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**MEDIA STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION
CONCERNING ITS RELEASE OF REPORT 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 was 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 Report contains the Commission's final recommendations for law reform, including a draft Bill, with regard to Project 143: Investigation into maternity and parental benefits for self-employed workers. The Report follows on the Research Proposal Paper, the supplementary Briefing Document, and Discussion Paper 153 which were published for general information and comment on 6 June 2017, 23 November 2017 and 20 July 2021 respectively. It takes into account all the input and comment received from the virtual

workshops and webinars held with stakeholders and experts in labour and social security law, as well as written submissions to the Commission on Discussion Paper 153.

The Commission's recommendations in the Report can be summarised as follows:

First, a definition of a "self-employed worker" (target group) is provided. It is recommended that this definition, which includes own account workers, wage workers, and independent contractors, 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 for purposes of maternity and parental benefits.

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 recommendations are made.

It is recommended that-

- (a) the existing Unemployment Insurance Fund system be extended by the Department of Employment and Labour to self-employed workers, 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 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 self-employed workers will promote fulfilment of the State's obligation in terms of the international instruments that are binding upon the RSA;
- (b) the recommendation to peg maternity cash benefits for self-employed workers at 100% of the reference wage and government to subsidise maternity cash benefits for self-employed workers in the event that reference wage does not allow a woman to maintain herself and her child in proper conditions of health and with a

suitable standard of living in accordance with article 6(2) of the Maternity Convention, 2000 (No.183) be referred to NEDLAC for decision;

- (c) that 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 all the workers in the formal and informal sectors of the economy so as to avoid extending current discriminatory practices into the legislative framework;
- (d) that parental cash benefits equal to the parental cash benefits as provided for under section 12(3)(cA) of the in 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 all the workers in the formal and informal sectors of the economy so as to avoid extending current discriminatory practices into the legislative framework;
- (e) that 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 all the workers in the formal and informal sectors of the economy so as to avoid extending current discriminatory practices into the legislative framework;
- (f) that the existing Child Support Grant be extended to all eligible poor and vulnerable pregnant women, including self-employed workers in both the formal and informal economy, who fulfil the criteria for child support grant and that the maternity support should be provided for six 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 of the Social Assistance Act, 2004 (Act No.13 of 2004); and

- (g) that 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.

The full Report is available is available on the Internet at the following site:

<http://www.justice.gov.za/salrc/reports.htm>

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