



DISCUSSION DOCUMENT

MATERNITY PROTECTION

27 – 29 MARCH 2012

MATERNITY PROTECTION

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COSATU DRAFT DISCUSSION DOCUMENT ON MATERNITY PROTECTION FOR GENDER CONFERENCE 27-29 MARCH 2012

Introduction

COSATU 10th Congress resolved on the need to ratify key ILO Conventions which include among them ILO Convention 183 and Recommendation 191 on Maternity Protection. As such, this discussion document pertaining to maternity protection has been prepared for this 3rd National Gender Conference.

The maternity protection discussion paper aims to address concerns in relation to state practice and non-compliance with international obligations concerning access to maternity benefits for **all classes** of working women.

It argues that though women workers are covered to some extent by existing labour laws (Constitution, Labour Relations Act (LRA) and Basic Conditions of Employment Act (BCEA) or UIF); there is still a **huge gap** as there is **no specific labour law addressing the issue of maternity protection and benefits**.

*Women working in the formal economy have to draw their maternity benefits from universal coffers (meant for both men and women) which is the Unemployment Insurance fund (UIF). It is sad that **some categories** of women working as domestic workers, farm-workers, casuals, subcontractors, part-timers or volunteers are **excluded from the benefits of maternity protection**. It is even worse for those working in the **informal economy!***

The situation is further exacerbated by the constrained definition of “employee” and the industrial relations thereof.

The paper also attempts to identify the gaps that exist between the National Labour Laws and International Standards. In 2000, the International Labour Organisation (ILO) which South Africa is a signatory to adopted Convention 183(C183) and its Recommendation 191. Member states have the obligation to bring the Convention before the competent authority for a decision on a possible ratification (art. 19 of ILO Constitution) and domesticate the instrument. Above all, there is a great responsibility for member states that have ratified an ILO Convention to report on its implementation, monitoring and compliance in accordance with the ILO Constitution.

The National question is ‘when is South Africa as a signatory to the ILO going to respect the international laws and bring the Convention before the competent authority for a decision on a possible ratification of Convention C183? Yet the national labour laws create an opportunity for the Ratification of this Convention.

The paper concludes that the blind eye paid by the government to adoption of this very important instrument for working women’s lives denotes not only to **workplace discrimination** but to the **undervaluing of women’s contribution**, to the country’s overall **Gross Domestic Product (GDP)** and the entire economy.

In fact, the existing labour laws are still not **amended** to recognise and create an enabling environment for the currently **highly feminised** formal and informal labour market.

First, the paper will provide an overview of the basic tenets of maternity protection in the world in general then will narrow it down to evaluate the South African context. Second, the paper will draw guidelines from International, Regional and South African existing instruments to

establish the opportunities and gaps that help to facilitate or impede maternity protection for women.

Finally, recommendations shall be made to South African Government, Business and Labour to ensure that maternity protection for **all women is inclusive**, further **denouncing discrimination** on **grounds of pregnancy** in **both the formal and informal** labour markets.

Of great importance is the contribution the recommendations shall make towards COSATU forthcoming Congress in resuscitating and taking forward the **maternity protection** national **debates** and **campaign**.

What is Maternity Protection?

Decent work and maternal health are key inter linked and mutually reinforcing. For women to achieve economic and social empowerment there is a need for maternity protection at work. Maternity protection enables women to combine their reproductive and productive roles successfully and prevent inequality in the workplace. Simply, maternity protection refers to the following:

- Maternity leave
- Cash and medical benefits
- Health protection at work
- Breastfeeding- breaks
- Employment security
- Non-discrimination
- Providing a healthy environment for mother and child
- Opportunity for women to choose motherhood freely
- Job retention

Providing access to decent work and decent life for women and their children is a very viable means of empowering women. Raising a family is a cherished goal for many working people. Yet pregnancy and maternity are an especially vulnerable time for working women and their families.

Expectant and nursing mothers require special protection to prevent harm to their infants' health, and need adequate time to give birth, recover, and nurse their children. At the same time, they also require protection to ensure that they will not lose their job simply because of pregnancy or maternity leave, such protection ensures the continuation of often vital income which is necessary for the well –being of the entire family.

Safeguarding the health of expectant and nursing mothers and protecting them from job discrimination is a precondition of achieving genuine equality of opportunity and treatment for men and women at work.

Significance of maternity leave

- ✓ It gives the mother enough time to rest before and after birth.
- ✓ The period allows the women's body to recover after birth.
- ✓ The mother is also given ample time to bond with the baby.
- ✓ Breast milk is guaranteed to the child therefore ensuring growth.

Why is maternity protection an issue for working class women?

Today more women are entering the labour market and contributing towards economic development. Like men women are valuable employees whose work is essential in workplaces and need to be protected by labour law. Maternity protection in the workplace is a fundamental issue to ensure that women's or child's health is not threatened during and after pregnancy. Maternity protection laws yield positive results as it enables women to have a better opportunity to participate in the workplace.

Other than contributing to productive work, women also serve the social reproduction burden, of reproducing the next generation of workers for the capitalists, government and labour. Also worth noting is the fact that lack or no maternity protection would yield poor results and little productivity as women and the babies pay extra costs because they are subject to vast stress and health disorders. The safeguard of the health of pregnant workers including their babies and the protection against employment discrimination due to motherhood are integral to all working class women.

