

The case for increased reform of South African family and maternity benefits*

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1 INTRODUCTION

The White Paper for Social Welfare (GN 1108 in GG 18166 of 8 August 1997:93) defines "family" as: "individuals who either by contract or agreement choose to live together intimately and function as a unit in a social and economic system. The family is the primary social unit which ideally provides care, nurturing and socialisation for its members". However, in modern society it must be accepted that the nuclear family, consisting of a father and a mother and their children, does not constitute the norm as it may have before.

There are various occasions where a family would be inclined to turn to social security for assistance, whether to compensate them for the loss of earnings because of pregnancy or to assist with the cost of raising children. With the rapid ageing of the world's population, increasing attention is also being paid to the question of who is supposed to care for elderly members of the family who are either physically or financially incapable of caring for themselves. Although the focus of this contribution will be on the state's role in assisting families, and particularly women, in caring for their children, assistance to those caring for elderly family members will also be addressed.

Families who seek assistance from the social security system in South Africa are the victims of the fragmentation of the relevant legislative provisions regulating the system. The legislation that deals with the benefits that families traditionally seek, encompass the following:

- The Basic Conditions of Employment Act 75 of 1997
- The Unemployment Insurance Act 30 of 1966¹
- Social Assistance Act 59 of 1992.

* Portions of this contribution have been based on research published in Olivier *et al* 1999.

¹ See also the Unemployment Insurance Bill Government Notice 943 in *Government Gazette* 20952 of 2 March 2000.

The purpose of this contribution is to give a general outline of the various benefits available to families and to comment on some of the problems linked to these benefits.

2 MATERNITY BENEFITS

In 1975, member states of the International Labour Organization (ILO) adopted the Declaration on Equality of Opportunity and Treatment of Women Workers. Through this Declaration the member states of the ILO expressed their belief that equality of opportunity and treatment of women workers can only be achieved through a combination of various legal measures. These are the right to maternity leave; the right to cash benefits to replace wages lost during the leave period; the right of the mother and child to health protection; the elimination of maternity as a source of discrimination; and the right to employment security. To this a sixth component is often added, namely leave and benefits for fathers.

The statutory entitlements referred to above are commonly found in three distinct types of legislation, namely social security laws, labour laws and anti-discrimination laws. However, given the focus of this publication, the emphasis in this contribution will be exclusively on the protection that social security law² offers women workers who become pregnant. The discussion will thus focus narrowly on only two aspects of maternity protection, namely the right to maternity leave and the right to cash benefits to replace lost wages during the leave period.

3 CURRENT SOUTH AFRICAN LAW ON MATERNITY BENEFITS

3.1 Legislation

Broadly speaking, two pieces of legislation govern maternity benefits (in the narrow sense) in South Africa. They are, first, the Basic Conditions of Employment Act 75 of 1997, and second, the Unemployment Insurance Act 30 of 1966.

3.1.1 *The Basic Conditions of Employment Act*

The Basic Conditions of Employment Act (BCEA) states that an employee is entitled to at least four consecutive months' maternity leave (s 25). She may commence maternity leave at any time from four months before the expected date of birth or on another date necessitated on medical grounds. No employee may work for six weeks after the birth of her child unless she is certified fit to do so on medical grounds. A new type of leave, namely family responsibilities leave, is introduced for employees with longer than four months' service and who work for at least four days a week for an employer. An employee then has a right to three days' paid leave per year for *inter alia* childbirth in the immediate family (s 27(1)–(2)).

2 Or what is also referred to as "social legislation." See Rycroft and Jordaan 1992:294.

The BCEA makes it clear that a collective agreement may not reduce an employee's entitlement to maternity leave in terms of section 25 of the Act. Furthermore, a collective agreement may also not reduce the protection afforded to employees in terms of section 7 of the Act, which provides for the regulation of working time of employees with due regard to their family responsibilities.

Section 26 of the BCEA also grants protection to employees before and after birth of a child. A Code of Good Practice entitled "The Code of Good Practice on the Protection of Employees during Pregnancy and after the Birth of a Child,"³ recently issued in terms of section 87(1)(b) of the BCEA, is intended as a guide to employers and employees concerning the application of section 26. The Code addresses three principal issues. Firstly, it sets out the legal requirements relevant to the protection of the health and safety of pregnant and breast-feeding employees. Secondly, it lays down a method for assessing and controlling the risks to the health and safety of pregnant and breast-feeding employees. Finally, it lists the principal physical, ergonomic, chemical and biological hazards to the health and safety of pregnant and breast-feeding employees and recommends steps to prevent or control these risks.

