

# Legislation and Policies for the Right to Maternity Protection in South Africa: A Fragmented State of Affairs

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## Abstract

**Background:** Maternity protection rights incorporate comprehensive benefits that should be available to pregnant or breastfeeding working women.

**Research Aim:** To describe South Africa's maternity protection legal and policy landscape and compare it to global recommendations.

**Method:** A prospective cross-sectional comparative policy analysis was used to review and describe national policy documents published from 1994–2021. Entitlements were mapped and compared to International Labour Organization standards. The document analysis was supplemented by interviews conducted with key national government department informants. Thematic analysis was used to evaluate policy and interview content.

**Results:** Elements of maternity protection policy are incorporated into South Africa's constitutional dispensation, and some measures are consistent with international labor and social security standards. However, the policy framework is fragmented and difficult to interpret. The fragmented policy environment makes it challenging for employees to know their maternity rights' entitlements and for employers to understand their responsibilities. Confusion regarding maternity protection rights is amplified by the complexity of ensuring access to different forms of maternal protection in pre- and postnatal stages, oversight by multiple government departments, and heterogenous working environments.

**Conclusions:** Maternity protection in South Africa is fragmented and difficult to access. Overcoming these challenges requires legislative and implementation measures to ensure greater policy coherence and comprehensive guidance on maternity protection rights. Addressing gaps in maternity protection in South Africa may provide insights for other countries with shortcomings in maternity protection provisions and could contribute to improved breastfeeding practices.

## Keywords

breastfeeding, breastfeeding support, document analysis, labor rights, lactation workplace programs, legislation, maternity protection, policy analysis, social protection, social support, South Africa

## Background

Maternity protection rights incorporate benefits that should be made available to pregnant or breastfeeding working women (International Labour Organization [ILO], 2012a). According to the ILO, comprehensive maternity protection includes maternity leave; cash and medical benefits during maternity leave; health protection at the workplace; employment protection (job security); non-discrimination; breastfeeding break/s and childcare support (ILO, 2000, 2012a). Access to all components of maternity protection would improve lactation for working women. Paid maternity leave and breastfeeding support in the workplace have direct benefits for children, mothers, employers, and businesses (United Nations Children's Fund [UNICEF], 2019). These include

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longer breastfeeding duration, improved immunization rates, decreased morbidity (Fallon et al., 2017; Khanam et al., 2016), improved workplace productivity, and decreased absenteeism (Cohen et al., 1995).

Maternity protection is nested within wider systems of social protection, defined as “policies and programs designed to reduce and prevent poverty and vulnerability throughout the life cycle” (ILO, 2017, p. xxix). Social security, including maternity benefits, can be financed through social insurance, which refers to insurance that yields social security cash benefits where employers and employees contribute a percentage of monthly wages to a government-managed fund, from which eligible beneficiaries can apply. Social assistance refers to non-contributory tax-funded benefits (South African Human Rights Commission, 2001).

South Africa’s (SA) Constitution, Bill of Rights, and legislation contain provisions that underpin the importance of international maternal protection standards. International maternity protection standards have been comprehensively created by the ILO (ILO, 2021), and the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Although SA has not yet ratified the ILO Maternity Protection Convention, CEDAW has been ratified.

South Africa’s maternity leave is legislated through the *Basic Conditions of Employment Act*, requiring women to receive four months maternity leave around the time of childbirth (*Basic Conditions of Employment Act*, 1997). The 2021 second Quarter Labour Force Survey report stated that 23% of women employees could not access maternity leave (Statistics SA, 2021), despite national legislation. Payment from employers in South Africa during maternity leave is non-mandatory. Rather, women need to rely on social security benefits during unpaid maternity leave. Social security is protected in the Constitution (Constitution of the Republic of South Africa, 1996). Section 27(1)(c) guarantees everyone the right to access to social security “including, if they are unable to support themselves and their dependents, appropriate social assistance” and section 27(2) requires that “the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights” (Constitution of the Republic of South Africa, 1996, p. 11). Social insurance is implemented through the Unemployment Insurance Fund and is mostly limited to employees in the formal sector. Social assistance is made available through statutory grants administered by the South African Social Security Agency. Caregivers of children under 18 years of age earning insufficient income, as determined by “means test” criteria, are eligible for a monthly child support grant (Social Assistance Act 13, 2004). In 2020, the child support grant’s value was R440 (USD 28) per month for each child under 18 years (Western Cape Government, 2020). This may be the only financial assistance that many women not receiving paid maternity leave or maternity benefits can access after childbirth.

## Key Messages

- Adequate maternity protection incorporates various components located in policy and legislation across various departments in South Africa and is essential to support optimal breastfeeding.
- This comprehensive description of maternity protection policy in South Africa reveals that most components of maternity protection are legislated and meet minimum international standards, but fragmentation creates policy incoherence and confusion.

