



International  
Labour  
Organization

▶ Maternity income  
protection in Southern  
and Eastern Africa  
**From concept to practice**



CENTRE FOR  
SOCIAL DEVELOPMENT  
IN AFRICA

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## FOREWORD

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On the 24th November 2017, government ministers and other heads of delegation gathered at the 10th ECASSA Social protection Makers Conference in Kampala, Uganda, committed to extending social protection coverage to the entire population and to widening the scope of benefits in all member states through legislation and policies.

This publication is part of a collaboration of the ILO with the Eastern and Central Africa Social Security Association (ECASSA) to encourage the move from employer liability systems to social insurance based systems and to provide universal and comprehensive coverage. The report was written by the International Labour Office (ILO), in partnership with the Centre for Social Development in Africa (CSDA) at the University of Johannesburg, South Africa. It counted with the contribution of various distinguished African experts from over the continent (see acknowledgements section).

The publication builds around the main theme of the 2017 ECASSA annual conference: from theory to practice. To achieve effective social security reform countries need to embrace not only legal reforms. They need to overcome practical structural barriers (including cultural and social barriers) and implementation challenges through action, evidence and knowledge generation and learning by doing. The publication provides evidence of some of the reforms undertaken in Africa in order to strengthen maternity income protection in the continent.

Through this publication, ILO and ECASSA materialize once more the fruitful partnership envisaged as part of the MoU signed between the two institutions.

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## THE KAMPALA DECLARATION.

**WE, the Ministers and other Heads of Delegation having met on the Occasion of the 10th ECASSA Social Protection Policy Makers Conference on Transforming Social Security from Theory to Practice in Kampala on the 24th of November 2017, declare that:**

- 1. It is essential to build and entrench the culture of social protection through education in all member states from the primary level to University and throughout adulthood.**
- 2. Extend social protection coverage to the entire population and widen the scope of the benefits in all member states through legislation and policies.**
- 3. Social protection being a right enjoyed by every citizen, each member state should develop policies that guarantee a social protection floor for all citizens.**
- 4. Strengthen regional cooperation through peer reviews and benchmarking for the purposes of sharing best practices.**
- 5. To leverage on technology to ensure cost efficient and effective delivery of social protection services in particular to the informal sector.**

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The editors wish to thank all writers and contributors for their valuable collaboration.

Last and not least, a special vote of thanks to Frederic Ntimarubusa, Secretary General Eastern and Central Africa Social security Association (ECASSA), Arusha, Tanzania, former CEO of Burundi National Social security fund for his contribution and encouragement, to ILO office in Lusaka (Luca Pellerano and Marielle Goursat) for their support throughout the project, and to ILO Decent Work Team Pretoria Director Joni Musabayana for his encouragement and support to the cooperation with ECASSA, and to all institutions involved in the research for their outstanding collaboration.

## ACRONYMS

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<b>CBHI</b>	Community-Based Health Insurance (Rwanda)
<b>CSDA</b>	Centre for Social Development in Africa
<b>ECASSA</b>	Eastern and Central Africa Social Security Association
<b>GDP</b>	Gross Development Product
<b>ICT</b>	Information and communication technology
<b>ILO</b>	International Labour Organization
<b>INPS</b>	National Institute for Social Providence (Mozambique)
<b>INSS</b>	National Institute for Social Security (Mozambique)
<b>MSD</b>	Maternity leave, Sick leave, and Death benefits fund (Namibia)
<b>NEDLAC</b>	National Economic Development and Labour Council (South Africa)
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>RSSB</b>	Social Security Board of Rwanda
<b>SARS</b>	South African Revenue Service
<b>SDG</b>	Sustainable Development Goals
<b>SME</b>	Small and Medium Enterprise
<b>SSC</b>	Social Security Commission (Namibia)
<b>TASAF</b>	Tanzanian Social Action Fund
<b>UIF</b>	Unemployment Insurance Fund (South Africa)
<b>WHO</b>	World Health Organization

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# INTRODUCTION

# 1. INTRODUCTION

When maternity social insurance legislation was passed in Rwanda, the Executive Secretary of Pro-Femmes TweseHamwe, an umbrella of civil society organizations<sup>1</sup>, Emma Bugingo said: “*The Fund will help mothers to take a longer rest and to take care of their newly born babies*”<sup>2</sup>. Pregnancy and childbirth can be a vulnerable time for women, particularly those with low incomes or no incomes at all. Indeed, a study in South Africa showed that pregnancy in poor areas is associated with increased anxiety and mental health problems, and is correlated with food insecurity and domestic violence (van Heyningen et al. 2016).

Female workers who are not entitled to paid maternity leave often have to interrupt or reduce their participation in paid work in order to bear and rear a child. This often translates into increased economic vulnerability in a time of increased household expenditures related to pregnancy and birth. There are other risks too: they may continue to engage in economic activity too far into pregnancy, or they do not take an adequate rest period and start working too soon after childbirth with negative effects on both their own and their children’s health. Maternity income protection increases economic security in the household. It is also associated with positive health outcomes for women and their children, including the establishment and maintenance of breastfeeding, as well as greater emotional and psychological wellbeing. This contributes to a general feeling of greater security, stability and ability to plan for the future.

Maternity income protection provides income to a working mother before and after the birth or adoption of her child. Maternity income protection contributes to maternity protection with other integral elements: maternity leave, medical benefits, health protection at the workplace, employment protection, non-discrimination and breastfeeding arrangements at work. This report focuses on maternity income support, but we recognise that all these elements are interdependent.

More broadly still, maternity income protection is an important social protection mechanism for women and their children. The right to social protection is protected by international human rights conventions. It is supported by the United Nations Sustainable Development Goals. Globally, many countries still do not have laws to guarantee these rights. When paid maternity leave is not funded by social insurance or public funds, employers often have to bear the full direct cost of maternity protection benefits. This can create disincentives to hiring, retaining and promoting women workers. It also excludes the large majority of women workers in the informal economy whose working conditions are usually not covered under labour law or regulations and are therefore not compulsory for employers. Maternity paid leave which is the sole and direct liability of employers carries risks and costs for the financial stability of small enterprises, can have detrimental effects on women’s labour market participation and productivity, and can compromise the physical security of women workers and their babies when women are forced to work in unprotected environments.

**Across Southern and Eastern Africa, there are six countries with social insurance models, 13 countries with employer liability and three countries with mixed models. The overall trends are towards longer and better paid leave, funded by social insurance.**

Efforts to increase maternity income protection are affordable even for low income countries. This report demonstrates affordability based on existing schemes and estimates for new schemes using the ‘Social protection floor cost calculator’ (available to download online<sup>3</sup>) Maternity income protection schemes are also proving to be a valuable investment for increased productivity and ensuring a healthier workforce.

Whilst there has been growing interest on the topic of maternity protection, the reality on the ground is that only a few countries in Eastern and Southern Africa have established a social insurance based system of maternity income protection. In addition, those countries that have established social insurance systems may still fail to adequately protect women who are self-employed, domestic, agricultural, casual or temporary workers. This publication aims to take stock of the existing situation in Southern and Eastern Africa but also to reflect the actual experience of countries that are undergoing processes of reform. Across these two regions, there are six countries with social insurance models, 13 countries with employer liability and three countries with mixed models. The overall trends are towards longer and better paid leave, funded by social insurance.

Technical assistance over the past decade has highlighted some misconceptions about social insurance for maternity, and how to finance it: who can be covered, who needs to pay among other questions. These questions sometimes reflect deep-seated cultural beliefs, myths, and social norms or views about the role of women in work and in the home and the joint responsibilities of men and women in childcare. There are also different views about solidarity versus individual responsibility for one’s protection at different stages of life. Should women who cannot bear children be covered? Should men contribute? Should adopted children be covered? Will it raise fertility? Whilst there is certainly scope for contextualisation in design and implementation of maternity benefits, responding to local circumstances and national social dialogue, there are internationally agreed principles that deserve to be better known. This has been the role of the International Labor Office (ILO) and the Eastern Central Africa Social Security Association (ECASSA) through research and capacity building.

**While South Africa and Namibia have short term social insurance funds, most countries in the sub-region have pension funds but do not have enough experience with short term benefits**

Another concern reflects the issues of organizing and implementing benefits adequately. While South Africa and Namibia have short term social insurance funds, most countries in the sub-region have pension funds but do not have enough experience with short term benefits, with the exception of medical coverage in some instances. National dialogues have shown that developing short term social security in the sub region is needed and overdue. One step is to increase understanding of the technique of social insurance as opposed to employer sole and direct liability.

But importantly, another issue to address involves practical questions of implementation: where to locate the management and delivery of maternity benefits; if benefits are not integrated overall, should maternity benefits be administered under health insurance or pension funds? Are there specific mechanisms that need to be in place to administer the scheme? The experience of the preparedness of Rwanda Social Security Board to implement the new branch of maternity benefits could be inspiring to other countries.

The study relies on a literature review, as well as ten country studies (Burundi, Kenya, Lesotho, Mozambique, Namibia, Rwanda, South Africa, Tanzania, Zambia, Zimbabwe). Each case study has been compiled by national and international experts (academics or policy-makers) with first-hand experience of the design and implementation of maternity income protection schemes in each country. A write-shop was convened in April 2018 to finalize the synthesis of the case studies and draw conclusions from the comparative analysis.

<sup>1</sup> Pro-Femmes/Twese Hamwe is an umbrella of Rwandan civil society organizations aiming at advancement of women’s status <http://profemmes.org/>

<sup>2</sup> Reported in RSSB Magazine, issue 03, 2005, p. 20.

<sup>3</sup> <http://www.social-protection.org/gimi/ShowWiki.action?wiki.wikid=3051>

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# MATERNITY INCOME PROTECTION IN CONTEXT

## 2. MATERNITY INCOME PROTECTION IN CONTEXT

Maternity income protection is an important building block that needs to be understood in its broader policy context. What does it mean that maternity income protection is a right? What is its role in achieving the realisation of the Sustainable Development Goals and in promoting gender equality? How does maternity income protection relate to other social protection and maternity protection mechanisms? And finally what are the international standards for maternity protection?

**A respect for fundamental human rights means advancing the rights to live free of discrimination and harassment in access to jobs and in the workplace. In developing countries y, these rights to maternity protection (and social security) need to be extended to women who are self-employed and who are employed in the informal economy or other atypical forms of employment.**

### 2.1 A rights-based approach

This report is informed by a rights-based approach. Maternity protection is a fundamental right enshrined in universal human rights treaties including the Universal declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966) and the Convention for the Elimination of all Forms of Discrimination against Women (1979). The most recent international labour standards on maternity protection are the ILO Convention No. 183 and Recommendation No. 191 (2000).

A respect for fundamental human rights means advancing the rights to live free of discrimination and harassment in access to jobs and in the workplace. It is crucial that domestic law is in line with international human rights provisions and includes legal guarantees that ensure their effective implementation. In developing countries especially, these rights to maternity protection (and social security) need to be extended to women who are self-employed and who are employed in the informal economy or other atypical forms of employment.

### 2.2 Achieving the Sustainable Development Goals

National laws and policies can play a key role in advancing the Sustainable Development Goals. In particular, governments' commitments to making paid maternity leave policies a reality can support the achievement of SDG 1 (poverty), SDG 3 (health), SDG 5 (gender equality), SDG 8 (decent work) and SDG 10 (inequality) (Heymann et al. 2017). For example, by promoting the safety and health of pregnant and nursing women and their babies, maternity protection contributes to progressing SDG 3. Maternity Protection also allows women to dedicate adequate care to infants, including through breastfeeding, which is known to have important and long-term effects on children physical, cognitive and non-cognitive development. Breastfeeding also reduces the cost of caring for preventable diseases and promotes rest of the mother.

### 2.3 Gender equality

One motivation for promoting maternity income protection is to advance gender equality. Calls for the extension of maternity protection to all women are in line with the principle of equal opportunity and treatment between women and men and a recognition of their equal contribution to economic growth and society. Maternity protection schemes recognize specific gender forms of vulnerability in the life cycle hinged on the interrelation between the women's participation in the labour market and their reproductive role. "This is particularly so in African societies, where the traditional role of women as caregivers remains strong" (Osei-Boateng 2011). In addition, in the African context, and elsewhere, the current social security landscape tends to aggravate gender bias. Men tend to have higher formal employment rates and the majority of women who tend to work in the informal economy. When social insurance is restricted mainly to the formal sector, women and female-headed households are left particularly vulnerable (Mokomane 2013).

**Maternity protection schemes recognize specific gender forms of vulnerability in the life cycle hinged on the interrelation between the women's participation in the labour market and their reproductive role.**

### 2.4 Social protection

Social protection is a fundamental right that should be enjoyed by everybody irrespective of the occupation and economic sector in which he or she is employed. While there is no universally accepted definition for social protection, the International Labour Organisation's (ILO) definition of social protection has been widely accepted as a standard operational definition:

*For ILO, social protection refers to the protection which society provides for its members, through a series of public measures, against the economic and social distress that otherwise will be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old age, and death and also including the provision of medical care and provision of subsidies for families with children.<sup>4</sup>*

Maternity income protection is an important social protection mechanism for women and their children. In addition to maternity, social protection systems may include other benefits in the case of poverty, unemployment, occupational injury, disability, death of family members and old age in addition to ensuring financial protection in accessing to health care services.

**Access to maternity benefits should be independent from and not impact the ability of women to access other benefits; therefore savings schemes that deplete women's individual entitlements to other benefits are not equitable to women.**

These benefits are interrelated and the extent to which they take into account gender specific vulnerabilities related to maternity, may heighten or minimize exposure of women life cycle social and economic risks arising from maternity. For example: the ability to have maternity leave periods counting towards entitlements to pension or survivors'

benefits need to be explicitly integrated in the design of pension plans. Access to maternity benefits should be independent from and not impact the ability of women to access other benefits; therefore savings schemes that deplete women's individual entitlements to other benefits are not equitable to women.

**The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) noted that a few countries in the world have implemented social assistance policies that extend the coverage of maternity benefits beyond the scope of contributory schemes.**

Social protection benefits can be provided through social assistance (in which beneficiaries do not make contributions towards their individual entitlements) and/or social insurance schemes (in which beneficiaries do make dedicated contributions which give them entitlement to specified benefits) and/or tax-based system (for instance free health care at point of service). The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) noted that a few countries have implemented social assistance policies that extend the coverage of maternity benefits beyond the scope of contributory schemes. These measures are normally means tested<sup>5</sup>.

Social protection floors are nationally defined sets of basic social security guarantees that secure protection aimed at preventing or alleviating poverty, vulnerability and social exclusion. They are enshrined in international social security standards. The ILO Social Protection Floors Recommendation, 2012, No. 202 assists member States in covering the unprotected, the poor and the most vulnerable, including workers in the informal economy and their families. Social protection floor guarantees should ensure at a minimum that all citizens in need must have access to essential protections necessary to survive in society during their lifetime.

According to the ILO, national social protection floors should comprise at least the following four social security guarantees, as defined at the national level:

<sup>4</sup> ILO: Introduction to Social Security, (Geneva,1989) at 3.

<sup>5</sup> These include Australia, Estonia, Malta, New Zealand, Poland and Portugal in General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202), 2019, page 172.

access to essential health care; basic income security for children; basic income security for persons of active age; and income security for older persons. These floors provide a framework for the gradual implementation of short and long-term benefits to ensure a basic set of social security guarantees comprised of essential health care and income security for vulnerable and unprotected people, including women around childbirth.

***In sub Saharan Africa, social assistance that is not narrowly targeted at the extreme poorest is able to protect significant numbers of poor and vulnerable women. They remain however comparatively unprotected during birth, as entitlements tend to be in the form of social pensions, child benefits, public works or other forms of chronic or emergency needs assistance.***

In the sub-Saharan African context, social protection systems were developed in the past decades to help mitigate some of the demographic and socio-economic changes that have been taking place and, in some cases, depleted the support mechanisms that were traditionally provided by the extended family. These trends include decreasing fertility, increased number of older persons, increased unemployment and underemployment, increased migration, increased proportion of female-headed households and high levels of HIV and AIDS (Mokomane 2013). In sub-Saharan Africa social assistance that is not narrowly targeted at the extreme poorest is able to protect significant numbers of poor and vulnerable women. They remain however comparatively unprotected during birth, as entitlements tend to be in the form of social pensions, child benefits, public works or other forms of chronic or emergency needs assistance.

Social protection featured prominently in key African blueprints including the Ouagadougou Declaration and Plan of Action (2004), the Livingstone Call for Action on Social Protection (2006) and the Social Policy Framework for Africa (2008), all of which give high priority to investing in the general welfare and life chances of African households and their members (Mokomane 2013). These frameworks emphasize the need for basic

social protection packages to complement enhanced social welfare measures.

## 2.5 Maternity protection – five components

Maternity income protection, comprising cash benefits, is a core element of a complete maternity protection package. Each element plays an indispensable role to ensure women's reproductive role does not compromise their active and equal participation in the labour market and is not detrimental to their health. The overall aim of maternity protection is to protect the health of mothers and their babies, and to minimise the difficulties and disadvantages that working women face as a result of or linked to their pregnancy and/or giving birth.

Maternity protection is essential to promote the health, nutrition and wellbeing of mothers and their children. ILO Convention No. 183 and Recommendation No. 191 (2000) define several core elements of maternity protection at work:

- maternity leave
- cash benefits
- medical benefits
- health protection at the workplace
- employment protection and non-discrimination
- breastfeeding arrangements at work

Below is a brief description of each component:

### Maternity leave

Maternity leave, before, during and after birth is essential to safeguard the mother and the baby's health and well-being.

The duration of maternity leave needs to be appropriate. Where maternity leave is too long, it has been suggested that it may negatively impact a female worker's attachment to her job, as well and hinder her advancement opportunities due to the prolonged period out of work.<sup>6</sup> However, if the leave is too short, women would not have sufficient time to rest and recover from the pregnancy and child birth which may lead to them returning to work when they are not physically fit or choosing to leave employment altogether. Maternity leave which is too short may put the mother at health risk. The child will also be at a health risk without having sufficient

care and time with their mother by their side. The recommended duration of maternity leave per ILO Convention 183 is 14 weeks. This duration is seen as the optimum balance between the two extremes identified.

Before birth, time off work enables the pregnant women to rest which is essential in the last stage of the foetal development and for the mother to be physically and psychologically ready for the delivery. The required duration of the prenatal leaves depends on the health conditions of the mother and her baby, but also on the occupational hazards she may be exposed to at the workplace. Medical experts recommend a period of two to six weeks prior the birth.

After the delivery, maternity leave is crucial for physical recovery, for bonding with the baby, to establish breastfeeding and to attend medical examinations and babies' immunizations. At the birth of a baby, women go through a profound transition period, experiencing significant physical and emotional changes which necessitate adjustment to a new role and to modified relationship. These require resilience and capacity to adjust to changes. There is medical consensus that the post-natal maternity leaves should not be shorter than six weeks post-partum. This is explicitly addressed by Article 4(4) of ILO Convention No. 183 which provides for a mandatory period of six weeks' compulsory leave after child birth.

### Cash benefits

Apart from the duration and timing of maternity leave, the level of income replacement, is an important factor in assessing maternity protection legislation and its effects on women's health and their situation in the workforce as well as gender equality at work in general.

Cash benefits are the focus of this report. Cash benefits provide income (as a flat rate or as a %age of a worker's wage) to a working mother before and after the birth of her child. ILO Convention No. 183 provides that the cash benefit paid during maternity leave should be at least two-thirds of a woman's previous earnings, or a comparable amount if other methods are used to determine cash benefits, for a minimum of 14 weeks. According to the ILO, this is sufficient income replacement to compensate for the time period that a female employee will spend away from work during her maternity leave.

***Maternity cash benefits seek to replace some or all of the earnings a mother will lose out on by being on leave. Ideally, the amount of cash benefits is sufficient to provide an adequate and suitable standard of living for mother and her child. Without provision for cash benefits, several female workers would not be able to afford to take time away from work after giving birth to rest, care for their child, breastfeed and recover.***

These benefits seek to replace some or all of the earnings a mother will lose out on by being on leave. Ideally, the amount of cash benefits is sufficient to provide an adequate and suitable standard of living for mother and her child. Without provision for cash benefits, several female workers would not be able to afford to take time away from work after giving birth to rest, care for their child, breastfeed and recover.

Cash benefits may be funded by public funds, by social insurance or by employers (see Chapter 4). Without income replacement, women tend to work late in pregnancy and are under pressure to resume work as early as possible so as to minimize income loss. This significantly puts pregnant and nursing women and babies' health at risk.

### Medical benefits

Access to quality mother and child care in a timely manner and without financial constraints is essential to ensure a healthy pregnancy, and to help detect and treat any complications that may arise from pregnancy and birth. Women should be able to easily access pre-natal care, birth assisted by a skilled attendant, hospitalization and surgery, post-natal care, baby care and immunization, HIV test and counselling as well as pharmaceutical and medical supplies, medical tests and supplements and vitamins as prescribed by a medical practitioner.

The current global situation demonstrates a general lack of medical care of sufficient quality. National health systems in many developing countries are in the early stages of development and there is often excessive reliance on poorly resourced public health services with few countries providing access to free quality health care services, which are also geographically accessible. In many countries, only better-off households can afford better quality private medical care, which are often expensive and

<sup>6</sup> Thevenon, O. and A Solaz (2013) 'labour Market Effects of Parental Leave Policies in OECD Countries' OECD Social, Employment and Migration Working Papers No. 141

exclusionary. A significant portion of individuals are forced to forgo care or to delay treatment, take up loans or sell their own assets to meet health expenses. Globally, at least half of the world's 7.3 billion people do not receive all of the essential services they need and about 100 million people are being pushed into extreme poverty each year because they have to pay for health services out of their own pockets<sup>7</sup>.

Social health protection can be comprised of a series of public or publicly organized and mandated private measures against social distress and economic loss caused by the cost of necessary treatment that can result from ill health. According to the 2008 ILO Social Health strategy towards universal access to health care "Social health protection is designed to alleviate the burden caused by ill health and reduce the indirect costs of disease and disability, such as lost years of income due to short and long-term disability, care of family members, lower productivity, and the impaired education and social development of children".



Out-of-pocket financing of maternal medical care can be impossible to meet for many families and increases the risk of financial hardship of families. This increases poverty directly, inequality, health risks and the risks of health problems due to stress as women are compelled to work until late pregnancy or feel pressured to resume work in conditions which may be detrimental to the mother's health and that of her baby. Access of a comprehensive package of maternal and child care comprises financial protection and quality health care services that are available, accessible and acceptable. In addition, a woman should be entitled

to take time off work to attend medical examinations relating to her pregnancy, with no reduction in salary.

### Health protection at the workplace

Article 3 of ILO Convention No. 183 provides that:

*Each Member shall, after consulting the representative organizations of employers and workers, adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child.*

It is generally accepted that an employer has a duty to do what is reasonable to avoid workplace injury or accidents. The law does not demand the impossible from the employer and draws a balance between compliance with the duty of care and the reasonableness of measures taken by an employer to prevent workplace accidents. The duty to take reasonable care of employees is not limited to protection against injuries and accidents, but also include an implied duty to protect female employees from harm and provide a safe working environment for them.

Article 11(2)(d) of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women provides that

*In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:*  
*(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.*

It therefore follows that pregnant and breastfeeding women should not occupy functions that are dangerous or unhealthy or be exposed to working

conditions that could be detrimental to the mother's health or that of the baby. Per the recommendation the United Nations, pregnant female employees should be protected from the following:

- Work that has biological hazards such as bacteria and viruses that can affect an unborn child if the mother is infected during pregnancy. Protection from work that has biological hazards will also be important in ensuring that biological agents are not transferred through breast feeding that could harm the employee's child
- Work that has chemical hazards such as contact with harmful chemical substances that may cause infertility, miscarriage and foetal abnormalities.
- Work that has physical hazards such as exposure to noise, vibration, radiation or radioactive substances that would constitute a hazard to pregnant and breast-feeding female employees. This includes work involving highly demanding physical efforts or physical strain due to prolonged periods of sitting or standing
- Work that involves heavy physical work, frequent bending, static work posture, work that is repetitive or work that involves standing or sitting for a long period of time.

An employer should therefore seek to take measures to protect the pregnant or nursing woman from such risks include adaptations to the working conditions, for example with regard to the arrangement of working time, as well as avoidance of risks related to dangerous or unhealthy work.

**A study in South Africa documented instances of "compromised autonomy of lone mothers" in informal paid work: "They did not treat me with dignity, the reason I stopped working was the steam, because of the steam. I was pregnant at that time and they did not take that into consideration." (Alice, FG20) (Wright et al. 2014, 72)**

ILO Recommendation 191 specifies that when a risk is identified, the employer should try to eliminate the risk or adapt the conditions of work. When this is not possible, the worker should be transferred to another position, which is safe and with the same remuneration conditions. When the risk cannot be eliminated or an alternative position be found, the woman should be granted paid leave, in accordance

with national laws, regulations and practice. In addition, a woman should not be obliged to work at night.

Declaration of pregnancy should automatically trigger the implementation of protection measures. Early declaration enables employers to comply with these measures early in pregnancy and therefore to provide better protection to the mother and her baby. The availability of paid leave for mothers-to-be reduces the pressure on them not to declare pregnancies for fear of being sent home without pay.

Part of ensuring health protection for female employees in the workplace is ensuring that the woman is allowed to leave her workplace to undergo medical examinations related to her pregnancy, provided she notifies her employer (Paragraph 6(6) of ILO Recommendation No. 191). Regular medical check-ups and monitoring during and after the pregnancy are critical to protecting the woman's health as they allow her to be updated as to her health and effectively prevent any issues or complications linked to her pregnancy.

### Employment protection and non-discrimination

An integral part of maternity protection are measures to safeguard the employment of pregnant workers and combating discrimination based on maternity are an integral part of maternity protection. The relevant ILO Conventions and Recommendations require legislation against discrimination in employment, including access to employment, dismissal and the maintenance of employment benefits during leave.

Pregnancy and maternity are often a source of discriminatory practices in the workplace - in relation to access to employment, employment policies and practice and termination of employment. Discrimination is often grounded in beliefs that pregnant women and mothers have a reduced productivity or a cultural belief that mothers should not work. The resulting mistrust and fears among employers and women workers can result in inadequate planning and preparation for periods of pregnancy. At the workplace, pregnant women may find themselves in conditions that are inadequate, harmful and hindering their capacity to be fully productive. Instead, a climate of trust based on the guarantees of return to work and paid leave can lead to better preparedness and smooth transitions. The Maternity Protection Convention (Revised), 1952

<sup>7</sup> World Health Organization, World Bank, Tracking Universal Health Coverage, December 2017

(No. 103)<sup>8</sup> and CEDAW requires states to take measures “to prevent discrimination against women on the basis of marriage and maternity and ensure their effective right to work”.<sup>9</sup> Thus, national legislation must protect against any adverse alteration of the terms and conditions of service or victimisation when they return from work (such as changing the content of work or being given less work to frustrate female employees) or termination of employment on the ground of pregnancy, new motherhood and breastfeeding. The reproductive role incumbent to women should in no case compromise women’s employment opportunities and participation to the labour market. The protection should apply during the pregnancy period up to the end of the breastfeeding period.

Preventing discrimination in relation to access to employment also includes restrictions on certain employment practices. For example, ILO Convention No. 183, specifically prohibits requiring women to take pregnancy tests (with the exceptions cited below) at the time they apply for employment.

In case of dismissal, the Conventions are clear that female workers are protected against dismissal on the grounds of maternity. Dismissal is prohibited when related to pregnancy, birth of a child and its consequences, or nursing. Some countries provide protection against dismissal during the period specified in Convention No. 183 covering pregnancy, leave and a period after returning to work. In Zambia for example, the Employment Act deems a woman dismissed within six months after delivery as unfair dismissal on account of pregnancy unless the contrary is proven.

The burden of proof that the dismissal is unrelated to pregnancy should fall on the employer because such dismissal is regarded as automatically unfair – thereby switching the onus to the employer to prove that the dismissal was fair and not on the ground of pregnancy. This is an additional protective measure that not only enforces equal treatment but also provides a safeguard against unlawful dismissal related to maternity. Usually in dismissal cases, the employee bears the burden of proving the dismissal was unlawful or unfair. However to protected workers, a presumption of unlawful or unfair dismissal based

on or related to pregnancy is created and the that the employer must disprove as allegation – a necessary protection to female employees. The value of a social insurance based maternity benefit lies in the fact that maternity benefits are provided even in the case of unlawful dismissal, because they become an individual entitlement. Although derived from the employment situation and contributions to the fund administering the benefit, their claim and payment are actually personal and independent of the contractual relationship between the employer and the employee.

ILO Convention No. 183 provides that the period of protection against dismissal to include the entire period of pregnancy and maternity leave. The convention extends protection to any additional period following her return to work to be prescribed by national legislation. Therefore, at the end of her maternity leave, a woman should have guaranteed rights to return to the same position or a similar one paid at the same rate, and on terms and conditions of service that are not less favourable than the terms they served on prior to taking maternity leave.

**The value of a social insurance based maternity benefit lies in the fact that maternity benefits are provided even in the case of unlawful dismissal, because they become an individual entitlement.**

**Although derived from the employment situation and contributions to the fund administering the benefit, their claim and payment are actually personal and independent of the contractual relationship between the employer and the employee.**

#### **Breastfeeding arrangements at the workplace**

Article 5 of ILO Convention No. 103 requires that breastfeeding breaks for nursing mother should be counted as working hours and remunerated accordingly.<sup>10</sup> Further, Article 10 of ILO Convention No. 183 makes it clear that a woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child. One of the major issues concerning breastfeeding breaks are the length of time after birth that a

female employee may take nursing breaks. The World Health Organization (WHO) promotes exclusive breastfeeding in the first six months, as the best feeding practice to protect the baby against infectious diseases and to provide adequate intake of necessary nutrients for optimal baby’s growth. The 2002 World Health Assembly recommended that in addition to being exclusively breastfed for six months, female employees should continue to breastfeed their babies until age two years or more, with timely introduction of locally prepared indigenous complementary foods.