Maternity protection in the last half century has been marked by progress in law, and development in workplace practice. There is also a rising social expectation regarding the rights of working women during their child – bearing years. Yet, the gains registered have so far failed to resolve the fundamental problem experienced by most (especially those working in the informal sector), if not all working women at some point in their professional lives.

The notion that men are the sole providers for women and children has rapidly become a myth of the past. Nowadays, an increasing number of households in all regions of the world depend on two incomes to maintain a suitable standard of living. The number of women working throughout their childbearing years is escalating, a fact which makes adequate maternity protection even more imperative.

Not only is maternity leave and appropriate medical care essential to enable a woman to retain or regain her health and to return to work, but income replacement during her leave period has become indispensable for the well – being of herself, her baby and entire family. Many women do not afford to take maternity leave, because they do not have access to cash and health benefits.

Therefore women are forced to stop working few days before birth and return to work early after birth, that put risk to their own and child's health.

Access to maternity protection is an important part of accountability for women's health by **both private and public sector informal or formal.**

As joint breadwinning becomes the norm, discrimination in employment on the basis of actual or potential maternity has implications for the whole society. In all parts of the world, working women who become pregnant are faced with the threat of job loss, suspended earnings and increased health risks due to inadequate safeguards for their employment and the rights which derive thereof.

The maternity protection is a fundamental human rights issue and essential component of gender equality, it plays an important role in economic growth and poverty reduction and it's critical to the Agenda of Decent Work in the world of work.

Maternity protection in the world of work is fundamental and is the first entry point for Decent Work Agenda and gender equality. It is a collective responsibility with collective benefits. Provision of maternity protection in the workplace enables women to balance reproductive and productive work, minimises risk of the health of both mother and the child, it also contributes to economic growth and poverty reduction.

South African National legislation and policies on maternity protection

The law of South Africa provides for the provision of paid maternity leave for employees. **Regrettably**, the South African system providing protections to employees is **basically ignoring** the **other category** of **workers women** in **uniform** (defence/secret service), **self-employed** and those in the **informal** economy.

Although domestic and farm workers qualify for four months maternity leave, this is on unpaid basis. South Africa still has huge inequalities between men and women and also women of different race and classes. Most working women are entitled to maternity protection including paid maternity leave and employment security but application of these rights is in paper and not practically enjoyed due to gaps in coverage, implementation and monitoring of these policies.

Despite the provision and measures of maternity protection, it is apparent that in South Africa there is no specific law that talks to maternity protection; one has to tap from different legislations to be protected and to be able to argue.

The following are the legislations that regulate South African law on maternity protection:-

- Basic Conditions of Employment Amendment Act 2002 of 24 June 2002
- Employment Equity Act 1998 of 12 October 1998
- Labour Relations Act 1995 of 29 November 1995
- Unemployment Insurance Act 2002 of March 2002
- Code of Good Practice on the Protection of Employees during Pregnancy and after the birth of the child, Government Gazette, Vol 401

In South Africa maternity benefits are covered through a social insurance scheme - the unemployment insurance fund. Working women are obliged to draw on their unemployment contributions to the Unemployment Insurance Fund (UIF) to cover maternity leave, and should they at a later stage become unemployed, their pot of unemployment funds on which they can draw, has been diminished whilst the partners fund are not affected. The sense is that it is discriminatory for women to draw on unemployment funds to cover for maternity leave – this is in fact penalising women for giving birth.

The *Basic Conditions of Employment Amended Act No. 11 of 2002* states that maternity protection covers all employed women who receive remuneration in private and public sector, except from members of the National Defence Force, National Intelligence Agency and Secret Service also independent contractors, unpaid volunteers working in charity organisation and women employed on vessels at sea are not covered by the ACT.

The Act also states that an employee is entitled to at least four consecutive months' maternity leave, and then provides details on the specific requirements for requesting and providing this leave. This law does not call for payment during this time but women in maternity leave may draw their benefits from the *Unemployment Insurance Fund (UIF)* as dictated by the *Unemployment Insurance Act 63 of 2001* and the *Unemployment Insurance Contributions Act 4 of 2002*.

Meanwhile the South African Constitution, states that:

“Everyone has the right to equal protection and benefit of the law, and that everyone has the right of equal access to social security. It further prohibits discrimination on the grounds of pregnancy” and reprimand the state that *“The state may not unfairly discriminate against anyone on one or more grounds, including .gender, sex (or) pregnancy”*

There exists legislation that requires employers to treat pregnant and post pregnant employees with the greatest of care. One of these Protection pieces of legislation is the code of good Practice on the Protection of employees during Pregnancy and after the Birth of a Child.

The code, issued in terms of the Basic Conditions of Employment Act (BCEA), is aimed at protecting pregnant and post – pregnant employees. As such, the code obliges employers to:

- Encourage women employees to inform the employer of their pregnancy as well as possible as to ensure that the employer can assess risks and deal with them.
- Evaluate the situation of each employee who has informed the employer that she is pregnant.
- Assess risks to the health and safety of pregnant or breastfeeding employees within the workplace.
- Implement appropriate measures to protect pregnant or breastfeeding employees.
- Supply pregnant or breastfeeding employees with information and training regarding risks to their health and safety and measures for eliminating and minimizing such risks.
- Maintain a list of jobs not involving risk to which pregnant or breastfeeding employee could be transferred.