Limited recent research has been conducted about South Africa’s maternity protection rights. An international and comparative analysis of maternity protection in South Africa was conducted in 2001–2002 (Dupper, 2001, 2002) but amendments to legislation have subsequently been made. Challenges in accessing maternity benefits in South Africa have been documented and recommendations for improvements made (Boswell & Boswell, 2009). Boswell and Boswell’s (2009) findings were that vulnerable groups (e.g., informal economy female workers) were not covered by existing maternity protection legislation. This violates gender equality and women and children’s constitutional and human rights (Hicks, 2019). In a 2018 review of breastfeeding in South Africa, Martin-Wiesner concluded that while legislation exists to protect workplace breastfeeding, no financial resources have been allocated and government lacks capacity to monitor or evaluate these laws’ implementation. While existing research about selected aspects of maternity protection has been important and revealed shortcomings, no comprehensive review exists describing where different components of maternity protection in South African policy and legislation can be found and how they align with global guidance. Furthermore, it is not clear whether the current policy framework for maternity protection in South Africa can be regarded as reasonable measures to realize social security rights. The aim of this study was to describe South Africa’s maternity protection legal and policy landscape and compare it to global recommendations.

## Methods

### Research Design

This study was a prospective cross-sectional comparative policy analysis using a mixed method approach (Holland & Novak, 2018). As is common for public health policy analysis, we used a combination of document review and key informant interviews (O’Brien et al., 2020), together with interpretation from published literature to achieve this aim.

All documents describing and analyzing policy content were publicly accessible. Ethical approval was obtained

from the University of the Western Cape Biomedical Research Ethics Committee on 20 June 2020 (Reference Number: BM20/5/7).

### Setting and Relevant Context

Although classified as a middle income country, South Africa has high rates of poverty, inequality, and unemployment (Statistics SA, 2021). Women and men's labor force participation rates are 51.4% and 62.6% respectively. Approximately 68% of employed women and men work in formal employment while the remaining 32% are employed informally (20.6% of men, 14.6% of women), work in the agricultural sector (7.2% of men, 3.9% of women) or in private households (3.7% of men, 13.5% of women; Statistics SA, 2021).

While breastfeeding rates in South Africa have improved, average duration of exclusive breastfeeding is only 2.9 months and 32% of infants under 6 months (National Department of Health [NDoH] et al., 2019) are exclusively breastfed (EBF), defined as receiving only human milk and no other liquids including water, or solids during the first 6 months (World Health Organization [WHO], 2008). EBF declines with infant age; 44% of 0–1-month-olds are EBF compared to 24% of 4–5-month-olds (NDoH et al., 2019). Approximately 75% of public birthing units in South Africa have the “Baby Friendly” designation (Martin-Wiesner, 2018). There are only 49 International Board Certified Lactation Consultants (IBCLCs) in South Africa but breastfeeding support is also provided by breastfeeding peer counsellors and community health workers (Nieuwoudt et al., 2019). Despite the government's commitment to breastfeeding, there are still provincial, geographical, and socioeconomic disparities and inequities in breastfeeding rates and access to breastfeeding resources (Martin-Wiesner, 2018).

South African national legislation is issued or amended by the legislature (Parliament). A Bill is introduced by the relevant government department or an individual Member of Parliament. It is then published for public comment. Following various stages of approval it is signed by the President as an Act (law; Parliament of the Republic of South Africa, 2022). Each government department issues (and amends) the policies required to implement the department's statutory obligations.

### Sample

National policy documents containing any provisions relevant to maternity protection in South Africa were sourced and reviewed by one of the authors (CPK). In this research, policy documents (or policy frameworks) refer to any policy tool available to implement policy, including the Constitution, legislation and regulations, national policies, and national guidelines (e.g., codes of good practice, a national declaration, national guideline, national booklet, and national position paper). Documents published from 1994 to September

2021 that incorporated at least one element of maternity protection were included. Altogether 24 national policy documents ( $N = 24$ ) identified between 1995–2018 contained provisions relevant to South Africa's maternity protection. We are satisfied that the most relevant national policy documents were included. No documents were excluded.

Following document analysis, individual in-depth interviews were held with key informants ( $N = 3$ ) about national maternity protection policy development and implementation. Key informants were purposefully selected based on their position to influence South Africa's national maternity protection policy and for their knowledge and experience on national maternity protection policy. Participants were included if they worked for a national government department involved directly in maternity protection policy development. Although only three key informants were purposively identified, these informants were selected as important stakeholders in South Africa for maternity protection including one informant from each of the departments involved in setting maternity protection policies.

### Data Collection

Relevant documents were identified by CPK during August–November 2020. The ILO recommendations guided sourcing of policy documents (ILO, 2012b), indicating that maternity protection components are usually located in labor, social security and anti-discrimination legislation, and health policy (ILO, 2012c). Additionally, previous reviews on similar topics were evaluated (Ernst & Young, 2019; Martin-Wiesner, 2018). Websites of relevant national government departments were searched. Documents were categorized into the Constitution, legislation ( $N = 13$ ) (legally enforceable), national policy ( $N = 2$ ; enforceable by the department responsible) and national guidelines ( $N = 8$ ; non-legally binding recommendations based on legislation or policy). The range of documents identified incorporated all components of maternity protection and reflect what is described on maternity protection in published literature. Documents published from 1994 until September 2021 were included (Table 1).