3.1.2 *The Unemployment Insurance Act (UIA)*

Entitlement to the payment of maternity benefits arises under the Unemployment Insurance Act. Section 37 states that a female contributor to the Unemployment Insurance Fund (UIF) who is unemployed may be paid benefits in respect of her pregnancy and confinement for a period not exceeding twenty-six weeks from the date on which she is deemed to have become unemployed, whether or not she is capable of and available for work. In terms of the Act, a female contributor is deemed to be unemployed if in respect of the period of twenty-six weeks, referred to above, she receives from her employer less than one-third of her normal earnings (s 37(6)).

No payment of benefits may be made unless the application is made before the date of birth or within a period of fifty-two weeks from that date.

The general provisions of the Act relating to benefits (s 34) also apply to maternity benefits. Benefits are payable at the rate of 45 per cent of the normal earnings at which the contributor was last employed as a contributor. Importantly, the benefits payable may not exceed one week's benefits for each completed cycle of six week's employment as a contributor. This arrangement is referred to colloquially as "the employee's credits".

What is immediately noticeable is that the twenty-six week period for which women can claim cash benefits under the UIA does not correspond with the four months maternity leave that may be claimed under section 25 of the BCEA. Women who are therefore only allowed to take the minimum four-months maternity leave period will not collect the total unemployment

³ Government Notice 1441 in *Government Gazette* 19453 of 13 November 1998. The Code must be taken into account in interpreting and applying the Act.

insurance benefit granted to them under the UIA. The recently published Unemployment Insurance Bill addresses this anomaly by reducing the 26 weeks benefits to 16 weeks to correspond with the 4-month period of leave provided for in the BCEA.⁴

3.2 Collective agreements

Agreements between employers and recognised trade unions or between employers and individual employees can also regulate maternity benefits. These may supplement the provisions of the BCEA and UIA or substitute more generous arrangements for those provisions. It is important to note that the core rights in the BCEA cannot be reduced and that a collective agreement must be consistent with the purpose of the Act (s 49(1)). Because maternity leave is one of these core rights, no agreement may therefore reduce the period of leave extended to employees in terms of the BCEA.

4 SHORTFALLS IN CURRENT PROVISION FOR MATERNITY BENEFITS

4.1 Credits

Under the present UIA a contributor may not draw more than one week's benefits for every six weeks of employment as a contributor. The purpose of this provision appears to be to set some limit to the amount of benefits that the UIF may be required to pay to a contributor.

However, the Report of the Ministerial Task Team on Unemployment Insurance and Related Coverage Issues (1996:36) noted that this provision had the curious effect that credits may be built up and retained over a person's working life. The requirement that a person genuinely participate in the labour market could usefully be combined with this provision by taking into account only credits earned in a particular period. The task team, therefore, proposed that credits should be limited to contributory service in the four years (based on the three years required to accumulate six months credits plus a period of grace of one year during which a person could apply for benefits) preceding the date of application for benefits. Credits earned before that, but not used, would fall away. The proposal has many advantages, including its relative simplicity and combining the credit system and participation in the labour market into one requirement.

Clearly, female contributors could be prejudiced by the current provision that a contributor may not draw more than one week's benefits for every six weeks' employment as a contributor. A female contributor who draws maternity benefits for six months may have used all her credits if she is, for instance, retrenched due to economic circumstances in the industry in which she is employed. She would then not qualify for unemployment benefits. By comparison her male counterpart who had exactly the same number of credits would enjoy unemployment benefits because he would not have used his credits to pay for maternity benefits.

⁴ See clause 16(4).

Consideration should be given to addressing the prejudice suffered by female contributors in this way. It is recommended that in order to prevent abuse (for instance by working for a short period before her confinement), the requirement that a female contributor must have six weeks' employment as a contributor for each week's maternity benefits be retained. The law should, however, be amended to provide that she would not in fact utilise such credits when taking maternity benefits. The recently published Unemployment Insurance Bill (GN 943 in GG 20952 of 2 March 2000) addresses this concern specifically, providing in clause 5(5) that the days of benefits that a contributor is entitled to is not reduced by the payment of maternity benefits.