It is important to note that the code provides not only for the mother to recover after birth but also that even if she has delivered 100% well, time-offs should be awarded for the employee to nurse her baby.

Working mothers are automatically entitled to four months maternity leave. This applies even if the employee has contractually agreed to take less than the four month she is entitled to. The reason for this is that any agreement that is contrary to the law is an invalid agreement.

The Unemployment Insurance Act no 75 of 13 January 2001 provides protection to workers who become unemployed. It prescribes claiming unemployment, maternity benefits, illness benefits or adoption benefits.

Unemployment Insurance Fund offers short-term financial assistance to workers when they become unemployed or are unable to work because of illness, maternity or adoption leave. The fund also assists the dependents of a contributing worker who has died. All workers who work for more than 24 hours per month (except public servants) must contribute towards the Unemployment Insurance Fund.

Workers pay 1% of their salaries every month. Then employers contribute a further 1%. It is the employer's responsibility to make sure that employees contribute from their salaries. The employer is also responsible for making sure that all employees are registered with the fund. If an employee has been registered and the contributions are paid, then that employee will be entitled to claim from the fund.

South African civil rights laws do guarantee protection to pregnant women and new mothers from discrimination on the job. Title V11 of the Civil Rights Act, and the family and Medical Leave Act clearly spell that no employee shall be discriminated on the basis of her pregnancy.

The South African health care system faces many challenges that impact on maternal health care and put more women and their children at risk. The other challenge is the fact that there is no clear data on maternal death. According to government figures, South Africa's maternal mortality ratio increased from 150 deaths per 100,000 live births in 1998 to 625 in 2007.

With reference to the aforementioned, one can conclude that pregnant employees are strongly protected under existing South African laws but to a certain extent.

Governments and the social partners must face the fact that maternity protection for vast numbers of working women are still barely assured.

The South African MDG's report by Stats S.A. 2010 confirms that as a country we are far from reaching the targets in 2015. "The current level of under-five mortality in South Africa is far higher than the international set target for South Africa (20per thousand live births).

Although South Africa has the necessary policies in place to reduce under-five mortality, evidence indicates a rising trend in child mortality deaths in recent years in South Africa" Therefore it is clear that the maternal health and child mortality is the issue for discussion in the workplace and is the health issue for working women.

International Laws on Maternity Protection

The International Labour Organisation (ILO) is a United Nation agency that brings together representatives of employers, workers and government globally. Its role is to formulate and develop policies, minimum standards and good practice in the workplace. Since its inception in 1919, the ILO has always had the issue of maternity protection for women at the core of its heart.

The Convention on maternity protection No. 183 is an ILO international treaty, which only becomes binding when member states have ratified it. When a Member State has ratified it, it has to report progress on implementation to the ILO.

Significant regional and international conventions require member states to provide for maternity benefits, comprising paid leave or leave with adequate social security benefits for all women. Countries are required to give special attention to workers inadequately protected by social security, including those who are self employed and in informal economy.

The protocol to the African Charter on Protection of the Rights of Women in Africa says that "States should adopt and enforce legislative and other measurers to guarantee women equal opportunities at work" and should

guarantee adequate and paid pre and post-natal maternity leave”.

The UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW) requires that states prevent discrimination against women on the grounds of maternity, and ensure their effective right to work by providing for “maternity leave with pay or comparable social benefits”.

The UN Millennium Declaration of 2000 set critical goals (Millennium Development Goals) of which among those goals were to reduce child mortality and improve maternal health, countries including South Africa committed themselves to these goals and towards achieving them by 2015.

Maternity Protection Convention No. 183 of 2000

This is the most up to date international labour instrument on maternity protection. This convention was adopted in June 2000 with its Recommendation (No. 191) with the aim to protect and promote the health, safety, employment and economic security of the mother and child. The aim of this convention is also to achieve all of this as it covers all working women including those in the informal sector.

Below is a list of areas covered by C183:

- The extension of the scope of coverage to include ALL employed women and include those in atypical forms of dependent work
- Health care benefits
- The maternity leave of 14 weeks, which includes a period of six weeks’ compulsory leave after childbirth
- Protection against dismissal from employment during pregnancy, maternity leave or during a period following the woman’s return to work due to pregnancy related reasons
- Extension of protection against discrimination to women who

- are seeking employment
- Cash benefits during leave of at least two-thirds of previous earnings
- Paid breaks to breastfeeding mothers
- Additional leave for illness or complications related to pregnancy or childbirth
- Health and Safety at the workplace.

The Convention provides for 14 weeks of maternity leave to women to whom the instrument applies. Women who are absent from work on maternity leave shall be entitled to a cash benefit which ensures that they can maintain themselves and their child in proper conditions of health and with a suitable standard of living and which shall be no less than two thirds of her previous earnings or a comparable amount.

The convention also requires ratifying states to take measures to ensure that a pregnant woman or nursing mother is not obliged to perform work which has been determined to be harmful to her health or that of her child. Further, it provides for protection from discrimination based on pregnancy, maternity leave, or during a period following her return to work, except on grounds unrelated to the pregnancy, birth or nursing.

