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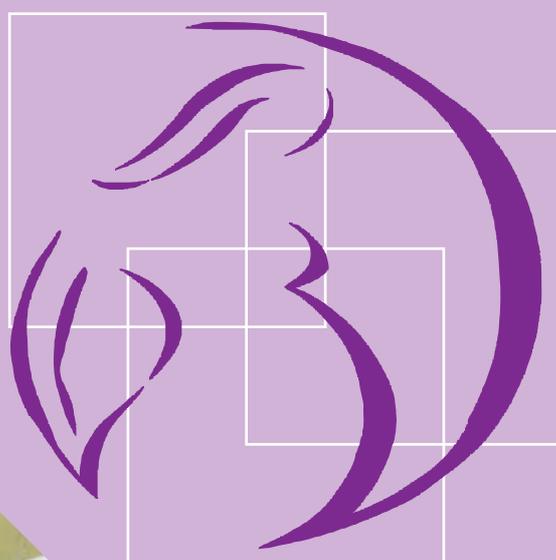
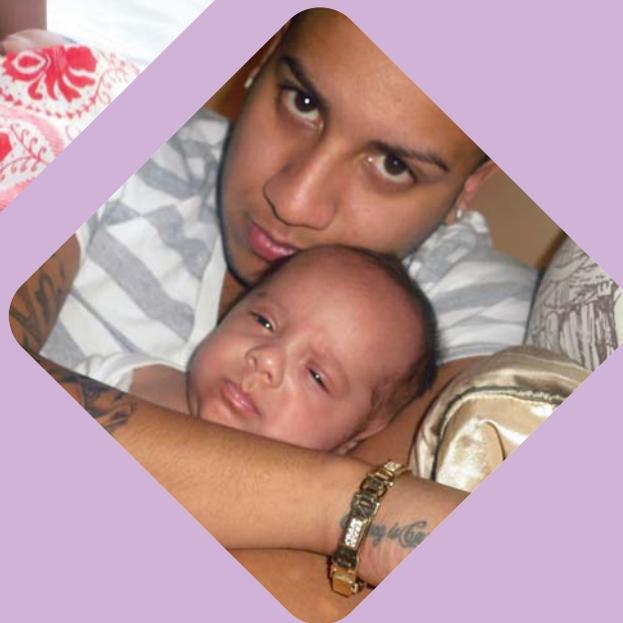
Maternity Protection Resource Package

From Aspiration to Reality for All

PART ONE

Module
5

International rights and guidance on Maternity Protection at work



Maternity Protection Resource Package

From Aspiration to Reality for All

Module 5: International rights and guidance on Maternity Protection at work



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Module 5: International rights and guidance on Maternity Protection at work

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Module 5:

International rights and guidance on Maternity Protection at work

Key contents

This module looks at global frameworks related to the principle of maternity protection and highlights guiding instruments for its implementation. In particular, this chapter highlights:

- ➔ Global treaties, declarations and platforms of action that refer to maternity protection rights
- ➔ International labour standards on maternity protection
- ➔ How to ratify the most recent ILO Convention on Maternity Protection, 2000 (No. 183)
- ➔ How the ILO supervisory machinery works
- ➔ Regional frameworks to improve and promote maternity protection

Global frameworks on maternity protection

Human rights treaties

Together, the world's nations have repeatedly reaffirmed the importance of maternity protection to human rights, women's rights, children's rights and for gender equality. Several global human rights instruments contain provisions related to maternity protection, including:

- the Universal Declaration of Human Rights (UDHR), 1948;
- the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966;
- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979;
- the Convention on the Rights of the Child (CRC), 1989.

The provisions of these instruments related to maternity protection are shown in **Box 5.1**.

Box 5.1 Human Rights Treaties and Maternity Protection

Universal Declaration of Human Rights (UDHR), 1948

Art 25(2):

Motherhood and childhood are entitled to special care and assistance.

International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966

Art. 10(2):

Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period, working mothers should be accorded paid leave or leave with adequate social security benefits.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979

Preamble:

Women's right to non-discrimination, including in maternity: leading implicitly to maternity protection at work, to paternity and parental leave, and to understanding society's responsibility towards women vis-à-vis maternity.

Art. 11:

Non-discrimination in employment; health and safety at work; prohibits dismissal during pregnancy and maternity leave; maternity leave with pay; services enabling women to combine family obligations and work (child-care facilities); protection against work harmful during pregnancy.