4.2 Rate of income replacement

According to the ILO's Employment Promotion and Protection Against Unemployment Convention 168 of 1991, persons who become unemployed should receive benefits at no less than 45% of previous earnings (article 15(2)). In this regard, the UIA complies with this requirement by granting benefits at a rate of 45% of previous earnings. However, the ILO Convention and Recommendation that deals specifically with the issue of maternity provide for more generous benefits, and it is submitted that these standards are the more appropriate ones to measure the UIA's provisions against. ILO Maternity Convention No 3 of 1919 does not stipulate an amount, but refers to "benefits sufficient for the healthy maintenance of [the woman] and her child." However, Maternity Protection Convention (Revised) No 103 of 1952, provides that where cash benefits are based on previous earnings, benefits should be at least equal to two-thirds (66%) of previous earnings. The Maternity Protection Recommendation 95 of 1952 suggests that, wherever practicable, cash benefits should be fixed at a higher rate than the minimum standard provided in the Convention and should, to the extent possible, equal 100% of the woman's previous earnings.

The UIF has therefore often been criticised for not measuring up to international standards. The drafters of the Unemployment Insurance Bill (UIB) have responded to this criticism in two ways. Firstly, in order to strengthen the depleted financial base of the Unemployment Insurance Fund, the UIB broadens the scope of coverage by including certain categories of workers previously excluded.⁵ Secondly, the UIB introduces a graduated scale of benefits ranging from 29,5% for high-income earners to 58,6% for low-income earners (Schedule 1). It is hoped that by broadening the scope of coverage and by applying the higher rate of income replacement to low income earners only, the impact on the already cash-strapped UIF will be reduced.

4.3 Coverage

At present certain categories of employees are excluded from the Act. They include domestic workers and persons in the employment of the state. Excluding domestic workers does in the South African context have a distinct

5 Such as migrant workers employed on a contract basis and high-income earners. See clause 3.

racial and gender flavour, and may amount to a form of unfair (indirect) discrimination (Olivier 1998:682).

In principle all employees should be eligible for maternity benefits. It is recommended therefore that consideration be given to addressing the logistical problem of including domestic workers for purposes of maternity (and other) benefits. Making state employees eligible for maternity benefits, however, is part of a more fundamental policy debate surrounding the inclusion of employees in the public sector within traditional social insurance arrangements.

The UIF does attempt to broaden the scope of coverage by including all employees working more than 24 hours a month, which for the first time also would include migrant workers employed on a contract basis. However, employees in the national and provincial spheres of government are still excluded. Even though domestic workers are also still excluded, the UIF does require the Minister of Labour to appoint an appropriate body to investigate and make recommendations regarding their inclusion under the coverage of the Act (clause 3(1)(d)).

4.4 Contributor database

The UIF lacks an effective contributor database. This means that it cannot link contributions to particular persons and therefore relate claims made by person to their contributions. This is because the employer pays contributions without apportioning any amounts to individual employees. The employee only becomes individually identified by the UIF once he or she claims benefits. This system creates opportunities for dishonesty and fraud. The situation would be made worse were the proposal to be implemented that the payment of maternity benefits be made dependent on the existence of credits without resulting in the actual use of such credits.

The UIF states that the Unemployment Insurance Commissioner must create and maintain a database of contributors and employers, and may pay benefits to contributors in accordance with the information on the database (clause 56). Commentators have called for linked databases between unemployment benefits and other social security schemes such as occupational injuries and diseases and road accidents in order to avoid “double dipping” – that is where a person simultaneously claims benefits under a number of different schemes.⁶

5 ANALYSIS

This overview of the state of affairs in South Africa with regard to maternity-related benefits has highlighted many recent achievements, but also underlined many shortcomings of our present system.