Job retention is also guaranteed after maternity leave in accordance with C183 and the working mother has to return to the same position paid at the same original rate. The instrument provides women the right to one or more daily breaks or daily reductions of hours of work to breastfeed their child. Revised Maternity Protection Convention No. 183 further promotes equality of all women in the workforce, especially their health needs, as well as equality between women and men, thereby encompassing diversity in economic and social development of members.

A study conducted by ILO in 2010 has revealed that all 167 countries monitored by the ILO Database of Conditions of Work and Employment laws have national legislation on maternity protection. On the positive

side is the fact that of 167 countries, 97% provide cash benefits for women during maternity leave and 42% provide at least two thirds of previous earnings for 14 weeks.

What is more important is how countries finance cash benefits during maternity leave. There has been a shift away from reliance on employers being directly liable for the payment of maternity cash benefits. By 2009, half of the countries' financial benefits were derived through social security systems or public funds in order to relieve employers. In addition, a majority of countries have also adopted legal measures to safeguard pregnant or nursing women from work related hazards, including calling for workplace risk assessments to be conducted or dangerous substances to be identified and banned.

Taking into account the circumstances of women workers, ILO stipulates that they need protection for pregnancy, which is a shared responsibility of government and society. ILO Convention 183 also goes on to say that:

“it shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave during a period following her return, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing” (Art. 8.1).

In accordance with the Convention, a woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.

Other International Frameworks Supporting Maternity Protection

- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights

Cash Benefits

Social reproduction undertaken by women benefits the entire nations such that the full cost of maternity burden should be shared amongst key players; business and government through public funds.

In addition, compulsory social and health insurance system plays a pivotal role as women are guaranteed of access to professional health services during pregnancy. Access to cash benefits would mean absence of financial stress which in most cases compels women to “sell-out” their leave days before they even recover from delivery pains.

According to ILO Maternity Protection Convention 183 as highlighted in articles 6 and 7, cash benefits shall be provided , in accordance with national laws and regulations , or in any other manner consistent with national practice , to women who are absent from work on maternity leave .

Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.

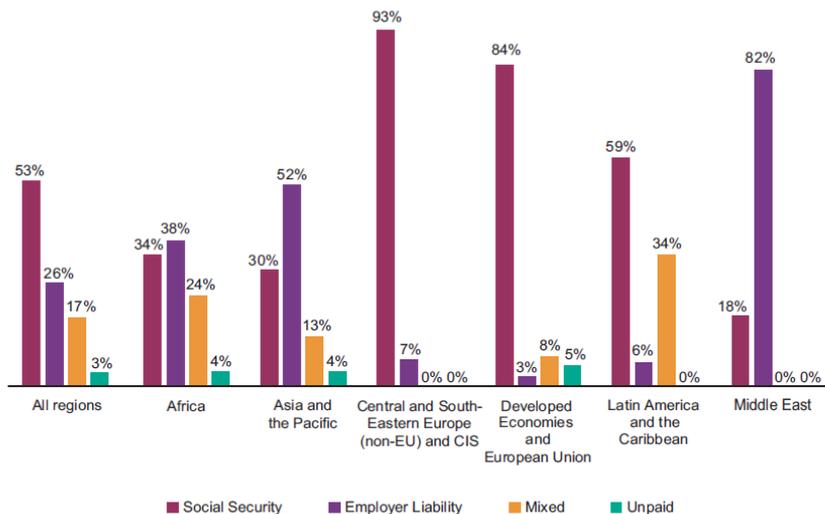
Who should pay?

The costs of maternity protection should be shared among all workers, employers and government. Yet, there is a lot of contestation around maternity protection coverage across the world as empirical evidence reveals a complex web of different approaches towards **what benefits are available; who will pay; and who is eligible to receive the benefits.**

In order to protect women in the labour market, benefits in respect to leave shall be provided through compulsory social insurance or public funds, or in a manner determined by national laws and practice.

In nearly **80 member** states of the ILO, benefits are paid by national social security and in about **15 countries**; the responsibility for financing

Figure 2.4.
Who pays the benefit, by region, 2009 (167 countries)



Note: Figures may not add up to 100 per cent because of rounding.
Source: ILO Database of Conditions of Work and Employment Laws on Maternity Protection (International Labour Office, 2009a).

Medical Benefits

There are a number of benefits that should be offered. These include:

- Prenatal, childbirth and postnatal medical care (Art.6.7 of C183)
- Hospitalization care, when necessary (Art.6.7 of C183)
- To the extent possible, medical benefits should include access to qualified medical staff (Par.3 of R191).
- Access to required pharmaceutical examinations and tests (Par.3 of R191).
- Maternity Protection included in National Health Insurance

Related types of leave

Recommendation No.191 states that “In the case of the death of the mother before the expiry of postnatal leave, the employed father of the child should be entitled to take leave of duration equal to the unexpired portion of the postnatal maternity leave” (Par. 10.1).

In addition, “in the case of sickness or hospitalization of the mother after the childbirth and before the expiry of postnatal leave, and where the mother cannot look after the child, the employed father of the child should be entitled to leave of a duration equal to the unexpired portion of the postnatal maternity leave, in accordance with national law and practice, to look after the child” (Par. 10.2).

Finally, “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” (Par.10.3).