Key informant interviews were conducted during October and November 2020 with three employees of national government departments, comprising two females and one male. Participants worked in the National Departments of Employment and Labour, Health and Social Development. Interviews were conducted in English by CPK, a female PhD student trained in qualitative research. Approval was obtained from participants' immediate supervisors to participate in the interviews and their informed consent was obtained verbally. Online interviews were conducted using a virtual platform chosen by the interviewee.

All interview data were stored electronically and securely by CPK. An interview guide (see supplemental material) containing broad questions and follow-up probes was used to obtain insights into policy content and implementation.

**Table 1.** National Policy Documents in South Africa Containing Provisions Relevant to at Least One Component of Maternity Protection.

Year	Department	Document Type	Document Name
1. Constitution			
1996	Department of Justice	Constitution	Constitution of The Republic of South Africa, 1996
2. National Legislation			
1995	Department of Labour	Act	Labour Relations Act No. 66 of 1995
1997	Department of Labour	Act	Basic Conditions of Employment Act No. 75 of 1997
1998	Department of Labour	Act	Employment Equity Act No. 55 of 1998
2000	Department of Labour	Act	Promotion of Equality & Prevention of Unfair Discrimination Act No. 4 of 2000
2001	Department of Labour	Act	Unemployment Insurance Act No. 63 of 2001
2002	Department of Labour	Act	Unemployment Insurance Contributions Act No. 4 of 2002
2002	Department of Labour	Act Amendment	Basic Conditions of Employment Amendment Act No. 11 of 2002
2002	Department of Labour	Act Amendment	Labour Relations Amendment Act No. 12 of 2002
2013	Department of Labour	Act Amendment	Employment Equity Amendment Act No. 47 of 2013
2013	Department of Labour	Act Amendment	Basic Conditions of Employment Amendment Act No. 20 of 2013
2014	Department of Labour	Act Amendment	Labour Relations Amendment Act No. 6 of 2014
2016	Department of Labour	Act Amendment	Unemployment Insurance Amendment Act 10 of 2016
2018	Department of Labour	Act Amendment	Labour Laws Amendment Act 10 of 2018
3. National Policy			
2013	Department of Health	National Policy	Infant and Young Child Feeding Policy
2018	Dept of Public Service & Administration	National Policy	Determination and Directive on Leave of Absence in the Public Service
4. National Guidelines			
1998	Department of Labour	Code of Good Practice	Code of Good Practice on the Protection of Employees During Pregnancy and After the Birth of the Child, 1998 of the Basic Conditions of Employment Act
1998	Department of Labour	Code of Good Practice	Code of Good Practice on the Arrangement of Working Time, 1998 of the Basic Conditions of Employment Act
2005	Department of Labour	Code of Good Practice	Code of Good Practice on Integration of Employment Equity into Human Resource Policies and Practices, 2005 of the Employment Equity Act
2011	Department of Health	Declaration by Minister	Tshwane Declaration for the Support of Breastfeeding in South Africa
2012	Department: The Presidency	National Policy	National Development Plan 2030: Our future - make it work
2016	Congress of South African Trade Unions	Trade Union Federation Position Paper	Position Paper on Maternity Protection: Adopted at 2016 Congress of South African Trade Unions Congress
2017	Department of Health	National Policy	Nutrition Guidelines for Early Childhood Development Programmes
2019	Department of Health	National Booklet	Supporting Breastfeeding in the Workplace: A guide for employers and employees

Limited socio-demographic information on key informants was collected. Interviews took approximately 45 min, were audio-recorded, following participants' verbal informed consent, and transcribed by CPK. Participants' confidentiality was maintained by removing any personal information and any names linked to individuals' insights from the transcribed data in any reporting of the results. Privacy, confidentiality, and anonymity were thereby ensured. To ensure that the influence of the interviewer's personal characteristics was taken into account, the interviewer made notes during and after each interview on her initial reactions to the interview and how her position (as a student researcher) may have influenced participant responses, and reflected on

topics discussed and considered topics needing discussion in future interviews (Dodgson, 2019). The interviewer's role as a student may have allowed participants to view the interaction as constructive and information-gathering as opposed to an interrogation. This may have promoted honesty in responses. Interview transcripts were checked for accuracy as a quality-control measure.

We compared the maternity protection policies described in the policy review with recommendations made in selected international documents—namely, the ILO Maternity Protection Convention 183, the ILO Maternity Protection Recommendation 190, and CEDAW. No additional data collection was undertaken for this study aim.