Return to work often obliges the mother to interrupt breastfeeding and to introduce infant formula or solid foods too early. Particularly in developing countries, this exposes the baby to a nutrition regimen which may not be adapted to its needs, and may be detrimental to its health.

As it relates to the number, frequency and length of the breastfeeding breaks, it recommended that women are given two 30 minute breaks per day for at least 6 months. This recommendation has been placed in section 45 of the proposed Zambian Employment Code Bill.

Further issues concerning breast feeding breaks are whether there breaks are counted as working time and will be paid or unpaid. Article 10(2) of the ILO Convention 183 recommends that ‘The period during which nursing breaks or the reduction of daily hours of work are allowed, their number, the duration of nursing breaks and the procedures for the reduction of daily hours of work shall be determined by national law and practice. These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly. In line with this provision, the breastfeeding breaks are counted as working time and the employee is to be paid.

Some may argue that it may not practical in certain countries where the majority of working places do not have facilities for nursing mothers. It is impractical for a nursing mother to leave her work premises and head home to breastfeed her child during office hours. This notwithstanding, Item 9 of ILO Recommendation provides that where practicable, provision should be made for the establishment of facilities for nursing under adequate hygienic conditions at or near the workplace.

Therefore, adequate arrangements at the workplace can encourage and enable mothers to pursue breastfeeding. At the minimum, a breastfeeding facility should be a reasonably sized hygienic room which protects the privacy of women and provides basic facilities such as a chair, clean space, a screen, curtain, or door for privacy, access to clean running water

Further, the facility should permit storage for expressed milk help mothers to pursue breastfeeding. Working time can be adjusted to provide lactating mothers with several short breaks a day or reduced working hours. These nursing breaks must be paid as the same hourly rate to ensure that breastfeeding does not translate into income loss for the mother.

In South Africa, breastfeeding at work is protected under the Basic Conditions of Employment Act, allowing feeding mothers two breaks of 30 minutes a day to feed their baby or express milk until the child is six months old.

**A study conducted among informal workers in Kenya found that despite high levels of knowledge regarding the benefits of breastfeeding, mothers often did not breastfeed because of structural and socio-economic barriers.**



2015-11-11, commerce and shop, family and work - Portrait of 26 years old Nasilele Mbambiko with her baby in her little food shop (Kambwise, Zambia). Country: Zambia, © Copyright ILO Photographer: Crozet M.

<sup>8</sup> Convention No. 103 has been updated by the Maternity Protection Convention, 2000 (No. 183), which the country has not ratified.

<sup>9</sup> Article 11(2) of CEDAW.

<sup>10</sup> Article 5 of Convention No. 103.

However, interventions are still needed to facilitate companies in changing attitudes and supporting nursing mothers in their work environment.<sup>11</sup> A study conducted among informal workers in Kenya found that despite high levels of knowledge regarding the benefits of breastfeeding, mothers often did not breastfeed because of structural and socio-economic barriers. They typically had to return to work and resume domestic chores very soon after delivery. The study found that “some respondents indicated a need for paid maternity leave, in line with the constitution, to allow women to breastfeed optimally, while others recommended material support such as cash transfer or food donation for mothers to enable them time to breastfeed” (Kimani-Murage et al. 2015, 321). In some countries in Africa, breastfeeding or expressing milk in public places (including breastfeeding rooms) is avoided, which justifies call for alternative measures such as reduction in working time.

## 2.6 International standards

The Maternity Protection Convention (revised) 1952 (No. 103) set the first international standards on maternity protection, which relate to each of the elements described in the previous section. It has been ratified by forty-one countries, but is no longer open for ratification. Maternity protection convention, 2000. (no.183) and Recommendations 191 now provide the most up-to-date standards

pertaining to the topic. Thirty-four countries ratified the Convention 183, including six in Africa (Mali, Burkina Faso, Morocco, Sao Tome e Principe, Senegal)<sup>12</sup> but none in Southern and Eastern Africa. The table below provides a comparative summary of the provisions of Conventions 103 and 183 and Recommendation 191 for each of the five components of Maternity Protection.



**Photo:** Authors, Breastfeeding corner at UNFPA Regional office for East and Southern Africa, Sunninghill, Johannesburg, South Africa.

**Table 2.1. ILO Conventions standards for maternity protection**

	Convention 103	Convention 183	Recommendation 191
<b>Leave Duration</b>	12 weeks	14 weeks	18 weeks
	Period of compulsory leave after confinement (not less than 6 weeks)	6 weeks compulsory after birth	More if multiple births
	Additional leave in case of sickness/ complications	Additional leave in case of sickness/ complications	Mother free to decide on dates, in the limit of compulsory post-natal leave
			Measures related to other type of leave (parental, adoption, in case of sickness or death of the mother during maternity leave)
<b>Cash Benefits</b>	2/3 of previous earnings	2/3 of previous earnings	100% of previous earnings
		Or no lower than rates paid for sickness or disability	

<sup>11</sup> <https://city-press.news24.com/Voices/grow-the-quality-of-our-workforce-by-embracing-maternity-20180808>

<sup>12</sup> [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:312328](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312328)

<b>Conditions of eligibility Coverage</b>	Not specified	Conditions that can be satisfied by a majority of women	Not specified
	Women employed in industrial undertakings and in non-industrial and agricultural occupations, including wage earners working at home	All employed women, including those in atypical forms of dependent work	Not specified
	Members to provide for exceptions from the application of the Convention	Leave room to exclude categories of workers (but countries must take measures to progressively implement for all)	
<b>Medical benefits</b>	Prenatal, confinement, postnatal medical benefits, hospitalization	Prenatal, childbirth, postnatal, including hospitalization if necessary	Medical care, maternity care, hospitalization, pharmaceuticals. And medical supplies, dental and surgical care
<b>Employment protection and non-Discrimination</b>	Unlawful to terminate employment of a woman during her pregnancy or absence on maternity leave	Unlawful to terminate employment of a woman during her pregnancy or absence on maternity leave	Entitled to return to former position or equivalent, paid at the same rate
			Right to return to same position, same pay rate
			No discrimination in employment of pregnant women
<b>Health protection at the work place</b>	Not specified	Not obliged to perform work which has been determined to be prejudicial to the health of the mother and the child	Measures to be taken to ensure safety and health of the pregnant and nursing woman and her child
			If risks: eliminate, adapt conditions of work, transfer to other post, or paid leave
			Not obliged to do night work
			Allowed to leave workplace for medical examination
<b>Breastfeeding arrangements</b>	Possibility to interrupt work for breastfeeding purposes, counted as working hours	Daily breaks or daily reduction of hours of work, counted as working time	Frequency and length of nursing breaks to be adapted to needs
			Measures to reduce working hours (start/end of day) by combining nursing break times
			Facilities
<b>Financing</b>	Compulsory social insurance or public funds	Compulsory social insurance or public funds – not employers liability	Compulsory social insurance, or tax based on payroll
		Except if agreed at national level by government and the representatives of employers and workers – or if provided for prior to date of adoption of the Convention by the ILC (1952)	
	Either paid by Employer/Employee or employer alone; but paid in respect to the total number of men and women employed		Either paid by Employer/ Employee or employer alone; but paid in respect to the total number of men and women employed
	Social assistance for those not complying with qualifying conditions	Social assistance for those not complying with qualifying conditions	
<b>Revision</b>	Not specified	Government, employers and workers to periodically examine appropriateness of extending leave periods and amount of cash benefits	Not specified

3

# MATERNITY INCOME PROTECTION: WHAT ARE THE IMPACTS?

2015-11-15, informal  
secteur, family and  
work - Portrait of a  
woman with her child  
selling locally produced  
charcoal in the  
Kalulushi area, in the  
Copperbelt Province  
(Zambia).

Country: Zambia  
© Copyright ILO

### 3. MATERNITY INCOME PROTECTION: WHAT ARE THE IMPACTS?

Pregnancy and confinement are linked to several risks and vulnerabilities. These factors are summarised in Figs. 3.1 and 3.3. They are accentuated in cases where heightened vulnerability during pregnancy also results from poverty, lower standards of living, poor working conditions and gender discrimination.

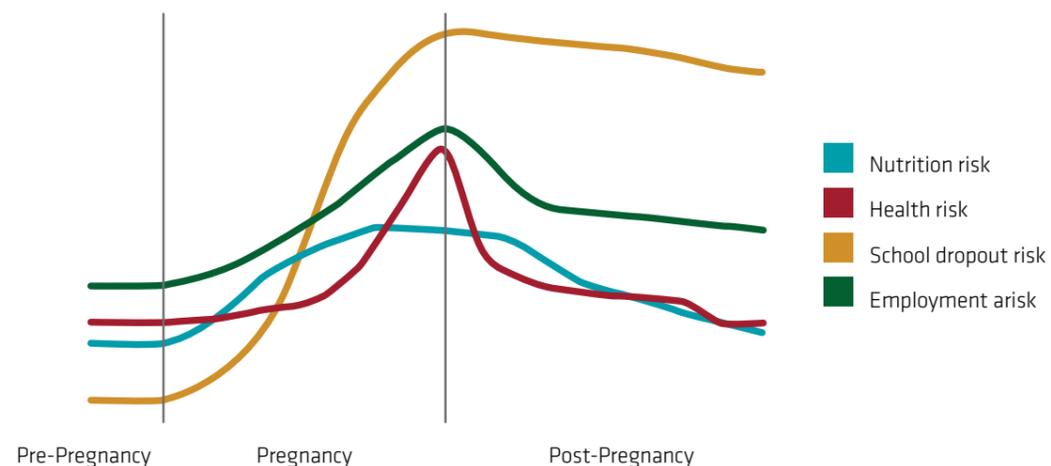
Maternity income protection can address some of the socio-economic, health, nutrition issues faced by women and their children, but the impacts vary depending on factors such as the length and amount of cash benefits. The studies listed below show how the findings affect mothers, children, and employers and populations. The evidence is useful for designing and monitoring policy-making on maternity protection.

#### 3.1 Risks and vulnerabilities during and after pregnancy

The risks and vulnerabilities associated with pregnancy and postpartum include psychosocial risks, nutrition risks, foetal and postnatal development risks for the child and vulnerabilities with regard to accessing health services (Fig 3.3). These are especially acute for women living in poverty. When women are poor, their pregnancies are likely to be negatively impacted in several ways: they are at high risk of malnutrition, and by extension, their infants are vulnerable to nutritional and developmental deficiencies, placing unnecessary risks on mothers and their children. Other studies have explored associations between poverty and depression in low-income settings both during and after pregnancy (Lovisi et al. 2005, Cooper et al. 1999).

Underlying these risks are several socio-economic factors, including low education levels, gender inequities and discrimination, unemployment, low incomes, reduced ability to work, limited financial support from other sources. These factors may reinforce each other. For example financial and discrimination barriers can combine to prevent women from accessing health care services. This in turn raises concerns about initiation of antiretroviral therapy (ART) early enough to reduce maternal mortality and pediatric HIV infection. Or a woman may lose her employment due to discrimination on the ground of maternity. In other instances, a young mother may drop out of school on account of her pregnancy. Fig. 3.1 illustrates the heightened vulnerabilities experienced by women during and after pregnancy.

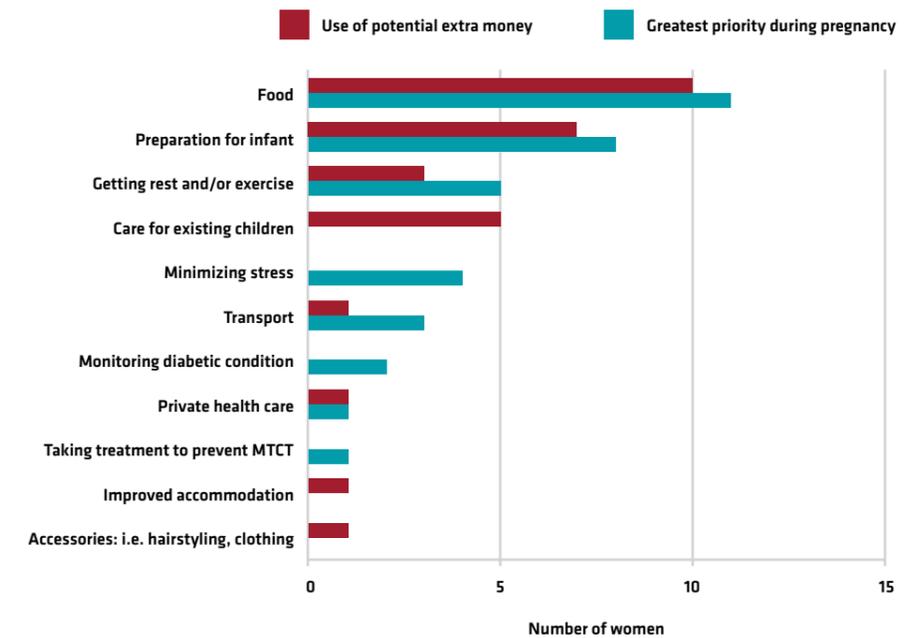
Figure 3.1 Vulnerabilities experienced by women during and after pregnancy



Source: van den Heever (2016)

In addition there are financial demands for increased food, for transport to health facilities and for care of the child (Scorgie et al. 2015). These factors underscore the immense pressure caused by potential loss of income associated with pregnancy and confinement, and the many negative impacts it can lead to for mothers and their children. Fig.3.2 lists the self-reported answers by participants in a South African study regarding greatest needs during pregnancy and how additional income would be spent (multiple response questions).

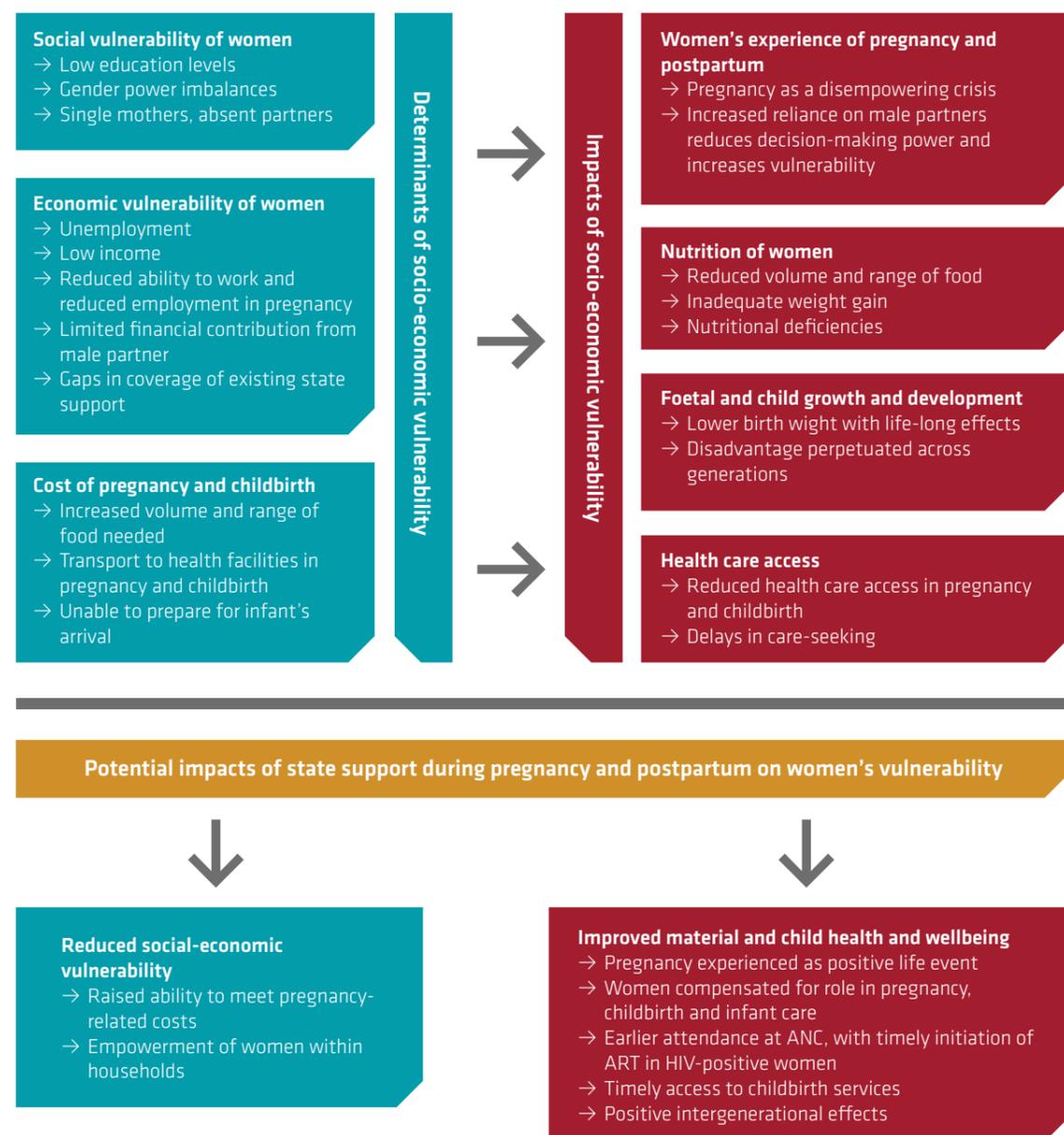
Figure 3.2 Participants' greatest needs during pregnancy and how additional income would be spent (multiple response questions)



Source: Scorgie et al. (2015, 8)

Fig. 3.3 provides a framework for considering the risks and vulnerabilities experienced by women, particularly in low income contexts, around pregnancy and childbirth. It also hypothesizes the impacts of state interventions, such as cash benefits.

**Fig. 3.3 Risks and vulnerabilities before and after birth, and potential impacts of state supports**



Source: Scorgie et al. (2015, 4)

There are two further issues that may accentuate the risks and vulnerabilities listed above: inequality and working in the informal sector.

With regard to **inequality**, excessive income and health risks in maternity are generally higher in

poorer quintiles of the income distribution<sup>13</sup>. These can be traced back to excessive burdens of domestic work, heavy agricultural work, poor health habits, lower access to preventive care including antenatal care, and under employment. Maternity protection also plays a greater role for employees in riskier work

<sup>13</sup> For example, low birth weight is a major determinant of perinatal and infant mortality and morbidity. The correlation between low socioeconomic status and low birth weight is well recognised (Spencer 1999)

environments (such as in agriculture, domestic work, heavy manufacturing).

Women workers in the **informal economy** are exposed to several factors that place them at greater disadvantage. These include:

- low income, exacerbating all other vulnerabilities women are also exposed to
- higher incidence of self-employment and informal work;
- less protection with employer hiring/firing; no access to statutory social security schemes, therefore absence of paid maternity leave/rest and/or paid benefits and insufficient leave provision for adequate breastfeeding;
- challenges relating to adjustment of working conditions and attending antenatal and postnatal care;
- facing more health risks due to the unsafe and insecure working conditions they are expected to work in.
- continuing to work too far into pregnancy or re-starting work too soon after childbirth exposes these women and their children to significant health risks.
- insufficient job security or guarantee to return to employment after giving birth;
- insufficient access to medical care provision and insufficient paternity leave arrangements exacerbating women's dependence and weak labour market position
- Lack or absence of representation in workers movement to protect their rights

In the light of these risks and vulnerabilities, it is important to assess what role maternity income protection can play in addressing and reducing them.

### 3.2 Maternity income protection – what does the evidence say?

A number of studies have investigated the health and economic outcomes of maternity income protection (or lack of it). The evidence has primarily been gathered in developed countries, but we specifically refer to studies conducted in developing countries where these are available. The impacts of maternity compensation policies may vary according to the duration and generosity of the policy, and the eligibility restrictions that apply. A country's economic development, literacy levels and cultural norms among other factors may also mediate the effects of paid leave.

### Child health

Globally, there is strong evidence that paid maternity leave is associated with lower infant mortality (Tanaka 2005, Heymann, Raub, and Earle 2011) and improved child health outcomes (Heymann et al. 2017, Haeck 2011). A study conducted in 20 low and middle income countries (Nandi et al. 2016) found that each additional month of paid leave was associated with a 13% relative reduction in infant mortality, with the strongest effect in the post-neonatal period. These results were confirmed in a study across 121 developing countries, which found that the amount of compensation matters, and that the greatest impacts are in countries with lower GDP rates (Fallon, Mazar, and Swiss 2017). The authors include specific case studies: for example in Namibia, infant and child mortality decreased sharply following the introduction of maternity compensation. A sharp decline in mortality rates followed their adoption of maternity leave in 2004 and an increase in compensation level in 2009 (Fallon, Mazar, and Swiss 2017).

**In Namibia, infant and child mortality decreased sharply following the introduction of maternity compensation.**

There are two ways that paid maternity leave can have a significant positive effect on the health of children. Firstly, mothers who receive cash benefits are more likely to breastfeed their babies and for a longer period and are more likely to attend well-baby visits (Staehelin, Berteau, and Stutz 2007).

Breastfeeding is considered one of the most effective infant health interventions, particularly in low and middle income countries. Secondly, it supports parents' ability to access immunisations and postnatal care (Hajizadeh et al. 2015). Paid leave leads to the best results when mothers have at least some level of formal education (Fallon, Mazar, and Swiss 2017).

Without cash benefits to replace income, and with the risk of losing jobs after confinement, many low-income informal economy workers work longer than they should, exposing workers and babies to a variety of risks. Limited provision of paid maternity leave (duration, cash benefits) as well as the restrictive conditions to access benefits put a risk on babies' health also have adverse effects. When the provision of paid maternity protection leave is limited – in duration and/or amount – and does not

sufficiently compensate for the foregone income, women tend to work late in pregnancy or to return to work too quickly, which is detrimental to the baby's physical and emotional development. They may also remain exposed to workplace risks or perform hazardous or unhealthy work while pregnant or nursing (Agbla, Ergin, and Boris 2006), to reduce their access to prenatal, childbirth and postnatal care or to reduce the duration of breastfeeding (ILO 2014, 2013).

### Maternal physical and mental health

Paid leave enables women to recover physically from childbirth before returning to work. A review investigating the relationship between paid leave and maternal health concluded that paid maternity leave was beneficial to maternal physical and mental health (Aitken et al. 2015). They also found that access to paid leave at the time of birth may have greater health benefits for lone mothers. Paid parental leave can also benefit for mental health, specifically depressive symptoms in mothers (Avendano et al. 2015). Gartland et al (2011) showed a positive association between paid maternity leave and reduced intimate partner violence.

Without sufficient maternity leave, mothers cannot allocate the time necessary to recover physically and emotionally from the birth and to comply with pre and postnatal care. In some cases, women fall into economic distress and develop negative coping strategies. The risk is higher when the mother is the main breadwinner of the household (ILO 2014). This in turn, is associated with socio economic status.

### Fertility

In developing countries, the implementation of leave policies leads to decreases in fertility levels (Fallon, Mazar, and Swiss 2017). For example, in Kenya and in Namibia, fertility decreased following increases in maternity compensation. This differs from family or child policies who may, be intended, in high income countries where benefit levels are high and of a significant length, to increase fertility (often to 18 years old). In contrast, maternity benefits are very short term by nature and will never compensate to cover the cost associated to raising an additional child.

### Earnings, employment and economic opportunities

Increasing women's participation in paid employment is a fundamental step towards women's economic empowerment and improving development outcomes. Research mainly from high

income countries shows that paid maternity leave is beneficial to women's economic opportunities (Grimshaw and Rubery 2015), whilst research in developing countries is still scant and show moderate effects. The potential positive effects of paid maternity in developing countries is limited by poor design (employer liability systems) and limited personal scope of application of existing provisions (low compliance when such social security scheme exists due to lack of regulations or enforcement of such provisions in informal sector jobs).

Maternity protection provides a measure of job security guaranteeing that women of childbearing age have access to jobs, maintain their wages and benefits during maternity, can return to their job or an equivalent one with the same conditions and have a period of time after return to work (Baker and Milligan 2008). Maternity cash benefits are essential to compensate for the loss of income resulting from the interruption of women's economic activities before and after birth. It also helps women to cater for the additional costs resulting from pregnancy and birth. Without financial support, or with low levels of support, the interruption of mothers' work can put economic pressure on the household, leading women to enter back in the labour market too quickly and in vulnerable jobs (Cerise et al. 2013).

The ILO has underlined the importance of providing paid maternity paid leave to women in precarious and informal employment (ILO 2010). This is of particular relevance to developing country contexts where women are over-represented in the informal sector, particularly as domestic and agricultural workers (Cerise et al. 2013).

Evidence from high income countries has shown paid maternity leave to have positive effects on women's economic opportunities (Morton et al. 2014). Paid leave has been associated with increases in both women's earnings and their long term attachment to the labour force (Heymann et al. 2017) as well as decreases in school drop-out (Carneiro, Løken, and Salvanes 2015). The length of leave, the monetary value of the wage replacement, and leave eligibility lead to different effects (Hegewisch and Gornick, 2011). It has been found that the absence of paid leave or shorter paid leave lengths (less than 12 weeks) can have detrimental effects on women's rates of returning to work (Hegewisch and Gornick, 2011; Misra et al., 2011). Generally, moderate length, well-paid and wage-related leave improve female labour force

participation. If leaves are very long women may be less likely to return to work (Grimshaw and Rubery 2015, Hegewisch and Gornick 2011).

***ILO study found that the maternity leave policy in Jordan had a negative impact on female labour participation, since the whole cost was borne by employers. This led to a proposal for the adoption of a government-funded maternity cash benefits (ILO 2011). It is therefore important that maternity leaves are at least partially funded by compulsory social insurance or public funds.***

Within developing countries, women's employment is often driven by poverty and necessity and many women work, whether in the formal or informal sector (Chaudhary and Verick 2014). Because formal sector employment where compensation is more likely to be enforced, is limited, maternity provisions do not appear to increase female labour force participation across developing countries (the effects are still small) (Fallon, Mazar, and Swiss 2017). Also, in developing countries, it is often the employer rather than the state that is burdened with the cost of the leave, which can result in employer reluctance to hire females since they may be more costly (Öun and Trujillo 2005, Lee and Cho 2005, Karshenas, Moghadam, and Alami 2014). For instance, an ILO study found that the maternity leave policy in Jordan had a negative impact on female labour participation, since the whole cost was borne by employers. This led to a proposal for the adoption of a government-funded maternity cash benefits (ILO 2011). It is therefore important that maternity leaves are at least partially funded by compulsory social insurance or public funds.

### Gender equality

The structure of labour policies like paid leave has significant implications for gender equality, in the home and in the workplace. The level of wage replacement also affects the extent to which paid leave can contribute to gender equality outcomes (Heymann et al. 2017).

However, accelerating progress towards more inclusive maternity leave may not be enough to improve female labour force participation. Countries

where women experience higher levels of discrimination in the family have higher rates of women in vulnerable employment. Discriminatory cultural norms therefore do not necessarily prevent women from working, but women's employment is important to provide economic opportunities to their daughters. A Harvard study (McGinn, Castro, and Lingo 2018) using social attitudes surveys across 29 countries in developed and developing countries found that adult daughters of employed mothers are more likely to be employed. If employed, they are more likely to hold supervisory responsibility, work more hours and earn higher incomes than their peers whose mothers were not employed.

Discriminatory social values and gender stereotypes hinder women's access to labour markets, increasing their vulnerability to poverty and poor work conditions. Policies addressing the dimensions that can shape women's employment (such as early marriage and inheritance rights) could play an important role in improving the extent and quality of female labour force participation.

It is also important to note that if paid leave is available only to women, it may reinforce the idea that women are primarily responsible for caregiving, while men are the primary earners. Paternity and parental policies are also vital for ensuring gender equality and for helping workers to reconcile work and family life. The general aim of parental leave policies and provisions that provide for both maternity and paternity leave is to encourage men and women to be involved parents. These provisions may challenge gender stereotypes, promote gender equality, and increase fathers' participation and involvement in both childcare and domestic responsibilities. The need for paternity or parental leave provisions is heightened by the shift in traditional family models and parental roles observed across the world.

In South Africa, fathers qualify for three days of family responsibility leave (there is no specific paternity leave). In November 2017, the Labour Law Amendment Bill passed in Parliament, determined that fathers are allowed 10 days of paid paternity leave. For adoptive and surrogate fathers, the Law enables either parent to take leave off up to 10 weeks if their child is under age of two.<sup>14</sup> A recent study found that in South African men who utilise

<sup>14</sup> [https://www.parent24.com/Family/Finance\\_Legal/paternity-leave-around-the-world-20180709](https://www.parent24.com/Family/Finance_Legal/paternity-leave-around-the-world-20180709)

paternity leave benefits are more likely to be involved in domestic responsibilities and in rearing and caring for children, and in so doing would experience higher marital integration.<sup>15</sup>

**In South Africa, a 2017 Labour Law Amendment Bill determined that fathers are allowed 10 days of paid paternity leave. Parental leave allows fathers to appreciate better the role of carer. Men who utilise paternity leave benefits are more likely to be involved in domestic responsibilities and in so doing experience higher marital integration.**

Although this is a major advancement, more progressive reforms – in South Africa like in other developing and developed countries – are required to support progress towards more gender balance in the labour market. Short paternity leaves tend to suggest – and reflect? – a society’s vision where raising a child is primarily and sometimes exclusively the role of women, which is highly detrimental to equality between men and women when it comes to employment opportunities. Comprehensive policy reforms, including child care policies, as well as longer paternity leaves, and shared parental leaves can be a first step to a better share of responsibilities in child raising, and ultimately gender equality at the work place.

At the other end of the spectrum of gender equality, Finland’s Kela, their social insurance agency, provides 9 weeks (54 days, at once or split in shorter periods) of paid paternity leaves, to which are added up a provision of 158 days of paid parental leaves, which starts after the paternity and maternity leave. Either

the mother or the father can take a parental leave, or the parents can take turns. Finland has currently the highest labour-force participation of women globally.