Key areas of action – Role of Stakeholders

The role of government

The government has a number of responsibilities in areas of maternity protection. Chief among them is to set minimum standards and see through the Department of Labour that womanhood is restored in the workplace through amendment of existing laws or introduction of new progressive policies. Because of their important role as productive organ of the nation, the government needs to see to it that pregnant women not only in the workplace but all pregnant women in general should be protected.

Though some in-roads have been made through national laws in as far as maternity protection is concerned, however, the government of South Africa is still encouraged to adopt and ratify ILO Convention 183 based on its responsibility to achieve the MDGs and promote the Decent Work

Agenda. This would go a long way in ensuring that all the categories not covered for in the national laws including other gaps noted would be catered for.

The Role of Employers

Employers need to utilize the services of labour law experts to devise and implement detailed strategies for ensuring the welfare of working mothers and for minimizing the effect of motherhood on workplace productivity without breaking the law. Productivity should be seen in the long term, not only short term.

Employers lose productivity when workers take leave because of illness, injury, or disability. Unlike any of these kinds of absences from the workplace, maternity is not an illness and must be distinguished from sick leave. The good news is that maternity leave can be scheduled ahead of time. By so doing, the employer is able to plan in advance.

As maternity leave safeguards the health of women and their children, it is more beneficial as this curbs against any future sicknesses related to childbirth or absence from work to nurse babies for illnesses related to lack of breastfeeding. Above all, it is an employer's obligation to see that national laws are adhered to and respected in light of the pregnant woman. Every employer should strive to create a conducive working environment favourable for pregnant and nursing mothers.

The Role of Unions and Civil Society

The labour body has a duty to protect and safeguard workers' interests and champion their rights alongside the civic society. Unions should lobby government and employers to improve the minimum standards.

Trade unions in partnership with the government and business under the tripartite arrangement should focus on improving workers welfare that also includes the rights and privileges of pregnant and nursing mothers. It is the duty of the trade unions and the civic society to lobby for redress

and upholding of workers' rights and make sure that workers are not oppressed.

Organised Labour together with civic formations has a duty to lobby government for the restructuring of the UIF to include all workers in the formal and informal economy as well as to ensure contribution by all parties to the fund.

Unions should also adjust the collective bargaining priorities to consider disadvantaged and vulnerable groups of women. This could be done by encouraging full participation of women on the collective bargaining table including consultation of women before such processes.

Through collective bargaining processes, trade unions have an obligation to campaign for child care facilities at or near the workplace and to campaign for a social security net for all. It is the mandate of these two to ask and petition for maternity insurance which to this point covers "formal" workers though the majority of the workforce in the country is classified as "informal". For unions, implementing a basic social security is fundamental for decent work.

Therefore, the union and civil society should seriously lobby for the adoption and ratification of ILO convention 183.

Challenges

Laws providing maternity for working women are usually restricted to the formal sector, which may represent a small proportion of economic activity. There is an **absence** of a **social assistance fund** that ensures maternity protection for women outside formal employment and those that cannot qualify for cash benefits even if they are working in the formal sector.

Workers working in unregistered economic activities in the informal sector in many countries constitute the majority of working women. While there is a trend worldwide to improve and extend maternity protection, the

question of who has to protect the large segment of the population living and working outside the formal economy remains a major challenge.

Many women workers in precarious employment, such as temporary workers, or casual workers, are excluded from the scope of labour legislation and are not covered by the general definition of “worker”. Yet, most national laws would consider formal “employer-employee” relationships when determining eligibility to contribution or benefitting from Maternity Protection measures. Depending on the number of hours they work, part time workers may also be excluded.

Over the decades, however, the coverage of legislation has been extended to more economic sectors and categories’ of workers. Yet, while an employee may be covered by a law, the enjoyment of certain benefits in particular maternity leave and cash benefits may depend on certain eligibility requirements.

Thus, while most countries protect maternity, working women do not enjoy a universal right to access to such protection. A practical example is that of immigrant women working in the formal sector and contributing towards UIF of which they are not ‘eligible to claim’ because they do not possess a “Green ID Book”.

Another shortcoming is that in some instances depending on the woman’s profession, cash benefits may not be adequate *“to ensure that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living”* (Article 6.2 of C183). Those working in vulnerable sectors such as domestic and farm workers always bear the brunt as cash benefits are usually commensurate with one’s earnings.

In most industries, there is still no provision for parental leave for the employed mother or father as provided for in Paragraph 10. (3) Recommendation No. 191. It is sad that fathers cannot take leave to look after their newly born babies. Although “paternity leave” is not explicitly included in ILO standards, it is an important leave policy and should be promoted accordingly.

Recommendations

*COSATU should take the lead in the campaign for the ratification of ILO Convention No. 183 at NEDLAC level.

*Some aspects of the South African national labour laws need to be amended or additions made to ensure employment protection and non-discrimination for pregnant women especially those working in the informal sector and self-employed.

*COSATU should set up a framework/ plan of action co-ordinated by a Reference Group to embark on a nationwide maternity protection consultative mission within its constituency to raise awareness on C183 and the need for the Government to ratify it.

*A massive broad-based campaign encompassing progressive civic society organisations meant to lobby for the ratification of convention 183 is a priority and should begin as soon as possible.