The period of maternity leave provided for in the BCEA is a minimum of 16 weeks. This is 4 weeks more than that provided for in Convention 103

6 Olivier M and Van Kerken E *Comments: Unemployment Insurance Bill and Unemployment Insurance Contributions Bill* (April 2000) 2 (unpublished).

and 2 weeks more than the period suggested in Recommendation 95. One should be careful not to insist on longer maternity leave, especially if the discrepancy between the minimum leave and the period during which cash benefits are provided is significant. In South Africa, it is submitted that it is not the short period of maternity leave that will force women back to work prematurely but the inadequate cash benefits provided in terms of the UIA to replace lost income. The 1999 ILO *Maternity Protection at Work* report (24) notes that excessively protective measures may in many instances act against women's best interest. The report states that very long maternity leave may compound the organisational problems created by a worker's absence, particularly in small enterprises where many women wage earners are employed.

The current rate of income protection during maternity leave is too low, forcing many mothers to return to work before exhausting their leave entitlement, which may not be in the best interests of the infant, the mother or society at large. In this regard, South Africa not only lags behind industrialised countries but also behind many developing countries in Africa. In over half of the African countries surveyed by the ILO in 1994, female workers received full pay during maternity leave (ILO 1999:471–3). Different options for sources of cash benefits, such as payments either entirely by social security, half by social security and half by employers, or entirely by the employer, are available and should be considered in South Africa. This could also include the removal of maternity benefits from an already depleted UIF and its replacement by a comprehensive social insurance system, which deals exclusively with the issue of maternity protection.

Currently, employers face no statutory duty to provide paid maternity leave to employees. Although many trade unions in South Africa have been able to negotiate maternity benefits more in keeping with the needs of families and with international standards, a large number of companies or workplaces are not unionised and therefore offer few or no maternity benefits. In addition, unions have not been able to achieve uniform standards. This provides impetus to the call that legislation should set minimum standards in this regard.

Laws providing maternity protection for working women are usually restricted to the formal sector, which in many countries represents but a small proportion of overall economic activity. Such laws do not apply to the majority of women working in unregistered activities in the informal sector. The challenge of extending “not just maternity protection, but much needed social protection, to the large segments of the population living and working outside the formal economy” (ILO 1994:7) provides impetus for the introduction of more comprehensive maternity benefits as part of a national social insurance system.

6 FAMILY BENEFITS

6.1 Introduction

Discussions on family benefits usually centre on assisting families with caring for their children. Increasing attention is now also being bestowed on the question of who is supposed to care for the elderly members of the family

who are either physically or financially incapable of caring for themselves. Whilst the primary purpose of this discussion of family benefits is to link with the points made on maternity benefits above, and therefore necessitates a focus on benefits assisting families with raising children, some thoughts regarding caring for elderly family members will be shared.

6.2 Assistance in raising children

South Africa does not have a system of social insurance for the extra costs involved in raising children⁷ since current protection exists only by way of state grants (social assistance). This contribution will focus on the child support grant, which has replaced the maintenance grant.⁸

The child support grant has been instituted to solve the various highlighted problems with the child maintenance grant, which was payable to the legal parent of the child for a child under the age of 18 years in his or her custody to a maximum of two children.

The child support grant is payable to a primary caregiver of a child under the age of seven years (s 4(1) Social Assistance Act 1992 as amended by the Welfare Laws Amendment Act 106 of 1997). This primary caregiver is the person who takes primary responsibility for meeting the daily needs of a child and who has the parent's/parents' permission to care for the child.⁹

The child support grant is payable for an unlimited number of own children of the primary caregiver and other children up to a limit of six (reg 3(1) GN R 418 in GG 18771). This gives some recognition of the fact that many households in South Africa have a high number of children who have to be cared for.

The primary caregiver will have to prove that he or she and the child are resident in South Africa at the time of the application for the child support grant and that they are both South African citizens (s 4(b) Social Assistance Act (as amended)). The following conditions also have to be met:

- he or she or any other person must not already receive a grant for the child;
- the child must not be in an institution for the care and safety of children.¹⁰

There is also a means test involved, which is linked to the personal income of the applicant. The means test is intended to ensure that these grants are only paid to families where real need has been established. A means test involves the assessment by an outsider of an individual or a family's income and assets.

7 As found in some other countries – eg Belgium has both social assistance for families (called the *gewaarborgde gezinsbijslag*) and social insurance linked to the parent's employment (the *kinderbijslag*).