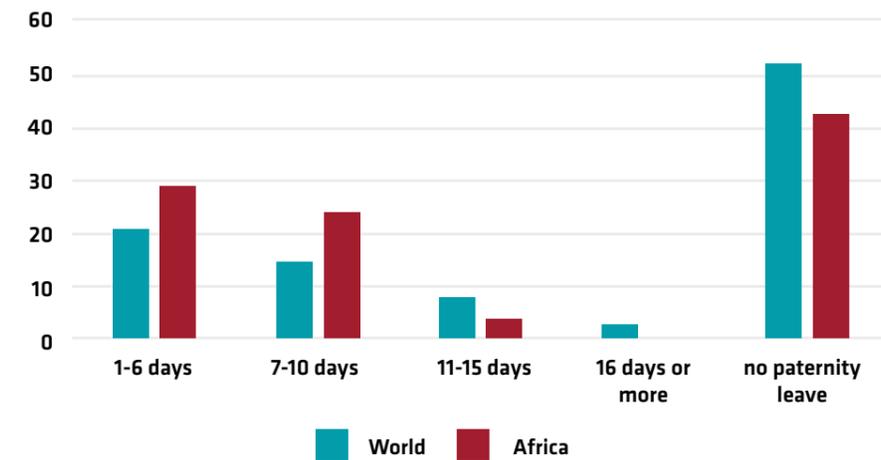
The benefits of paternity leave and fathers utilising their leave entitlements have been well-documented in social science research. These include:

- increased participation and involvement of the father;
- mothers being more likely to breastfeed;
- fathers feeling more psychologically attached to their family;
- improved family relationships (father-mother and father-child);
- improved health and well-being for mother and child;
- increased child development; and
- established norms of sharing family responsibilities and gender equality.

The provision of paternity leave may lead to increased organisational commitment, an increase in the number of women in employment, and the strengthening of women’s position in the labour market.

Attitudes towards the new role for fathers have been positive in some countries. In Sweden, for example, fathers have an increasingly stronger tendency and interest in wanting to be at home and to fulfil carer duties.<sup>15</sup> It has also been argued that men who take paternity or parental leave are better able to acknowledge and appreciate the role of carer. With this exposure to the reality of childrearing and childcare, it is more likely that fathers will continue to help and provide support in this role in subsequent years.

**Fig. 3.5 Paid paternity leave in Africa and the World, Number of countries (2013)**



Source: ILO 2014, 55

The source of funding for maternity cash benefits is important for gender equality. There is evidence that cash benefits entirely paid by employers foster discrimination against women. It is therefore

important that maternity leaves are at least partially funded by compulsory social insurance or public funds (Öun and Trujillo 2005).



<sup>15</sup> R Smit 'The changing role of the husband/father in the dual-earner family in South Africa' (2002) 33 (3) *J of Comparative Family Studies* 401-15.

### Impact for employers

Available research on paid maternity leave finds no evidence of negative impacts on productivity and indicates the potential for substantial benefits for employers, including small and medium sized-enterprises (Hegewisch and Gornick 2011, Lewis et al. 2014). Positive enterprise-level outcomes can include staff retention and reduced recruitment costs, less absenteeism, improved organizational commitment and staff motivation. Performance and productivity outcomes can include assessments of quality and development of products and services, customer/client satisfaction and increased sales. Research in high income countries found significant effects on mothers' return to work behaviour after childbirth, and reduced turnover preserved good job-employee matches. However this is not the case if employers shoulder the costs of maternity leave. For example, Zambia and Ghana's labour laws make female hiring more costly by requiring that employers assume all the costs of maternity leave (Morton et al. 2014). The employers' direct liability financing model represents a threat to SMEs' financial equilibrium and entails loss of productivity, especially when employers cannot afford to hire replacement workers while they also continue financing the salary of women on maternity leave.

Paid leave, funded by compulsory social insurance or public funds, can encourage SMEs to find effective ways to manage maternity leave. For example, SME employers expressed reservations about the costs of new maternity regulations in Australia and in the state of California in the United States, yet the majority of employers, who were surveyed some years after experiencing the legislation's implementation in both contexts, reported benefits to business (Lewis et al. 2014).

Even when the direct costs of wage replacement are carried collectively, costs for employers might arise from the administration of leave, including the cost of temporary replacement of staff on leave. The data, however, show that these indirect costs, rarely quantified, are often low or outweighed by benefits in retention and human capital development (ILO 2014).

### Impacts for workers and whole population

Understanding the determinants of women's employment outcomes, and in particular female labour force participation is important not only to tackle persistent gender gaps but also to enhance economic growth and accelerate progress on development goals (Cerise et al. 2013). In countries with lower GDP, maternity income protection has the greatest effects in terms of reducing fertility and improving child health outcomes. However the effects on health depend on the degree of take-up and how they are implemented (Aitken et al. 2015).

To achieve discernible impacts at population level paid leave needs to reach large sections of the population, including those working in the informal sectors (Fallon, Mazar, and Swiss 2017). Paid leave policies in higher income countries in which large shares of women's jobs are in formal employment are likely to have tangible impacts on improving gender equality outcomes and in raising labour attachment rates (Morton et al. 2014). Heymann concludes that by supporting workforce attachment and its positive impact on long term incomes, paid parental leave can help both national economies and family incomes (Heymann et al. 2017).



4

**FINANCING  
MATERNITY  
INCOME  
PROTECTION**



## 4. FINANCING MATERNITY INCOME PROTECTION

Maternity leave can be financed from a variety of sources: social insurance, employer liability, or social assistance. In the absence of any of these, maternity leaves are unpaid and the costs fall directly on the worker.

**Employer liability** schemes place liability for providing maternity income protection on individual employers. Employers and/or workers may purchase **private insurance**. The former are based on individual contracts, or purchased as a bulk by companies on behalf of their workers. This may be on a voluntary basis or as a government requirement. Private insurance relies essentially on savings. The same holds for maternity schemes in **provident funds**, which are not based on social pooling or solidarity mechanisms.

**Social insurance** financing provides income replacement and medical care. Typically, social insurance is financed by worker and employer contributions and sometimes with a government subsidy. Funding is based on social pooling, usually PAYGO mechanism, and the benefit based on an agreed formula.

**Mixed systems** provide that the liability for maternity cash benefits are split between the employer and the relevant social insurance scheme.

**Social assistance** schemes are usually financed by public funds and base benefit eligibility on some level of financial need on the part of the woman or household. No previous contributions are required. Universal benefits are available to all women who are residents of a country and meet certain eligibility criteria.

### 4.1 Employer Liability

Employer liability schemes place the responsibility for providing cash maternity benefits on individual employers. Employer liability schemes tend to be more costly and risky for employers. Single employers run the risk that they may unpredictably, have unusually high benefit obligations in a particular year and they need to hold resources in reserve. Private insurance schemes that cover only a segment of the market face similar risks and costs. Individual employers' liability can impose an

excessive cost on both small and medium-sized enterprises in particular. In an environment of general socio-economic deprivation, risk of high levels of non-compliance, and even bankruptcies exists. In both instances, the employee does not benefit and stands to lose out from any protection when their employee faces financial hardships due to the legal requirement that places all liability and risk on them.

*Individual employers' liability can impose an excessive cost on both small and medium-sized enterprises.*

Employer liability benefits often fail to provide basic security for workers. Workers whose employers do not comply with the law or go out of business are left with no compensation at all. Compliance is often problematic and it is difficult to enforce.

A further challenge for potential female employees would be the reluctance of their employer to pay them higher salaries because the employer may be anticipating having to pay cash benefits. Therefore, some employers would pay lower salaries and benefits to avoid having to compensate the employee at a higher level when she is on leave.

Employer liability schemes invariably result in discrimination against women. Where the employer bears sole liability for maternity leave pay, employers are more likely to be reluctant to recruit, train, develop, retain or promote pregnant workers or women with family responsibilities or may seek to find reasons to discharge pregnant employees in order to avoid paying the costs of wage replacement during maternity leave as well as other (potential or actual) direct and indirect costs linked to their replacement. In other cases, employers may terminate employment relationships with female employees to circumvent having to pay both maternity leave and the cost of replacement labour.

It is also not uncommon for employers to enter into shorter term contracts and not renewing them, so as to avoid triggering the qualification period that will make an employee eligible for maternity leave. This

not only promotes job insecurity for women but is severely undermines the objective of equal treatment between men and women.

Employer liability schemes also impede labour mobility making it difficult for workers to change jobs. Workers may be reluctant to make career moves for fear of losing their earned rights to benefits available only through their current employer in the event of contingencies such as becoming pregnant or falling sick as a result of pregnancy. When workers fail to accept better job opportunities, not only are they harmed economically, national productivity also suffers. Placing the burden for paying benefits on single employers creates financial incentives to discriminate in hiring. Employer liability schemes have long been viewed as detrimental to the promotion of equal treatment for men and women in the labour market.

It is also important to note that in many countries, labour inspection and compliance is difficult. As a result where employers do not comply with national legislation such as either not paying the required maternity pay or underpaying the benefit, the enforcement of their legal obligations is not always strictly ensured.

### 4.2 Social Insurance

All of these shortcomings of the sole employer liability model can be addressed within the framework of an appropriate, national social insurance scheme. Through social insurance, economies of scale can be achieved, costs lowered, benefits improved, and incentives for unequal treatment avoided. International experience provides strong evidence that the pooling of risks and finances within a social insurance scheme is the optimal method to protect workers while limiting employer costs.

Both ILO Conventions No. 3 and No. 103 provide that employers should not be individually liable for the cost of maternity benefits payable to women employed by them, and that benefits should be provided through social insurance or other public funds. ILO Recommendation 191 emphasizes that when maternity benefits are covered by social insurance mechanisms, both men and women should contribute to the scheme. Indeed, a social insurance mechanism should provide for solidarity between non child bearing individuals and child bearing

individuals, regardless of age or sex, physical ability to bear children or not, or the number of pregnancies a woman already had. In employer sole and direct liability systems the limit to the number of times a woman can access maternity benefits is often instituted; this is related to misconceptions about raised fertility and abuse of the system. However, the financial impact on any given private company of any maternity occurrences above normal is negligible as it is supported by the broader national solidarity pool through very minor increases in the overall contribution rate. The mechanism is comparable to all other risk benefits run under social solidarity principle whereby all individuals collectively share the burden of compensating for the financial consequences (foregone income) at the occurrence of a determined risk to some of individuals in the same pool.

The rationale for collective responsibility is twofold: (i) ensure that women do not incur additional costs or loss of income due to their reproductive role and (ii) reduce the risk of discrimination against child-bearing women at the work place, which still occur when costs are not spread evenly across the working population. Therefore, social insurance as a means to financing maternity benefits prevents employers from bearing the direct cost of maternity benefits, as is the case in employer liability schemes and thereby promotes non-discrimination.



Only mandatory coverage can ensure that a larger risk pool and more equitable financing mechanisms. Including maternity cash benefits under the national social insurance scheme is an important step for improving social security coverage for working women. Inclusive social insurance should cover informal sector and self-employed categories of

workers. Voluntary schemes for maternity protection would go against the core principle of solidarity and risk and cost sharing, let alone the fact that such a scheme would be exposed to high adverse selection and financial un-sustainability.

### 4.3 Mixed systems

In some countries, cash benefit entitlements to female employees on maternity leave is provided by a scheme where the employers and social insurance systems share responsibility for the benefits. In Burundi, contributions are split equally between the employer and social insurance mechanism. However, an equal distribution of contribution is not the mandatory route. Some countries may opt for a system where the employer contributes more, or one where social insurance bears less of the burden.

Based on the discussion above, the prescribed route for countries that opt for a mixed system is one where social insurance contributions to cash benefits is larger given the shortcomings of employer liability and its impact on discrimination against female workers. The ILO's Committee of Experts on the Application of Conventions and Recommendations has held that in mixed systems, to ensure observance of ILO Convention No. 103, the contribution of the employer to maternity benefits is less than one-third of insured income and the share paid by social security is at least two-thirds.

### 4.4 Social assistance

Where no social insurance is available, social assistance should be provided (Art. 6, C183). Financing maternity benefits through social assistance means that the benefit level is set out on the level of financial need on the part of the female worker. A means-test is usually applied in determining the appropriate beneficiaries under social assistance. This form of benefit is financed by public funds and administered by the government.

Extending maternity cash and medical benefits to vulnerable and unprotected women remains challenging, especially in low-income countries. A few countries in Africa target specifically pregnant and lactating mothers in their existing social cash transfer programs (such as Ethiopia, Tanzania, Ghana and Mozambique), but their reach is relatively small and limited to very poor women. A good example of a more inclusive benefit is the proposal in Namibia of the introduction of a maternity grant in the National

Social Protection Floor Assessment (2014) and current social protection draft policy (2018) which would provide a monthly payment to all expectant mothers.

Some maternity benefit schemes have in-built conditionalities, which are designed to enhance the use of services or to encourage behaviour change; these can be in the form of minimum age (avoidance of early pregnancy, usually resulting from social pressure against state support for adolescent pregnancy), institutional delivery (to ensure safer deliveries), number of children (as part of or in coherence with national family planning policies), attendance of pre-natal clinics, and postnatal monitoring visits.

In normal circumstances, income support is provided as a %age of previous earnings which are already small. Such conditions can inadvertently penalize the poorest and most vulnerable women they are designed to support, by inducing extra burdens and costs in accessing benefits and thereby limiting women's entitlements. Women may simply not be able to afford transport costs or waiting wards in institutions if the value of the transfer does not offset them, and even in case it does. Evidence that unconditional transfers have strong impact on prevention of adolescent pregnancy, family planning, breastfeeding and other benefits calls in to question the value of such conditionalities. In India, it is estimated that conditionalities limit benefits to 52% of potentially eligible women in maternity benefit programmes (Dasgupta et al 2012).

### 4.5 Actual costs and estimates

The objection to maternity protection based on its cost is ill informed. It is important to note that maternity protection is less expensive than other branches of social security. In nearly all contexts, it is possible to finance a social insurance scheme providing cash maternity benefits for less than 0.7 % of covered wages. In Namibia, for example, the Social Security Administration's Maternity, Sickness, and Death cash benefit programme is financed by a 1.8 % contribution rate, of which 0.35 % is allocated to maternity. In Zambia and Lesotho, ILO actuarial estimates point to costs of less from 0.5% to 1% contribution rate.

Costs for maternity social insurance are explained by the following equation:

$$\text{Costs} = \text{frequency of the event} \times \text{duration of the event} \times \text{cost per day} \times \text{covered population}$$

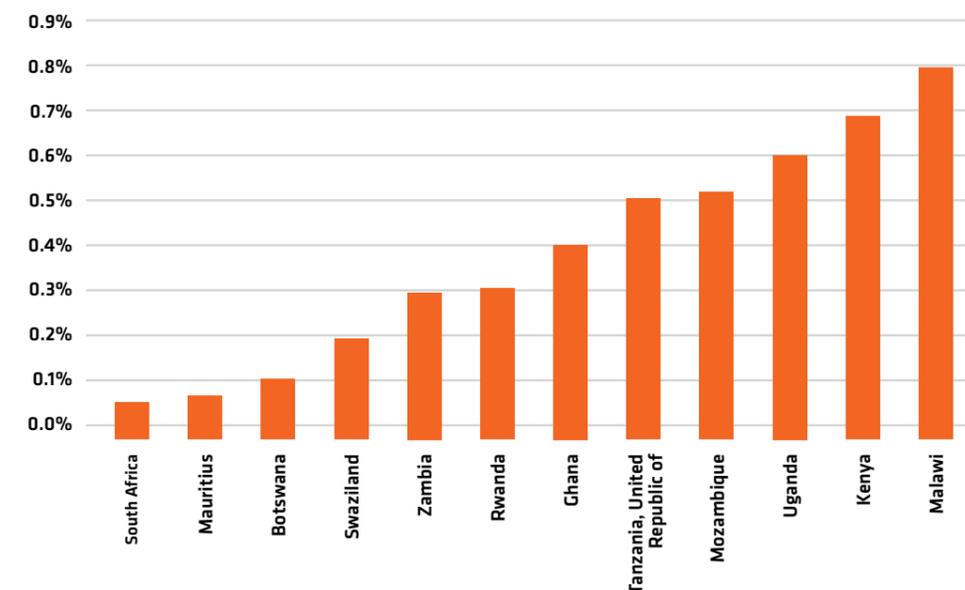
The frequency is the fertility rate; that is a stable, declining factor. The number of episodes per year is less than one. In addition, the covered population is a fraction of the contributing population which reflect on total costs on insurable earnings lower than in other social risks.

The actuarial skills required for social insurance costing exercises are different to private insurance. Social insurance contributions should pay for a year,

with only a small reserve. Pre-funded future payments including maternity finance a stream of benefits across the life course and the entire population and thus entail higher contributions.

Costing exercises indicate that social protection is affordable and within the financial reach even of low-income countries. Simulations have been done in several countries including Lesotho, Zambia and South Africa, to estimate the cost as a %age of GDP that a four-month cash benefit for all mothers. These all point to the affordability of a basic package of maternity protection for vulnerable and poor women, most of whom work in the informal economy and rural areas.

Cost of a benefit during 4 months of 100% of the poverty line to all mothers with newborns as % of GDP



Source: Authors, Social protection floor calculator

Finally, the costs of not providing maternity cash and medical benefits are greater than the costs of providing it. A study in the United States showed that costs of not providing (in this case company-based) paid maternity involves costs with attrition – losing productivity because of lost industry and occupation specific knowledge that takes time to recover, costs with finding, recruiting and training replacement workers. These are likely to outweigh the cost of providing the benefit. Thus, even in absence of public

paid leave in the United States, despite it being a relatively more inefficient way of funding the benefit directly, employers are still keen to provide directly for paid maternity leave<sup>16</sup>. In the context of a developing country, income protection in maternity and after birth, decreases maternal and infant mortality, improves life chances and economic opportunities for women, amongst other quantifiable benefits<sup>17</sup>.

<sup>16</sup> <https://www.fastcompany.com/3055977/the-real-cost-of-paid-parental-leave-for-business>

<sup>17</sup> [https://www.thelancet.com/pdfs/journals/langlo/PIIS2214-109X\(16\)30266-2.pdf](https://www.thelancet.com/pdfs/journals/langlo/PIIS2214-109X(16)30266-2.pdf)

*A study in the United States showed that costs of not providing paid maternity involves costs with attrition – losing productivity because of lost industry and occupation specific knowledge that takes time to recover and costs with finding, recruiting and training replacement workers.*

#### 4.5 Making the case for social insurance financing for maternity income protection: how do stakeholders benefit?

Making the case for maternity income insurance to be funded by social insurance is important. The issues vary amongst stakeholders. There are real benefits, but also real costs involved. Engaging with concerns, quantifying the benefits and costs and dispelling common myths are a part of the process of building consensus for policy reform on maternity benefits.

##### The case for governments: why is social insurance a policy worth investing in?

GOVERNMENTS	What are the benefits?
	→ Solidarity and Social Justice principles
	→ Human rights agreements
	→ Implementation of international labour standards
	→ Supporting SDGs
	→ Healthy populations
	→ More productive workforce
	→ Higher female labor market participation
	→ Higher survival of mother and children
→ Increased child and lifelong cognitive skills	

**The benefits.** There are several reasons why moving to social insurance funding models for maternity benefits is a worthwhile investment for national governments. First, this is a move which is in line with the realisation of numerous international human rights agreements. In particular, it is an important component of implementing labour and social security commitments at national and global levels. As this report has shown, maternity income protection promotes the achievement of the SDGs, including SDG 3 on health and SDG 5 on gender equality and SDG8 Decent work and economic growth, as an evidence-based approach to investing in the health and economies of a country. Based on a review of the evidence, Fallon et al conclude that “the literature thus indicates that supportive maternity provisions are cost-effective policies that advance child health” (p.103).

**Engaging with the issues and dispelling myths.** Governments and policy-makers may have several concerns which need to be engaged with. Often, these include **affordability and impact on fertility**.

In reality, maternity cash and medical benefits are not financially out of reach for developing countries; their costs are low in absolute terms and also relatively when compared with other social security contingencies. Indeed, costing exercises show that a basic social protection package that includes health services is affordable in all countries. In contrast, the costs of not providing maternity cash and benefits are high: when a woman dies or becomes ill, her family and community lose her income, and her children are much more likely to drop out of school, suffer poor health, or die. The exclusion of women from the labour market due to insufficient maternity protection translated into missed opportunities for increased productivity and economic growth at the national level.

*The basis of lifelong health, wellbeing and productivity is established during the first 1000 days of our lives. In that surprisingly short period – 270 days of pregnancy, and up till the age of two – our environment activates our genetic potential in ways that will determine our lifelong learning, earning and happiness” (Richter 2016)*

With regard to fertility, there is often a misplaced perception that an improvement in maternity benefits would result in even higher fertility rates, resulting in increased poverty, higher costs for the social security scheme, and for the society as a whole. Evidence demonstrated the opposite. In the case of maternity benefits, people are rational and calculate that very short-term maternity benefits will not be sufficient to make up for the cost of raising a child up to the adult age.

Maternity benefits are a social benefit and should not be the responsibility of business alone. The UN has summarised evidence that demonstrates the positive relationship between investing in the first 1000 days of a child’s life, life expectancy and social and economic growth<sup>18</sup>. A South African researcher comments that: “The basis of lifelong health, wellbeing and productivity is established during the first 1000 days of our lives. In that surprisingly short period – 270 days of pregnancy, and up till the age of two – our environment activates our genetic potential in ways that will determine our lifelong learning, earning and happiness” (Richter 2016)

##### **What can be done to support governments.**

Legislative reviews, with a view to map and analyse existing legislation through the prism of international standards such as Convention183 on maternity protection are an important step to identify gaps in regulations and inform necessary reforms.

Social surveys are instrumental to analyse the needs and impact of maternity protection arrangements in a given society.

Actuarial assessments are an essential tool to empower policy-makers to make informed decisions regarding funding of maternity income protection. Based on predictable and stable fertility rates over time, actuarial projections are very accurate and an essential element for Ministries of Finance and Planning to assess the amount of financial resources which will be needed over time to finance social protection benefits. Findings from actuarial assessments can be used to feed in to micro and macro simulations of the effects of providing or increasing social protection benefits on fiscal space and poverty reduction.

Lastly, bottleneck analysis of implementation of existing arrangements, they may help improve the actual delivery of benefits under public social insurance systems.

The participation of Social Partners at all stages, through technical meetings and social dialogue forum is essential to ensure broad support from the tripartite constituents to the design, hence facilitating the future implementation of maternity protection schemes or their reforms.

##### The business case: why should employers contribute to a social insurance fund for maternity benefits?

EMPLOYERS	What are the benefits?
	→ Enables financial planning (regular consistent contributions)
	→ Reduced turnover
	→ Less absenteeism
	→ Higher productivity
	→ Employee satisfaction and commitment
	→ Attracts quality candidates
	→ Lowers recruitment costs
	→ Improves company’s image
→ Increased Employee and dependents’ health	

<sup>18</sup> <https://thousanddays.org/the-issue/why-1000-days/>

**The benefits.** There are proven benefits for employers in the transition from employer or employee liability to social insurance for maternity benefits (Lewis et al. 2014). These can include retention of valued staff and reduced recruitment costs, mitigated absenteeism, enhanced organizational commitment and staff motivation, improved relations among employees, and improved performance and productivity. These benefits are best achieved when they are accompanied by broader family-friendly practices. Particularly for small and medium enterprises (SMEs), social insurance systems can help with financial planning and avoid unexpected expenses.

The costs and benefits involved are different for large and small/medium sized companies. Large companies often have the means and resources to manage their own social support systems. Many companies offer maternity benefits that exceed the minimum laid down by law (Bosch 2016). If bureaucratic processes to claim benefits are onerous they may simply opt out of social insurance schemes and view contributions as a tax rather than as an investment which yields returns. If managed well however, social insurance requires significantly cheaper premiums than private insurance.

Particularly in SMEs with small margins, the cost of bearing along the cost of a female workers in maternity leave is perceived to be greater than the benefits and assumed to lead to competitive disadvantage. However, this is precisely why social insurance can be of help. By paying regularly to a fund, SMEs do not have to bear cash sudden outlays.

For employers in specific sectors of employment where female labour is traditionally low (in mining or construction), the gain of contributing to a social insurance scheme for maternity benefits is usually perceived as low, and unfair. However, the principle of solidarity and compulsory contributions regardless of sex must be upheld in all industries, in order to ensure that women are not incurring additional costs (or payroll deduction) in reason of their reproductive role.

Employers often contend that costs with maternity social insurance will be high because of high fertility rates. They also argue that it may have an effect on increasing fertility. Evidence shows that increased protection can lead to declining fertility: investing in the survival of children replaces investing in greater number of children as a way to ensure that at least some children survive early years. Also, when countries undergo a demographic transition, the declining fertility rates mean costs for maternity social insurance also decline (See p. 29).

**What can be done to support employers.** There are several interventions to support employers which can enhance the benefits of social insurance. Ensuring that social insurance is affordable and linked to reasonable benefits is crucial. Efficient pay-out systems, timely payments, light and streamlined (online) paperwork, public campaigns to increase awareness, are practical ways to make sure that the system benefits its contributors. For SMEs, some financial compensation and support may be necessary for very small firms and for pregnant self-employed (owner) managers, for example for the cost of recruiting and training replacements staff and for financial planning to manage disruptions or potential costs (Lewis et al. 2014).

Other family-friendly provisions such as flexible arrangements on return to work are essential for achieving positive outcomes and to help to optimise positive outcomes such as satisfaction and productivity of workers. Governments can provide support to employers by ensuring widespread availability of affordable quality childcare.

More evidence quantifying benefits and documenting good practice is needed especially in developing countries. Far-reaching public awareness campaigns that engage with gender inequities, and which promote healthy work cultures are important to shift resistance from employers to actively contribute.

### The case for workers: why contribute to a social insurance maternity protection programme?

WORKERS	What are the benefits?
	<ul style="list-style-type: none"> <li>→ Income security</li> <li>→ Safe pregnancy, safe birth and post-delivery period for the mother and the baby</li> <li>→ Time for family</li> <li>→ Job satisfaction</li> <li>→ Peace of mind, less stress, better health for self and dependants</li> <li>→ Better share of family responsibilities at home</li> </ul>

**The benefits.** The protection of workers is the primary driver of maternity income insurance. Benefits include income security for women, improved health outcomes for mothers and their children, a better work-life balance, reduced stress and greater satisfaction at work.

**Engaging with the issues.** Workers do not always agree with the principle that even women who do not bear children have to pay; they also disagree that men have to pay. The social insurance model is based on principles of solidarity which ultimately benefit populations as a whole, and recognise the value of reproductive roles to society.

**Maternity income protection is vitally important for women employed or self-employed in the informal economy. Yet these women are not legally covered where social insurance is offered. They are often administratively the hardest to reach and include in social insurance.**

Financial barrier is one important deterrent. The costs of regular contributions are a concern for those who only have irregular and unpredictable outcomes. Benefits need to be visible and easily accessible, especially taking into consideration competing demands on women's time due to their dual worker and care roles.

**What can be done to support workers.** Firstly, where needed appropriate social insurance regulation needs to be in place for all workers. There is sometimes a misconception that when workers are protected by labour law (as part of sole and direct employer liability), social insurance should cater only for workers who are not covered by law. For the reasons already mentioned before, workers have advantages in being covered under social insurance compared to employer liability; in terms of reliability and equity of cover. When schemes are in place, workers need to know that the benefits exist, and they have rights. In some countries, there is not enough communication around the whole package of benefits offered under mandated social security benefits and therefore certain benefits such as maternity are less claimed than others. Secondly, there needs to be streamlined administrative processes that ensure easy claim and fast pay out of benefits, without which again, workers will not claim. Ensuring that claimant systems are straightforward and that payments are timely is valuable for workers in order for effective and positive health and income outcomes to be realised. Paying a maternity benefit much later than when the need for extra income arises, defeats the purpose of the benefit. In that respect, the administration of short term social insurance benefits is much more demanding on social security administration in terms of responsiveness and rapidity than that of long term benefits as duration between benefit claim, eligibility determination and payment needs to be very short. It is also important that workers understand how much they will receive in benefits beforehand, in order to facilitate planning and timely claiming the benefits. The development of systems which are flexible to accommodate self-employed and workers in the informal economy is also vital. For example, in South Africa, contributions for maternity benefits for domestic workers are paid through a simplified and dedicated internet based filling system, which is different than the normal companies based contribution system done by the South African Revenue Authority.

5

# COMPARATIVE OVERVIEW



## 5. COMPARATIVE OVERVIEW

### 5.1 General overview

In Eastern and Southern Africa, there are some positive trends in the form of a shift towards social insurance coverage for maternity benefits, though maternity leave is still largely instituted as an employer liability. Ideally there should be according to Convention 183:

- A maternity social insurance branch under the national social security system;
- Coordination of social protection and health care services
- A maternity grant for those not covered, which can be part of social cash transfers, for example an extended child grant, making sure poor women are protected even before the child is born

There is a lot of variation across the Eastern and Southern African regions and a long way remains to go towards achieving this comprehensive coverage. However, several countries have recently implemented or are considering reforms to extend maternity provision.

Realising coverage for informal sector workers remains one major challenge and in practice maternity cover remains limited to formal sector workers. Social protection programmes in many African countries are gender-neutral in spite of the differential impacts of risk on men and women. They mainly focus on formal sector workers, hence excluding the majority of women, who are concentrated in the informal sector (Osei-Boateng 2011).

**Another particularly important challenge preventing strengthening of maternity protection and gender equality at the workplace is the lack of consideration given to paternity and parental leaves. Weak paternity leave provisions contribute to persistent stereotypes that it is the woman's burden to care for the child.** In case of family separation, the care of children continues to be the responsibility of both parents, but evidence of paternal neglect abound. The judiciary is supposed to enforce child care responsibilities in such cases. However, slow justice processes, corruption, and administrative bottlenecks leave many women

struggling alone with the care of their children. This in turn can force women to exit the labour market, with severe social security implications.

