INFORMAL ECONOMY**

The South African Law Reform Commission (SALRC) was established by the South African Law Reform Commission Act 19 of 1973. It is an advisory body whose aim is the renewal and improvement of the law of South Africa on a continuous basis.

A gap currently exists in the State's social protection system, in that self-employed workers in the informal economy are excluded from receiving maternity and parental benefits when the mother enters confinement. This situation exacerbates the socioeconomic problems of poverty and inequality between women and men in South Africa, prevents women's full economic participation, and impacts on their reproductive choices. The purpose of this SALRC investigation is to examine shortcomings in the current maternity and parental protection mechanisms, how this gap should be addressed, and by whom, in order to give effect to South Africa's obligations in terms of the Constitution, and applicable regional and international gender equality conventions.

The discussion paper is the second document published during the course of this investigation. The discussion paper aims to determine two principal questions in relation to maternity and parental benefits for self-employed workers in the informal economy, namely:

- (a) Who should be included in the definition of “self-employed worker” (target group) in the informal sector of the economy? and
- (b) What is the nature and extent of the benefit, that is, state maternity and parental benefits that could be offered to self-employed workers in the informal sector of the economy?

First, a definition of a “self-employed worker” (target group) is provided. It is recommended that this definition, which includes own account as well as wage workers, be integrated into the definition of “employee” in the relevant provisions of the Unemployment Insurance Act, 2001; the Unemployment Insurance Contributions Act, 2002; and the Basic Conditions of Employment Act, 1997.

Second, in relation to the nature and extent of the maternity and parental benefits to be extended to self-employed workers in the informal economy, the following preliminary recommendations are made.

It is recommended that-

- (a) the existing UIF system be extended by the Department of Employment and Labour to self-employed workers in the informal economy, so as to make provision for the extension of maternity and parental benefits outlined in the UIF Act and BCEA to all workers. This will bring informal economy self-employed workers into a social security system as envisaged in section 27(2) of the Constitution. Implementation of the proposed maternity and parental benefits contribution scheme for informal economy self-employed workers will promote fulfilment of the State’s obligation in terms of the international instruments that are binding upon the RSA;
- (b) maternity leave benefits equal to the maternity leave benefit as provided for under section 25 of the BCEA, (that is, at least four consecutive months’ maternity leave), which allows for absence from work while earning a salary, be extended to self-employed workers so as to avoid extending current discriminatory practices into the legislative framework;

- (c) parental cash benefits equal to the parental cash benefits as provided for under section 12(3)(cA) of the Unemployment Insurance Act, 2001 (that is, 66% fixed rate of the contributor's earnings as at the date of application, subject to the prescribed maximum income threshold) be extended to self-employed workers so as to avoid extending current discriminatory practices into the legislative framework;
- (d) parental leave benefits equal to the parental leave benefit as provided for under section 25A of the BCEA, (that is, at least ten consecutive days parental leave); adoption leave equal to the adoption leave benefit as provided for under section 25B of the BCEA (that is, ten consecutive weeks adoption leave); and commissioning parental leave equal to the commissioning parental leave benefit as provided for under section 25C of the BCEA (that is, ten consecutive weeks commissioning parental leave) be extended to self-employed workers so as to avoid extending current discriminatory practices into the legislative framework;
- (e) the existing CSG be extended to all pregnant self-employed workers in the informal economy who fulfil the criteria for child support grant. The maternity support should be provided for nine months of pregnancy and be registered in the name of the expectant mother. The maternity support should be converted into a CSG after the birth of the child in accordance with section 6(a) of the Social Assistance Act, 2004. Alternatively, that the existing CSG be extended to all eligible poor and vulnerable pregnant women, including self-employed workers in the informal economy, who fulfil the criteria for child support grant;
- (f) government must accelerate the roll-out of early childhood development centres in informal workplaces and spaces where informal workers reside, such as street trading; waste recycling; city markets; informal settlements and townships. It is also recommended that municipalities be urged to take up this recommendation in their industrial development plans as part of infrastructure provisioning.

Third, the other questions asked, and recommendations made in the discussion paper, are the following:

- (a) Given that the income of a majority of self-employed workers fluctuates for a number reasons and is in many instances marginal, the first question asked is whether the maternity cash benefit should be set at 100% of the reference wage for self-employed workers, if not for all workers generally. Secondly, in the event that the existing mechanism is lower than the level which ensures that the woman can maintain herself and her child in proper conditions of health with a suitable standard of living, should the UIF not be obliged to subsidize the shortfall, regardless of the amount of the shortfall? The third question is whether there should be an established minimum threshold for the maternity benefit? If so, should this threshold be determined nationally by the Minister of Labour and Employment, or should it be negotiated sectorally by the relevant stakeholders?
- (b) It is recommended that the BCEA be amended to provide that women should be given paid maternity leave where there are no alternative positions as provided for by the International Labour Organization's Maternity Protection Recommendation.
- (c) It is also recommended that Section 30(3) of the Unemployment Insurance Act, 2001 should be amended in order to make provision for the devolution of maternity benefits to a surviving spouse or life partner upon the death of a contributor. The only benefit that devolves is the unemployment benefit. It is also recommended that in the event that the surviving spouse or life partner is not the primary caregiver, the benefits must devolve to the primary caregiver.

Last, but not least, the discussion paper contains questions for public comment, The SALRC specifically requests input and comment on the discussion paper as a whole, including the questions which are posed in it.

The SALRC would appreciate receiving comment and input from stakeholders and members of the public on or before 29 October 2021 at the following address:

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Discussion Paper 153 is available on the Internet at the following site:
<http://www.justice.gov.za/salrc/dpapers.htm>.

The discussion paper is also obtainable free of charge from the SALRC upon request (the contact person is Mr Jacob Kabini at (012) 622 6349).

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