**Table 2.** Data Analysis Structure for Key Informant Interviews.

Theme	Theme Definition	Code Definition	Code Definition
Health policy analysis	Analysis of policy which considers policy content, but also the context, actors and process involved in policy development.	<ol style="list-style-type: none"> <li>1. Content</li> <li>2. Context</li> <li>3. Process</li> <li>4. Actors</li> </ol>	<ol style="list-style-type: none"> <li>1. Policy content is usually described as written text in documents.</li> <li>2. Policies are influenced by international context national or sub-national government or political environments and institutions.</li> <li>3. The process of policy development incorporates the steps required for policy to be developed.</li> <li>4. The actors refer to the various stakeholders and organizations that influence policy development.</li> </ol>

## Data Analysis

Various frameworks exist to manage and analyze public health policy. We used the “READ approach” which includes “(1) ready your materials, (2) extract data, (3) analyze data and (4) distil your findings” (Dalglish et al., 2020, p. 1424). All documents were assigned a label. The following information extracted from documents were entered into a Microsoft Excel spreadsheet: title, date, author, publisher, sector, document type, purpose of document, target audience and the component(s) of maternity protection addressed by the document. Tables 2 and 3 present the structure of the data analyses. Policy content was organized by identifying text referring to any component of maternity protection. The components of maternity protection contained in each document were summarized and documented in tables. Published reviews of maternity protection related policies were also sourced (Hicks, 2019; Martin-Wiesner, 2018), including research conducted by an independent company, commissioned by the National Department of Employment and Labour (Ernst & Young, 2019). These documents were used to compare this study’s results to existing published analysis of South Africa’s maternity protection policy, within the context of ILO recommendations. A thematic analysis approach was used for evaluation of policy content and to interpret the interview data (Vaismoradi & Snelgrove, 2019).

Key Informant interview transcripts were read and re-read by CPK, who manually allocated codes to similar groups of information and developed overarching themes linked to these codes. Themes for key informant interviews were developed using the “health policy triangle” conceptual framework for policy analysis. This considers policy content and the context, actors, and process involved in policy development as described in Table 2 (Walt & Gilson, 1994; WHO, 2018). In addressing reflexivity, CPK had informal discussions with co-authors to ensure accurate interpretation of the data.

Data extracted from published policy documents and information obtained from the interviews were triangulated to develop a more comprehensive understanding of the maternity protection policy landscape in South Africa. Textual information from the document analysis was compared to quotations from the interview participants to ensure that documents were accurately interpreted and described.

The themes and codes used for the analysis of the documents and key informant interviews are summarized in Table 3.

## Results

### Characteristics of the Sample

Information obtained from policy documents and key informant interviews are described by type of policy document and component(s) of maternity protection (Table 4). The National Department of Employment and Labour is tasked with developing maternity protection policy for workers and implementing and enforcing much of the maternity protection legislation. Other government departments—for example, the National Departments of Health and Social Development—and South Africa’s large national trade union federation, the Congress of South African Trade Unions, have policies incorporating components of maternity protection. While these can be monitored, they are not legally binding. The way policy content was extracted and coded enabled a mapping process, describing where each component of maternity protection is located.

### The Maternity Protection Policy Landscape in South Africa

**Maternity Leave and Cash Benefits.** Maternity leave and related cash benefits are covered by three Acts and one national policy (Table 4). In addition, the Presidential National Development Plan mentions cash benefits. The Basic Conditions of Employment Act provides for four consecutive calendar months of unpaid maternity leave. In 2011, the national Tshwane Declaration of Support for Breastfeeding in South Africa, ratified by the health minister, committed to extend maternity leave and to ensure that all workers, including domestic and farm workers, benefit from maternity protection (NDoH, 2011).

Section 27(1) of the Constitution contains cash benefit provisions through rights to access social security for all (including pregnant or breastfeeding women). This is operationalized through legislation. If employers do not pay wages to women while on maternity leave, provided that women have worked at least 24 hr per month and employers and employees have each contributed 1% of monthly earnings to

**Table 3.** Data Analysis Structure for Document Analysis.

Theme	Theme Definition	Code Definition	Code Definition
Maternity protection	Benefits made available to pregnant or BF working women	1. Maternity leave 2. Cash benefits 3. Medical benefits 4. Health protection 5. Employment protection 6. Non-discrimination 7. BF breaks 8. Childcare	1. Leave (period of rest) provided around the time of childbirth. 2. Access to income while on maternity leave. 3. Access to health services during pregnancy and after the birth of a child. 4. Insurance that workplace does not introduce health risks to pregnant or BF women. 5. Job security by prohibiting dismissal during pregnancy or around time of childbirth. 6. Insurance that maternity is not a source of discrimination in employment. 7. One or more daily breaks or reduction of work hours for BF. 8. Family friendly working time arrangements and/or childcare facilities.
Maternity protection policy in South Africa	Any policy took available at a national level to implement maternity protection in South Africa.	1. Constitution 2. Legislation 3. National policy 4. National guidelines	1. The basic principles and laws of a country that guarantees certain rights to people. 2. Laws passed by the legislature that can be legally enforced in a country. 3. Documents that describe the principles of a topic approved by a national government department minister. 4. National documents with guiding principles that guide policy implementation.
International standards	Principles or guidelines that have been agreed upon internationally	1. International Labour Organization labor standards on maternity protection 2. United Nations Conventions	1. The International Labour Organization Maternity Protection Convention (No. 183) of 2000 and Maternity Protection Recommendation (No. 191) of 2000. 2. The Conventions on the Elimination of All Forms of Discrimination Against Women

Note. BF = breastfeeding.

the Unemployment Insurance Fund, they can claim two-thirds of their earnings (up to a maximum threshold) as maternity benefits (Unemployment Insurance Act 63, 2001; Unemployment Insurance Contributions Act 4, 2002).