In South Africa, a new Labour Law Amendment Bill was passed in Parliament in November 2017, determining that fathers are allowed 10 days of paid paternity leave. From January 2019, these can be claimed from the Unemployment Insurance Fund. Paternity leave provisions are being generalized and extended in new social security legislations throughout Africa, but they still face numerous social and culture barriers. As a result, paternity provisions remain very weak in many countries in the sub-region. Where it is offered, the period is restricted and there is generally no obligation to pay for such leave. For example, Lesotho offers paternity leave in limited cases for very specific group of workers (ex. for workers of the Central Bank). There is also a great need for child care provision to complement maternity protection, especially where there is an emerging shortage of child care as traditional structures where family members would take care of babies becomes less practical and girls attend secondary school and move into the workforce. This is a challenge for mothers and employers.

### 5.2 Legislation

Some countries in this study have well established legislation in line with international maternity protection and social security labour standards. This is the case of South Africa, where provisions for maternity and paternity benefits are included in Section 24 to 26 of the Unemployment Insurance Act. In Namibia, women are entitled to 12 weeks maternity leave under the 2007 Labour Act and are protected by social insurance benefits under Social security commission legislation.

Other countries have recently or are in the process of amending their provisions. For example in Rwanda, in 2016, Law No. 003/2016 was passed introducing a maternity leave benefits insurance scheme for 12 weeks of fully paid leave. This replaced the previous regime in which mothers were forced to choose between returning to work after six weeks to keep their income, or losing 80% of their income.

Others still are seeking to introduce new legislation and/or policy frameworks. In Kenya, the National Social Protection Policy 2011 proposed for maternity benefits to be provided through a restructured National Social Security Fund, however this is yet to be realized.

The introduction of social insurance models of funding for maternity cash benefits involves coordinated revisions of labour law, finance law and social security law. One issue that can result from the way legislation has developed over years or decades, is that of fragmentation. The laws and policies governing maternity may not be found in one document but may be spread across many different legislative and regulatory documents. This can lead to gaps or contradictions, as well as confusion regarding institutional custodianship and challenges in the implementation stage. For example in South Africa, laws overseeing social assistance and social insurance have developed quite independently and gaps in coverage have ensued. Zambia has established as a policy objective (National social protection policy 2014-2018) the move from employers liability to social insurance to strengthen maternity protection. Efforts are underway to integrate legislation which currently fall under labour and social security legislation acts.



2013-03, street photo of a young mother carrying her child in the city of Lilongwe (Malawi).  
Country: Malawi, © Copyright ILO

Laws governing employer liability schemes have tended to include stringent conditions (such as maximum number of births over certain periods, see next section), to minimise supposed negative impacts of maternity leave on businesses, including financial consequences of direct liability. Such conditions are not necessary under social insurance mechanisms, where the maternity leave cost is shared collectively and is compensated by national social insurance.

Qualifying conditions (example provisions for number of pregnancies, miscarriage or adoption) and entitlement conditions (minimum time in employment and/or with same employer, minimum period of contributions to social insurance) play a key role in determining coverage in practice under social insurance. Countries seeking to expand coverage are addressing some of such limiting factors and conditions (for example South Africa's Unemployment Insurance Amendment Act 2017 extends coverage to situations of miscarriage).

**DEFINITIONS: While qualification conditions are the set of legally defined conditions that determine who is entitled to claim a benefit (for example person who is pregnant, or in the process of adoption), entitlement conditions stipulate in which specific conditions and when that person has the right to claim that benefit (such as minimum working period of contributions, etc..)**

### 5.3 Scope of coverage

The starting point for the scope of coverage is ILO Convention No. 183. The Convention provides that the scope of coverage of maternity protection should apply to all employed women, irrespective of occupation or type of undertaking, including women employed in atypical forms of dependent work, who have often received no protection due to the increasingly flexible nature and segmentation of employment relations. The Convention explicitly states that women in atypical forms of dependent work must also have access to maternity protection.

The above notwithstanding, the scope of coverage in Eastern and Southern Africa is generally limited to the formal sector and identifiable employment relationships. Thus, informal workers are excluded. Even in cases where legally the definition of the

employer/employee relationship includes informal workers, in practice they remain excluded.

In some countries, because of the years of service requirement and criteria to qualify for maternity protection, several workers in part-time, casual and temporary employment are excluded. The exclusion of these non-standard employees can affect an important number of women workers, since a significant proportion of them, even in the formal economy, may not be full-time, regular workers.

A recent study in Mozambique illustrates those issues, which is typical for many developing countries. The mandatory contributory social security scheme provides maternity cash benefits for formal private sector workers. In practice, however, this benefit covers only a very small %age of births. Reasons for the lack of coverage include the recent date of the programme's implementation, a lack of awareness, lack of compliance of remittance of contributions. The latter is due in particular to the abundance of casual workers in the female workforce, even when they work in the formal sector. Only a minority of women in Mozambique are salaried workers who are eligible for maternity protection (Castel-Branco 2013).

Some countries are in the process of developing scheme frameworks which extend coverage to self-employed. Inadequate maternity protection for the self-employed is a major concern. In South Africa, self-employed workers are not covered under social security maternity provision. A major investigation is underway by the South African Law reform commission to explore new forms of extending coverage to women in informal economy.<sup>19</sup> In Namibia, self-employed workers can register on a voluntary basis. In practice however, coverage is limited for self-employed workers due to the financial burden of paying the equivalent of both employer and employee's share of contributions.

Maternity income measures also vary by sector in some instances, with a risk of creating inequities. In Mozambique there are different provisions for public

and private sector workers, pertaining to duration of leave and amount of benefits. In Lesotho, a variety of different forms of paid leave are provided for depending on the industry (the duration of leave differs). In Zambia, maternity leave is solely the employers' liability. However, domestic workers are only entitled to unpaid maternity leave, whereas other workers are entitled to fully paid leave.

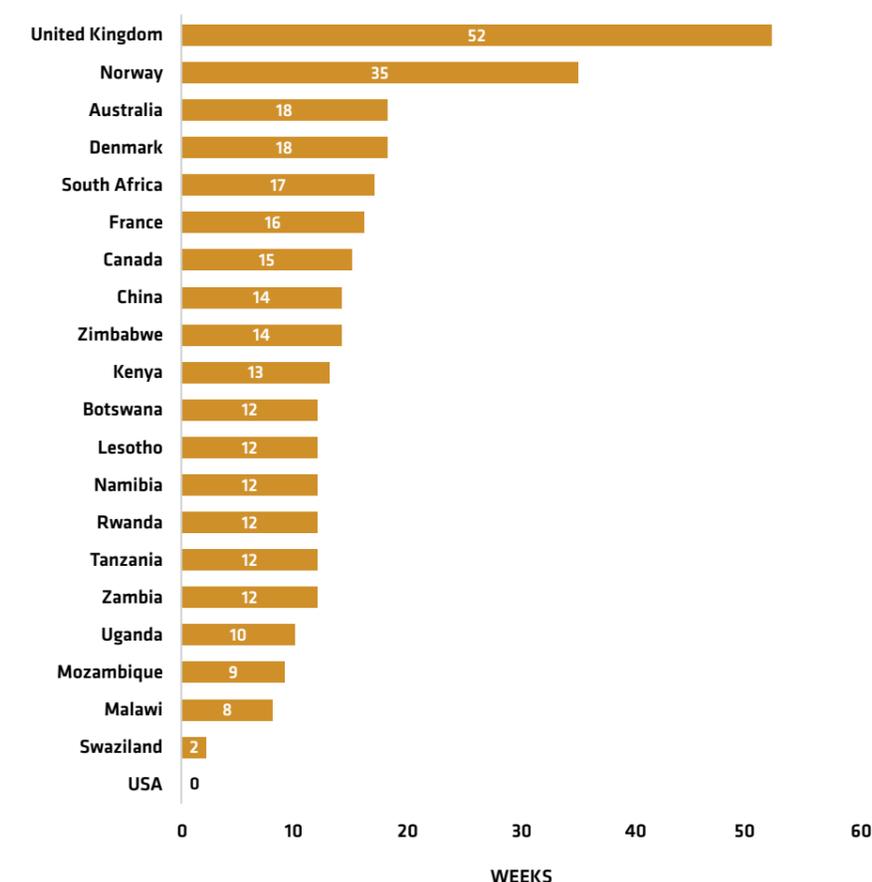
In South Africa, maternity benefits under the recently amended Unemployment Insurance Fund (UIF) cover learners and independent contractors. The latter includes workers who appear to be self-employed but are working under the supervision of someone or an agency. But they do not by law cover the self-employed. In addition, a study found that women tend to be under-represented in the UIF because they tend to be over-represented in part-time or contract work (Bhorat et al, 2013). This means that under the current qualifying criteria based on points or credits earned per days of contribution, they have fewer credit days to apply for benefits, or struggle to access their benefits. Despite the positive developments towards expanding legal coverage, more attention to issues of effective access of such non-standard forms of work to UIF can help redress inequalities in accessing benefits.

#### 5.4 Benefits, duration and amount

All the countries in the Eastern and Southern African regions provide cash benefits to at least some selected groups of female workers during maternity leave. The overall trends are towards longer and better paid leave.

The duration of paid maternity leave varies from two (2) weeks in Swaziland (though maternity leave is for 12 weeks) to eight (8) weeks in Malawi to seventeen (17) weeks in South Africa. Four countries provide less than 12 weeks, eight countries provide 12 weeks, three countries 13 weeks and six countries 14 weeks. These figures are in line with a global shift towards maternity leave periods that meet or exceed ILO standards of 14 weeks.

Figure 5.1 International comparisons in duration of maternity cash benefits (weeks)



Source: ILO Data collection on maternity protection and respondents for more up to date data.

Collective bargaining agreements can help to raise standards in certain sectors, or to reinforce legislation, and they can help to strengthen implementation. In Zambia, there are different provisions for maternity leave depending on whether employees fall under the Employment Act, have a collective agreement that regulates their employment or their conditions of service are provided for under the regulations made pursuant to the Minimum Wages and Conditions of Employment Act. In South Africa, a study of 361 enterprise-level agreements and 31 bargaining council agreements found that most of the collective agreements endorsed the four months of leave established by the labour code. 7% of agreements specifically provided for additional unpaid maternity leave of about two months (ILO 2014).

The legislated income replacement rate varies from 50% in Botswana to 100% in some countries. Overall the trend is towards increasing the income

replacement rate. In 2010, Botswana increased leave benefits from 25 to 50 % of former earnings. In 2017 South Africa increased the rate of maternity benefits from a sliding scale (based on income) of 38-60% to a flat rate of 66%. In some instances, (where there is a social insurance model) benefits are only paid up to a certain ceiling. This is the case for example in Namibia and South Africa. In both countries, recent policy reforms have led to increases in the income replacement ceilings.

In some countries, there is a difference between the duration of maternity leaves, and the duration for which female workers receive an income replacement. A striking example is in Swaziland, where only 2 weeks of maternity leaves are paid out of a total of 12 weeks of maternity leave. Such situations leaves women financially unprotected from income losses due to maternity and force them to resume work earlier.

<sup>19</sup> See <http://www.justice.gov.za/salrc/rpapers/2017-ResearchProposalPaper%20-Prj143.pdf>

### Duration of post-natal leave

A compulsory time period of post-natal maternity leave is critical to help a female employee recover from the effects of pregnancy and childbirth as well as nurture her child during the early stages of its life. ILO Convention No. 103, states that maternity leave should include compulsory post-natal leave of at least six weeks.<sup>20</sup> Post-natal leave is critical because it protects the female employee from being put under pressure to return to work too soon, which could be detrimental to her health and that of her child.

Not all countries in Eastern and Southern Africa explicitly provide compulsorily part of the leave for postnatal recovery. For example Kenya and Zambia do not provide it in Law. The latter was object of a recommendation of the Committee of Experts on the Application of Conventions and Recommendation (CEACR) (2011) to Zambia, in application of C.103 which Zambia ratified in 1957. Lesotho does not provide for some sectors such as private security, textile or clothing industries. There is no such indication either in RSSB social insurance maternity benefit regulations. A provision of six weeks compulsory postnatal leave is provided in Law in Tanzania, Burundi, Namibia, and South Africa.

### Parental leave

Linked to the concept of maternity leave is that of parental leave. As discussed above, maternity leave is critical to protect female workers during and after their pregnancy, as well as help them recover from childbirth. Parental leave on the other hand is generally understood to be a separate form of leave that is available to either the female employee or their husband to give them time to take care of the child over a period of time following the maternity leave. Paternal leave should be distinguished from paternity leave which is leave given to a male employee to assist their spouse recover after the birth of the child.

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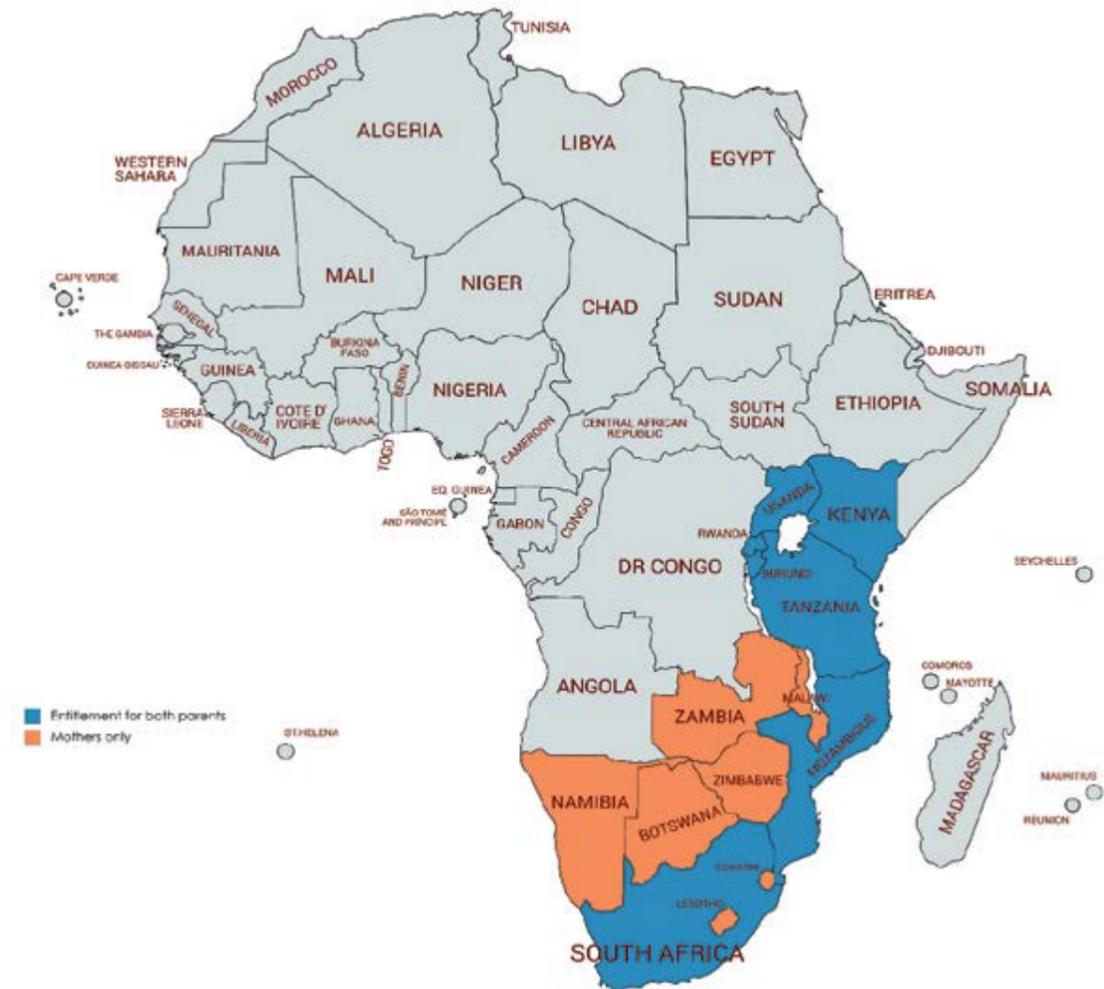
ILO Recommendation No. 191 makes provision for parental leave. According to the Recommendation, the employed mother or the employed father of the child should be entitled to parental leave during a period following the expiry of maternity leave with the use and distribution of parental leave between the employed parents, should be determined by national laws or regulations or in any other manner consistent with national practice.

In most countries, an additional period of parental leave, above and beyond the compulsory post-natal leave is seen as unnecessary. Most employers seek to prevent long absences from work which may cause employees to become disinterested in their work. A further issue surrounding parental leave is that it may result in deterioration of women's skills that may affect promotion opportunities. This notwithstanding, some level of parental leave is important to allow the female worker time to care for the child, above and beyond the time granted for maternity leave which is meant for her to recover and nurture her child in the early stages of their life. Another potential fear that parental leave can be onerous can be resolved by restricting the amount of time that can be taken and limiting its scope and eligibility in respective national legislation.

All OECD countries, except the US, offer nationwide paid maternity leave for at least 12 weeks, and over half grant fathers paid paternity leave when a baby arrives. More and more countries now also offer paid parental leave, i.e. a longer period of job-protected leave that is available to both parents.<sup>21</sup> In Southern and Eastern Africa, there is an almost half division between countries that provide entitlement to both parents and those that provide entitlements to mothers only.

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Figure 5.2. Paid leave for mothers or for both parents, Southern Eastern Africa



Source: Authors based on data from <https://worldpolicycenter.org/policies/is-paid-leave-available-for-both-parents-of-infants>. Data as of April 2015.

### 5.5 Eligibility conditions

According to Convention No. 183, as well as the older ILO maternity protection standards, the sole prerequisite for a worker's right to maternity leave is the production of a medical certificate indicating the expected date of birth. The Convention also allows national law or regulations to prescribe the eligibility requirements for cash maternity benefits. In most countries, there are qualifying conditions before a female employee becomes eligible to receive their maternity benefit.

Qualifying conditions can play a part in extending or restricting coverage. They often take the form of minimum time in employment and/or with same

employer, minimum period of contributions to social insurance, number of pregnancies etc. Stringent qualifying conditions for maternity leave are also set in place by many of the countries under this review.

Qualifying periods range from one to three years in some countries. In Zimbabwe a woman needs to have been in employment for at least one year with her employer to qualify for paid leave. Other countries limit the number of times a woman can obtain maternity cash benefits. In Tanzania, women receive cash benefits for maternity if they have been in employment for three years since they last received maternity benefits. In Zambia it is two years. In Zimbabwe paid maternity leave may only be

<sup>20</sup> Article 3(2) and (3) of Convention No. 103.

<sup>21</sup> <https://www.oecd.org/policy-briefs/parental-leave-where-are-the-fathers.pdf>

granted three times for the same employer and only once during a 24-month period.

In South Africa, recent tripartite negotiations on unemployment insurance resulted in payments of maternity benefits no longer being affected by the payment of unemployment benefits (they were linked previously). In addition, mothers can claim unemployment benefits provided they can demonstrate that they have worked 13 weeks in the year before birth of the child. These provisions are inconsistent with Article 3(1) of Convention No. 103, which does not limit the entitlement to maternity leave to specified categories of employees. The Committee of Experts has repeatedly pointed out that establishing this type of qualification period does not conform with ILO maternity protection standards. Whilst Convention 183 provides that member states may set up conditions a woman must meet to qualify for cash benefits, this is provided that these can be satisfied by a large majority of female workers. This notwithstanding, the qualification criteria in certain countries may be too burdensome and exclude several women from obtaining a benefit. These rules for qualification do not appear in Botswana (nor in fact in South African Labour legislation itself). On the contrary, rules in Zambia, Malawi and Zimbabwe with regards to years of service requirements to qualify for maternity leave may be overly onerous. Stringent and extensive qualification limits the entitlement to maternity limits maternity leave to women who are permanently employed or employed under long-term contracts. Such provisions discriminate against women employed under temporary or short-term contracts who may fall pregnant during the course of their employment but not be entitled to any leave at all because their contracts may be shorter than given minimum service requirements.

Apart from the qualifying periods, some countries also provide that a female worker can only take maternity leave a maximum number of times. In Zambia for example, an employee cannot benefit from maternity protection if they have a child within two years since the last time she took leave. Further, in Tanzania, women on maternity leave are eligible for cash benefits if it has been at least three years since they last received maternity benefits.

The ILO's Committee of Experts have noted that qualification criteria for eligibility are acceptable as this is indeed permitted by the ILO Convention. However for the eligibility conditions to be

justifiable, the qualifying periods should be set at a reasonable level and that women who do not meet the condition are provided (subject to certain means-related conditions) with benefits financed through social assistance. The Committee of Experts has been adamant that, in certain cases, national programmes have as an objective the progressive elimination of this qualifying period, which will provide a greater number of working women with financial protection during maternity leave.

Lastly, documentation requirements can make the claim process more difficult. In Namibia, different documentation is required for the release of three maternity benefit tranches (before birth, after birth and on return to work). In Swaziland on the other hand, a medical certificate is required for pregnancy and birth, but this is not enforced in practice.

### 5.6 Financing

Globally, the %age of countries which rely on employer liability systems is declining. In Eastern and Southern Africa, there are six countries with social insurance models, 13 countries with employer liability and three countries with mixed models (see Appendix. Summary Table).

There have been some positive shifts away from employer liability systems towards sole reliance on social security systems for financing cash benefits, with policy reforms underway in several countries such as Zambia. Angola introduced a social insurance system in 2005, Burundi moved to a mixed model and Mozambique introduced social insurance in 2009. Namibia started a social insurance scheme in 1995. Rwanda took a stepwise approach towards a social insurance model, with a mixed system in which employers and social security systems share responsibility for benefits since 2016. Since 1997 Kingdom of Eswatini pays two weeks of leave and Lesotho has progressively introduced compulsory paid leave for an increasing number of categories of workers since 2009 (ILO 2014). Both countries have determined through national social dialogue the objective of introducing social insurance based maternity income protection in the context of comprehensive social security schemes.

Several of the case studies demonstrate that adequate maternity benefits are provided at relatively low cost. In Namibia, the Social Security Administration's Maternity, Sickness, and Death cash benefit programme is financed by a 1.8 %

contribution rate, of which 0.35 % is allocated to maternity. In Zambia and Lesotho, ILO actuarial estimates point to costs of less from 0.5% to 1% contribution rate. In Rwanda, contributions comprise 0.6% of earnings. South Africa also shows that when considered in the context of a comprehensive package of social security the cost of maternity protection relative to other social security benefits is very affordable (2% contribution for unemployment, illness, death of dependents, maternity and adoption benefits). From an accounting perspective, in the countries with social insurance systems reviewed in the case studies, the social insurance funds were reported to be financially healthy.

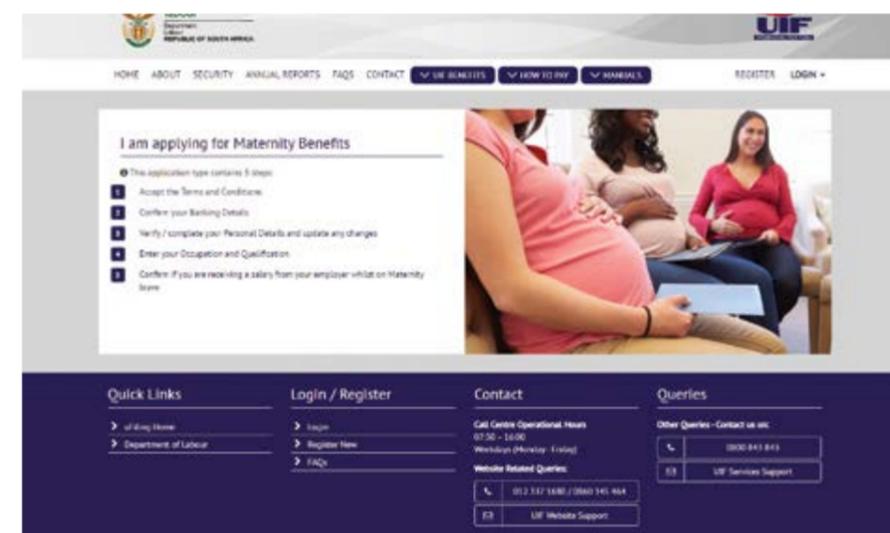
In a move towards achieving better coverage for informal sector workers, some countries have introduced or are considering social assistance programmes. South African child grant provides assistance from 0 years of age, and the effort is currently to increase the ability to claim the benefit as early as possible to help support mothers and their infants at early stages of childbirth. The Tanzanian Social Action Fund (TASAF) introduced a conditional cash transfer programme for pregnant women equivalent to US\$6 disbursed every two months. Children are required to attend regular medical routine checks and school. In Mozambique, the National Institute for Social Welfare (INAS) provides cash transfers for poor pregnant women.

### 5.7 Administration and institutional framework issues

Institutional frameworks vary between countries which have instituted a social insurance scheme covering maternity benefits. For example, in South Africa, maternity benefits are administered by the Unemployment Insurance Fund which falls under the Department of Labour. This fund covers contributions based short term benefits only (unemployment, sickness, death and maternity). In Mozambique, the National Institute responsible for public sector workers is under the tutelage of the Ministry of Economics and Finance, and the National Institute of Social Security (responsible for private sector workers) is managed by the Department of Labour. These institutes provide maternity social insurance cover for their respective members, combined with long term benefits (retirement pensions, survivors and invalidity benefits). The Mozambican National Institute for Social Welfare (INAS) is responsible for cash transfers for poor pregnant women and is under Ministry of Social welfare.

Countries vary in their reliance on electronic systems, for data collection and monitoring and for client interface. In Rwanda and South Africa, the collection of contributions is managed by revenue authorities. In South Africa, for workers not registered with the South African Revenue Service (e.g. domestic workers and taxi workers), contributions are collected directly by the unemployment Insurance Fund.

Below: *U filling e-service:*



The transition from direct collection of contributions by UIF to transfers through the revenue authority for workers in the formal economy contributed to a significant improvement in collection and to the funds' financial

recovery and good financial standing at the moment. Indeed in South Africa, compliance is relatively high in the formal sector collected via the revenue authorities. However it is still low among informal workers.

*From the perspective of social insurance and a rights perspective, it is always better to establish a direct relation between the insured person and the social security institution, so that the person relies on information and benefit provision from a third party.*

The operational side varies between countries. In some cases, employers are responsible for registering and paying their employees, then reclaiming from the social insurance body. In other cases employees deal directly with the social insurance fund. In the Rwandan mixed financing model, the first six weeks of maternity leave are paid directly by the employer. For the seventh to the 12th week, the employer is required to pay the maternity leave benefits directly to the employee and then claim reimbursement from the RSSB at the end of the six-week period. From the perspective of social insurance and a rights perspective, it is always better to establish a direct relation between the insured person and the social security institution, so that the person relies on information and benefit provision from a third party. This ensures better awareness of workers about their rights and heightened accountability of employers for declaring workers and making the necessary contributions on their behalf.



6

# GOOD PRACTICE AND LESSONS LEARNED



## 6. GOOD PRACTICE AND LESSONS LEARNED

The case studies are presented in Chapter 7. Lessons about institutions, gradual roll-out, implementation, technology, communication and extending coverage emerge from the case studies.

### 6.1 Getting the institutions right

Ensuring the institution that manages the maternity income protection scheme is one of the most important decisions that needs to be made, and hence requires detailed and careful consideration. ILO Convention No. 102 which relates to social protection provides guidance on the administration of social protection schemes broadly as it provides that the institution must have sound, adequate and competent management and financing, and must seek to ensure the administrative structure is embedded with representation from employees, employers and the government.

In most cases it is neither efficient nor desirable for maternity benefits to be established via a standalone institution. This raises the question regarding which institutional affiliation is a 'best fit' for maternity benefits? Options include alignment with existing institutions of social security, under labour, health or other departments. In addition, can some functions be managed by other existing institutions (e.g. revenue authorities)?

What criteria can help to guide these decisions?

- Whether or not the relevant institution has been enshrined in a legal framework or is capable of being incorporated into a relevant law or statute.
- Political will. In Namibia, strong political support meant that a loan was given for the establishment of a new Social Security Commission.
- Departmental policy and operational alignment.
  - ▷ Does the host institution have similar or close policy goals (income replacement/smoothing)?
  - ▷ Does it have funding systems based on similar funding method in place (for example PAYGO method)?
  - ▷ Does it cover broadly same members (providing scope for collection of contributions, database management...)?

- ▷ Does it already provide already benefits that materialize in the short term (such as sickness, unemployment) and related business processes are in place?
- ▷ Is there scope for any other operational synergy, for example sharing of back office or front office administration platforms?
- ▷ Does it have capable social security staff who can be mobilized?

- Public trust and reputation of the institutions of choice (for example where are major reputation concerns: from national revenue service or existing social security institutions?)
- Insulation of the institution's administration from factors that can destabilise it such as economic conditions and changes in government for example
- Technical expertise and systems for managing short term funds (e.g. do the existing schemes provide the necessary expertise and infrastructure to manage a short term benefit scheme?)
- Administrative capacity (can existing systems easily be adapted to manage maternity benefits; what additional staffing requirements would be necessary?)
- Which institutions are most likely to promote the inclusion of informal sector workers?
- Technical systems (can existing databases be easily adapted to manage maternity benefits?)
- How to reap the most economies of scale in information, registration, claim processes (proximity to medical centres and linking up with health systems can be an advantage for early declaration of pregnancy)
- Financial sustainability based on actuarial calculations (can the proposed arrangement provide reasonable benefits for affordable contributions), and who will bear the risk in case of deficits

The experience regionally and internationally shows that there may be several advantages to locating a maternity benefits programme within an existing social security institution. These may include tapping into staff expertise, infrastructure networks such public access offices across a country, database management systems, electronic client interface

systems etc. As an example, Namibian case study demonstrates the value of integrated administrative functions.