*Unions should also adjust the collective bargaining priorities to consider disadvantaged and vulnerable groups of women for maternity protection through involving women in collective bargaining processes.

*With regards to UIF, there should be a clear dichotomy between maternity benefits and unemployment insurance in general. In fact, maternity benefits should be completely independent of UIF.

*COSATU together with civic formations has an obligation to restructure the UIF to include and cover all women workers including those in the informal sector and immigrants

*Labour and civil society should ensure contribution by the government to the fund. There should be a strong call for collaboration between Department of Health and Labour.

*COSATU should look beyond borders and make sure that

Immigrant women are also considered for UIF maternity protection irrespective of the type of ID they possess.

*Considering the contemporary world of work which is characterised by a high wave of job insecurity, maternity protection should guarantee job retention after childbirth.

Conclusion

South Africa has not yet ratified and domesticated the ILO Convention No. 183, which simply means to a greater extent, a lack of obligation and responsibility. Only when a state ratifies a convention, will it be translated into legislation and enforcement measures including compliance be instituted.

Full adoption and ratification of the ILO Convention No. 183 of 2000 will bring in many opportunities. Among the issues is the full recognition of the role of women to the society and nation at large.

South African laws as enshrined in its Constitution, Labour Relations Act (LRA) and Basic Conditions of Employment Act (BCEA) create an opportunity to begin to lobby for the Adoption of Convention 183.

Treating maternity as a disability or the leave as a period of unemployment or being sick could be considered discriminatory, such as the case of South Africa. The UIF benefits provided for during pregnancy could be exhausted such that if one finds themselves out of employment, they might not be eligible to any social protection.

There should be therefore a clear dichotomy between maternity benefits and unemployment insurance as this is more beneficial to male employees who do not have maternity obligations to cater for. Indeed, maternity benefits should be independent from general unemployment fund.

The paper concludes that women through the biological process of carrying pregnancy not only contribute to the overall GDP of the nation but all continuously add to the existing human resource base of the nation.

South Africa has the potential to be a 'powerhouse' of the continent in terms of human resource as more healthy children are born. By ratifying the ILO Convention, South Africa will be among an array of nations that will prioritize the welfare of pregnant women and nursing mothers, and Mortality rates will be greatly reduced.

Despite the efforts made at international level to adopt convention 183 and recommendation 191 on maternity protection in 2000, it is regrettable to note that South African Government has not yet ratified this noble and progressive international instrument.

Most African countries, among them, South Africa have not yet domesticated the convention which simply means to a greater extent, a lack of obligation and responsibility on the part of respective African governments. Only when a state ratifies a convention, will it be translated into legislation and enforcement measures including compliance be instituted.

Considering the contemporary world of work which is characterised by a high wave of job insecurity, maternity protection should guarantee job retention after child-birth.

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C183
Maternity Protection
Convention,
2000

C183 Maternity Protection Convention, 2000

Convention concerning the revision of the Maternity Protection Convention (Revised), 1952 (Note: Date of coming into force:07:02:2002.)

Convention:C183

Place:Geneva

Session of the Conference:88

Date of adoption:15:06:2000

Subject classification: Maternity Benefit

Subject classification: Maternity Protection

Subject: **Maternity Protection**

See the ratifications for this Convention

Display the document in: French Spanish

Status: Up-to-date instrument This Convention was adopted after 1985 and is considered up to date.

The General Conference of the International Labour Organization

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 88th Session on 30 May 2000, and

Noting the need to revise the Maternity Protection Convention (Revised), 1952, and the Maternity Protection Recommendation, 1952, in order to further promote equality of all women in the workforce and the health and safety of the mother and child, and in order to recognize the diversity in economic and social development of Members, as well as the diversity of enterprises, and the development of the protection of maternity in national law and practice, and

Noting the provisions of the Universal Declaration of Human Rights (1948), the United Nations Convention on the Elimination of All Forms

of Discrimination Against Women (1979), the United Nations Convention on the Rights of the Child (1989), the Beijing Declaration and Platform for Action (1995), the International Labour Organization's Declaration on Equality of Opportunity and Treatment for Women Workers (1975), the International Labour Organization's Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998), as well as the international labour Conventions and Recommendations aimed at ensuring equality of opportunity and treatment for men and women workers, in particular the Convention concerning Workers with Family Responsibilities, 1981, and Taking into account the circumstances of women workers and the need to provide protection for pregnancy, which are the shared responsibility of government and society, and

Having decided upon the adoption of certain proposals with regard to the revision of the Maternity Protection Convention (Revised), 1952, and Recommendation, 1952, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this fifteenth day of June of the year two thousand the following Convention, which may be cited as the Maternity Protection Convention, 2000.

SCOPE

Article 1

For the purposes of this Convention, the term **woman** applies to any female person without discrimination whatsoever and the term **child** applies to any child without discrimination whatsoever.

Article 2

1. This Convention applies to all employed women, including those in atypical forms of dependent work.

2. However, each Member which ratifies this Convention may, after consulting the representative organizations of employers and workers concerned, exclude wholly or partly from the scope of the Convention limited categories of workers when its application to them would raise special problems of a substantial nature.
3. Each Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organization, list the categories of workers thus excluded and the reasons for their exclusion. In its subsequent reports, the Member shall describe the measures taken with a view to progressively extending the provisions of the Convention to these categories.