According to one of the key informants, the Department of Social Development is working towards additional social assistance provision through a Maternal Support Grant that vulnerable women could access when pregnant. This is intended to be an extension of the Child Support Grant to women before childbirth and would assist vulnerable pregnant women reporting difficulty in accessing social insurance cash benefits: “you raised the issue of UIF [the unemployment insurance fund]—pregnant women, most of them, especially those in the margins, they are unable to access this [social protection]. . .” (Key Informant 1). Another key informant also reported that limited numbers and the inadequate capacity development of existing inspectors constrained the enforcement of current legislation:

There’s not really enough inspectors. . .our inspectors, you know, they have teeth, but they can’t bite. . . . That issue of them maybe being able to issue fines. . .if the legislation is maybe amended to empower the inspectors to be able to maybe issue even spot on [sic] fines. . .I think that would actually maybe

improve things a bit, especially for informal workers. (Key Informant 3)

*Health Protection and Medical Benefits.* The Presidential National Development Plan briefly mentions pregnancy health protection. Section 27(1) provides rights to access healthcare for all, including pregnant or breastfeeding women. The Basic Conditions of Employment Act regulates workplace health protection rights for women before and after childbirth. Two codes of good practice contain guidance on health protection and medical benefits for pregnant and breastfeeding women.

*Employment Protection and Non-Discrimination.* Section 9 of the South Africa Constitution guarantees maternity protection by ensuring the right to non-discrimination due to pregnancy. Section 187 of the Labour Relations Act ensures job security during and after pregnancy by stipulating that dismissal related to pregnancy is automatically unfair (Labour Relations Act 66, 1995).

*Breastfeeding Breaks and Childcare.* Breastfeeding breaks and childcare are the only components of maternity protection not contained in one of six core Acts and their amendments

**Table 4.** Description of the Location of the Components of Maternity Protection in South African National Policy Documents.

Department	Legislative, Policy, or Guideline Document	Maternity Leave & Cash Benefits	Medical Benefits & Health Protection	Employment Protection & Non-discrimination	Breastfeeding Breaks & Childcare
1. Constitution Justice	Constitution of the Republic of South Africa (1996)			✓	
2. National Legislation Labour	Labour Relations Act (1995)	✓	✓	✓	
	Basic Conditions of Employment Act (1997)			✓	
	Employment Equity Act (1998)			✓	
	Promotion of Equality & Unfair Discrimination Act (2000)			✓	
	Unemployment Insurance Act (2001)	✓			
	Unemployment Insurance Contributions Act (2002)	✓			
3. National Policy Health Public Service & Administration	Infant & Young Child Feeding Policy (2013) Leave of Absence Policy (2015)	✓	✓		✓
4. National Guidelines National Department of Labour	Code of Good Practice on the Protection of Employees During Pregnancy and After the Birth of the Child (1998)		✓	✓	✓
	Code of Good Practice on the Arrangement of Working Time (1998)				✓
	Code of Good Practice on the Integration of Employment Equity Into Human Resource Policies and Practices (2005)	✓	✓	✓	✓
National Department of Health	Tshwane Declaration of Support for Breastfeeding in South Africa (2011) Nutrition Guidelines for Early Childhood Development Centres (2017) Supporting Breastfeeding in The Workplace Booklet (2019)	✓			✓
Presidency Congress of South African Trade Unions	National Development Plan (2012) Maternity Protection Position Paper (2016)	✓	✓	✓	✓

(see Table 4). Two Acts have three accompanying codes of good practice (Tables 1 and 4). The *Code of Good Practice on the Protection of Employees During Pregnancy and After the Birth of the Child* contains recommendations for maternity protection, including that breastfeeding women should have twice daily breaks of 30 min for breastfeeding or expressing, until their child is 6 months old (NDoL, 1998). The *Code of Good Practice on the Arrangement of Working Time* contains provisions regarding shift work for employees who are pregnant, breastfeeding or have childcare responsibilities (NDoL, 1997). The *Code of Good Practice on the Integration of Employment Equity Into Human Resource Policies and Practices* recommends against employee discrimination or loss of benefits due to pregnancy and childbirth and that employers should provide supportive and flexible work environments for employees with family responsibilities (NDoL, 2005).

The Department of Employment and Labour informant commented on the discretionary nature of the codes of good practice:

The Code of Good Practice is just a code. . . [It] depend[s] on the relationship of the employer with the workers, for them to actually implement it. . . The code is not legally enforceable. It's just a guideline, to employers. . . on issues of maternity protection. (Key Informant 3)

The National Department of Health's national policy also recommends breastfeeding breaks and has nutrition and childcare guidelines, and a booklet providing practical breastfeeding break recommendations (NDoH, 2019). However, since these are not legislated, no formal monitoring and enforcement mechanisms exist.

### *Comparison of Maternity Protection in South Africa to Global Recommendations*

The components of maternity protection in South Africa's legislation that meet international standards include length of maternity leave, non-discrimination, job security, medical benefits, and health protection, while cash benefits and breastfeeding breaks are not adequately guaranteed in South Africa's legislation (see Table 5). Recommendations made in codes of good practice, while not legally enforceable, could be considered if an employee were to seek remedy in response to disciplinary action. The implementation status of many of these codes of good practice is unknown.

