

COSATU Submission on the Unemployment Insurance Amendment Bill

Submitted to the Portfolio Committee on Labour

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1. Introduction

COSATU welcomes the opportunity to comment on the Unemployment Insurance Amendment Bill (hereafter “the Bill”). The Unemployment Insurance Act 63 of 2001 (UIA) introduced a number of welcome changes including a progressive scale of benefits with lower income earners getting a higher proportion of their income than high-income earners; the extension of coverage to high-income earners which recognises the principle of solidarity and equity and brings greater stability to the Unemployment Insurance Fund (UIF); and the “delinking” of unemployment benefits from maternity benefits that allows pregnant women to claim maternity benefits without affecting their rights to claim their unemployment benefits.

Nevertheless at the time the UIA was passed, COSATU and various other civil society organisations raised a number of serious concerns around the substance and process. While some of these have been addressed, such as the recent inclusion of the domestic workers and seasonal workers, a number of contentious issues have remained unresolved. These include the:

- Continued exclusion of public sector workers from the fund;
- Limitation of maternity benefits; and
- Lack of financial guarantees and general financing of the Fund.

In addition to responding to specific provisions in the Bill, this submission focuses on the extent to which the above concerns are addressed in the current process as well as other processes around unemployment insurance. Further, the UIA has been in operation for more than a year, making this an appropriate time to address various problems that have been identified in the course of its implementation. In this respect the submission takes into account the following exclusions from benefits under the UIA:

- Workers who receive old age pensions; and
- Workers who have resigned.

2. The Continued Exclusion of Public Service Workers

We have consistently registered our objections to the continued exclusion of public service workers from benefits under the UIA.¹ Excluding certain sections of the labour market from

¹ See COSATU Submission on the Unemployment Insurance Bill [B3-2001] to the Portfolio Committee on Labour, 19 March 2001.

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specific labour legislation significantly undermines the realisation of a unified labour market dispensation, which is the stated aim of the Department of Labour. We strongly believe that such an exclusion is unconstitutional, since it unfairly discriminates against public service workers and violates their constitutional rights to equality. Further, it contradicts the State's obligation to progressively realise everyone's rights of access to social security under section 27 of the Constitution.

Apart from concerns about equity and discrimination, the inclusion of public service workers would substantially contribute to the stability and viability of the Fund. This would further entrench the principle of solidarity already incorporated into the Act.

During the Parliamentary process on the UIA, the Committee instructed the Department to investigate and report to the Committee on the financial implications and viability of including public service workers. We note that this investigation has been completed and the Department subsequently briefed the Committee in November last year on the findings. In terms of these findings the recommendations were to retain the current exclusion of permanent state employees.

We note with concern that the full report has not been made public on the grounds of "confidentiality", which we believe contradicts the Promotion of Access to Information Act. We are therefore calling on the Committee to instruct the Department to release the report publicly and to allow for a process of public comment. There is a need to allow civil society organisations to engage with the underlying financial and legal considerations informing the recommendations against including public service workers.

3. Financing

It has been our consistent view that the State underwrite the fund and make good any shortfalls. However, the UIA merely makes provision for the Minister of Labour to request the Minister of Finance to make an emergency allocation to cover any deficit in the Fund. Thus the Minister of Finance retains a discretion to refuse such a request.

We note as a positive development that for the first time in a number of years the Fund has reflected a surplus of R1.4 billion for 2002/03. This is due to a combination of reasons. Firstly, the increased efficiency and capacity through the use of the South African Revenue Services (SARS) as the collection agency. Secondly, the inclusion of higher-income earners, who were previously excluded, has contributed to the stability of the Fund. Finally there has been a considerable increase in budgetary allocations over the past few years to the Fund.

For the years 2001/02, 2002/03 and 2003/04 the respective amounts of R 612 million, R 327 million and R 257 million were transferred to the Fund. This is compared to the mere R 7 million allocated in previous years. This confirms our view that the State should play an active role in guaranteeing the stability of the fund.²

While we recognise that the R 1.4 billion surplus for 2002/03 represents a positive development, this should not create a false sense of security. Firstly, domestic workers and seasonal workers have only just been included. These are particularly vulnerable sectors, with lower income earners who face cyclical unemployment. Accordingly, contributions from these sectors are less likely to substantially increase the size of the Fund, although it is to be expected that there may be a considerable increase in the number of claims for benefits. Further, collection of contributions from these sectors are undertaken by the Department as opposed to the SARS, which places increased administrative and capacity demands on the Department.