(1): *States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: [...]*

(f) *The right to protection of health and safety in working conditions, including the safeguarding of the function of reproduction.*

(2): *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:*

(a) *To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;*

(b) *To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;*

(c) *To encourage the provisions of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;*

(d) *To provide special protection of women during pregnancy in types of work proved to be harmful to them.*

Art. 12.2:

...States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Convention on the Rights of the Child (CRC), 1989**Art. 18(2):**

For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

Art. 18(3):

States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Sources:

- UN: *Universal Declaration of Human Rights* (New York, 1948).
- *International Covenant on Economic, Social and Cultural Rights* (New York, 1966).
- *International Covenant on Civil and Political Rights* (New York, 1966).
- *Convention on the Elimination of All Forms of Discrimination Against Women* (New York, 1979).
- *Convention on the Rights of the Child* (New York, 1989).



Beijing Declaration and Platform for Action, 1995

The Fourth World Conference on Women, held in Beijing in 1995, brought together 6,000 delegates from 189 countries and over 4,000 non-governmental organization (NGO) representatives. In a Declaration, governments reaffirmed their commitment to women's equal rights and empowerment. The resultant *Platform for Action* comprised a global framework and strategic objectives and actions in 12 critical areas, including poverty, equal access to education and health care, decision-making, violence against women and the rights of female children (see **Box 5.2**).

Box 5.2 The Beijing Platform for Action (1995): A call for maternity protection and harmonization of work and family responsibilities

The overriding message of the Fourth World Conference on Women was that the issues addressed in the Platform for Action were global and universal. Deeply entrenched attitudes and practices perpetuate **inequality** and **discrimination** against women in all parts of the world. Change and implementation thus require new values, attitudes, practices and priorities at all levels. Measures should be taken at all levels to protect and promote the inalienable rights of every woman and girl and should be at the heart of all action. These measures should follow international norms and standards of gender and enable institutions to progress such that change is implemented at a wider level. Governments and the UN should make commitments to use “**gender mainstreaming**” as a strategy in policies and programmes to achieve the goal of gender equality.

In order to increase women's access throughout the life cycle to **appropriate, affordable and quality health care**, information and related services:

Paragraph 106 calls for governments and partners to:

Formulate special policies, design programmes and enact the legislation necessary to alleviate and eliminate environmental and occupational health hazards associated with work in the home, in the workplace and elsewhere with attention to pregnant and lactating women.

In order to promote **harmonization of work and family responsibilities** for women and men:

Paragraph 181 calls on governments to:

Ensure, through legislation, incentives and/or encouragement, opportunities for women and men to take job-protected parental leave and to have parental benefits. Promote the equal sharing of responsibilities for the family by men and women, including through appropriate legislation, incentives and/or encouragement, and also promote the facilitation of breastfeeding for working mothers.

Source: Fourth World Conference on Women: *Beijing Declaration and Platform of Action* (Beijing, 1995).

In March 2010, the 54th Session of the United Nations Commission on the Status of Women adopted a declaration on the occasion of the 15th anniversary of the Beijing Conference and passed Resolution 54/4 on women's economic empowerment. The Resolution urges States as well as employers, organizations and trade unions to develop or strengthen policies and programmes to support the multiple roles women play in society. The Resolution acknowledges the significance of maternity and motherhood, and that such policies and programmes should also promote shared responsibility on the part of women and men in parenting children and caring for other family members.¹

¹ UN: *Report of the Commission on the Status of Women*, E/2010/27 (SUPP) - E/CN.6/2010/11 (SUPP), 54th Session, New York, 2010.

World Health Assembly (WHA) resolutions

Various WHA resolutions on infant and young child feeding explicitly mention maternity protection at the workplace. These include the resolutions adopted in 1990, 1992, 2001 and 2002, year of the adoption of the *Global Strategy on Infant and Young Child Feeding*. The WHA Global Strategy contains several paragraphs relevant to maternity protection, especially related to breastfeeding and to the specific roles of the government and the other stakeholders vis-à-vis legislation and policies for working mothers and fathers (see **Box 5.3**). The WHA Global Strategy was adopted by UNICEF's Executive Board in 2002.

Box 5.3 World Health Assembly (WHA) Resolution *Global Strategy for Infant and Young Child Feeding:* Sections relevant to maternity protection

Paragraph 4: Scope

Maternity protection legislation should include all working women in agricultural, formal and informal sectors.