Many factors influence women's healthcare access rendering this difficult to evaluate. Most components of maternity protection are clearly defined, but cash benefits are complex. Since payment of women's full salary while on maternity leave is not guaranteed, some women are unable to make full use of the maternity leave benefits, as they cannot afford to remain on leave without receiving sufficient cash benefits. These gaps in maternity protection in South Africa

were described by two key informants: "Whatever the UIF [social protection] gave her wasn't enough. . . therefore they come back before the 4 months" (Key Informant 3). "But then if you are not registered as someone who is employed then it means you cannot fully access those benefits, even with the UIF. I think, for me, there's a bit of gaps. . ." (Key Informant 2).

## **Discussion**

We have described how South Africa's components of maternity protection are dispersed across different documents and government departments. We further explained how this fragmented system compared with global standards. Most of South Africa's maternity protection components are legislated, but contained in separate laws with corresponding amendments, creating a complicated policy landscape. Fragmentation of maternity protection legislation and policies restricts employee rights holders' knowledge of their maternity protection entitlements and remedies, and employers' understanding of their obligations in ensuring these rights. This lack of policy coherence, including weak policy integration and inadequate monitoring and evaluation, contributes to the disorganization of maternity protection in South Africa.

It is commendable that components of pregnant and breastfeeding women's health protection are guaranteed in South Africa's maternity protection policies and laws, but it is vital that mechanisms exist to ensure employer adherence. While piecemeal research has been conducted, no recent evaluation of comprehensive maternity protection availability and access in South Africa has previously been conducted. Despite the prohibition of unfair discrimination featuring prominently in policy and legislation in South Africa, recent qualitative research revealed incidents of discrimination in the recruitment, employment, and return-to-work of pregnant and breastfeeding women, more commonly in the informal economy and male-dominated industries (Ernst & Young, 2019). Reports of discrimination were mainly attributable to lack of knowledge and awareness of rights and responsibilities. This highlighted that legislation alone is insufficient to protect employment and ensure non-discrimination for pregnant and breastfeeding women.

Strategies ensuring compliance with legislation are needed to strengthen current statutory mechanisms. Maternity protection provisions should be clearly documented in dedicated legislation and guidelines developed to interpret maternity protection rights for women in various employment contexts (Olivier et al., 2011). The National Department of Employment and Labour should actively engage in improving knowledge and awareness of employees' maternity protection rights and employers' responsibilities. Civil society organizations and other government departments could assist the Department of Employment and Labour with relevant education campaigns. For example, the Department of

**Table 5.** Comparison of the Components of Maternity Protection in South Africa to Global Recommendations.

Component	International Standard	South African Legislation
<b>Components of Maternity Protection in South Africa That Meet International Standards</b>		
Maternity leave	The ILO Maternity Protection Convention recommends a minimum of 14 wks. of maternity leave (ILO, 2000a). The Maternity Protection Recommendation recommends 18 wks. of maternity leave (ILO, 2000b). The ILO recommends that women have 6 wks. of compulsory leave after childbirth, & the prenatal portion of maternity leave can be extended if a child is born early, without reduction in compulsory portion of PP leave.	17 wks. of maternity leave is guaranteed by the Basic Conditions of Employment Act (Basic Conditions of Employment Act 75, 1997). SA law prohibits women from returning to work within 6 wks. after childbirth, and allows leave to be extended due to pregnancy or childbirth health complications (Basic Conditions of Employment Act 75, 1997).
Non-discrimination	The ILO and CEDAW guarantee non-discrimination based on maternity status.	The <i>Employment Equity and Labour Relations Acts</i> clearly state that women should not be unfairly discriminated against nor face unfair dismissal due to pregnancy or family responsibility. This protection against discrimination features across four acts.
Job security (income protection)	The ILO ensures job security and recommends that women should return to similar positions and be paid at the same rate after maternity leave (ILO, 2000a).	The protection of pregnant women's job security features unambiguously across four acts.
Medical benefits and health protection	The ILO indicates that antenatal, childbirth and PP medical benefits should be provided to women and young children (ILO, 2012a).	SA legislation ensures health protection for pregnant and breastfeeding women. Free maternity health services are available at all public health facilities in SA (NDoH, 2015). Three codes of good practice describe pregnant and breastfeeding women's protection from workplace hazards, that pregnant and breastfeeding employees should be given time off work to attend antenatal and PP check-ups and recommendations for workplace shift roster development (NDoL 1997, 1998, 2005).
<b>Components of Maternity Protection in South Africa Falling Short of International Benchmarks</b>		
Cash benefits	The ILO recommends that women on maternity leave receive their full salary.	This is non-mandatory in SA. All employees can presently claim two-thirds of their salary with an income 'ceiling' applicable (Unemployment Insurance Amendment Act 10, 2016). However, women who are not registered for social insurance are unable to claim cash benefits.
Breastfeeding breaks	The ILO Maternity Protection Convention recommends that a woman should be able to have one or more daily breaks or a daily reduction in work hours to breastfeed her child.	Provision of breastfeeding breaks upon return to work does not appear in maternity protection legislation in SA but is rather recommended by a non-legally binding code of good practice.
<b>Other Components of Maternity Protection</b>		
Childcare	The ILO Maternity Protection Convention has no childcare recommendations. However, the ILO Workers with Family Responsibilities Convention (No. 156) of 1981 provides guidance to support employees with childcare responsibilities.	SA has not ratified either of these conventions. The Codes of Good Practice on the Arrangement of Working Time and Integration of Employment Equity into Human Resource Policies and Practices contain childcare provisions upon return to work. These recommend flexible working environments that consider employees with childcare needs.