Housed under one roof, the Social Security Commission is mandated to provide social protection and social insurance by administering funds established by the Social Security Act or any other fund assigned to it. It currently administers three main instruments: the Maternity Leave, Sick Leave and Death Benefit Fund (MSD Fund), the Employees' Compensation Fund (EC Fund) and the Development Fund (DF). In the future it is intended to oversee national pension and medical benefit funds. The SSC has 14 regional and satellite offices across 14 regions.

The Ministry of Labour and Employment in Lesotho has begun the process of establishing a National Social Security Scheme for the private sector, covering all nine branches of social security. The Kingdom of Eswatini has determined the policy objective to establish a comprehensive social security system including maternity and paternity benefits. (National Social Security Policy, 2018). The establishment of comprehensive set of benefits has the advantage that it reduces the administrative cost on revenue collected. The existence of established structures can help to contain costs and build in economies of scale as well as simplifying access to multiple benefits for contributors.

But it is also important to ask what a realistic level of integration between schemes is. Ideally full

integration allows to maximize administrative gains. However it is often difficult in practice due to differences in rules and criteria for each benefit, and that is why often a step wise approach is taken to allow for gradual integration of different management tools and processes across benefits. In South Africa, the Unemployment Insurance Fund manages different short term benefits including maternity. While there is a high level of integration at front office (interface with contributors and claimants), there is less integration in the back-office in terms of processing claims and managing information (where more needs to be done in exchanging information between schemes). The same happens for the Rwanda Social Security Board. This is one of the most comprehensive social security schemes in Africa comprising elderly pensions, survivors, invalidity, maternity, health, employment injury cover. The schemes management and information systems are still not fully integrated. Going forward, the ability and competence to implement and manage cross cutting management information systems remains a critical asset for comprehensive social security funds.

Social security comprehensive organizations such as the RSSB in Rwanda allow a client centric approaches to social security that addresses multiple needs of populations in strategic and integrated ways, and reduces the cost of accessing benefits. A culture and education of social security is also emphasized nationally when comprehensive social security is in place in a country.

### Rwanda Social Security Board maternity leave benefits information and registration



The addition of a maternity protection element to an existing provident fund is often problematic. In general, maternity cash benefits under savings schemes (this includes provident funds and defined contribution schemes), tend to implement maternity benefits that are not collectively financed but represent simply drawdown of individual savings. This results in lack of solidarity, particularly between women and men, inability of women to be adequately protected during maternity and perpetuation of gender inequality.

Possible disadvantages may occur in cases of long-established social security institutions or departments, particularly those whose primary focus has been on pension funds in the formal employment sector. These funds may have very rigid operational structures, geared towards long term benefit processing; they may lack the operational flexibility and responsiveness required for short term benefits – where issues of rapidity of response to delivering benefits is crucial. In addition, qualifying conditions for pensions may be very restrictive to workers with long term tenures. In this situation, it is worth considering whether the potential insertion of a maternity cash benefit may be restricted by these historical priorities, in a way that could hinder for example efforts to extend coverage to informal sector workers.

A major advantage of potentially integrating maternity benefits into national health insurance systems stem from the potential to achieve coverage of large sections of the population. For example in Rwanda the combined community based health insurance and national health insurance schemes cover more than 99% of the population, and it would seem to be appropriate and administratively feasible and efficient to extend coverage to maternity cash benefits under same mechanisms for the informal sector. Similarly, extending social assistance programmes such as child grants to maternity grants (an option that is being considered in South Africa), can ensure inclusion of women with low or no incomes.

Finally, institutional arrangements need to bear in mind the linkages which can reinforce the impacts of maternity benefits. These linkages include other components of maternity protection such as flexible work arrangements, healthcare systems, access to transport, and childcare (not a concession but a necessity). In Rwanda, the Maternity Leave Benefits (MLB) has benefited from a partnership between the Social Security Board of Rwanda (RSSB) and the tax

administration called Rwanda Revenue Authority (RRA), which is guided by a strategy of widening the tax base as well as the social security coverage.

## 6.2 Getting the roll-out right

Several important lessons can be drawn from the case studies. Generally, incremental reforms may be easier to apply than 'big-bang' reforms. Gradual changes can help to increase political and public acceptance. The introductory level of benefits needs to be established through well-informed actuarial calculations. Benefits levels need to be high enough that they are meaningful and workers and employers are willing to register. Contributions also need to be low enough that employers are willing to pay the contributions required and accept the policy.

Once the maternity benefit system is established, it can be increased incrementally, through successive reforms built through social dialogue. The experience of Rwanda is interesting in that regard. At the introduction of the new scheme, RSSB decided to offer a high level of replacement rates throughout the whole leave (100%) but combines for the moment a mix of employer liability (first period of six weeks) and social insurance (second period of six weeks) for the whole period of compulsory maternity leave.



There are several dimensions to be considered when prioritizing the incremental roll-out of maternity benefits:

- Qualification (considering specific contexts such as miscarriage, adoption...)
- Duration of maternity benefits (up to 14 weeks and beyond)
- Amount of benefits during leave ( up to 66% of previous earnings and beyond; raising maximum

- income replacement ceiling towards 100%, at least to ensure an adequate standard of living)
- Eligibility criteria (reducing barriers to access, such as previous employment and documentation requirements)
- Financing of benefits (moving towards a sole social insurance model)
- Scope/proportion of employed women (all employed women)
- Implementation (removing barriers to access such as administrative bottlenecks, and lack of public information)

### **Stepwise approach from employer liability to social insurance in Rwanda.**

In order to overcome initial resistance from some stakeholders (small companies, foreign firms, manufacturing and construction companies), the Rwandan government introduced a mixed model which only required a small contribution (0.6%) that was acceptable to employers. The feasibility study and technical support provided by the ILO were also significant in the gauging the requirements for gaining the support of employers. In the future the plan is to move to a full social insurance model. However, the case study also highlights some possible side-effects of a stepwise plan. For instance, the mixed model (employer pays costs for 6 weeks, social insurance pays for 6 weeks) has meant that until the full transition to social insurance has been completed, several functions and bureaucratic requirements are duplicated.

When a country is transitioning from a situation where maternity leave is paid 100% by employers to a situation where a social insurance fund is only compensating up to a minimum (as proposed in Zambia), legislative clauses may be necessary to the effect that enterprises should top up to the current benefit levels, so that there should not be a regression of guarantees to workers.

### **Gradual increases in the income ceiling in Namibia.**

Pressure from women's advocacy groups has successfully campaigned for increases to the maximum salary ceiling for which maternity benefits were provided. When the income ceiling was too low, and the pay-outs were minimal, beneficiaries used to just opt out and apply for sickness benefits instead. The ceiling was raised from N\$9,000 to N\$ 10,000 in 2010 and to 13,000 in 2016 but is still considered low. The policy objective is to gradually increase to N\$20,000 then N\$30,000 over the next five years. Strategic decisions have been reached in the Namibian case regarding which decisions to prioritise (based on feasibility and acceptability by stakeholders). Rather than extending the ceiling and

the length of time at the same time, it has been decided to sequence these changes.

### **Incremental steps towards compliance with ILO Recommendation 183 in South Africa.**

In South Africa, reforms to the Unemployment Insurance Fund introduced in 2017, made significant changes to the prior measures. In relation to maternity income protection, the amendment increased coverage and the level of benefits, and improved bureaucratic requirements, towards compliance with ILO Recommendation 183. For example the rate of income replacement was extended and the time for submitting an application was increased from 8 weeks prior to due date to 12 months afterwards.

## 6.3 Getting the financing right

Supporting ILO member States in the progressive shift from employer liability systems to maternity leave benefits financed by social security systems is a priority of ILO technical assistance. Technical assistance with regard to costing social insurance systems and creating fiscal space to finance them has played a key role in several countries.

The importance of actuarial reports has been fundamental in Namibia and Zambia.

In Zambia, following the adoption of a Tripartite Road Map on Maternity Protection (2013) which sets up national priorities on action to improve maternity protection in the country, the Ministry of Labour and Social Security, with ILO technical support, launched an actuarial study prior to setting up a social security branch to fund maternity leave benefits. The study also assessed the financial and operational feasibility of extending maternity benefits to low-income and vulnerable women who are pregnant or breastfeeding. Actuarial studies are useful particularly for challenging current assumptions regarding the affordability of the schemes, and in creating sustainable programmes.

***In Uganda and Kenya, provident funds provide benefits out of savings. In these contexts, maternity cash benefits tend not to be collectively financed but represent drawdowns of individual savings. This represent problems in terms of gender equity (unfair treatment of women) and adequacy of the maternity protection that may be available for workers more at risk of unemployment or other short term risks.***

In both Zambia and Namibia, actuarial calculations made by private actuaries recorded high premiums, and hence employers initially didn't see a benefit and were sceptical. It is only when ILO actuarial assistance showed better value, by using a social security approach with a pay as you go model that the dialogue on maternity protection reforms could resume. Sound actuarial study are powerful instruments to support policy making, in that it provides scenarios and options on which employers and workers can based their dialogue to agree on a level of benefits and corresponding level of contributions.

In Uganda and Kenya, provident funds provide benefits out of savings. In these contexts, maternity cash benefits tend not to be collectively financed but represent drawdowns of individual savings. This represent problems in terms of gender equity and adequacy of the maternity protection that may be available for workers more at risk of unemployment or other short term risks.

#### 6.4 Getting the implementation right

Although a core step, law enactment is only the first phase of providing maternity protection. Indeed, having systems in place for effective and efficient delivery of social insurance is key to the success of a maternity benefit programme. Otherwise it becomes a tax without a service. Straightforward and no cost registration, speedy claim and qualification mechanisms, and clear information about what benefits will be received and short claim to payment times all play a role in gaining the trust of employers and workers, especially in maternity benefits where number of occurrences are limited in a life time.

In Namibia, an initial registration period of 90 days was agreed at the start of the scheme to give employers time to register their employees. However, questions regarding the administrative capacity of the Commission to register members, and the delayed issue of social security cards (dispensed only three-four years later) contributed to a loss of trust in the scheme, though this has now stabilised.

In South Africa, administrative challenges with accessing maternity benefits are a major issue. Delayed payments and bureaucratic/documentation requirements have undermined the advantages of maternity benefit provision. If benefits are received after the maternity period, mothers may not be able

to remain on leave or may suffer as a result. Recently, South Africa legislation has prohibited the use of agencies to process applications on behalf of claimants because of the exorbitant costs involved in the process. Instead, it has moved to make claiming of benefits possible online and it is increasing the digitisation of paper handling within the institution to reduce the processing time.

The involvement of revenue authorities has been positive in South Africa and Rwanda. Since 2001, the South African Revenue Service (SARS) has been responsible for the collection of contributions and was credited with the financial turnaround of the scheme. However, in other countries or at certain moments in time, credibility issues with the revenue service can preclude their involvement in maternity benefits contribution collection compared to social security administration.

#### 6.5 Getting the technology right

Technological developments and innovations can support the implementation and administration of a maternity benefits programme. There are several examples of ICT programmes which have played instrumental roles in improvement of delivery of maternity benefits.

In South Africa, the Unemployment Insurance Fund has two core systems that are used in its operations:

- The Siyaya System for the registration of employers and employees and for processing claims, and:
- Computron which is a financial system used for the payment of claims and for recording collected revenue
- In addition, the UIF has an on-line system called u-filing used by employers to declare their employees and to pay contributions to the fund. The same system is used by employees to make their claims on-line.

In Mozambique, social security contributions are managed by an integrated information management system (IMS), developed in 2011 and gradually being phased in, which collects contributors' information, records contributions made and benefits paid out, detects internal irregularities or anomalies, and provides valuable information for external audits.

In Rwanda, an integrated software package called E-tax has been developed and implemented which

unifies the collection of PAYE tax, Pension & Occupational hazards, Medical and Maternity Leave Benefits schemes contributions. This system allows the use of one single annexure (declaration form) to file returns of PAY As You Earn (PAYE) tax and all RSSB contributions. The readiness of ICT systems before the programme started has been credited with the smooth introduction of maternity benefits reform in Rwanda. Initially maternity benefits comprised a standalone database. Rwanda is now in the process of integrating its ICT systems across its social security benefit programmes.

In the case of informal sector self-employed workers, it may be administratively cumbersome to collect contributions and keep up-to-date accurate records due to intermittent and irregular work. The risk for duplications of data and errors can increase. Income may also not be accurately obtained. However with the advent of big data and digital technologies in particular for payment, the argument is less and less valid. Innovations in the field of pension funds through digital mobile pension systems should a fortiori be available for short term insurance where there is less need to keep data for long periods of time.

Technologies which enable user access need to be designed with a clear idea of the demographic profiles of potential beneficiaries, and their level of access to phone and internet technology. Being able to register or file a claim online could mean that a beneficiary need not take a day off work. However, the same scheme could disadvantage rural workers with little access to wi-fi.

However, technology also needs to be designed in ways which reduce fraud. In Namibia the Social Security Commission has implemented an Electronic Data Interface (EDI) project, to enable employers to submit their monthly returns electronically in a particular file format, rather than manually, thereby substantially reducing the burden on employers. However, there is no electronic exchange of documents in Namibia. So documentation for maternity benefit claims need to be submitted in person and are entered onto the system manually by SSC staff.

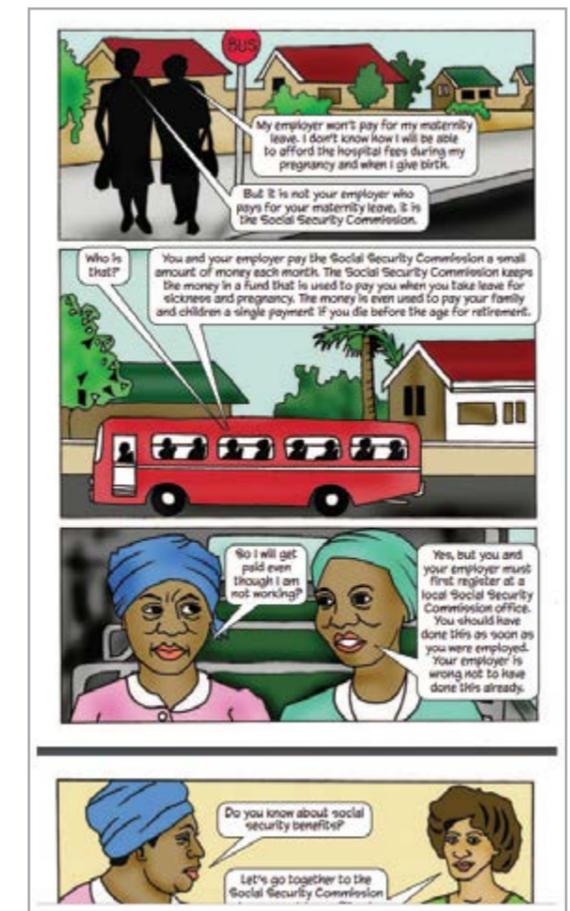
#### 6.6 Getting the communication right

Another key to the successful incremental extension of maternity income protection is **effective communication**.

Communication is crucial for:

- Raising awareness among employers, employees and trade unions in rural and urban areas about existing systems. In Namibia, the SSC regularly undertakes public campaigns to improve the outreach of the scheme and promote workers' and employers' compliance. The public relations and communication unit at Rwandan Social Security Board, carry out extensive sensitisation to ensure efficient implementation of the scheme. Public awareness through media (show on TV, Radio Talk, and Online Information, Written Tools (Leaflets, Booklets, Banners, and Magazine Articles) are regularly organized, as well as workshops to targeted groups of workers.

*Information booklet on maternity by the Gender research and advocacy centre legal assistance, Windhoek Namibia, 2010*



Source: <http://www.lac.org.na/projects/grap/Pdf/comicdomesticworkerseng.pdf>

→ Dispelling common myths that deter registration and compliance. Circulating evidence about the business case for maternity benefits can be beneficial, since the costs are often perceived to be far higher than the returns on investment. Public campaigns can address common fears around moral hazards by engaging with deep-seated cultural beliefs about women and men and their reproductive and economic roles that prevent maternity protection in practice, especially in developing countries. Interventions may need to go beyond the workplace to address deeply held convictions in the wider society (Lewis et al. 2014). “Information and education campaigns should be implemented to sensitize employers and workers on different aspects of maternity leave and its funding under social insurance including: the need for women to increase their take-up of leave and not be forced to work until they are due for delivery and to ensure solidarity between all men and women and between all women including those above child bearing age or incapacitated to bear children” (Lewis et al. 2014).

**“Information and education campaigns should be implemented to sensitize employers and workers on different aspects of maternity leave and its funding under social insurance including: the need for women to increase their take-up of leave and not be forced to work until they are due for delivery and to ensure solidarity between all men and women and between all women including those above child bearing age or incapacitated to bear children” (Lewis et al. 2014).**

→ Communication is necessary to ensure that benefits reach intended beneficiaries, to avoid contributions becoming an unjustified tax. In Mozambique and Tanzania there is insufficient knowledge about the maternity benefits available under various funds. Companies pay to the fund but individuals do not use the maternity benefits. It would be important to understand in these two countries what the barriers to access are. One issue which may need to be addressed is that the funds themselves have no incentive for beneficiaries to make claims happening.

→ Creating political support and supporting advocacy for the extension of maternity benefits. Women’s advocacy groups in Namibia and elsewhere have been significant in extending the scope of maternity benefits.

Creating multi-stakeholder platforms for dialogue can also foster buy-in at state, market, community and family levels. The South African Unemployment Insurance Amendment Act (2017) was extensively negotiated via a multi-stakeholder forum, the National Economic Development and Labour Council (NEDLAC). This brought together government, business, labour and civil society representatives to discuss the reforms. In Namibia when maternity reforms were proposed in 1994, employers were initially resistant but the tripartite nature of the social security commission made the reforms acceptable.

### 6.7 Extending coverage

Of the social risks identified by the ILO, there is no doubt that those in the informal economy are susceptible to a wider range of challenges and external shocks, including lack of income replacement during pregnancy and childbirth. Informal sector employees are susceptible primarily to growing urbanisation. For these reasons, it may be a huge risk to cover such employees and provide them with the necessary protection where the risk they are exposed to is unpredictability.

Extending coverage to self-employed, informal, casual, agricultural, domestic, piece workers is a challenge across the region. A primary challenge affecting the extension of social protection to employees in the informal economy is the definition of ‘employee’ in labour and social security legislation. The definition of employee in the Employment Act requires employees to be employed under a contract of employment, as existing social protection legislation is biased towards workers in the formal sector. This excludes many workers from social insurance schemes. Without being able to fit into the definition, these workers will not be covered by most legislation.

There aren’t necessarily legal impediments to covering informal workers where an employee/ employer relationship exists, unless minimum qualifying periods or specific provisions exclude them. But in practice they are hard to reach because are

self-employed or work for small enterprises, don’t belong to any workers movements or associations, have limited or not contributory capacity, and for these reasons compliance is hard to enforce. Further even workers who fit into the definition of an employee are excluded from social protection coverage, such as those in the agricultural and construction sector, who are excluded due to the informality of their employment relationships and the seasonal or short-term nature of their employment. This means that these employees would not qualify to receive retirement, disability or sickness benefits, as they need to make a certain number of contributions over a period of time to gain a benefit.

There is no doubt that compared to formal economy employees, those employed in the informal sector lack or have a lower contributory capacity due to earning a generally lower income. The lack of a capacity to contribute towards social insurance schemes affects the ability of these schemes to provide the necessary protection. However, coverage under social insurance schemes is bound to be low due to the high unemployment levels and number of people employed in the informal sector. In addition, many of the informal employees are reluctant to contribute to the schemes because of the requirement that they pay double contributions, that is, the workers’ contributions and the employers’ contribution.

There is also view that the informal economy is incapable of being organised in the same way that the formal economy is. Because the nature of informal sector employment varies in size, range and type, it may be difficult for social insurance schemes to provide a meaningful basis to assist these groups of persons. The lack of organisation would therefore make it difficult to monitor and administer any scheme that will assist these workers.

Moreover, registration is often difficult for employers and workers who live far away from the nearest social security office. As it relates to on-line systems, these often do not exist or are not relevant to the limited availability of required technologies and lack of access to email coupled with variable or non-existent telephonic access. Administratively, lack of postal and email addresses for many self-employed workers have generated administrative and communication barriers. South Africa Unemployment Insurance Amendment Bill 2017 prohibited any agency or person purporting to be

acting on behalf of the applicant to charge a fee against the applicant.

Linked to the above, most informal economy employers and employees are not as interested or aware of the registration for social protection which could be time consuming. Additionally, because the informal economy is unpredictable and vulnerable, these employers and employees may be anxious about the penalties that are charged for unpaid contributions.

The informal economy is characterized by decent work knowledge and information gaps. Despite most informal economy workers knowing that in formal workplaces workers are entitled to decent work conditions, they hardly know that the informal economy workers are equally entitled to similar conditions. Information and initiatives to raise awareness among the workers (and their employers alike) about fundamental rights at work, social protection and social dialogue are non-existent outside the formal economy. Although knowledge on the informal economy develop fast in the region, it can be hard to access sector data, for example regarding numbers of domestic workers, and to design and implement relevant policies.

These categories of workers often have little representation. Their intermittent and unpredictable incomes can make them reluctant to subscribe to schemes requiring regular contributions. However, there are several examples of encouraging initiatives:

- Some countries have implemented a sector-specific approach: in Namibia schemes have sought to reach taxi workers in three regions. Also in Namibia, contributory benefits are delivered to domestic workers by door-to-door house calls, as a first step to gradually covering domestic workers under the scheme.
- In Namibia, self-employed workers can register with social insurance on a voluntary basis. The worker is responsible for the entire 1.8% contribution. Payments generally extend for 12 weeks, four weeks before and eight weeks after giving birth.
- In Rwanda, there is some possibility that in the future social insurance could be extended to informal workers via the Community Based Health Insurance programme, which receives government funding and reaches a large proportion of the population who do not receive

regular incomes. However, this would require a thorough feasibility study. It is worth noting that in Rwanda, there is an increasing level of formality, with private sector federations, cooperatives and trade unions trying to organize groups of workers in informal economy. The scheme is not accessible to self-employed. However, self-employed can be voluntarily covered by the pension benefit under the same social insurance organization, so it should not be difficult to implement maternity cover for self-employed.

→ An increasing number of countries are providing maternity cash benefits to low-income residents or informal workers through non-contributor maternity cash benefits financed by public funds. In Kenya, the Kakamega programme provides a cash transfer to pregnant women of about USD 20 per clinic visit to a total of USD 120 over 1,000 days from the start of their pregnancy till the child is two years. In South Africa, social assistance options are being explored to extend the child support grant to pregnant women.

It is important that policy discussions to extend social insurance to those not covered by labour law should not occur in isolation, particular where maternity benefits for workers in the formal sector are covered by employer liability systems. Policy reforms which extend social insurance and that reach women across employment status categories need to be designed and enacted in an integrated manner across, legislative, institutional and implementation dimensions.



7

# COUNTRY CASE STUDIES



## 7. COUNTRY CASE STUDIES

### 7.1 Burundi

#### Socio-economic context

Burundi's population reaches 10.4 million of which 4.7 million constitute the labour force. The employment rate is estimated to be 77 % and equal among men and women<sup>22</sup>. The rate of youth unemployment is very high, around 50 % among people under 30.

The per capita GDP was estimated at 276 USD (ECA, 2015), ranking the country among the poorest in the world. According to the Economic Commission for Africa (ECA), the Gross Domestic Product (GDP) of Burundi declined by 3.9 % in 2015, as a result of the socio-political crisis affecting the country. More recently, real GDP growth improved to an estimated 1.4% in 2018, following a 0.2% contraction in 2017<sup>23</sup>.

The large majority of people work in the informal subsistence economy (no current estimates available, cf. UNECA Country Profile 2017). The general poverty rate stood at 64.6 % of the total population of Burundi in 2014.

Food insecurity is a matter for concern. According to the World Food Programme (WFP), 46 % of the population of Burundi suffers from food insecurity. The WFP estimates that between 2014 and 2016, food insecurity increased by 11 %, mainly for structural reasons (lack of access to land, decreased soil fertility, high population density), but also because of aggravating factors such as the current socio-political crisis and the increase of food prices.

Over the last decade there has been an appreciable reduction in maternal and child mortality rates. Child mortality decreased by 38 % over the last decade. The decline was achieved because of the Free Maternity Services established in 2006 targeting children under five and pregnancy and delivery services. Notwithstanding these achievements, the maternal mortality rate remains alarmingly high, with almost 500 deaths per 100,000 live births to the most recent demographic and health survey (ISTEEBU, 2012).

#### Legislation

In Burundi, maternity is covered by the Labour Code (Decree law No. 1/037) 1993 and the Code of Social Security 1999. Burundi has not ratified the ILO maternity conventions.

#### Scope of coverage

Every employed woman covered by labour law is entitled to maternity leave. It is illegal for the employer to stop or suspend the employment contract during the pregnancy or after birth using the pregnancy or delivery as a reason.

#### Maternity cash benefits duration

The duration of maternity leave is 12 consecutive weeks. This period can be extended to 14 weeks if it is deemed necessary. Six weeks have to be taken after delivery. Should birth happen after the expected due date, the leave will be extended without affecting the post-birth leave.

In addition, for six months after birth, women are entitled to one hour's paid breastfeeding break per day.

#### Maternity cash benefits amount

Female employees are entitled to maternity benefits equivalent to 100 % of the wage. 50% is funded by the employer and 50% by social security. The amount of the daily benefit to which the worker is entitled for the

maternity leave is calculated on the basis of the worker's monthly average salary, and cannot be less than 50% in case of maternity.

#### Maternity cash benefits eligibility

There is no minimum qualifying period.

#### Financing

Burundi has a mixed system in which employers and social security systems share responsibility for benefits. The employer continues to pay 50% of the monthly wage as well as other benefits – including annual leave – applicable at the moment of the leave. In addition, employers, public or private have to subscribe to a social security scheme covering a maternity allowance as well as health care costs.

#### Administration and institutional framework

A mixed system based on employer liability and Social insurance (administered by the Institut National de Prevoyance Sociale, INPS).

#### Gaps and Challenges

**Employer liability.** The current legal framework for maternity protection is partly based on employer liability, making the employer partially responsible for financing maternity cash benefits – and putting some women at risk of discrimination. It should however be noted that this risk is mitigated to some extent because social insurance is responsible for part of the cash benefit. There are however problems with the lack of enforcement of the labour code.

**Duration of maternity leave.** The law provides for 12 weeks maternity leave which is slightly less than the 14 weeks recommended by ILO Convention No. 183

**Amount of benefits.** The replacement rate of the maternity cash benefits meets the requirements under ILO Convention 102 which requires an average replacement rate of 45 % over the total 12 week maternity leave. However, under more recent standards on maternity protection, ILO Convention 183 establishes a replacement rate of 67 % of previous earnings at least 14 weeks, including 6 compulsory weeks after childhood.

#### Conclusion

Current employer liability provisions are in not in line with ILO standards. Both ILO Conventions C102 and C183 recommend a financing mechanism for the whole salary replacement and duration, based on collective risk sharing through social insurance, public financing or any other risk-sharing mechanism identified and agreed upon by the Government and representatives of workers and employers. A social insurance scheme should be financed by both workers and employers on a Pay As You Go (PAYG) method. The scheme should replace the current direct payments of maternity benefits by employers because employer liability schemes are detrimental to the promotion of equal treatment for men and women in labour market.

### 7.2 Kenya

#### Socio-economic context

Kenya is a low middle income country with a population of 48.5 million (2016) with an almost equal proportion of male to female (49.7% are women). According to Kenya Bureau of Statistics Economic Survey 2018, there were a total 16,893 million workers in 2017 of which workers in the informal sector constituted 83.4 % of total employment.

Real GDP grew an estimated 5.9% in 2018, from 4.9% in 2017. Kenya is the fifth most unequal country in Africa with inequality reflected in the distribution of income and wealth, access to education, water, land and health services. 46% of Kenyans live below the poverty line with 19% being extremely poor but this varies based on geographical location.

<sup>22</sup> [http://www.ulandssekretariatet.dk/sites/default/files/uploads/public/PDF/LMP/LMP2015/Imp\\_burundi\\_2015\\_final\\_version.pdf](http://www.ulandssekretariatet.dk/sites/default/files/uploads/public/PDF/LMP/LMP2015/Imp_burundi_2015_final_version.pdf)

<sup>23</sup> <https://www.afdb.org/en/countries/east-africa/burundi/burundi-economic-outlook>

The Kenya Constitution promulgated in 2010 brought in a devolved system of government with political power and resources being decentralized to 47 counties and functions such as health being managed through counties which has provided an opportunity for growth but not without challenges which are being addressed over time.

### Legislation

In Kenya, social security is recognized as a constitutional right. The Constitution of Kenya of 2010 guarantees that 'the State shall provide appropriate social security to persons who are unable to support themselves and their dependants'. Maternity benefits are covered in the Employment Act 2007 (Section 29). Kenya has not ratified the ILO maternity convention.

### Scope of coverage

The Employment Act 2007 applies to all employees employed by any employer under a contract of service. Employees are defined as persons employed for wages or a salary and this includes apprentices and indentured learners. An employer is any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company. Those employed in the police services, armed forces, National Youth Service and family undertakings are not covered by the Act.

In principle, apart from the expressly excluded group of employees this covers formal and informal workers as contract of service means an agreement, whether oral or in writing, and whether expressed or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership (period – three months and above).

### Maternity cash benefits duration

A female employee is entitled to three months' maternity leave. No female employee shall forfeit her annual leave entitlement on account of having taken her maternity leave. The female employee shall have the right to return to the job which she held immediately prior to her maternity leave or to a reasonably suitable job on terms and conditions not less favourable than those which would have applied had she not been on maternity leave.