HEALTH PROTECTION

Article 3

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.

MATERNITY LEAVE

Article 4

1. On production of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of childbirth, a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks.
2. The length of the period of leave referred to above shall be specified by each Member in a declaration accompanying its ratification of this Convention.

3. Each Member may subsequently deposit with the Director-General of the International Labour Office a further declaration extending the period of maternity leave.
4. With due regard to the protection of the health of the mother and that of the child, maternity leave shall include a period of six weeks' compulsory leave after childbirth, unless otherwise agreed at the national level by the government and the representative organizations of employers and workers.
5. The prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without reduction in any compulsory portion of postnatal leave.

LEAVE IN CASE OF ILLNESS OR COMPLICATIONS

Article 5

On production of a medical certificate, leave shall be provided before or after the maternity leave period in the case of illness, complications or risk of complications arising out of pregnancy or childbirth. The nature and the maximum duration of such leave may be specified in accordance with national law and practice.

BENEFITS

Article 6

1. Cash benefits shall be provided, in accordance with national laws and regulations, or in any other manner consistent with national practice, to women who are absent from work on leave referred to in Articles 4 or 5.
2. Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.

3. Where, under national law or practice, cash benefits paid with respect to leave referred to in Article 4 are based on previous earnings, the amount of such benefits shall not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits.
4. Where, under national law or practice, other methods are used to determine the cash benefits paid with respect to leave referred to in Article 4, the amount of such benefits shall be comparable to the amount resulting on average from the application of the preceding paragraph.
5. Each Member shall ensure that the conditions to qualify for cash benefits can be satisfied by a large majority of the women to whom this Convention applies.
6. Where a woman does not meet the conditions to qualify for cash benefits under national laws and regulations or in any other manner consistent with national practice, she shall be entitled to adequate benefits out of social assistance funds, subject to the means test required for such assistance.
7. Medical benefits shall be provided for the woman and her child in accordance with national laws and regulations or in any other manner consistent with national practice. Medical benefits shall include prenatal, childbirth and postnatal care, as well as hospitalization care when necessary.
8. In order to protect the situation of women in the labour market, benefits in respect of the leave referred to in Articles 4 and 5 shall be provided through compulsory social insurance or public funds, or in a manner determined by national law and practice. An employer shall not be individually liable for the direct cost of any such monetary benefit to a woman employed by him or her without that employer's specific agreement except where:

- (a) such is provided for in national law or practice in a member State prior to the date of adoption of this Convention by the International Labour Conference; or
- (b) it is subsequently agreed at the national level by the government and the representative organizations of employers and workers.

Article 7

1. A Member whose economy and social security system are insufficiently developed shall be deemed to be in compliance with Article 6, paragraphs 3 and 4, if cash benefits are provided at a rate no lower than a rate payable for sickness or temporary disability in accordance with national laws and regulations.
2. A Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of this Convention under article 22 of the Constitution of the International Labour Organization, explain the reasons therefor and indicate the rate at which cash benefits are provided. In its subsequent reports, the Member shall describe the measures taken with a view to progressively raising the rate of benefits.

EMPLOYMENT PROTECTION AND NON-DISCRIMINATION

Article 8

1. It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer.
2. A woman is guaranteed the right to return to the same position or an

equivalent position paid at the same rate at the end of her maternity leave.

Article 9

1. Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including - notwithstanding Article 2, paragraph 1 - access to employment.
2. Measures referred to in the preceding paragraph shall include a prohibition from requiring a test for pregnancy or a certificate of such a test when a woman is applying for employment, except where required by national laws or regulations in respect of work that is:
 - (a) prohibited or restricted for pregnant or nursing women under national laws or regulations; or
 - (b) where there is a recognized or significant risk to the health of the woman and child.

BREASTFEEDING MOTHERS

Article 10

1. 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.
2. 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.

PERIODIC REVIEW

Article 11

Each Member shall examine periodically, in consultation with

the representative organizations of employers and workers, the appropriateness of extending the period of leave referred to in Article 4 or of increasing the amount or the rate of the cash benefits referred to in Article 6.

IMPLEMENTATION

Article 12

This Convention shall be implemented by means of laws or regulations, except in so far as effect is given to it by other means such as collective agreements, arbitration awards, court decisions, or in any other manner consistent with national practice.

FINAL PROVISIONS

Article 13

This Convention revises the Maternity Protection Convention (Revised), 1952.

Article 14

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 15

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General. 3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 16

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 17

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and acts of denunciation communicated by the Members of the Organization.
2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 18

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 19

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 20

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
 - (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 16 above, if and when the new revising Convention shall have come into force;
 - (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 21

The English and French versions of the text of this Convention are equally authoritative.

Cross References

Conventions: C156 Workers with Family Responsibilities
Convention, 1981

Recommendations: R095 Maternity Protection Recommendation, 1952

Supplemented: R191 Complemented by the Maternity Protection Recommendation, 2000

Revised: C103 This Convention revises the Maternity Protection Convention, 1952

Constitution: 22:article 22 of the Constitution of the International Labour Organisation



R191
Maternity Protection
Recommendation

R191 Maternity Protection Recommendation, 2000

Recommendation concerning the revision of the Maternity Protection Recommendation, 1952

Recommendation:R191

Place:Geneva

Session of the Conference:88

Date of adoption:15:06:2000

Subject classification: Maternity Benefit

Subject classification: Maternity Protection

Subject: **Maternity Protection**

Display the document in: French Spanish

Status: Up-to-date instrument This Recommendation was adopted after 1985 and is considered up to date.