8 For more on the other grants payable to families raising children, see Olivier *et al* 1999:267–268; s 4(b) Social Assistance Act 1992; reg 3 Government Notice R418 in *Government Gazette* 18771 of 31 March 1998 for the foster child grant; and Olivier *et al* 268; reg 5(1) Government Notice R418 in *Government Gazette* 19771 for the care-dependency grant.

9 This requirement ensures that parental authority is not undermined. Anyone who receive payment for caring for a child is also not regarded as a primary caregiver for the purposes of this grant – reg 3(2) Government Notice R418 in *Government Gazette* 18771 of 31 March 1998.

10 Reg 3(2) Government Notice R418 in *Government Gazette* 18771 as amended by Government Notice R813 in *Government Gazette* 20235 of 25 June 1999.

The means test for the child support grant differentiates between urban and rural areas and between different types of dwelling. People living in informal dwellings and rural areas are subjected to a means test with a higher income threshold, a distinction that might be perceived as unfair by impoverished caregivers situated in urban areas. The current amount of the child support grant is R100 per child per month .

For a variety of reasons the child support grant can be regarded as an improvement on the maintenance grant. The number of children that are entitled to the grant is increased from only two to no limit in the case of the caregiver's own children or six children of others. The increasing costs that this extension would create is offset by the fact that grants are only payable for the most vulnerable children, that is, those under seven years.

In contrast to the maintenance grant system, where the parent could not receive another social grant, the only restriction in this regard under the child support grant is that the caregiver must not be in receipt of another grant for the child . The requirement under the maintenance grant expecting the beneficiary to prove the legal steps taken to secure maintenance payments from an absent parent has also fallen away.

The fact that the payment is made to the primary caregiver indicates a move away from the nuclear family as the ideal family in favour of a system which recognises the modern reality that, with ever increasing numbers of broken families, it is not necessarily a parent who cares for the child. It therefore stands to reason that "if one considers the international trend as well as the constitutional imperative to protect the best interests of the child, a scheme, which makes the benefit available where the child is in fact cared for is the most suitable" (Olivier *et al* 1999:265-6).

Even though the child support grant can therefore be regarded as an improvement on the maintenance grant, there are a number of criticisms that can be levelled at it:¹¹

- the small benefit level of the grant is not linked to a transparent, accepted assessment of the needs of poor children and the costs of their support;
- there is no clear commitment to link the grant to inflation;
- the targeting rate does not correspond with prevailing poverty levels among children, and will exclude a significant number of poor children in the eligible age group from support, due to the means test;
- the two-tier means test with a higher income threshold for persons living in informal dwellings and rural areas may give rise to perceptions of unfairness and is vulnerable to claims of unfair discrimination;

11 The amount is to be determined by the Minister of Welfare and published in the GG. Amounts for subsequent children do therefore not vary, as is the case in some other countries, eg Canada.

12 Van der Merwe (*Social transformation in South Africa* 11) uses the example of an elderly grandmother already receiving a social grant for the elderly, who, under the new system would be entitled to receive a child support grant for her grandchildren in her care.

13 As summarised by Liebenberg and Tilley (1998:13-14).

- the means test and the conditions pertaining to the grant will make administration of the grant more complex and time-consuming as well as less transparent and accountable.

6.3 Caring for elderly family members

Projections indicate that the proportion of elderly people in the population will increase substantially over the next two decades. The longer people live, the greater becomes the incidence of people over the age of 80, of people who are vulnerable due to factors such as failing health, of retirement provisions running out and of lack of suitable accommodation and care.

The core of the government's strategy for dealing with the question of caring for the aged is the individual responsibility of every person to provide for his or her own retirement. Failing this, the government considers the family as the main support system for the elderly. According to the White Paper for Social Welfare (1997:71), the state's only role is seen as providing for the needs of disadvantaged, destitute and frail older persons who require 24-hour care and who do not have the financial resources to meet their own needs.

Home care of the elderly is seen as a possible solution to the dilemma of accommodation for the elderly (White Paper:72). No concrete plan on how to induce families financially to take on this extra burden has, however, been introduced and it is submitted that the viability of such a programme should be examined as a matter of urgency.

Currently the only statutory assistance available to families caring for the elderly in the family home is the grant-in-aid available to the elderly person. This is an additional grant payable to a person who receives a social grant (the grant paid to the aged) and who requires full-time attendance by another person owing to his or her physical or mental condition¹⁴.