The Employment Act also provides for Paternity Leave of two weeks.

### Maternity cash benefits amount

Employees are entitled to full pay during their maternity leave.

### Maternity cash benefits eligibility

All employees are eligible (see above). There is no limit on the number of times an employee can take maternity leave. The employee has to provide not less than seven days' notice in advance or a shorter period as may be reasonable in the circumstances of her intention to proceed on maternity leave on a specific date and to return to work thereafter.

### Financing

Maternity benefits are currently financed by employers. Individual employer liability has led to discriminatory employment practices against women of reproductive age.

### Administration and institutional framework

Cash Maternity benefits are currently provided on the basis of individual employer liability as outlined in Section 29 of the Employment Act of 2007.

### Gaps and Challenges

**Amount and duration of pay.** The Employment Act provides for three months' maternity leave, which is below the prescribed 14 weeks prescribed by ILO Convention 183. Further, the Act does not set a compulsory period of post-natal leave within which an employee will not be permitted to return to work after childbirth with a medical certificate. Lastly, an employee must give seven (7) days notice of her intention to go on maternity leave – if she does not give notice, in written form, she forfeits her maternity protection.

**Financing arrangements.** Employers bare sole liability to pay female employees at full pay during the duration of maternity leave.

**Limitations of the NSSF.** The NSSF has been identified as a scheme that could be used as a vehicle for a maternity insurance scheme but it is currently characterised by several problems. The chief problem is the high administrative costs of managing the affairs of the Fund that make it difficult to effectively carry out its tasks due to limited funds. Further, the NSSF has been criticised for not making regular benefits to beneficiaries and failing to effectively pass on the returns on investments of contributions to contributors.

**Exclusion from coverage in law and/or in practice.** Female workers especially in the informal economy and the self-employed are hard hit without maternity income protection and cover as most of them have to forfeit their income as a result of pregnancy and care giving duties and will return to work as soon as possible some as early as two weeks post-delivery in order to earn their living. This predisposes the women to protracted recovery periods due to excessive strain and other psychological issues including postpartum depression as a result of stress leading to decreased productivity with eventual impact on the country economic growth.

### Past and present policy reform processes

**Social insurance.** The National Social Protection Policy of 2011 sought to address various social issues that plagued Kenya such as poverty, disease, health risks and the fractured and ineffective provision of social security in the country. Various stakeholders from employers, employee representatives, managers of various schemes and the government met and engaged to discuss how to improve the challenges identified. Specifically as it related to maternity protection, the policy highlighted the shortcoming of a model based on sole employer liability and non-compliance with international labour standards.

The Policy proposed for maternity benefits in form of remuneration which was to be provided through a restructured National Social Security Fund and based on a social insurance basis to increase the protection, predictability, and sustainability of such benefits. The Policy also identified the need to address discrimination in the provision of maternity benefits, whether it be direct or indirect and how social insurance may reduce the discrimination.

**Non-contributory maternity benefits pilot scheme.** In 2013, a new governance structure was introduced in Kenya, a national and devolved system with 47 county governments. Power and resources are devolved to the county level based on agreed functions as per the Constitution of Kenya of 2010. Health is a devolved function which puts it under the direct responsibility of the counties. One of those 47 counties, Kakamega loses almost one mother every day due to complications during pregnancy and delivery. The county records a maternal mortality rate of 316 per 100,000 live births only slightly below the national average at 400. In 2014, Kakamega's Governor H.E. Wycliffe Oparanya spearheaded a conditional cash transfer scheme for pregnant women and new mothers with a goal to significantly reduce maternal and infant mortality. Referred to as 'Oparanyacare' maternal and newborn health programme – Afya ya Mama na Mtoto is targeting to reach 33,000 mothers with an aim of reducing maternal and child mortality in the county. The programme benefits to pregnant women who attend Ante Natal Clinics and provides them with a cash transfer of about USD 20 per clinic visit to a total of USD 120 over 1,000 days from the start of their pregnancy till the child is two years.

### Linkages to other benefits

**Free Maternity Services (FMS).** The Kenya government provides free maternity services in public and faith-based health facilities. The programme was introduced in 2013 with an aim of increasing access to skilled delivery services with resultant reduction of maternal and infant mortality. The FMS programme covers antenatal and postnatal care, deliveries and complications of delivery including; ICU care, renal dialysis, and complicated medical diseases in pregnancy. Health facilities are reimbursed USD 20 and USD 50 for health centres/dispensaries and hospitals respectively based on number of deliveries conducted. The programme is one of the government efforts towards attainment of universal health coverage and is implemented through the National Hospital Insurance Fund. Challenges faced by the programme include inadequate amenities, equipment and human resource for health.

## Conclusion

Beyond recommending the switch to social insurance maternity cash benefit scheme and seeking to tackle discrimination, the Kenya National Social Protection Policy of 2011 is very clear that measures should be introduced to ensure that appropriate pre-natal and post-natal care, which is now available to female workers, is enhanced and their working conditions improved. However, beyond making this broad policy objective, the policy lacked detail on how this is to be achieved. The National social protection review 2017 noted that there was no progress in implementing the objective to introduce a social insurance based maternity benefit.



## 7.3 Lesotho

### Socio-economic context

The Kingdom of Lesotho is a small mountainous country with a population of approximately 2.1 million people of which 51% women.

GDP growth rate has been slow. The economy showed signs of recovery in 2017/18, with real GDP growth estimated at 0.9% following a 2.3% contraction in 2016/17. The national poverty rate has been relatively unchanged since 2003 (poverty rate of 56,6 % against 57,1% in 2010).

The 2010 Gini coefficient of 0.538 recorded little change from its 1993 level of 57,9. It ranks 160 out of 188 countries in the Human Development Index 2015. Lesotho faces a number of challenges amongst which are deep-rooted poverty, high unemployment and a food shortage that is exacerbated by land degradation and global warming. It is counted among the countries with the highest HIV and AIDS prevalence rate, estimated at 23.6%.

Over 70% of the population lives in the rural areas. The unemployment rate is estimated to be around 29.3% (2015). In the past, many Basotho (people of Lesotho) men used to work in the mines in South Africa<sup>24</sup>. In recent years, however, the dwindling economic performance has seen South Africa prioritising its own citizens for mining employment. Consequently, Basotho now have to strive for employment in the already saturated market at home. The textile, apparel and footwear manufacturing industry has emerged as a strong compensatory force offering alternative employment. The industry employs + 46,500 workers, the majority of which are women.

According to the Census of 2016 the under-five mortality is 80,2 per 100,000. Maternal mortality rate according to Census data of 2016 is 618 per 100,000 live births.

### Legislation

Lesotho does not have a public social insurance scheme hence maternity benefits are provided as an employer liability. Lesotho has two distinct pieces of legislation governing maternity benefits, one for the public sector and the other for the private sector.

The private sector maternity protection stems from the provisions of the Labour Code Order 1992 and the annual Labour Code Wages Amendment of 2015. The Labour Department is the custodian of this piece of legislation. Parallel to the Labour Code, the public sector administers the Public Service Act of 2008 and the Basic Conditions of Employment for Public Officers of 2011. These are under the custody of the Ministry of Public Service.

Lesotho has not ratified the ILO maternity conventions.

### Scope of coverage

In the public sector, maternity protection is available for all qualifying categories of public sector employees without exception. In the private sector Section 134 of the Labour Code Order of 1992 does not impose any obligation on an employer to pay wages to a female employee during her absence from work owing to confinement. However, as a result of collective bargaining in recent years workers are now being paid maternity leave at varying periods depending on the sector of the economy.

Certain groups of people such as domestic workers are excluded from the definition of employee. Employees in the informal sector are not excluded from coverage in terms of the law. In practice, however, it is doubtful that the employers in this sector would pay their employees maternity protection while on leave. In fact for many of them going on maternity would be tantamount to summary dismissal given the precarious nature of the work.

### Maternity cash benefits duration

In the public sector, maternity leave is paid for a duration of three months to all qualifying categories of public sector employees without exception. Public officers who miscarry or have a stillborn during the third trimester are entitled to four weeks paid maternity leave from the date of such miscarriage or stillbirth.

In the private sector, however, the benefit structure varies according to the sector as follows (in accordance with the Wages Notice 2015)

- In Textile, Clothing, Leather and Manufacturing sector, as well as in the Private Security Sector, maternity leave is paid for six weeks.
- Maternity leave for other sectors is paid for the full duration of maternity leave which is 12 weeks, broken down as six weeks before confinement and six weeks after confinement.

The duration of maternity leave may be extended in the event that the employee experiences medical complications. In addition to paid maternity, lactating mothers are afforded some time off to nurse their babies. In the private sector, they are allowed one hour while those in public sector have two hours break a day.

### Maternity cash benefits amount

In the public sector, maternity leave is paid at the rate of 100% of earnings. However, labour law applicable to the private sector requires that employees are entitled to maternity leave although it does not demand that it be paid. The payment of maternity in private sector was borne out of the process of collective bargaining in wage negotiations. The Wages Code 2014 is silent on the amount of paid leave for the different sectors. Some sectors are paid 100% of their salaries for the duration of maternity leave, while others are paid 50%.

### Maternity cash benefits eligibility

Whilst there are no special qualification requirements for expectant mothers in the public sector, expectant mothers in the private sector have to meet certain requisite conditions in order to qualify for paid maternity leave. They are as follows:

- The pregnant employee must have completed at least a year of continuous service with the same employer.
- The maternity period is limited to two confinements only per employee (for a and b) during her employment with the same employer. This means that the employee would not be entitled to paid maternity leave if they fall pregnant with the third child onwards.

Additional administrative requirements are that a pregnant female employee shall give notice of her anticipated confinement by delivering to her employer a written certificate signed by a medical officer or a registered nurse or midwife certifying that the employee's confinement will probably take place within six weeks from the date of that certificate. Within 21 days immediately after her confinement, a female employee shall deliver to her employer a written certificate signed by a medical officer or a registered nurse and midwife certifying the date of confinement.

### Financing

Maternity protection in Lesotho operates under the principles of employer liability which means that maternity protection is financed directly by the employers. The model carries the disadvantage of discouraging employers from hiring women of child-bearing age for fearing for such responsibility<sup>25</sup>.

<sup>24</sup> Cobbe, J. (2012). Lesotho: From Labor Reserve to Depopulating Periphery?. Migration Policy Institute, Washington DC.

<sup>25</sup> Collier, D and Godfrey, S (2014) ILO technical assistance in a least developed country context: the making of labour law for the Lesotho labour market. University of Cape Town.

### Administration and institutional framework

The Labour Department is the custodian of the Labour Code. Provision for public servants are under the custody of the Ministry of Public Service.

### Gaps and Challenges

Lesotho has made some progress in providing protection in case of maternity. Be that as it may, the system still falls short in many ways as outlined below.

**Disparities in benefits across private/public sectors.** Some sectors are paid 100% of their salaries for the duration of maternity leave, while others are paid 50%

**Exclusion from coverage in law and/or in practice.** Domestic workers are excluded from the definition of employee. Employees in the informal sector are not excluded but do not usually benefit from paid leave.

**Stringent eligibility criteria.** Paid maternity leave is limited to two confinements in the private sector. Entitlement is based on at least one year of continuous service.

### Past and present policy reform processes

**Comprehensive social security.** The current model of employer liability imposes a heavy burden on the employers thereby making it impossible for them to adequately protect employees in need of maternity protection. The Cabinet of Lesotho is considering the adoption of legislation geared towards the establishment of a comprehensive social security scheme which would cover wide-ranging contingencies including maternity income protection. This means that the maternity protection under the new scheme would be delivered to all on an equal basis across industries unlike under the current situation where the system is polarised and inconsistent. It is being proposed that public sector also be covered under the same regulations.

The legislation is now waiting to be tabled in Parliament after which it becomes law.

### Conclusion

Lesotho has limited safety nets and these are still in their infancy. Although these are still inadequate in several respects, the country is often hailed for being a good example that demonstrates that even the least developed countries can afford certain levels of social protection. Be that as it may, Lesotho does not have a social insurance scheme for the private sector. Current provision operates as an employer liability model that offers maternity protection directly from employers.

Taking this responsibility away from the sole employers would ensure equality of treatment of all irrespective of the sector of the economy. The existing proposed law is however silent on the exact nature of benefits, which have to be determined in specific regulations. More importantly Lesotho does not have a social security fund for the private sector. The implementation of maternity benefits on a social insurance basis will thus still take some considerable time and effort.



## 7.4 Mozambique

### Socio-economic context

Mozambique is located in southern Africa, bordering Malawi, Zambia, Tanzania, Zimbabwe. The country has just over 28 million people, with the labour force consisting of 12.5 million<sup>26</sup>. Employment in the formal sector is estimated to be around just 14% of the total employment which approximates to 1,750,000 workers. It is projected that 300,000 youths join the labour force every year. Mozambique has an estimated employment-to-population ratio at 62%, is lower than the average for the sub-Saharan Africa. Women aged 15+ have higher employment rate (63%) than men (60%) which is in contrast to other countries in the continent. However,

<sup>26</sup> [http://www.ulandssekretariatet.dk/sites/default/files/uploads/public/PDF/LMP/Imp\\_mozambique\\_2017\\_final.pdf](http://www.ulandssekretariatet.dk/sites/default/files/uploads/public/PDF/LMP/Imp_mozambique_2017_final.pdf)

women are almost four times less likely than men to receive a salaried, formal sector job. They often receive lower pay than men for the same work and are less likely to have access to credit. ILO has estimated an unemployment rate at 22 % for Mozambique in 2016. This is slightly higher among women than men.<sup>27</sup>

### Legislation

Maternity (income) security for public sector workers is determined by the *General Statute for State Officials and Agents of 2017*.

Maternity (income) security for private sector workers in the formal sector is determined by the *Labour Law of 2007*. Decree 14/2015 incorporates own account workers into the National Institute for Social Action (INSS) and potentially extends maternity (Income) to them.

### Scope of coverage

**Public sector.** The projected total coverage of the INPS for 2017 is 271,803 individuals (ILO 2014). There is no data on the number of contributors who have benefited from the maternity benefit.

**Private sector.** The INSS has a projected coverage of 366,669 individuals. The projected coverage for the maternity benefit for 2017 is 973 individuals (ILO 2014).

**Own account workers.** While own account workers have been historically excluded from maternity (income) security, their incorporation into the INSS through Decree 14/2015, has the potential to extend maternity benefits to registered informal workers. By the end of 2016, 8,000 informal workers had registered with the INSS.

### Maternity cash benefits duration

**Public sector.** This year the Mozambican Parliament approved the extension of paid maternity leave from 60 to 90 days, for public sector workers. According to the *General Statute for State Officials and Agents of 2017*, maternity leave can be combined with other forms of paid leave, and taken up to twenty days before the birth of the child. Women who miscarry after the seventh month of gestation, are also eligible for paid maternity leave. In the case of maternal mortality or incapacitation, the father has the possibility of extending paternity leave from 7 to 60 days, subject to authorization by the medical *junta*.

**Private sector** workers registered with the INSS receive 60 days of paid maternity leave. Contributors can request the maternity benefit up to 20 days before the birth of the child.

### Maternity cash benefits amount

**Public Sector.** The value of the benefit per day is equivalent to 100% of the average daily wage.

**Private sector.** The value of the benefit per day is equivalent to 100% of the average daily wage. The maternity benefit is paid monthly, until the last day of each respective month.

### Maternity cash benefits eligibility

In the public sector the maternity benefit is not dependent on past contributions, making this a partially contributory system. In the private sector, to be eligible for the maternity benefit, workers must be registered with the INSS and have made contributions for at least six months in the year prior to the beginning of the leave period, including for two months immediately prior. To access the benefit, they must present a prenatal form, a medical certificate, a copy of their identity document, and a form filled out by their employer.

### Financing

**Public sector.** The INPS is financed through the contributions of workers and the state budget. Public sector workers contribute 7% of their monthly income to the INPS.

<sup>27</sup> Ibidem

**Private sector.** Historically private sector employers have absorbed the costs of paid maternity leave. Recently, the source of financing shifted from the employer to a contributory social insurance scheme administered by the National Institute for Social Action (INSS). Under this scheme, private sector workers contribute 3% of their monthly income, and employers 4%.

**Own Account workers.** Decree 14/2015 establishes a contribution rate of 7% of monthly income, paid exclusively by workers. While own-account workers self-declare their income, it cannot fall below the sectoral minimum wage for their respective sector, which is approximate to the minimum pensions. The lowest monthly minimum wage is Mzn 3642 (\$58), for the agriculture and fisheries sector; and thus, the lowest possible contribution, Mzn 255 (\$4) per month.

#### Administration and institutional framework

**Public sector.** The social insurance scheme for public sector workers is administered by the National Institute for Social Providence (INPS). The INPS was created by Decree 8/2014. Under the tutelage of the Ministry of Economics and Finance, it is responsible for managing social insurance for public sector workers.

**Private sector.** The INSS was created by Decree 17/88. Under the tutelage of the Ministry of Labor, Employment and Social Security, it is responsible for managing social insurance of private sector workers. The INSS has a tripartite board of directors—comprised of representatives of workers, employers and the state—which is responsible for the overall management of the institution, including the approval of internal regulations, the budget, procurement, and investments. The president of the Board of Directors is nominated by their respective constituency and appointed by decree by the Council of Ministers. The Director General is responsible for executing the decisions of the Board of Directors, including authorizing revenue and expenses, and legally representing the INSS. At the central level the INSS is comprised of departments and sections; at the local level of provincial delegations, provincial sections, and district directorates. The contributions are managed by an integrated information management system (IMS), developed in 2011 and gradually being phased in, which collects contributors' information, records contributions made and benefits paid out, detects internal irregularities or anomalies, and provides valuable information for external audits.

In 2009, the Council of Ministers approved Decree No. 49/2009, which seeks to strengthen the articulation of contributory social insurance schemes administered by the Ministries of Labor, Finance and the Bank of Mozambique so as to facilitate the transfer of benefits between schemes.

#### Gaps and Challenges

**Barriers to inclusion for self-employed workers.** While it is too early to tell what the impact of own-account workers into the INSS will be for the extension of maternity (income) security, the terms of their incorporation pose many barriers. First, the system puts the burden of contribution exclusively on the shoulders of own-account workers. Second, for own account workers who earn a monthly income that is less than the minimum wage, registration with the INSS is unaffordable. Third, partly because of the previous challenge, the INSS has focused registration drives in urban areas, to the detriment of workers in rural areas, where three quarters of Mozambicans continue to live. Fourth the combination of onerous registration and contribution processes, the long periods of contribution required, and a lack of trust in the INSS due to historically poor and unaccountable service delivery, has meant that own-account workers are reluctant to register with the scheme.

**Administrative challenges.** For workers registered with the INSS, access to the maternity benefit is constrained by the weak dissemination of information regarding the rights and obligations of workers and employers; the non-payment of contributions by employers to the INSS, and weak monitoring capacity by the institution; the inaccurate registration of contributions into the IMS, which ultimately makes workers ineligible for the benefits; the slow processing of maternity benefit requests; and confusion regarding the value of the benefit (with some INSS offices saying that workers are only eligible for 65% of their salary, not 100%).

**Duration of maternity benefits in the private sector.** Despite gains in the public sector, the period of maternity (income) security for workers registered with the INSS remains 60 days. This is significantly lower than most countries in the region. In the absence of a period long enough for workers to ensure their safe recovery and that of their new-born child, workers are forced to cobble together paid holiday and paid maternity leave. The

limited scope of coverage, combined with an inadequate level of maternity (income) security, is of concern given Mozambique's high rates of maternal and infant mortality.

#### Past and present policy reform processes

**Maternity protection for the private sector.** With the proposed revision of the Labor Law of 2007, paid maternity leave will be extended from 60 to 90 days. However, the revision of the Labor Law of 2007 remains uncertain given concern from some social partners that such a revision will result in less protection for workers.

**Non-contributory maternity benefits.** As detailed above, the scope of maternity (income) security coverage through contributory schemes is extremely limited. Although a non-contributory maternity grant was proposed as part of the revision of the National Strategy for Basic Social Security (ENSSB), such a proposal was considered political unviable and potentially undesirable, given concern about high fecundity rates and teenage pregnancy. Instead, policy discussion centred on a child grant (see next section).

**Ratification of ILO Convention 183 on Maternity Protection.** The OTM's (organization of Mozambican workers') Women Worker's Committee (COMUTRA) emphasizes the importance of continued pressure to ratify ILO Convention 183. They stress that the expansion of coverage and extension of the maternity benefit to 90 days is only one component of Convention 183 on Maternity Protection, which includes medical benefits, occupational health and safety protection in the workplace, employment protection and non-discrimination. While maternity (income) security can contribute to the socialization of care, the provision of quality, affordable, social services, including childcare, is a core component of maternity protection. .

#### Linkages to other benefits

**Child grants.** In 2016, the Council of Ministers approved a child grant for infants between the ages 0 and 2 years, to address the high rates of infant mortality and chronic malnutrition (GoM 2016). According to the targets established by the ENSSB 2016-2024, the child grant will cover 50,000 infants in an initial pilot phase, and 1,401,937 infants until 2024. However, the regulations for the new basic social security programs have yet to be approved, and the child grant designed. It is thus too early to determine the extent to which such a grant can contribute indirectly to maternity (income) security.

#### Conclusion

Despite recent advances, the scope of maternity (income) protection remains limited due the nature of Mozambique's labour market, (own-account) workers' limited contributory capacity and the absence of a non-contributory maternity benefit.



## 7.5 Namibia

#### Socio-economic context

The population of Namibia is projected to reach 2,504,498 in 2020<sup>28</sup>. Population in working age (15 years and above) in 2018 was 1,531,967. Out of this 1,090,153 are in the labour force, while the remaining 438,770 people are outside the labour force. At National level the number of the employed population increased from 676,885 in 2016 to 725,742 in 2018.

There were more males than females in employment in both rural and urban areas, with the difference being more significant in urban areas<sup>29</sup>. The majority of those who live in rural areas are subsistence farmers and are susceptible to food shortages during times of drought. Among other factors, prolonged periods of drought in the recent years have motivated many working age adults to migrate to urban areas in search of a better livelihood.

<sup>28</sup> <https://d3rp5jatom3eyn.cloudfront.net/cms/assets/documents/p19dn4fhgp14t5ns24g4p6r1c401.pdf>

<sup>29</sup> [https://d3rp5jatom3eyn.cloudfront.net/cms/assets/documents/Key\\_Highlight\\_2018\\_Labour\\_Force\\_Indicators.pdf](https://d3rp5jatom3eyn.cloudfront.net/cms/assets/documents/Key_Highlight_2018_Labour_Force_Indicators.pdf)

Namibia is endowed with natural resources and the economy relies heavily on the mining, agriculture, fisheries and tourism sectors. Over the past years (2012-2016), Namibia's gross domestic product (GDP) expanded by an average of 4.8% per year, while real GDP per capita increased by an average of 2.9% per year<sup>30</sup>.

While this relatively high level of economic growth and other policy interventions have resulted in significant reduction in poverty, income inequality (Gini coefficient of 0.572 in 2015/16) and the unemployment rate (34% in 2016) remain relatively high. Women, in particular, are more susceptible to high poverty incidence, earnings disparity and informal employment<sup>31</sup>.

### Legislation

Maternity leave and cash benefits are provided and regulated under the Social Security Act 1994 and the Labour Act 2007. Namibia has not ratified the ILO Maternity Protection Conventions No.103 or No. 183.

### Scope of coverage

Every employee employed by an employer must be registered with the Social Security Commission. Every employee registered by the Commission is a member of the Maternity Leave, Sick Leave and Death Benefit Fund. The Maternity leave, Sick leave and Death (MSD) fund is aimed at providing income security in the event of sick leave and maternity leave. The fund also pays out a benefit in the event of retirement, permanent disability or death. Affiliation to the fund is compulsory for all employed persons working at least one day a week on a regular basis, including household workers, casual workers, and part-time workers and employees of Small and Medium Enterprises (SMEs). Self-employed persons register as members on a voluntary basis. There are currently over 630 000 employees who are registered members of the MSD fund and 48% of these are female (Namibia Statistics Agency 2017).

### Maternity cash benefits duration

Maternity leave is payable for a maximum period of 12 weeks (three months) to be taken at least four weeks before and six weeks after delivery. The Namibian Labour Act, 2007 has made provision for four weeks of maternity leave on top of the 12 weeks provided for in the Social Security Act. This benefit is called extended maternity leave and is only granted by motivation of medical doctor on the following grounds:

- due to complications arising from pregnancy or delivery, and/or
- due to complications arising from birth or congenital conditions and it is necessary for the health of the child.

### Maternity cash benefits amount

Maternity leave benefits to female members equal 100% of monthly basic wage up to ceiling of N\$13 000.00 payable, with a minimum of N\$300.00 per month.

### Maternity cash benefits eligibility

To be eligible for maternity benefits, a member must have contributed to the MSD fund for at least 6 months. The eligibility conditions for other funds are to be provided under the regulations issued by the Minister on recommendation of the SSC.

### Financing

The contribution rate for the MSD Fund is 1.8% of the employee's basic wage shared on a 50/50 basis by the employer (0.9%) and the employee (0.9%) from N\$300.00 per month to the ceiling of N\$13 000.00. Employees earning N\$300.00 or less per month are required to contribute the minimum of N\$2.70 per month, while those earning N\$ 13 000.00 or more per month contribute N\$ 81.00 per month. A self-employed person's contribution is a combination of both an employer and an employee's contribution (i.e. 1.8% of his / her basic wage/ income).

<sup>30</sup> [https://www.npc.gov.na/?wpfb\\_dl=315](https://www.npc.gov.na/?wpfb_dl=315)

<sup>31</sup> Ibidem

Employers are obliged to keep paying the other benefits (pensions, medical aid) during pregnancy but forgo the part that is covered by the social security contributions up to the ceiling. Benefits are paid directly to the mother.

In 2016, the SSC MSD fund was reported to be in a financially sound position<sup>32</sup>.

### Administration and institutional framework

The Social Security Commission (SSC) is mandated to provide social protection and social insurance by administering funds established by the Social Security Act or any other fund assigned to it. It currently administers three main instruments: the Maternity Leave, Sick Leave and Death Benefit Fund (MSD Fund), the Employees' Compensation Fund (EC Fund) and the Development Fund (DF). In the future it is intended to oversee national pension and medical benefit funds. The SSC has 14 regional and satellite offices across 14 regions (some regions have two offices, three regions have no social security office).

Maternal benefits are paid in three tranches. The first payment is made on presentation of medical certification by a doctor indicating the expected date of delivery four weeks prior to due dates. The second payment is released on receipt of proof of delivery (birth or death) of baby. The third payment is made after four weeks, on receipt of documentation confirming return to work (declaration by employer or employee in form of declaration). The SSC has implemented an Electronic Data Interface (EDI) project, to enable employers to submit their monthly returns electronically in a particular file format, rather than manually, thereby substantially reducing the burden on employers. However, there is no electronic exchange of documents in Namibia. So documentation for maternity benefit claims need to be submitted in person and are entered onto the system manually by SSC staff.

### Gaps and Challenges

**Low level of benefits.** The maximum salary scale ceiling of N\$13 000.00 (\$1042) has negative implications on women who earn more than N\$13 000.00; this benefit does not sustain their needs during maternity leave. Low benefit levels cause members to become reluctant to claim from the SSC. In some instances they opt to come back early to work in order to get their full monthly salary from employer or rather accumulate leave days so that they can make use of the annual leave days instead of claiming from the MSD fund.

**Exclusion from coverage.** In practice, informal economy workers, the majority of whom are women, remain excluded from social security coverage and thus unable to benefit from the MSD fund. Employed informal sector workers are eligible, but registration is hard to enforce. With regard to self-employed workers, while it is legislatively possible for them to access social security benefits on a voluntary basis, uptake has been limited and many challenges have meant that coverage remains low. Administratively, lack of postal and email addresses for many self-employed workers have generated administrative and communication barriers.

**Lack of paternity and adoption benefits** under the MSD is viewed as shortcoming by some members.

**Administrative weaknesses.** These include failings or delays in data capturing on information systems, for example regarding contribution records (when claimants submit their forms, they may appear not to be up to date with their contributions, despite these amounts being deducted from their accounts). Documentation requirements in hard copy and delays in finalising claims have also caused inefficiencies in the system.

### Past and present processes of reform

**The establishment of the Social Security Commission (SSC).** The tripartite SSC was established with strong government involvement in 1994, when the government provided a loan of NA\$5 million. Employers were initially resistant but the tripartite nature of the commission made the reforms acceptable. Critical voices included the concerns of employers (informed by private actuarial calculations) who questioned whether the fund was going to be sustainable. The Maternity, Sickness and Death fund was supported by trade union,

<sup>32</sup> <https://www.newera.com.na/2016/03/17/social-security-increases-member-benefits/>

however women's groups critiqued the reduced maternity benefit 80% replacement rate and demanded that this be set at 100%.

The Office of the Prime Minister developed the initial system to register members. An initial registration period of 90 days was agreed to give employers time to register their employees. However questions regarding the administrative capacity of the Commission to register members, and the delayed issue of social security cards (dispensed only three-four years later) contributed to a loss of trust in the scheme, though this has now stabilised.

**Changes to the income replacement rate and the income ceiling.** Women's associations argued that the replacement rate was low. They also advocated that the maximum salary ceiling was restrictive for higher paid women. The ceiling was raised from N\$9,000 to N\$ 10,000 in 2010 and to 13,000 in 2016 but is still considered low. The policy objective is to gradually increase to N\$20,000 then N\$30,000 over the next five years.

**Duration of maternity leave.** Convention number 183 of the International Labour Organization (ILO) stipulates that maternity leave period shall not be less than 14 weeks. The current maximum period of 12 weeks thus falls short of meeting the minimum convention maternity leave period. The SSC is working to amend the Act in order to increase the maternity leave period to 14 weeks. This will be sequenced to follow the raising of the ceiling level to N\$30000.