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and

having met in its 88th Session on 30 May 2000, and Having decided upon the adoption of certain proposals with regard to maternity protection, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Maternity Protection Convention, 2000 (hereinafter referred to as “the Convention”),

adopts this fifteenth day of June of the year two thousand the following Recommendation, which may be cited as the Maternity Protection Recommendation, 2000.

Maternity leave

1.(1)Members should endeavour to extend the period of maternity leave

referred to in Article 4 of the Convention to at least 18 weeks.

(2) Provision should be made for an extension of the maternity leave in the event of multiple births. (3) To the extent possible, measures should be taken to ensure that the woman is entitled to choose freely the time at which she takes any non-compulsory portion of her maternity leave, before or after childbirth.

Benefits

2. Where practicable, and after consultation with the representative organizations of employers and workers, the cash benefits to which a woman is entitled during leave referred to in Articles 4 and 5 of the Convention should be raised to the full amount of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits.

3. To the extent possible, the medical benefits provided for in Article 6, paragraph 7, of the Convention should include:

- (a) care given in a doctor's office, at home or in a hospital or other medical establishment by a general practitioner or a specialist;
- (b) maternity care given by a qualified midwife or by another maternity service at home or in a hospital or other medical establishment;
- (c) maintenance in a hospital or other medical establishment;
- (d) any necessary pharmaceutical and medical supplies, examinations and tests prescribed by a medical practitioner or other qualified person; and
- (e) dental and surgical care.

Financing of benefits

4. Any contribution due under compulsory social insurance providing maternity benefits and any tax based upon payrolls which is raised for the purpose of providing such benefits, whether paid by both the employer

and the employees or by the employer, should be paid in respect of the total number of men and women employed, without distinction of sex.

Employment protection and non-discrimination

5.A woman should be entitled to return to her former position or an equivalent position paid at the same rate at the end of her leave referred to in Article 5 of the Convention. The period of leave referred to in Articles 4 and 5 of the Convention should be considered as a period of service for the determination of her rights.

Health protection

6.(1)Members should take measures to ensure assessment of any workplace risks related to the safety and health of the pregnant or nursing woman and her child. The results of the assessment should be made available to the woman concerned.

(2)In any of the situations referred to in Article 3 of the Convention or where a significant risk has been identified under subparagraph (1) above, measures should be taken to provide, on the basis of a medical certificate as appropriate, an alternative to such work in the form of:

- (a) elimination of risk;
- (b) an adaptation of her conditions of work;
- (c) a transfer to another post, without loss of pay, when such an adaptation is not feasible; or
- (d) paid leave, in accordance with national laws, regulations or practice, when such a transfer is not feasible.

(3)Measures referred to in subparagraph (2) should in particular be taken in respect of:

- (a) arduous work involving the manual lifting, carrying, pushing or pulling of loads;

- (b) work involving exposure to biological, chemical or physical agents which represent a reproductive health hazard;
- (c) work requiring special equilibrium;
- (d) work involving physical strain due to prolonged periods of sitting or standing, to extreme temperatures, or to vibration.
- (4)A pregnant or nursing woman should not be obliged to do night work if a medical certificate declares such work to be incompatible with her pregnancy or nursing.
- (5)The woman should retain the right to return to her job or an equivalent job as soon as it is safe for her to do so.
- (6)A woman should be allowed to leave her workplace, if necessary, after notifying her employer, for the purpose of undergoing medical examinations relating to her pregnancy.

Breastfeeding mothers

- 7.On production of a medical certificate or other appropriate certification as determined by national law and practice, the frequency and length of nursing breaks should be adapted to particular needs.
- 8.Where practicable and with the agreement of the employer and the woman concerned, it should be possible to combine the time allotted for daily nursing breaks to allow a reduction of hours of work at the beginning or at the end of the working day.
- 9.Where practicable, provision should be made for the establishment of facilities for nursing under adequate hygienic conditions at or near the workplace.

Related types of leave

- 10.(1) In the case of the death of the mother before the expiry of postnatal leave, the employed father of the child should be entitled to take leave of a duration equal to the unexpired portion of the postnatal maternity leave.
- (2) In the case of sickness or hospitalization of the mother after childbirth and before the expiry of postnatal leave, and where the mother cannot look after the child, the employed father of the child should be entitled to leave of a duration equal to the unexpired portion of the postnatal maternity leave, in accordance with national law and practice, to look after the child.
- (3) 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.
- (4) The period during which parental leave might be granted, the length of the leave and other modalities, including the payment of parental benefits and the use and distribution of parental leave between the employed parents, should be determined by national laws or regulations or in any manner consistent with national practice.
- (5) Where national law and practice provide for adoption, adoptive parents should have access to the system of protection offered by the Convention, especially regarding leave, benefits and employment protection.

Cross References

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| Conventions: | C103 Maternity Protection Convention (Revised), 1952 |
| Supplemented: | C183 Complementary to the Maternity Protection Convention, 2000 |