² Vote 17: Labour 2003 *Estimates of National Expenditure*.

Despite this the Department of Finance intends once again reducing the budgetary allocation over the medium term with the allocation for 2005/06 reverting to R 7 million. The Consolidated Report of the Committee of Enquiry into Comprehensive Social Security noted the following:

“... although falling claim levels and improved financial controls have eased the financial crisis for the meanwhile, the UIF remains vulnerable. Until the special conditions in which the UIF is required to operate are acknowledged, and appropriate Government top up funds (in the form of a regular contribution to the UIF) are provided, this vulnerability will remain.

4. Actuarial Review

Agreements reached at NEDLAC in 2000 on the Unemployment Insurance Bill provided for the implementation of a comprehensive, holistic actuarial review, which would look into a number of issues including the status of the Fund, financial guarantee from the State, and the level of benefits. This would allow a number of questions to be addressed in particular the low amounts of benefits and the frequency at which they may be claimed. We are prepared to submit more detailed questions on these issues if the Committee wishes to pursue the matter.

5. Resignations

Section 16(1)(a) of the UIA identifies the various categories that qualify for unemployment benefits, which are limited to:

- Workers whose contracts have been terminated by their employers or as a result of the ending of a fixed-term contract;
- Workers who have been dismissed by their employers as defined by section 186 of the Labour Relations Act (LRA). This includes constructive dismissal; and
- Unemployment as a result of insolvency.

We believe that a serious anomaly has arisen in respect of the above since resignations are not covered. Accordingly, workers are not eligible for unemployment benefits even if they resign for legitimate reasons. For example, a worker may resign because conditions are made intolerable owing to sexual harassment by another worker, or conditions at home force a rural worker to resign owing to the death of the head of the household. However, despite these being legitimate reasons for resignation, these workers would not be able to claim unemployment benefits. We believe that this situation is extremely discriminatory and has caused considerable hardship for many affected workers.

Further, the inclusion of constructive dismissals has created an anomalous situation, since it often takes the form of a resignation. Many workers who are constructively dismissed may state that they resigned either because they are unwilling to damage future job prospects or are not informed about what constitutes a constructive dismissal. This is further complicated by the fact that deciding what constitutes a constructive dismissal is a highly subjective process. These raise serious questions in respect of implementation, especially around the administration of the applications for benefits.

Accordingly we are calling on the Committee to insert an amendment into section 16(1)(a) to provide for the inclusion of resignations under certain defined conditions, and subject to a fair process. While the question of exclusions is not specifically covered in this Bill, we believe that it is important that the Committee address this problem within the current process. Further, it is relevant since the Bill reviews other exclusions as well.

6. Specific Provisions on the Bill

6.1 Inclusion of Seasonal Workers and Domestic Workers

All references in the Bill to seasonal workers and domestic workers are deleted especially where these provide for their exclusion.³ These amendments are in line with recent inclusion of the application of the UIA to domestic and seasonal workers. We strongly welcome this since it is something we have long called for.

6.2 Exclusion of Persons Who receive Old Age Pensions

In terms of the current legislation people who receive old age pensions and continue to work are in an anomalous position. Currently they are excluded from claiming benefits in terms of section 14(a)(I), although they are required to pay contributions to the UIF. The Bill seeks to address this by inserting a new section 3(1)(e), which removes the requirement to contribute to UIF.

We recognise that the underlying emphasis is to protect old age pensioners. However, after considering the implications we have concluded that it would be more appropriate to do the reverse which would be to ensure that this category of workers is properly included.

This concern is especially relevant to domestic workers of pensionable age. According to our discussions with SADSAWU a larger proportion of domestic workers are in fact over the age of 60 years. In many cases they are forced to work as domestic workers to supplement their pensions. In order to qualify for a pension, one has to comply with a means test. It is important to note that the minimum wage stipulated by the sectoral determination is lower than the maximum income to qualify for a pension. Accordingly, it is not irregular/illegal to draw a pension and work.

It is also important to bear in mind that those domestic workers drawing pensions have to contend with significantly reduced payouts that take into account their working income. Consequently in such a case a domestic worker who becomes unemployed may end up having a lower income than other state pensioners who receive the full pension benefit. Therefore it is important that the unemployment benefit be made available to ensure that the income does not fall below a minimum threshold.