**Extension to the informal sector.** Efforts are currently underway to effectively extend social security coverage to the informal sector with an emphasis on first clearly identifying and understanding the needs of this sector. An initiative was undertaken to improve coverage of the taxi industry in in three regions including Windhoek. Challenges included the limited information available from the transport registration authorities regarding the employment status of taxi workers. Efforts to collaborate with domestic workers' unions have also met with challenges. Options for coverage of informal economy were on the table; but require changes to the Law. These have been postponed, since pension reform has been prioritised.

**Access to health facilities.** Access to maternal healthcare is compromised by income replacement shortfalls as well as low incomes. Women in rural areas found it harder to access health facilities when they need them and by delaying seeking care, may result in maternal and infant deaths. The SSC has engaged the MoHSS to build maternity shelters at hospitals in Outapi, Katima Mulilo and Rundu at an estimated cost of N\$40 million. This includes delivery beds worth N\$3 million. An SSC spokesperson stated that "currently many of our pregnant mothers are squatting under trees to be close to hospitals when they go into labour" and added that it is an unpleasant scenario to see them endure harsh weather conditions.<sup>33</sup> The WHO is also funding the construction of maternity waiting home at Opuwo which should be completed by the end of the year 2017. The maternity waiting homes are part of a comprehensive approach to bringing better quality care to pregnant women in Namibia.

## Conclusion

Namibia is one of the few cases in Africa where maternity social insurance benefits are available to self-employed women. Uptake of voluntary affiliation has been slow. The costs of accessing the existing package and cumbersome administrative procedures for this category of workers can partly explain the obstacles to further expansion of maternity income protection for Namibian women.



## 7.6 Rwanda

### Socio-economic context

Rwanda is a small and landlocked country, characterized by a hilly and fertile landscape, dependant on agriculture, and with a dense population of about 11.9 million people (2016). Women accounted for 51% of the total population. The total number of people employed totalled 3.096 million with females a total of 1.377 million. More than a half of the population is outside the labour force, representing 25.7 % of working age population, was exclusively involved in subsistence agriculture in February 2018.

<sup>33</sup> <https://www.newera.com.na/2016/03/17/social-security-increases-member-benefits/>

The country has one of the fastest growing economies in Central Africa. Real GDP growth reached 6.1% in 2017 and was estimated at 7.2% in 2018. Strong economic growth was accompanied by substantial improvements in living standards. The %age of people living below the poverty line dropped from 57% in 2005 to 39% in 2014 while inequality measured by the Gini coefficient fell from 0.49 to 0.45. The unemployment rate in Rwanda stood at 16.0 % in February 2018.

Rwanda has a strong focus on home grown policies and initiatives, led by a determined government and their implementation with the support of development partners has contributed to significant improvement in access to services, human development indicators and building necessary institutions. Remarkably, under-5 child mortality dropped by two-thirds, achieving the MDG target. It exceeded the target of reducing maternal mortality rate by two-thirds, achieving an 84% reduction, compared with a sub-Saharan average of 49%<sup>34</sup>.

### Legislation

The coming into force of the maternity protection scheme under the Rwanda Social Security Board follows the promulgation of the law of March 30, 2016 establishing and governing maternity leave benefits scheme and the promulgation of the Ministerial Order of October 28, 2016 relating to maternity leave benefits scheme [<http://profemmes.org/spip.php?article31>]

Rwanda went through successive maternity protection reforms.

- Previous legislation through the Law No 51/2001 of 30th December establishing the Labour Code and the Law No 22/2002 of 09/07/2002 on General Statutes for Rwanda Public Service) provided two thirds income replacement rate for private sector employees and full pay for public sector employees for a duration of 12 weeks.
- Then, the Labour Law 2009 introduced a regressive reform, entitling women with a first 6 weeks of maternity leaves fully paid by the employers, followed with a second period of 6 weeks paid at 20 % of earnings only – obliging women to choose between significant loss of income or an anticipated return to work to keep their income. Therefore, this law was viewed as discriminatory because female employees had to essentially choose between returning to work after 6 weeks of maternity leave or completing the entire 12 weeks' leave but lose out on 80% of their income.
- The recently enacted Law N.003/2016 of 30th March 2016 and the Ministerial Order N 007/16/10/TC of 28th October 2016 altered the position as it related to maternity benefits under the 2009 law. The 2016 law, established and governs a new maternity leave benefits scheme. The newly introduced maternity benefits insurance scheme ensured that female employees are entitled to 12 weeks leave at full pay. The scheme shall be financed by contributions from both the employee (0.6% of gross salary) and employer (0.35%).

Rwanda has not ratified ILO Maternity Protection Conventions No.103 or No. 183.

### Scope of coverage

Law N.003/2016 of 30th March 2016 and the Ministerial Order N 007/16/10/TC of 28th October 2016 apply to all workers governed by Rwandan labour law, by general statutes for public service or by special statutes. The Law provides a broad definition of an employer ("any person who employs one or several employees on either temporary or permanent basis") and an employee ("any person who performs any activity in exchange for payment") and therefore applies to the vast majority of workers, both in the formal and informal economy (though not to self-employed workers). But in practice only the formal sector is covered and only 10% of the working female population. So the problem of coverage of informal economy is one of implementation including financing.

### Maternity cash benefits duration

The new social insurance scheme now allows expectant salaried women to benefit from maternity leave for a period of 12 weeks. Additional leave in case of medical complications resulting from maternity, and, shall be

<sup>34</sup> Abbot P., Sapsford R., Binagwaho A. Learning from success: how Rwanda achieved the Millennium Development Goals for Health, 2016

granted - in the limit of one month - when certified as such from an authorized medical doctor. In addition, female employees are entitled to a daily breastfeeding break of one hour for a period of twelve months starting from the date of delivery.

#### **Maternity cash benefits amount**

Since November 2016, the maternity leave for salaried women is fully paid – provided the requisite contributions are made not later than 15 days of every month following the month of contribution. 100% of the insured's daily earnings is paid for 12 weeks: six weeks by the employer and six weeks by social insurance (reimbursed to the employer). Up to one additional month of maternity leave is paid in case of delivery complications certified by an authorized medical doctor.

#### **Maternity cash benefits eligibility**

Conditions to access maternity leave benefits are not restrictive and allows a vast majority of women to benefit. The conditions are as follows:

- The employee must have contributed to maternity leave benefits scheme for at least one month preceding the month in which she starts her maternity leave;
- The employee must be on maternity leave, as evidenced by a prescribed form duly signed by the employer and submitted to the Social Security Administration within six months from the date of commencing maternity leave;
- A presentation of a medical certificate of delivery duly signed and stamped from a recognized health facility must be communicate to the RSSB.

#### **Financing**

Prior to 2016, maternity benefits were subject to employer liability. Under the current dispensation, Rwanda is transitioning from a financing mechanism relying entirely on employers to a mixed financing model which combines social insurance and employer liability. The first six weeks of maternity leave are paid directly by the employer. For the 7th to the 12th week, the employer is required to pay the maternity leave benefits directly to the employee and then claim reimbursement from the RSSB at the end of the six week period.

Monthly contributions amount to 0.6% of every employee's gross salary (minus transport allowances and other compensatory allowances). Contributions are equally shared between employer and employee. Contributions are made by all employees without distinction of sex, and all employers in the country (private and public, without distinction of businesses sizes). Remittances of due contributions is employers' liability and must be done on a monthly basis, and not later than the 15th of every month.

#### **Administration and institutional framework**

The scheme introduced in 2016 is implemented by the Rwanda Social Security Board (RSSB), as a separate scheme from the other social security schemes operated by the RSSB. The institution currently manages five schemes namely: Pensions, Occupational Hazards, Medical, Community-Based Health Insurance (CBHI) and Maternity Leave Benefits.

The collection of contributions for the Maternity Leave Benefits (MLB) Scheme is done by taking advantage of the existing synergy between the Social Security Board of Rwanda (RSSB) and the tax administration called Rwanda Revenue Authority (RRA). An integrated software package called E-tax has been developed and implemented which unifies the collection of PAYE tax, Pension & Occupational hazards, Medical and Maternity Leave Benefits schemes contributions. This system allows the use of one single annexure (declaration form) to file returns of PAY As You Earn (PAYE) tax and all RSSB contributions. The technical innovation is guided by a strategy of widening the tax base as well as the social security coverage. It also aims to ensure compliance, reduce turnaround time and achieve the delivery of services to contributors/taxpayers according to the highest standards. It is anticipated that this will promote and contribute to the development of doing business in Rwanda.

Under the unified declaration for PAYE tax and all RSSB contributions (Pension, Occupational hazards, Medical insurance and Maternity leave schemes) the collection of contributions starts with the declaration process

which combines the filing of tax returns and monthly contributions, using one single annexure (declaration form). This declaration form is accessed and submitted through an online portal called E-tax and is currently used by all taxpayers and contributors who are both PAYE and RSSB registered. After the submission, the system makes computations and informs the contributor/tax payer how much he/she owes for every type of return and he/she can proceed with payment remittance which is also done online.

Once the amount paid is equal to the amount of declared contributions, the E-tax system communicates the data to the RSSB contributions databank so that employer and employee accounts can be updated.

#### **Gaps and Challenges**

**Financing:** half of the benefits are financed through employer liability. This mixed model duplicates administrative procedures (some documents such as birth certificate are requested by both the employer and the RSSB).

**Exclusion from coverage and compliance:** the main challenge remains the coverage of informal economy workers. Currently maternity protection focuses only on the formal sector. There is some possibility that in the future social insurance could be extended to informal workers via the CBHI, which receives government funding and reaches a large proportion of the population who do not receive regular incomes. However, this would require a thorough feasibility study. It is worth noting that in Rwanda, there is an increasing level of formality, with private sector federations, cooperatives and trade unions trying to organize groups of workers in informal economy. The scheme is not accessible to self-employed. However, self-employed can be voluntarily covered by the pension benefit under the same social insurance organization, so it should not be difficult to implement maternity cover for self-employed.

**Administrative challenges.** Timely payment of benefits can be improved as there is currently a heavy workload on existing staff. There are currently five staff to manage the scheme. According to its administration, six more officers and supervisors are needed for the scheme to operate smoothly.

#### **Past and present policy reform processes**

**Introduction of the 2016 Maternity Law.** Given the inadequate maternity provisions in labour law post-2009 (stating that employers should pay women a salary for the first six weeks of maternity leave and that the remaining six weeks would be paid at 20%), there was a clear need for social insurance. Women's umbrella associations and trade unions were supportive. Employers were initially resistant to the introduction of maternity protection. Smaller companies, and particularly those in the construction and manufacturing sectors were especially resistant, since their female employment levels were low and they perceived the mandatory contributions as an unnecessary burden. The feasibility study and technical support provided by the ILO were significant in gaining the support of employers.

There was political will for maternity protection and parliamentarians were in favour of coverage for all women. However concerns regarding ability to make contributions meant that only coverage for employed women was taken into account. Several options were considered. Some proposed a voluntary scheme, there were also suggestions that only women should contribute (but this was recognized to be counter to the solidarity principles of social insurance). Finally a mixed model of financing was agreed so that contributions and the impact on pay would be modest. In the future the RSSB would like to move to a full social insurance model. There hasn't to date been a formal assessment of uptake and impact. But women have expressed support for the scheme. When law was adopted, there was early technical preparedness and a dedicated ICT system was developed before full integration. Issues that had to be addressed included dissemination and communication.

**Awareness and communication.** The public relations and communication unit at RSSB, carry out extensive sensitisation to ensure efficient implementation of the scheme. Public awareness through media (show on TV, Radio Talk, and Online Information, Written Tools (Leaflets, Booklets, Banners, and Magazine Articles) are regularly organized, as well as workshops to targeted groups of workers.

### Linkages to other benefits

**Medical benefits** are covered by the employee's medical insurance. All civil servants (public service workers) are insured in RSSB Medical Scheme, whereas private sector workers may subscribe to RSSB medical scheme or to private medical insurances. Informal economy workers are covered through the RSSB's CBHI scheme.

### Conclusion

The establishment of the Maternity Leave Benefits Scheme in Rwanda brought great relief to mothers, their families and society as it provides enough time to the female employee to take care of the new-born baby and to recover from the consequences of the pregnancy and the delivery. It also protects the woman, thus the family economically. It also corroborates the Rwandan policy to value and empower the woman. However many female workers (particularly in the informal sector) do not yet have coverage. The current model is a hybrid model, and may transition to a full social insurance model in the future.

## 7.7 South Africa

### Socio-economic context

The total population of South Africa reached 55.5 million in 2016 almost equally distributed between women (51%) and men (49%). The employed population reached 16.2 million (7.1 million women). 67% are employed in the formal sector. Total unemployment rate was 26.7% (29% for women).

Poverty rates declined from 2006-2011 but rose in 2015, with a poverty headcount of 55.5% (57.2% for women), equivalent to 30.4 million South Africans living in poverty (2015). Inequality rates are also very high, measuring a Gini coefficient of 0.68 in 2015. Economic growth has been slow in the past five years, GDP grew in 2017 by 1.3% driven by the agriculture, mining and finance sectors. Since the financial crisis in 2008, unemployment has been rising and is currently 26.7%.

South Africa has high rates of maternal mortality. Although the country has seen improvements since 2011, the number of women and girls who are dying during pregnancy or shortly after giving birth has increased dramatically since 2000. Today, the maternal mortality rate stands at 269 deaths per 100,000 live births, far higher than the rate of 38 which the government committed to achieve by 2015. Experts suggest 60% of maternal deaths in South Africa are avoidable. The government's stated target is for more than 60% of pregnant women and girls to access antenatal care before 20 weeks of pregnancy by 2016.

Antenatal care is free in South Africa's public health system and nearly all pregnant women and girls attend an antenatal clinic at least once during their pregnancy. However, most pregnant women do not access antenatal care until the latter stage of pregnancy. Such delays have been linked to nearly a quarter of avoidable maternal deaths in South Africa. Under-five mortality rates in 2016 were 43 per 1,000 live births.

### Legislation

Maternity leave and cash benefits are provided and regulated under the Basic Conditions of Employment Act 2002, the Unemployment Insurance Act 2001 and the Unemployment Insurance Contributions Act 2002. The Unemployment Insurance Amendment Act was signed into law in 2017, but has not yet been implemented.

South Africa has not ratified the ILO Maternity Protection Conventions No.103 or No. 183.

### Scope of coverage

South African law regarding maternity benefits covers employees (but not the self-employed). All employees are covered who receive remuneration (domestic and seasonal workers are covered from April 2003), except for independent contractors, government employees, employees who work less than 24 hours a month and foreigners who enter the country for the purpose of fulfilling an employment contract and who are required to leave the country upon termination of the contract.

The Unemployment Insurance Amendment Act (not yet implemented) will extend coverage to civil servants, employees under learnership agreements and foreign workers. Employees who work for less than 24 hours a month (for one employer) are not entitled to sign up for UIF, and thus cannot access maternity benefits. The Quarterly Labour Force Survey (4th quarter 2017) reported a total of 8.3m employees contributing to the UIF (3.4m females; 4.9m males). The UIF annual report reported that 98,589 maternity claims were approved in 2016/17.

### Maternity cash benefits duration

In South Africa, the Labour Law provides for four months' maternity leave, including obligation for six weeks after confinement. There is no minimum duration of maternity cash benefits under UIF. UIF benefits are paid for a maximum of 17.32 weeks (four months). A person's benefits accrue at a rate of one day's benefit for every six days of employment as a contributor. The worker may commence maternity leave four weeks prior to the expected date of confinement or earlier if a medical practitioner certifies that it is necessary for the health of worker or her child. Also, a worker is not allowed to work within six weeks of child's birth unless a medical practitioner certifies her to do so. In case of a miscarriage during the third trimester or a stillborn child the contributor is entitled to a maximum maternity benefit of six weeks after the miscarriage or stillbirth (extended to four months in the Unemployment Insurance Amendment Act). This provides support and time for them to recuperate emotionally, mentally and physically after the traumatic experience of losing their unborn baby.

### Maternity cash benefits amount

The Unemployment Insurance Act provides for a maternity benefit with an income replacement rate on a sliding scale from a minimum of 38% to a maximum of 60% of remuneration depending on level of income of the contributor (a higher rate for lower income contributors and a lower rate for higher income contributors), up to a ceiling of R14,872 per month. In the Unemployment Insurance Amendment Act the income replacement rate for maternity benefits is set at a fixed rate of 66% of a woman's salary. This is an important way to further interest higher income women.

Companies are not under a legal obligation to remunerate employees during maternity leave. Some companies in the private sector, offer complementary or basic maternity benefit packages, in addition to UIF. Employment contracts clarify how much of salary and benefits are paid during maternity leave, with each company having its own rules. For example, Pick n Pay allows their employees up to 11 months maternity leave, and pays their employees a portion of their salary for the period they are on maternity leave. The UIF can top up partial salaries below the income threshold. Employees may not draw benefits if maternity is paid by their employer at 100% of their salary (the replacement rate is computed on the basis of the basic salary; no commission earnings are included in the UIF calculation, when they can constitute a significant part of a woman's earnings, and therefore their benefit does not reflect an adequate replacement of their effective earnings).

### Maternity cash benefits eligibility

Workers on maternity leave may claim from the UIF if they have contributed to the fund for four months or more in the preceding year. An application can be lodged in the four weeks preceding the due date or within six months after the date of childbirth (extended to eight weeks before and 12 months after in the Unemployment Insurance Amendment Act). Documents required to submit a UIF claim are a medical certificate, birth certificate for the child and proof of banking details.

The pregnant worker must notify her employer in writing at least four weeks prior to the date of commencement of maternity leave and when she intends returning to work from maternity leave.

Domestic workers can claim, even if they work for more than one employer and are retrenched or dismissed at one of the employers or one of their employers dies.

### Financing

Maternity benefits are financed by compulsory social insurance. Overall, monthly contributions of 1% are made by both employers and employees (2% of salary in total) to the UIF, which is responsible for disbursing maternity benefits. The maximum earnings ceiling is R14,872 per month or R178,464 annually (increased to R 212,539

annually in the UIAA). For employees who earn more than this amount, the contribution is calculated using the maximum earnings ceiling amount. Therefore the maximum contribution which can be deducted, for employees who earn more than R14 872 per month, is R148.72 per month. Any payment above this rate is not compulsory, and is at the discretion of employers.

In 2017, 98,631 maternity/adoption claims were disbursed, adding up to ZAR920,719, equivalent to 11% of all UIF benefits disbursed. When taking into account any maternity payments paid to the applicant, the benefit paid may not be more than the remuneration the applicant would have received if the applicant had not been in confinement.

A financial assessment conducted in 2017 showed the fund to be in a good financial position, with a surplus in excess of ZAR 100bn.

#### **Administration and institutional framework**

In terms of governance structure, the Minister of Labour is the Executive Authority and appoints an advisory board comprising representatives from Organised Labour, Business, Government and Community. The Director General is the Accounting Authority and delegates powers to the Unemployment Insurance Commissioner. The Minister of Labour appoints the Unemployment Insurance Commissioner who in turn appoints claims officers in the regions to adjudicate on claims.

The Unemployment Insurance Fund operates in 9 provincial offices of the Department of Labour. In each province there is a head office, which manages the UIF dedicated services. There are 126 Labour Centres that members of the public can access to apply for benefits. These Labour centres further service 823 satellite offices and mobile units. Claims processing happens at 84 sites. Labour centres integrate several customer relations functions including UIF as well as the Compensation Fund for example. But processing and databases functions remain separate.

The UIF is responsible for maintaining a database of all employees, determining the contribution liability of employers, and administering the approval of benefit claims. Maternity benefit claims take six-eight weeks on average to process. The UIF has two core systems that are used in its operations:

- the Siyaya System for the registration of employers and employees and for processing claims, and:
- Computron which is a financial system used for the payment of claims and for recording collected revenue

In addition, the UIF has an on-line system called *u-filing* used by employers to declare their employees and to pay contributions to the fund. The same system is used by employees to make their claims on-line.

Employers are responsible for ensuring registration and payment. Every employer who has a minimum of one employee must register at the Department of Labour and by law must deduct and pay UIF contributions. Nobody is exempt and if the employer does not do so, the employee has the right to notify the Department of Labour or to take legal steps against the employer. Compliance is managed by the Department of Labour (DoL) whose generalist inspectors are responsible for all the DoL functions. In addition the UIF has several payroll auditors. The focus has been to improve self-regulation rather than to increase enforcement.

Since 2001, the South African Revenue Service (SARS) has been responsible for the collection of contributions. The UIF only collects contributions for employers and companies that don't fall under SARS (for example domestic workers). While some functions of the UIF are available online, maternity claims need to be processed in person.

#### **Gaps and Challenges**

**Administrative challenges** with accessing maternity benefits are a major issue. Delayed payments and bureaucratic/documentation requirements have undermined the advantages of maternity benefit provision. If benefits are not received during the maternity period, mothers may not be able to remain on leave or may suffer as a result. There are also implications for the nutritional intake of a newborn as without sufficient income new mothers might go hungry, affecting the health of their children. Further financial pressures may

occur as a result of the maternity benefit being smaller than a woman's salary (38-60% of salary), increasing the chance of mothers not taking the full four months to which they are entitled.

As a result, administrative barriers have been criticised as inhibiting rather than supporting the aims of the system to assist women in exercising their reproductive rights (Boswell and Boswell 2009). Amendments to the UIF legislation, and efforts to improve service may alleviate some of these issues. Labour centres are being converted into "centres of excellence", to increase speed of work processes. An article about UIF maternity claims quoted an interviewee stating that "I could not even enjoy my first month with my baby, because I was so stressed about money. I had no income and was dependent on the UIF money to support me and my child while I was on maternity leave. I could not pay my accounts and I had to borrow money to buy toiletries and nappies for my child. Only when I was back at work, four months after my application was submitted, my money was paid out".<sup>35</sup>

**Vulnerability in labour markets for women.** A study conducted in 2013 shows that women were under-represented in the UIF system because more women had part-time or contract work, which means that they have fewer credit days to apply for benefits, or struggle to access their benefits (Bhorat, Goga, and Tseng 2013). The absence of income protection in some jobs, heightens the vulnerability of pregnant women in low income, who do not enjoy the healthy environment and life styles of wealthier workers. A study conducted by the Institute for Poverty, Land and Agrarian Studies (PLAAS) recounted: 'A light-hearted but poignant exchange amongst participants in Khayelitsha who had worked in wealthy areas of Cape Town, compared their experience of pregnancy with those of wealthy white women, highlighting the lived experience of inequality. Respondent 4: "*White people, they have money they invest for their children's future from the time a person is pregnant (laughter)*". Respondent 2: "*For us it's very difficult when the baby kicks because of hunger, white people drink spring water and eat lettuce*"' (Wright et al. 2014, 107-108).

**Compliance** is low among domestic workers and very low in the taxi sector. Non-compliance with the act has been one problem in terms of implementation. For example many employers of domestic workers do not deduct UIF and do not make contributions on behalf of their workers. The law is strict regarding the issue however enforcement has been weak. Even if the domestic worker only works one day a week at the employer, she is entitled to UIF and deduction must be made. If the employer fails to deduct and pay UIF, the employer can face a fine and can even be imprisoned for up to 12 months. The court can furthermore rule that the employer must pay the benefits that the employee would have received if the contributions have been made.

#### **On-going reforms and studies and discussions**

The **Unemployment Insurance Amendment Act** (2017) was negotiated via the National Economic Development and Labour Council (NEDLAC) which brings together government, business, labour and community representatives to discuss issues of social and economic policy. As discussed above, the amendment extends the rate of income replacement to a fixed rate of 66%, and the timeframes for submitting an application (to 8 weeks prior to due date and 12 months afterwards). Further it provides for the payment of benefits to contributors who lose part of their income owing/due to reduced working times (benefiting for example domestic workers with multiple employers). Also, whereas previously maternity and unemployment components of the UIF used to be linked (access to maternity benefit reduced entitlements to unemployment benefit) the amendment stipulates that the benefits are accessed independently and the use of maternity benefits does not reduce duration for unemployment compensation. This is very important because the previous system discriminated against women.

**Low benefit ceiling.** Because of the low benefit ceiling, many large companies do not claim maternity benefits from the UIF for their staff, and rely instead on company packages to cover maternity costs. This has implications for the public acceptability of the social insurance scheme and its sustainability. However, the UIF system does serve small and medium size companies, who would otherwise struggle to cover the maternity costs for their staff (conversation with Anita Bosch).

<sup>35</sup> <http://reviewonline.co.za/107196/uif-woes-for-moms/>

**Pregnancy cash transfer.** There is a current proposal for the introduction of a means-tested pregnancy grant, to be made available to women from the second trimester of pregnancy. The Department of Social Development commissioned a study looking at social assistance for pregnant women. If this was introduced it would provide important support for women during pregnancy (Wright et al. 2014).

There are several arguments supporting the introduction of the grant. Firstly, although the child support grant (CSG) is available for women with infants, the 0-1 year category of children appear to be the most at risk of exclusion from the grant. Second, the CSG does not cover also the costs and charges with pregnancy before the birth of children. Third, only 14% of pregnant women in the poorest quartile are employed, either in the informal or the formal sector and thus do not benefit from UIF. Fourthly it could increase ante-natal and peri-natal health care access, and child and maternal health outcomes. Other additional options being considered are nutrition and childcare programmes (Chersich et al. 2013, Chersich et al. 2016).

#### Linkages to other benefits

**Good practice in administration:** momconnect in South Africa

MomConnect generates pregnancy- and health-related messages that are sent to women's mobile phones via SMS. Reminder messages are sent to women when they are due for a check-up at their local clinic. The system keeps tracks of critical milestones and appointments during and after pregnancy, and triggers the sending of text messages related to healthcare and important dates to the woman's mobile phone. "I immediately felt less alone," says Neliswa. "I might not have a partner at home to assist me, but receiving text messages to my phone is helping me to remember all the important things to attend to as a pregnant woman and mother-to-be." Instead of Neliswa having to keep track of important follow-up dates and appointments, she receives reminder text messages to remind her to visit her local clinic. She will continue receiving these messages until her baby turns 18 months.

MomConnect not only relies on mobile technology to improve healthcare, it's also an answer to the physical mobility of mothers-to-be. Like many other women in the region, Neliswa might not always visit the same clinic. This makes the tracking of patients quite challenging. Part of the MomConnect programme's inventiveness, is that it links the already existing medical registry to an electronic data base that can be accessed from all MomConnect clinics in the region. Taking the system a step further, MomConnect also communicates any important messages with regard to a particular woman to health workers.

#### Conclusion

South Africa has a system of social insurance which includes maternity benefits, but it does not in practice cover the majority of workers, particularly the self-employed and/or independent contractors. The latter includes workers who appear to be self-employed but are working under the supervision of someone or an agency. In addition, women tend to be under-represented in the UIF system because they tend to have part-time or contract work (Bhorat et al (2013)). This means that they have fewer credit days to apply for benefits, or struggle to access their benefits; More attention to such non-standard forms of work help redress inequalities in accessing benefits.

Recent amendments have positive effects on coverage, adequacy of benefits and the funds attractiveness to more women across income groups. The fund is bringing about changes in administrative processes, which will benefit women UIF can further improve coverage by mandating coverage of self-employed (example internationally the Swiss maternity insurance or UK maternity allowance apply to self-employed). Whilst it may be difficult to do it for all benefits managed by the Fund (notably unemployment benefits), it could grant access for self employed to a restricted package of benefits including maternity. The decoupling of maternity benefits from other benefits was a first step in that direction. An investigation is being done by the South African Law Reform Commission to advise on the best way to address this gap. This could also entail a scheme that would be partly or mostly funded by government, to ensure all women in informal economy are covered.



## 7.8 Tanzania

#### Socio-economic context

The total population of the United Republic of Tanzania was 54 million in 2017 and 1.3 million in Zanzibar. The population is growing fast at around 3.1% per year. An estimated total workforce population of 25.7 million out of which 22.3 million (87%) were economically active and 3.4 million (13%) were inactive<sup>36</sup>.

Tanzania has a higher employment participation rate than the Eastern African averages. Tanzanian men have higher employment participation rates than Tanzanian women (81% versus 78%).

Based on data from the Tanzania mainland Integrated Labour Force Survey 2014, around 43% (6.3 million persons employed in informal economy) of total households were in the informal economy. A broader definition of employment in the informal economy (i.e. including workers from subsistence farming) depicts Tanzanian mainland and Zanzibar with 85% and 88% workers in the informal economy, respectively<sup>37</sup>.

Average GDP growth in 2016 was a high 7%. Poverty has declined since 2007 with 26.9% of the population living in poverty in 2016<sup>38</sup>.

#### Legislation

Tanzania has two arrangements for maternity benefits. The first one is by way of employers' liability arrangement and the second one is through social insurance. For employers' liability, maternity benefits are covered under the Employment and Labour Relation Act 2006. For social insurance, maternity benefit is offered under several funds, each covered by different legislation: *National Social Security Fund Act 1997*, the Local Authorities Pensions Fund Act 2006 and the Government Employees Provident Fund (GEPF) Retirement Benefits Fund Act 2013 (maternity benefit provisions added in 2016), as well as regulations for the Public Service Pensions Fund and the PPF Pension Fund. Under the existing legal framework, employees may claim for maternity benefit under the social insurance programmes while at the same time receiving salary while on maternity leave<sup>39</sup>.

Tanzania has not ratified the ILO Maternity Protection Conventions No.103 or No. 183.

#### Scope of coverage

Private and public employees are covered by social insurance and/or employer liability. Many self-employed and agricultural workers are not covered. A cash transfer is available for low income pregnant women.

Overall, social insurance coverage is minimal and the programmes are complex and fragmented. There are a large number of contributory schemes in Tanzania, some of which are compulsory and some are voluntary. Currently Tanzania has five mandatory retirement benefits schemes which cover about 1.3 million<sup>40</sup> people. Maternity benefits are offered as short term benefits by these schemes. Supplementary schemes are voluntary and very flexible. For example, contributions can be made daily, weekly, monthly, or annually in the form of agricultural and livestock products such as eggs or tea.