Note. PP = postpartum; ILO = International Labour Organization; CEDAW = Convention on Elimination of Discrimination Against Women; SA = South Africa.

Health's existing communication routes for the dissemination of information regarding maternity benefits for working mothers could be used to provide labor rights information. South Africa could adopt the practices of some countries

where civil society organizations mediate between citizens and states to improve available statutory remedies' awareness (Feruglio, 2017). The *Congress of South African Trade Unions' Maternity Protection Position Paper* (COSATU,

2018) is the most comprehensive of all the documents examined, incorporating all maternity protection components, except for employment protection. COSATU is the biggest trade union federation in South Africa, and the only one with a maternity protection position paper. This trade union is in an alliance with the governing party and therefore its views should be influential when it comes to determining government policy. Trade union maternity protection guidelines can potentially form part of collective agreements, thereby shaping applicable laws.

Maternity protection should be viewed as an integral part of social protection. One strategy could be to establish a national social security fund to provide an integrated and consolidated approach to social security in South Africa, accompanied by a sustainable funding mechanism (Parliamentary Monitoring Group & Department of Social Development, 2021).

Despite the duration of maternity leave guaranteed by South Africa's national legislation being aligned with minimum ILO guidelines, this may be inadequate to support optimal breastfeeding practices. Four months of maternity leave is provided to working women, but EBF is recommended until 6 months of age. Researchers have shown that EBF declines when women return to work (Hirani & Premji, 2009). Increasing the duration of legislated paid maternity leave is associated with increased EBF (Chai et al., 2018). The limited duration of maternity leave could therefore be a factor contributing to suboptimal EBF in South Africa. In 2019, to mark 100 years since the ILO first defined maternity protection, the Global Breastfeeding Collective (led by UNICEF and the WHO), called on governments to mandate paid maternity leave for at least 18 weeks, but preferably, for 6 months or more after childbirth (WHO & UNICEF, 2019a). This is aligned with optimal infant and young child feeding guidelines. Furthermore, South Africa should ratify the Maternity Protection Convention. According to the Ernst and Young (2019) report, no changes are currently planned to guarantee payment of full salaries to women on maternity leave.

While the cash benefit component of maternity protection in South Africa was recently improved, access to cash benefits remains difficult for many women on maternity leave. The social insurance mechanism of financial compensation is accessible to women on maternity leave only if contributions to the Unemployment Insurance Fund are made. This is problematic for three main reasons: First, many groups are excluded from receiving social insurance benefits, including employees working < 24 hr per month for an employer, learners, students, self-employed women, and undocumented migrants (Kasselman, 2020). Second, only 58.6% of eligible women have reported contributing to the fund (Statistics SA, 2021), meaning 41.4% would be ineligible to claim cash benefits while on maternity leave. Third, many women experience delays in the process of applying for cash benefits. The National Department of Employment and Labour (NDoL, 2019) reported that most maternity claims submitted

with complete information were finalized within 10 working days of receipt, suggesting that this process is efficient. However, recent research has contradicted this report. Submissions are often incomplete because applicants lack information about correct completion and struggle to obtain guidance from the department, resulting in delays (Ernst & Young, 2019). Women unable to access social insurance can apply for the Child Support Grant, but this is much lower than the national minimum wage and the calculated cost of a basic food basket in South Africa (Pietermaritzburg Economic Justice & Dignity Group, 2021). Therefore, the route for many women to obtain cash benefits while on maternity leave is inadequate to sustain a suitable standard of living.

Globally, only four low-and-middle-income countries—Burkina Faso, Mali, Senegal, and Tajikistan—fulfill all ILO requirements regarding length of maternity leave, cash benefit rates, and sources of cash benefits' funding (WHO & UNICEF, 2019b). Three of these countries have over 90% continued breastfeeding at 1 year of age; yet only one, Burkina Faso, has reached the World Health Assembly (WHA) target for 50% EBF at 6 months. Access to cash benefits during maternity leave should be simplified and South Africa should be encouraged to follow other low-and-middle-income countries' achievements in increasing cash benefits during maternity leave. Maternity cash benefits should be extended to all women, including those currently excluded from social insurance (e.g., informal or non-standard workers).