We believe that the basis for the payment of UIF must be distinguished from that of the old age pension, which accrues as a right as a citizen to a form of social welfare to be used by older persons. The UIF on the other hand is a temporary measure to compensate for loss of employment income. Our argument in this respect should be distinguished from the exclusion of a person from drawing both pension and disability benefits, both of which are social welfare payments. It is discriminatory to exclude someone from enjoying the benefits of their contributions, including those which were made before they reached pensionable age.

The continued exclusion from the UIA will have the effect of undermining the principle of achieving a unified labour dispensation, since affected workers will not be able to rely on the legislation for protection.

It must be borne in mind that we are dealing with a very vulnerable sector of the labour market, which is predominantly represented by black women who are amongst the lowest paid. Age as a factor considerably compounds this and increases likelihood of exploitation.

Further, there is a substantial incidence of households headed by older persons whose pensions serve as the primary source of income. The incidence of HIV/AIDS, cyclical forms of unemployment and general prevalence of poverty have substantially contributed to this phenomenon.

³ See sections 1(d) and 3(2) and (3) are deleted by clauses 1(d) and 2(c) respectively.

Of further concern is that there is a perception amongst domestic workers who draw pensions that they are not allowed to work. This has impacted significantly on the registration process. This has the indirect effect of undermining efforts to formalise their working arrangements and creates opportunities for avoidance of obligations in respect of the minimum wage and conditions. We believe that complete exclusion from the UIF will only further entrench this misconception that their working arrangements are illegal.

Further, where a domestic worker is approaching the official retirement age (but is not as yet eligible for a pension) they often choose not to register for UIF on the basis that they are unlikely to benefit. However, this leaves them unprotected in the intervening phase.

Accordingly we recommend that the proposed exclusion not be implemented. Further, section 14(a)(i) should be deleted. This would then allow affected workers to draw unemployment benefits if necessary.

6.2.1 Need for Clarity Regarding Previous Contributions

Notwithstanding our recommendations noted above, we believe that the Department should clarify its intentions in respect of the previous contributions that it collected from affected workers before they reached a pensionable age.

6.3 Partial Loss of Employment

Clause 4 inserts a new section 12 A, which recognises the right to benefits if a domestic worker becomes partially unemployed. Clause 5 provides for a new section 13(6), which states that the total income (including the wage and the unemployment benefit) should not exceed the benefit that would have been paid out had the worker become wholly unemployed.

We welcome these amendments as they recognise the peculiar situation that domestic workers face in that they often have multiple employers. It recognises that it is crucial to address even a partial loss of income. Further provision should be made to ensure that a worker would receive the maximum benefit applicable taking into account the credits accumulated.

6.4 Death of an Employer

Clause 6 proposes that unemployment benefits may be paid to a domestic worker who is unemployed as a result of the death of the employer. We welcome this provision since it addresses the situation that is specific to domestic workers.

6.5 Topping Up of Benefits in respect of Illness, Maternity, and Adoption

Currently, benefits paid out in respect of the above are set off against any payments received from the employer. So if the income from the employer is greater or equal to that the UIF benefit, then no UIF benefit will be payable.

In terms of the proposed amendments to sections 21, 24 and 27 a top up benefit will now be applicable in respect of illness, maternity or adoption. Therefore it is possible to receive both the benefits from the employer and the UIF. The proviso is that the total income should not exceed total remuneration.

We strongly welcome this amendment, which goes a substantial way to addressing our concerns about the limited maternity benefits provided. Having noted this we believe that more needs to be done to address the situation of more vulnerable workers who earn lower incomes and who are less likely to be unionised. As such they are less likely to get paid maternity leave from their employers. This creates a situation of inequality when compared to higher income earners who are more likely to get a 100% of their normal income.

Accordingly we believe that there is a need to urgently investigate increasing maternity benefits on a general scale (which would also benefit lower income earners.)

6.5.1 Delinking of Maternity Benefits from the Employment Period

Provision also needs to be made to delink the maternity benefits from the period that a woman has been employed for. This would protect women who fall pregnant but have not accumulated the full quota of credits and so therefore do not receive benefits for all four months.

6.5.2 Investigation and Report into Maternity Benefits

As with the question of public service workers, the Committee instructed the Department to investigate and report on the extension and increase in the level of maternity benefits. We believe that this report needs to be released publicly and made subject to comment.