The main contributory social insurance schemes are:<sup>41</sup>

**National Social Security Fund**, a mandatory scheme established in 1998. This scheme is mainly used by the

<sup>36</sup> [http://www.ulandssekretariatet.dk/sites/default/files/uploads/public/PDF/LMP/LMP2018/Imp\\_tanzania\\_2018\\_final2\\_0.pdf](http://www.ulandssekretariatet.dk/sites/default/files/uploads/public/PDF/LMP/LMP2018/Imp_tanzania_2018_final2_0.pdf)

<sup>37</sup> Ibidem

<sup>38</sup> <http://www.worldbank.org/en/country/tanzania/overview>

<sup>39</sup> Section 27(1) GEPF Retirement Benefits Fund Act of 2013

<sup>40</sup> Annual Reports of NSSF, PSPF, LAPF, GEPF and PPF 2015/2016

<sup>41</sup> LEYARO, V., KISANGA, E., NOBLE, M., WRIGHT, G. & MCLENNAN, D. 2017 *UNU-WIDER SOUTHMOD Country Report: TAZMOD v1.0, 2012, 201, UNU-WIDER SOUTHMOD Country Report Series*, Helsinki, UNU-WIDER.

private sector, by formal employees and self-employed people, though certain government employees can be members if they are not covered by any of the government-specific pensions schemes. Benefits include old age pension, invalidity, survivorship, health insurance, funeral grant, maternity, and injury benefits. A voluntary supplementary scheme attached to this mandatory scheme is called the Deposit Administration Scheme.

**Government Employees Provident Fund:** This mandatory scheme was established in 1942. A voluntary supplementary scheme attached to this mandatory scheme is called the Voluntary Saving Retirement Scheme.

**Local Authority Pension Fund:** This mandatory scheme was established in 1942. A voluntary supplementary scheme attached to this mandatory scheme is called the Pension Saving Scheme.

**Parastatal Pension Fund:** This mandatory scheme was established in 1978. A voluntary supplementary scheme attached to this mandatory scheme is called the Deposit Administration Scheme.

**Public Service Pension Fund:** This mandatory scheme was established in 1999 and is for central government employees in pensionable positions. A voluntary supplementary scheme attached to this mandatory scheme is called the Pension Saving Scheme. PSPF began to offer maternity benefits in 2016 and by June 2017 the fund had paid TZS 5.399 billion to 11,521 beneficiaries.

**Social assistance for pregnant women.** The Tanzanian Social Action Fund (TASAF) was started in 2000 with the aim to increase income and consumption and the ability to cope with shocks among extremely poor populations. Cash transfers to pregnant women equivalent to 6 US\$ are disbursed every two months under the condition that they attend at least four antenatal medical exams or health and nutrition sessions every two months depending on availability of services. Children are required to attend regular medical routine checks and school.

#### Maternity cash benefits duration

The Employment Relations Act sets the minimum benefits for female employees who are in maternity. The Act grants at least 84 days of paid leave to employees who have given birth to one child and 100 days for those who have given birth multiple children at once<sup>42</sup>. The law also provides for compulsory post-natal leave of 6 weeks, unless a medical practitioner certifies that she may return to work earlier.

The NSSF Act has the same duration entitlements while pension fund provisions are higher: in the LAPF Act, the duration is 14 weeks<sup>43</sup> and 14.3 weeks for the GEPF. No periodical payment is specified under the PPF.

#### Maternity cash benefits amount

The Employment and Labour Relations Act establishes that maternity benefits should be paid at 100% of the basic wage.

Despite the provision of paid leave for maternity, social insurance pension funds in Tanzania offer maternity benefits in the form of cash over and above the paid leave. There is a variation in the %age offered as replacement rate for maternity benefits by social security provisions. According to the NSSF Act, the benefit includes 100% of the reference wage (paid in two equal instalments, four weeks before delivery and eight weeks after delivery although payment may be made in lump sum after delivery in case the member applies after delivery or chooses so<sup>44</sup>). For the LAPF Act, the benefit offered consists of 40 % of the salary of the month of application, for the GEPF, benefits are paid in a lump sum equivalent to 140% of the beneficiary's latest salary<sup>45</sup> and for the PPF, a lump sum payment determined by the PPF Board is made. The PSPF benefit is set at 130% of the latest salary of the claimant and is paid after delivery<sup>46</sup>.

Additionally, the NSSF provides for medical care during pre-natal and post-natal period by an accredited medical provider or midwife<sup>47</sup> and covers medical treatment costs for ailments directly related to pregnancy. Treatment period begins from the 24th week of pregnancy and ends 48 hours after confinement or seven days in case of a caesarean delivery. Treatments are made by accredited medical providers<sup>48</sup>. Where prolonged medical care is required after delivery, the post-natal medical care shall be limited to twelve weeks.

Cash transfers to pregnant women equivalent to 6 US\$ are disbursed every two months.

#### Maternity cash benefits eligibility

To qualify for paid maternity leave under the Employment and Labour Relations Act, an employee must:

- give notice of intention to take maternity leave at least three months before the expected date of birth, supported by a medical certificate;
- have worked for more than 6 months (in total) for the same employer, unless employed on a seasonal basis;
- not have taken a similar leave within the leave cycle (defined for the purposes of maternity leave as a 36 month period commencing on the anniversary of the employee's employment), unless her last child died within 12 months of childbirth; and
- not have taken maternity leave for four terms under the same employer.

In the social security legislation, the qualifying period for eligible members of the schemes for maternity protection varies from one fund to another. For the NSSF, the period is 36 months (of which 12 months must be immediately or before the confinement)<sup>49</sup>, 24 months for LAPF<sup>50</sup>, 24 months for PPF (of which 12 months must be immediately or before the confinement) and 18 months for the GEPF. Typically members must lodge their claim within 90 days of delivery. Several documentation requirements apply. In the case of the PSPF, claims should be supported by employment letter, latest salary slip, birth declaration, clinic cards for both claimant and the born child, approved maternity leave form and claimant bank details.

Cash transfers are conditional on attendance of at least four antenatal medical exams or health and nutrition sessions every two months depending on availability of services. Children are required to attend regular medical routine checks and school.

#### Financing

Maternity benefits are financed by social security. In all the five Social Security Legislations (NSSF Act, PSPF Act, PPF Act, LAPF Act and GEPF Act), the cost of administration of the schemes is by way of insurance contributions and returns from investment. For the contributions, the required rate is 20 % of the salary of the insured person. The rate is equally shared between employee and employer in the private sector. For public servants the ratio is 5% for employees and 15% for employers, This comprises all the benefits including pensions and maternity. For voluntary schemes, contributions are determined under the trust deed of the respective schemes, with a minimum of Tshs 20,000/= per month.

#### Administration and institutional framework

Administratively, the system is controlled and monitored by the Tanzania Social Security Regulatory Authority (SSRA). It is intended to coordinate the fragmented nature of social insurance, with different funds managed by different entities including Regional Administration and Local Government in the Prime Minister's Office and the Ministry of Finance and Planning. The role played by SSRA includes issuing guidelines for efficient and effective operation of the social security sector, monitoring and reviewing the performance of the social security sector and initiating studies in order to recommend, coordinate and implement reforms in the sector.

<sup>42</sup> Section 33 (6) of Employment and Labour Relations Act Cap 366

<sup>43</sup> See section 6 of the LAPF (Maternity and Funeral Grant Operationalization) Order, 2010

<sup>44</sup> National Social Security Fund. (retrieved 25 November 2017) <https://www.nssf.or.tz/index.php/benefits/english/maternity-benefits>

<sup>45</sup> GEPF Retirement Benefits Fund/ benefits (retrieved 25 November 2017) <http://www.gepf.or.tz/benefits.php?p=237>

<sup>46</sup> Public Service Pensions Fund 2016

<sup>47</sup> Section 45 (b) of the National Social Security Fund Act

<sup>48</sup> National Social Security Fund. (retrieved 25 November 2017) <https://www.nssf.or.tz/index.php/benefits/english/maternity-benefits>

<sup>49</sup> See section 45(a) of the NSSF Act

<sup>50</sup> See section 3 of the LAPF (Maternity and Funeral Grant Operationalization) Order, 2010

## Gaps and Challenges

**Coverage of social insurance schemes** is very limited and fragmented. There is lack of awareness and take up of social insurance mandated maternity benefits.

**Eligibility for maternity leave and protection.** An employee is obliged to give at least 3 months notice of their intention to take maternity leave. This seems set at a higher level than what is strictly necessary to preclude abuse from an international standards point of view and a comparative international perspective. A further issue is that an employer is only obliged to grant paid maternity leave a maximum of four (4) times which is discriminatory against female employees.

**Periodicity of payments** According to NSSF Act, in some circumstances maternity benefits may be paid in the form of lump sum, which is not aligned with international standards that recommend the payment of periodic benefits throughout the contingency.

**Duration of maternity leave.** An employee is only entitled to the recommended 14 weeks maternity leave if they are giving birth to more than one child as the law provides for 100 days in these circumstances. However, if the employee is to have only one child, they are only entitled to 84 days paid maternity leave. This falls short of the guidelines from ILO Convention No. 183.

**Eligibility for maternity medical benefits of dependents.** In the case of NSSF, the dependent wives of the insured persons are not covered for maternity medical care in case of pregnancy and confinement and their consequences (however they are covered for medical care in case of a morbid condition). NSSF legal framework should provide for the legal coverage of these dependents also under the NSSF. In the case of NHIF maternity related health care entitlements of members of NHIF (as well as dependent family members) need also to be specifically established by law and not only in practice.

## Conclusion

Tanzania has two arrangements for maternity benefit. The first one is by way of social insurance and the second one is through employers' liability arrangement. For social insurance, maternity benefit is offered under the NSSF Act and various acts pertaining to protection of workers in the public sector. For employers' liability, maternity benefit is covered under the Employment and Labour Relation Act No. 8 of 2006 in which women employees are entitled to a paid maternity leave of at least 84 days, or 100 days if the employee gives birth to more than one child at the same time. Under the existing legal framework, employee may claim for maternity benefit under the social insurance programmes and the same time receiving salary while on maternity leave.

The lack of a harmonized social insurance regulatory framework for public and private sector workers introduces differences in the rules pertaining to maternity protection across different sectors in the economy (on qualifying periods, level and duration of benefits).

On 17th November 2017 the Government of the United Republic of Tanzania tabled to the Parliament legislative proposals for the enactment of the Public Service Social Security Fund Act, 2017 ('the Bill'). The Bill merges the existing social security funds for public sector workers into one and would harmonize the regulations on maternity benefit for public sector workers. Specifically, it was expected that new harmonized maternity benefit be payable to a female member who made contributions for at least thirty-six months (3 years). The benefit would be payable as cash at the rate to be prescribed by the new Board established under the Act. However, the proposed social security regulations 2018 that would define the conditions for implementation of some of the new bill did not provide specific guidance for the calculation or duration of the new maternity benefits. In 2019, the enactment of this new bill was suspended pending the resolution of issues to do with pension benefits.



## 7.9 Zambia

### Socio-economic context

In 2017, the total population was estimated at 16,405,229<sup>51</sup>. Rural areas accounted for 57.5 % while urban areas accounted for 42.5 % of the total population. The female population was 51.5 % of the total.

The working age population (15 years or older) was estimated at 9,056,840. The labour force population was 3,398,294. The employed persons accounted for 2,971,170. The employment to population ratio was 32.8 %. (Males, 41.7 % and Females, 24.7 %, respectively. There were 1,096,832 employed persons and 1,874,337 informally employed.

Inequality is among the highest in the region and is increasing (Gini index: 0.69, LCMS 2015).The upward income growth led to the reclassification of Zambia as a low-middle income country in 2011. However, the country economy started to deteriorate in 2014 due to an economic and power crisis. The real economic growth fell to its lowest in 15 years, with gross domestic product (GDP) growth estimated to have slowed to 3.2% in 2016 from 5.0% in 2014.

The country has made significant progress against key health indicators. Maternal mortality rate decreased from 592 in 2010 to 398 per 10,000 live births in 2014<sup>52</sup>, and the %age of children under 5 who are stunted decreased from 45 to 40%, but remain high.

### Legislation

Current legislative and regulatory provisions provide limited maternity protection to women in Zambia. In 1979, Zambia ratified the Maternity Protection Convention, 1952 (No. 103), but has not ratified ILO Maternity Protection Convention No. 183. Maternity leave and cash benefits are provided for in the Employment Act (Chapter 268 of the Laws of Zambia) as amended by the Act No. 15 of 2015. Complementary provisions are added through the Minimum Wages and Conditions of Employment Act (Chapter 276 of the Laws of Zambia - MWCE Act). The MWCE Act is complemented by the Statutory Instruments No.1 of 2011, the Minimum Wages and Conditions of Employment (shop workers) order 2011 and by the Statutory Instruments No.3 of 2011 The Minimum Wages and Conditions of Employment (domestic workers) order 2011.

### Scope of coverage

All employees who meet eligibility conditions (two years of continuous employment for the same employer) are entitled to paid maternity leave. An employee is defined in the Employment Act as a person who, in return for wages, enters into a contract of service - explicitly or implicitly, verbally or in writing, whether on full time, part time or temporary basis or who is engaged to do casual work. It excludes apprentices, independent contractors or persons engaged to do piece work. Existing legislation mostly caters for women working in the formal economy and for such adequacy of benefits, financing and conditions to access are a concern. There are currently no social assistance programmes catering for vulnerable workers with no or limited financial contributory capacity.

### Maternity cash benefits duration

Employees are entitled to either 12 weeks (under the Employment Act) or 120 days (under the statutory instruments made pursuant to the Minimum Wages and Conditions of Employment Act) of paid maternity leave. Employees may access cash benefits for a longer period as provided under collective agreements or their individual contracts of employment.

<sup>51</sup> Figures from Zambia Labour Force Survey 2017, <https://www.zamstats.gov.zm/phocadownload/Labour/2017%20Labour%20Force%20Survey%20Report.pdf>

<sup>52</sup> Ministry of Health, ZDHS 2015

However there are some discrepancies that exist between those covered under the Employment Act and protected employees covered by the General Order and shop and domestic workers covered by the Shop Workers and Domestic Workers Order and other protected employees covered by the General Orders or the Employment Act. Shop and Domestic workers are not entitled to maternity pay whilst other protected employees are entitled to maternity leave pay. It could be argued that this could constitute discrimination on the basis of status or indirect discrimination of shop and domestic workers.

It could be argued that because the Employment Act generally also applies to all workers including shop and domestic workers and provides for better maternity provisions for shop and domestic workers, these workers should claim 120 days paid maternity leave in terms of the Employment Act because of the accrued right to pay under that legislation instead of the 120 days unpaid leave under their respective statutory instrument.

#### **Maternity cash benefits amount**

There is a disparity between employees, domestic workers and shop workers in the level of benefits. Maternity benefits for employees and shop workers are paid at the full salary rate. Domestic workers are not legally entitled to paid maternity benefits.

#### **Maternity cash benefits eligibility**

To be eligible for paid maternity leave, the employee must have completed at least two years of continuous service with the same employer. The qualifying period also requires that two years elapse between successive maternity cash benefit claims.

#### **Financing**

Maternity cash benefits are sole employers' liability.

#### **Administration and institutional framework**

The Ministry of Labour and Social Security is in charge of labour inspections and to deal with grievances relating to payment of maternity leave.

#### **Gaps and Challenges**

**Duration of Maternity leave.** Maternity leave in the terms of the Employment Act (12 weeks) falls short of the provisions of Convention No.183 (14 weeks).

**Disparities in treatment.** Employees who are termed as protected or vulnerable such as general, domestic and shop workers are entitled to more maternity leave days than all other workers who are covered by the Employment Act. A further discrepancy is that Shop and Domestic workers are not entitled to cash benefits. This is not only contradictory to the principle of equity but also not compliant with the ratified Convention 103. Indeed, Zambia did not accompany the ratification of C103 with a declaration in line with article 71 (c) of the C103, which makes the instrument applicable to domestic workers.

**Qualifying conditions.** Qualification conditions under national laws limit greatly the number of women entitled to maternity cash benefits, as it discriminates against women who are employed under temporary or short term contracts. Entitlement to cash benefits is unavailable to women who would otherwise qualify under the duration of employment, but have taken maternity leave due to subsequent pregnancy.

**Exclusion from coverage.** De facto, self-employed workers and other informal sector employees do not benefit from any maternity income protection. There are no mechanisms in place to ensure that women who do not meet the qualifications conditions are provided with adequate benefits out of social assistance funds. This leaves a significant portion of the population out of any maternity income protection.

**Financing arrangements.** With regard to employers' liability schemes in place, the Committee of Evaluation of Application of Conventions and Recommendations (CEACR) recalled in 2011 "*that maternity cash benefits should be financed collectively by way of insurance contributions or taxes*". In 2014, the Committee welcomed the Government's initiative to move away from the employer liability system and finance maternity protection by way of social insurance in line with the requirements of the Convention and the global trend towards collectively

financed protection mechanisms based on the principle of social solidarity. The report specifies that "*the Committee therefore hopes that the Government will indicate in its next report progress made with a view to establishing a maternity protection branch as a component of the currently developed social security system*".

The current financing arrangement which appoints employers as solely responsible for the payment of maternity cash benefits increases the costs of labour and reduces the incentive to hire female workers, which may prevent employers from employing women of a child-bearing age. More generally, it poses a risk of discrimination against women in reproductive age at the workplace in general, for recruitment, promotion, advancement, and dismissal on the ground of maternity etc. Another challenge is that it indirectly discriminates against women who are not of child-bearing age or chose not to have children as they cannot benefit from maternity leave with pay in the same way other pregnant female workers would.

It may also threaten financial equilibrium, especially of SMEs, when multiple occurrences occur over a short period. When an employer cannot afford to replace female workers on maternity leave, the risk is high for pregnant/nursing employee to face delayed, partial or no payment of due benefits from employers. It may also negatively affect productivity.

This method of financing maternity cash benefits is expressly prohibited by Convention No. 103, ratified by Zambia.

**No provision for compulsory post-natal leave.** Convention No.183 requires that national laws or regulations prescribe a compulsory leave after maternity not less than six weeks. This is at the moment absent from Zambia Laws and regulations. It should however be noted that the proposed Employment Code Bill, which is currently before the Zambian Parliament makes provision for compulsory post-natal leave.

**Overall structure of maternity protection.** The Employment Act only stresses aspects related to leave, cash benefits and employment protection. Other aspects such as health, nursing breaks and protection from harmful work are not properly catered for in the legislation. As with the provision of post-natal leave, the Employment Code Bill seeks to rectify this by providing for breastfeeding and nursing breaks and protection from harmful work.

#### **Past and present policy reform processes**

**Maternity protection reforms.** At the end of 2017, tripartite partners re-engaged in social dialogue on Maternity Protection reforms. Policy options were formulated by the government, employers and workers' representatives through a social dialogue process. The dialogue was based on the International Labour Standards on Maternity Protection, with the aim to comply as much as agreeable with the provisions of the Convention 183 but also considering the Recommendations 191.

The policy options are the fruit of intensive discussion and consultations and represent the most politically acceptable options, based on each of the tripartite partners' priorities and concerns, and in order to gain the broadest support possible from all parties involved.

- Financing mechanisms: there is a general consensus on shifting to social insurance to finance maternity income protection.
- Leave duration and cash benefits level: the tripartite constituents agreed on a maternity leave duration of 14 weeks. The income replacement ratio is yet to be decided. Several options between 67% and 100% are to be considered based on scenarios of actuarial-based contribution rates. The option of 14 weeks, with 2/3 replacement rate - is compliant with the provisions of the Convention 183. It would provide longer maternity leave (addition of two weeks) but a lower replacement rate and overall lower benefits (22% lower) than what is currently provided for.
- Paternity leave: the provision of 5 consecutive working days for paternity leave, financed through social insurance, is being considered.
- Eligibility conditions. There is also a general acknowledgment that the two year eligibility conditions must be reduced to 12 months of employment with the same employer before giving birth and 12 months between two pregnancies to ensure that the vast majority of women access cash maternity benefits.

- Harmonization of maternity leave days and benefits among workers in different employment sectors (shop and domestic workers) and other type of employment (self-employed, casual workers) were considered. These proposals have reflected in the Employment Code Bill which provides for paid maternity leave of 14 weeks for all employees in the formal economy.
- It is agreed that Shop and Domestic Workers are to be considered as any other workers and to benefit from the same rights at the same conditions in line with the Maternity Protection Convention, 1952 (No.103), ratified by Zambia.
- Extension of Maternity protection to self-employed to be considered but only after a complementary study is carried out, looking at implications from an actuarial perspective, and issue of compliance and adverse selection.
- Temporary/seasonal workers are effectively bound to provisions of the Employment Act. However eligibility conditions (12 months) de facto exclude certain temporary or seasonal workers (define as holder of less than 6 months contract).

#### Linkages to other benefits

**Medical benefits.** The newly enacted National Health Insurance Act seeks to provide for universal access to quality, insured health care services, as well as provide for the financing of the national health system in Zambia. The Act creates a compulsory National Health Insurance Scheme. This new scheme will be part of the effort to move towards universal health coverage, achieve better health outcomes and develop a sound and sustainable health care financing strategy. Subscription to the National Health Insurance Scheme is mandatory for all citizens or residents above the age of 18 including employees, members of pension schemes and self-employed people. Employers must also register their employees with the Scheme and pay monthly contributions as well as deduct a contribution from the employee's salary to contribute to the Scheme. Furthermore, pension schemes must register their members to the Scheme.

#### Conclusion

Two of the major challenges of maternity income protection in Zambia are the differences in the rules applying to different occupations and existing regulatory and practical limitations to extend coverage. For example, existing qualifications for benefits limit access to benefits by workers with temporary and short-term contracts. Self-employed workers and other informal sector employees do not benefit from any maternity income protection. Despite the policy objective stated in its National Social Protection Policy (2014)<sup>53</sup>, according to which "maternity insurance will be developed so that working pregnant women can gain the best deal possible for themselves." (page 40 of the NSPP 2014), maternity leave benefits still remain entirely an employer liability.



## 7.10 Zimbabwe

#### Socio-economic context

Zimbabwe currently has an estimated population of over 17 million<sup>54</sup> persons. Zimbabwean economy has been characterized by macroeconomic imbalances such as high budget deficits, balance of payment deficits, inflation and low economic growth<sup>55</sup>.

The individual national poverty rate dropped to 70.5 percent in 2017 from 72.3 percent in 2011/12. The poverty gap also decreased slightly from 34.1 percent in 2011/12 to 33.3 percent in 2017. However, rural individual poverty increased from 84.3 percent in 2011/12 to 86.0 percent in 2017. Extreme poverty among the population increased from 22.5 percent in 2011/12 to 29.3 percent in 2017.<sup>56</sup>

The health system that was inherited at independence was skewed, favouring the urban areas where the white population resided. After independence the Government made efforts to redress the situation by investing in

health, in general, and rural health services in particular. The number of health services have reached 1,500, but still there are some areas which are hard to reach<sup>57</sup>. Maternal mortality ratios are extremely high at 695 per 100,000, far above the MDG target of 194<sup>58</sup>.

The political and economic upheaval that Zimbabwe has experienced in the past 20 years saw health services in general and maternal services in particular deteriorating. Women resorted, more and more, to home deliveries due to reasons associated with lack of money to pay for treatment and distance to health facilities. However, women who deliver in facilities have better outcomes than those delivering at home, assuming health facilities have the trained staff, infrastructure and standardized delivery protocols needed to manage obstetric complications. In urban areas more births occur in a health facility compared to in rural areas.<sup>59</sup>

#### Legislation

The Labour Relations Act 1984 as amended in Labour Relations Amendment Act, 2005 provides for maternity protection for women employed in the private sector<sup>60</sup>. Women in the Civil service are covered by the Public Service Act Chapter 16:04. Maternity protection is provided for as part of conditions of employment. Zimbabwe has not ratified any of the ILO Maternity Protection Conventions.

#### Scope of coverage

Private and public employees are covered. Employees in the Labour Act are defined as any person employed by or working for any employer, and receiving or entitled to receive any remuneration in respect of such employment or work.

#### Maternity cash benefits duration

The Labour Act provides for 98 days of paid maternity leave whilst the Public Service Act provides for 90 days.

#### Maternity cash benefits amount

The level of benefit is set at 100% of the salary during the entire maternity leave period.

#### Maternity cash benefits eligibility

The qualification period for maternity benefits is one year of previous employment. Expectant employees may apply to proceed on maternity leave not earlier than the forty-fifth day and not later than the twenty-first day prior to the expected date of delivery. Paid maternity leave is granted only once during any period of twenty-four months calculated from the day any previous leave was granted. A female employee is entitled to a maximum of three periods of maternity leave with respect to her total service to any one employer. Any maternity leave requested in excess of the limits prescribed by the Act may be granted as unpaid maternity leave. A medical certificate is required upon submission of a maternity claim.

#### Financing

The scheme is an employer liability scheme, administered and wholly financed by the employer.

#### Administration and institutional framework

The maternity benefit is administered by the employer, but the Ministry of Public Service Labour and Social Welfare is the custodian of the Act, in case of dispute. The application is made to the employer. Once the employer approves the leave, the employee may proceed on maternity leave within the frames stipulated by the Act.

#### Gaps and Challenges

**Exclusion from coverage.** Women in the informal sector do not have access to income protection, during the periods of pregnancy, which entails loss of income for them.

<sup>53</sup> <https://www.social-protection.org/gimi/gess/RessourcePDF.action?ressource.ressourceId=54164>

<sup>54</sup> <http://worldpopulationreview.com/countries/zimbabwe-population/>

<sup>55</sup> [http://www.zimstat.co.zw/sites/default/files/img/publications/Prices/Poverty\\_Report\\_2017.pdf](http://www.zimstat.co.zw/sites/default/files/img/publications/Prices/Poverty_Report_2017.pdf)

<sup>56</sup> Ibidem

<sup>57</sup> Ministry of Health and Child Welfare. Access to Health Services Study, 2009, Government of Zimbabwe, Harare, Zimbabwe.

<sup>58</sup> Zimbabwe National Statistics Agency (ZIMSTAT). Multiple Indicator Cluster Survey 2014, Key Findings, 2014, Harare, Zimbabwe: ZIMSTAT.

<sup>59</sup> Zimbabwe National Statistics Agency and ICF International. Zimbabwe Demographic and Health Survey 2015: Key Indicators, 2016. Rockville, Maryland, USA: Zimbabwe National Statistics Agency (ZIMSTAT) and ICF International.

<sup>60</sup> Labour Relations Act, Chapter 28:01. Government of Zimbabwe. Government Printers

**Qualifying conditions.** Although formally employed women have maternal protection under the Labour Act, there are a number of restrictions. First, the number of times they can go on paid maternity leave under one employer is limited a female employee can only take maternity leave a maximum of three periods of time. Another condition restricts them from going on maternity leave within the first year of employment. Further, maternity leave shall be granted only once during any period of twenty-four months calculated from the day any previous maternity leave was granted. In a country like Zimbabwe, where employment opportunities are limited, employers may take advantage of the situation to deny women employees their right to maternity protection.

**The cost of access to maternal services.** A general health care programme exists for free-of-charge health services for low-income pregnant and lactating mothers, children under five and those aged 60 years and over. However, in practice user-fees are often applied by state and non-state providers, since in the absence of substantial government financial support, user fees provide the main income for many health care facilities, enabling them to provide at least the minimum service. These fees act as a barrier to basic health services, including birth facilities, for many vulnerable women, increasing the costs of associated with child-bearing.

#### **Past and present policy reform processes**

**Maternity protection social insurance programme.** Currently there are discussions to implement a maternity protection scheme in Zimbabwe, as one of the social security schemes. The scheme is envisaged to run under the National Social Security Authority, which is mandated to implement social security schemes in Zimbabwe. The Scheme will be based on some of the following social insurance principles;

- Pooling of risks and resources, solidarity of members between non child-bearing individuals and child bearing individuals, automatic transferability of rights from one employment to the other, and equal treatment for all.
- Women will have a right to the replacement of income during maternity
- In principle all employed women will be covered by maternity protection.
- The Scheme shall be financed primarily from compulsory monthly contributions by both employees and their employers.
- The Maternity Protection scheme will remove qualifications for paid maternity leave prescribed in the Labour Act.
- Cash benefits are intended to replace a portion or all of the income lost due to the interruption of the woman's economic activities, ensuring that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living (ILO Convention 183, Article 6(2)).
- Cash benefits should be paid on a periodic basis rather than a one off lump sum. Cash benefits should have the same frequency as the income they are replacing.
- The proposal is to have the Scheme administered under the National Social Security Authority together with the National Pension and Other Benefits Scheme for registration of members, contributions collection, compliance and claims payment. This is cost effective as the Authority already performs the same activities on the same employers and employees for the National Pension Scheme and Workers' Compensation Insurance Scheme,
- A separate fund would be set up and managed separately for the Maternity Protection Scheme.
- The scheme would use a pay-as-you-go financing method.

In addition, the Government of Zimbabwe passed the Statutory Instrument 50 of 2018, which provides the legislative framework for the establishment of three voluntary schemes for participation by the informal sector, namely (1) Pension, Survivors, invalidity and funeral benefits, (2) Health Insurance and (3) Maternity Protection. The funds and the schemes have so far not been implemented.

#### **Conclusion**

Maternal mortality ratios in Zimbabwe have remained high compared to the region and to set targets. This has largely been a result of lack of investment in the sector by Government. Although the Labour Act provides income protection to pregnant women, there are restrictions in accessing the benefit. The Government has however put in place a blue print to implement a maternity scheme based on social insurance. Once that happens, employed women will have adequate maternity protection. It is hoped that such protection will be extended to the informal sector.



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