While breastfeeding breaks are recommended in several of South Africa's codes of good practice, these codes are not legally enforceable. Codes of good practice guidelines are open to varying and inconsistent interpretations of the right to paid breastfeeding breaks. Therefore, they are unlikely to be adequately implemented. There should be unambiguous legislation guaranteeing the right to paid workplace breastfeeding breaks in South Africa. There are some departmental initiatives to support breastfeeding in the workplace that could be further developed. For example, the Department of Health's Side-by-Side campaign has online resources available, including a booklet entitled *Supporting Breastfeeding in the Workplace: A Guide for Employers and Employees* (NDoH, 2019). This provides practical guidance for implementing existing codes of good practice. A national civil society organization—the South African Coalition of Women, Adolescent and Children's Health (SACSoWACH)—has convened stakeholder discussions to advocate for workplace breastfeeding support (SACSoWACH, 2018). At the sub-national level, the Western Cape Department of Health, in collaboration with organized labor, developed a provincial circular recommending twice daily breastfeeding for women until their child is 12 months old (Western Cape Government: Health, 2012). This is a progressive policy that other departments in the Western Cape and other provinces could adopt. An older 2012 global policy analysis of 182 countries found

that 71% had legislated paid breastfeeding breaks (Heymann et al., 2013). South Africa is unfortunately one of a minority of countries that still does not guarantee workplace breastfeeding breaks. This is despite being a signatory to the 1995 Beijing Declaration and Platform for Action, which called on governments to ensure the protection and promotion of breastfeeding in workplace environments (United Nations, 1995). Heymann et al.'s (2013) study showed that in countries where legislation guarantees breastfeeding breaks at work, more women practice EBF during the first 6 months.

Protection for fathers and other non-birth (e.g., adoptive) parents does not always receive adequate consideration (Fontana & Schoenbaum, 2019). In South Africa, progressive amendments made by the *Labour Laws Amendment Act of 2018* contain gender-inclusive provisions; however, these changes may be insufficient to contribute to gender equality through improved maternity protection and shared caregiving responsibility (Malherbe, 2020). This paper focused on maternity protection since its availability and access is inconsistent, especially in Africa and Asia where most women cannot access maternity leave and cash benefits (ILO, 2014).

Maternity protection legislation and guidance in most countries focus on full-time, permanently employed women. Globally, over 60% of employed people work informally, and in low-and-middle-income countries this number is higher; in Africa, 86% of employment is informal (ILO, 2018). While there is no evidence to show how access to maternity protection in South Africa differs based on socioeconomic status, there is acknowledgement, globally and nationally, that research on implementing comprehensive maternity protection for all is urgently needed, especially for women working in the "informal" sector (NDoH, 2011; Rollins et al., 2016). A more in-depth investigation of maternity protection policy implementation is important, especially for women in non-standard employment. Consideration should be given to expanding current social assistance programs, and improving their efficiency, so that those who need to access funds can do so timeously. There is currently work underway in South Africa to extend social security benefits beyond women employed formally and to consolidate social security (Department of Social Development, 2021; S.A. Law Reform Commission, 2021). In August 2021 a Green Paper on Comprehensive Social Security and Retirement Reform for South Africa was published. It made promising references to a process to develop specific maternity and pregnancy support, but was unfortunately withdrawn soon after publication (Parliamentary Monitoring Group & Department of Social Development, 2021). Integration of maternity protection policies across government departments, and improved monitoring and evaluation of existing legislation, could contribute to policy coherence and implementation. Digital technology opportunities could be made use of to streamline service delivery for social benefits across government sectors (e.g., online, and telephonic chat lines) to ease pregnant women's access in obtaining

assistance for completing their applications for social insurance benefits.

What sets the South African position apart is the state's constitutional obligation to realize social security and health care rights. Therefore, civil society organizations can and should pressurize government to realize maternity protection rights by way of the legislative and policy changes suggested above.

### Limitations

Despite efforts to address researcher bias and reflexivity in this study, it is possible that some bias has remained. There is a possibility that there are some documents that were not included in the document review. A key limitation is the small number of key informants interviewed and the use of purposive sampling, which could have led to selection bias.

### Conclusions

South African maternity protection is fragmented throughout different policy locations, contributing to its limited enforceability and fragile access. Monitoring and enforcement of maternity protection policy requires improvement. Comprehensive guidance regarding women's statutory maternity protection benefits, including how these apply to women in different employment contexts, is needed to ensure that the state takes reasonable measures within its available resources to progressively realize health and social security rights as required by the Constitution and international law. Recommendations to address gaps in maternity protection in South Africa may be relevant to other countries with similar shortcomings in maternity protection provisions. Improved access to maternity protection could contribute to improved breastfeeding practices.

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### Author contribution(s)

**Catherine Pereira-Kotze:** Conceptualization; Data curation; Formal analysis; Funding acquisition; Investigation; Methodology; Visualization; Writing – original draft; Writing – review & editing.

**Kitty Malherbe:** Formal analysis; Writing – review & editing.

**Mieke Faber:** Conceptualization; Methodology; Supervision; Writing – review & editing.

**Tanya Doherty:** Formal analysis; Supervision; Writing – review & editing.

**Diane Cooper:** Conceptualization; Methodology; Supervision; Writing – review & editing.

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## Supplemental Material

Supplementary Material may be found in the “Supplemental material” tab in the online version of this article.

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