In terms of the common law, a reciprocal duty of support exists between parents and children and, in certain circumstances, between grandparents and grandchildren. This involves an obligation on children to support their parents should it become necessary, just as parents are compelled to support their children. However, various factors such as the migrant labour system, urbanisation, and the high divorce rate among middle- and upper income families have led to a decline in family ties and support in South Africa (Unit for Gender Research UNISA 1998:63).

In traditional societies an informal intra-family arrangement consisted of active working aged members of the family taking care of elderly relatives in an extended family. In turn, they could expect that the younger generation would support them when they become old (Iyer 1993:187).

In the modern world rural-to-urban migration is a given, even in the least developed countries. As unemployment in rural areas increases, so does the

14 Reg 7(1) Government Notice R418 in *Government Gazette* 18771 of 31 March 1998. S 2 of the Social Assistance Act only refers to "regular" attendance by another person, and not "full-time" attendance as stated in the regulations.

number of people streaming to the cities and towns to attempt to find an income to support their families.

Linked to urbanisation is a lack of space as housing becomes smaller and more expensive. As a result, children who have completed their education and start earning an income move from the family home, leaving the ageing parents on their own. The chances are also that working adult children may not be willing or able to accommodate their parents in their separate homes. All these factors lead to an alienation from the traditional extended family arrangement.

The group of elderly people who suffer most from this trend are the older people still remaining in the rural areas as the younger generation migrate to the cities. Whereas before they had a definite role to play in the community and the family, they are now in many cases viewed as a burden. The younger generation, who have been educated and who have to compete in the formal labour market, do not really have much use for the traditional knowledge of the elderly who, in turn, do not have the skills needed in formal employment. As the children move away, in many cases too far away to care for their parents, an increasing number of older people are left without adequate support from traditional sources (UN Committee for Development Planning 1998:2).

The "abandonment" of the rural elderly by their urbanised children is all the more a pity, when consideration is given to the fact that particularly the rural elderly women in many cases indirectly advance the labour force participation of younger women of childbearing age by taking care of their children¹⁵.

Even in cases where families are prepared to support their older members, the increasing life-span of the elderly means that family support will be stretched to its limits. The new gender balance in the labour market also means that women, who traditionally looked after elderly family members, are now increasingly not able to fulfil that role. Alternative means of care for the elderly must therefore be found.

Should working-age children actually have the income to support their parents, they cannot rely on assistance from the state as their income would most probably exceed the maximum amount for a means test.

Family caregivers are usually women and in many cases women of working age. These caregivers need to make provision for their own old age throughout their active working years. In many cases the fact that a woman is taking care of an elderly family member leads to the detriment of her own financial security in old age unless some way can be found by which she can continue to contribute to her pension scheme (Hoskins 1993:350). An example of this would be the allocation of pension credits to women during the period that they are caring for elderly family members and therefore not capable of contributing¹⁶.

15 Hoskins (1993:352) refers to research in Africa that has shown that when older women become frail and in need of care, it is more often than not their grandchildren taking care of them.

16 See Johnson and Lo Sasso (2000:2) for the measures proposed in the USA to protect workers who leave their jobs to care for frail relatives.

Policy makers could also consider tax credits or deductions to family caregivers¹⁷ to encourage more adult children to care for their elderly parents. The advantage of this would be to give the care-giver the freedom to choose how to apply this financial assistance. On the other hand, tax credits and deductions usually only benefit those who pay enough taxes to feel the difference, thus excluding the needy.

Caring for the elderly at home is not only generally cheaper than nursing home care but it can be argued that many elderly persons would in fact prefer to stay with their families (Johnson and Lo Sasso 2000 (1):6). What is desperately needed in South Africa is assistance by the state to those families who are supporting elderly members. Means-tested assistance, based on whether the children earn below a specific amount or not, is not the answer. Assistance should rather be based on the fact that children fulfilling their traditional role of caring for their parents or other elderly family members actually save the state money and should be compensated for that.

7 FAMILY SUPPORT IN SOUTH AFRICA: CONCLUSION

The rise of women's labour market participation, with the ensuing difficulties for working women who need to juggle work duties with family responsibilities, has drawn attention to the question of whether family-related social security measures in South Africa are adequate.

The main thrust of maternity benefits is to reconcile women's procreative role with the demands of paid employment. It is generally accepted worldwide that measures should be adopted which recognise the unique biological role of women in conceiving and giving birth to children but which prevent that role from becoming a source of discrimination against them in matters of employment. Equality of treatment between women and men will remain theoretical unless measures are enacted which take account of women's needs with respect to maternity.

As the overview of maternity benefits illustrated, some of the measures adopted in South Africa compare favourably with international standards, in particular the period of leave provided for in the BCEA. However, in other areas we fall short of those standards, especially in respect of the provision of cash benefits to replace lost wages. It has to be acknowledged that the current Unemployment Insurance Fund is depleted and that it would be unrealistic and irresponsible to raise the level of benefits under the current circumstances. The graduated scale of benefits proposed in the Unemployment Insurance Bill is an admirable attempt to address this concern but it, too, suffers from similar imperfections. The graduated scale ranges from 29,5% to 58,6% – still well below the 66% standard proposed by ILO Convention 103, and far below the 100% standard proposed in Recommendation 95.

In the final analysis, the wisdom of providing ordinary unemployment benefits when the cause of absence is pregnancy and infant care should be questioned. Maternity needs to be recognised as an independent ground for

17 For example, the tax credit proposed in the USA for family members taking care of the frail elderly – see Johnson and Lo Sasso (2000:2).

obtaining benefits, separate from ordinary unemployment benefits. It is apparent is that a specific value has been attached to the issue of pregnancy in South Africa. Clear evidence of this emerges from both the Constitution and applicable labour legislation. Section 9 of the Constitution specifically prohibits discrimination on the basis of pregnancy, and the Labour Relations Act 55 of 1998 (s 187(1)(e)) and Employment Equity Act 55 of 1998 (s 6) protect pregnant women against dismissal and discrimination respectively. Against this background, the possibility of providing genuine maternity benefits as part of a social insurance or social security system should be investigated as a matter of urgency.

In both developed and developing countries family forms are changing and single parents are now quite common. The nuclear family principle has been eroded and households are increasingly headed by women and people living outside the conventional model of the nuclear family. The economic situation of sole-parent families is often much worse than that of "traditional" families. Some of the factors explaining the dire position of sole-parent families, are the relatively low wages of working women and the relatively large number of part-time workers among women; the high costs of childcare facilities that are made necessary when the mother has to work; the poor enforcement of the payment of maintenance; and lack of vocational training (Olivier *et al* 1999:275).

The child support grant falls short of the primary aim of family benefits, which is compensating for the additional costs involved in raising children, as it pays only R100 per child. Whether an increase of this amount will be feasible in the future will depend on a variety of factors, for instance the fiscal restraints the government has to operate under, caused *inter alia* by the government's Growth, Employment and Redistribution strategy (GEAR) ¹⁸.

In a previous discussion of current legislation concerning family benefits the following conclusion was reached:

"The existing legislation should be lauded, as it extends the reach of state assistance through the child support grant. However, it would appear that the supervising mechanisms require major improvement and are the cause of many of the current problems regarding family benefits. The substantial provisions of the legislation, in particular those relating to the age limit of 7 years and the modest amount of the grant, should surely be addressed as soon as the fiscal constraints under which the system has to operate abate." (Olivier *et al* 1999:272)

Increasingly women are not only faced with taking care of their children, but of elderly family members as well. As was illustrated above, the same attention given to assisting families with the costs of raising their children is not given to the subject of families taking care of elderly parents. The current generation of women is sometimes referred to as the "sandwich generation" as they are faced with the dilemma of having to raise children, take care of elderly family members and in between still attempt to earn a living. It is

18 This macroeconomic strategy sees a cutback in government expenditure as a means to obtain the goal of sustained economic growth and job creation. It has been criticised for its neo-liberal approach and for not achieving its set objectives. See Terreblanche 1998:28; Lund Report 30: Report on Poverty and Inequality in South Africa 1998:8.

submitted that, given the government's stance that the family has the core responsibility to support elderly family members, policy makers and legislators should consider the role of women as family caregivers when designing new social security measures or planning to reform current structures. Research on the feasibility of cash grants or tax rebates for taking care of an elderly parent should be conducted as a matter of urgency and followed with decisive action by policy makers.

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