Paragraph 12: Specific measures of protection

Women in paid employment can be helped to continue breastfeeding by being provided with minimum enabling conditions, for example, paid maternity leave, part-time work arrangements, on-site crèches, facilities for expressing and storing breast-milk and breastfeeding breaks.

Paragraph 28: Role of governments

Mothers should also be able to continue breastfeeding and caring for their children after they return to paid employment. This can be accomplished by implementing maternity protection legislation and related measures consistent with ILO Maternity Protection Convention, 2000 No. 183 and Maternity Protection Recommendation, 2000 No. 191. Maternity leave, day-care facilities and paid breastfeeding breaks should be available for all women employed outside the home.

Paragraph 34: National legislation

A comprehensive national policy, based on a thorough needs assessment, should foster an environment that protects, promotes and supports appropriate infant and young child feeding practices...

For protection: Adopting and monitoring application of a policy of maternity entitlements, consistent with the ILO Maternity Protection Convention and Recommendation, in order to facilitate breastfeeding by women in paid employment, including those whom the standards describe as engaging in atypical forms of dependent work, for example part-time, domestic and intermittent employment...

Paragraph 45: Role of employers and trade unions

Employers should ensure that maternity entitlements of all women in paid employment are met, including breastfeeding breaks or other workplace arrangements – for example facilities for expressing and storing breast-milk for later feeding by a caregiver – in order to facilitate breast milk feeding once paid maternity leave is over. Trade unions have a direct role in negotiating adequate maternity entitlements and security of employment for women of reproductive age.

Paragraph 46: Child-care facilities

Other groups: ...child-care facilities, which permit working mothers to care for their infants and young children, should support and facilitate continued breastfeeding and breast-milk feeding.

Paragraph 48: International organizations

Specific contributions of international organizations to facilitate the work of governments include the following: ...to support policy development and promotion;...advocating ratification of ILO Maternity Protection Conventions, 2000 No. 183 and application of Recommendation 2000 No. 191, including for women in atypical forms of dependent work.

Source: WHO: *Infant and young child nutrition: Global strategy on infant and young child feeding*, Report of the Secretariat, World Health Assembly, 55th Session, (Geneva, 2002).

The *Innocenti* Declarations on Breastfeeding and Infant and Young Child Feeding

The 1990 and 2005 *Innocenti* Declarations recognized that breastfeeding is an irrevocable right of all mothers and is a fundamental component in assuring a child's right to food, health and care. Therefore, the declarations called on governments to pursue the implementation of these rights, including the rights of working women to breastfeed, one of the key elements of maternity protection (See **Box 5.4**). The *Innocenti* Declarations have successfully spurred attention and action around the world on these fronts, including working women's rights to breastfeed.

Box 5.4 *Innocenti* Declarations, 1990 and 2005

The meeting, co-sponsored by UNICEF, the WHO, USAID and the Swedish International Development Authority (SIDA), was held in Florence, on 30 July-1 August 1990. The declaration, endorsed by the 45th World Health Assembly, states that by the year 1995 governments should have reached the following four operational targets.²

- **Target 1:** Appoint a national breastfeeding coordinator of appropriate authority, and establish a multi-sectoral national breastfeeding committee composed of representatives from relevant government departments, non-governmental organizations and health professional associations.
- **Target 2:** Ensure that every facility providing maternity services fully practises all ten of the 'Ten Steps to Successful Breastfeeding'.
- **Target 3:** Take action to give effect to the principles and aim of all articles of the International Code of Marketing of Breast-milk Substitutes and subsequent relevant World Health Assembly resolutions in their entirety.
- **Target 4:** Enact imaginative legislation protecting the breastfeeding rights of working women and establish means for its enforcement.

Innocenti Declaration on Infant and Young Child Feeding, 2005

In 2005, the *Innocenti Declaration on Infant and Young Child Feeding* was adopted by UNICEF, WHO and several NGOs. While reinforcing the four original targets, it adopted five new ones.

- **Target 5:** Comprehensive policy
- **Target 6:** Optimal breastfeeding, with attention to supporting women in the community
- **Target 7:** Complementary feeding with continued breastfeeding
- **Target 8:** Infant feeding in exceptionally difficult circumstances
- **Target 9:** New legislation and other measures

Source: UNICEF: *1990–2005 Celebrating the Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding, Past Achievements, Present Challenges and the Way Forward for Infant and Young Child Feeding* Geneva, 2006.

² The fourth target refers to maternity protection and breastfeeding.

International labour standards

Maternity protection at work falls directly under the mandate of the ILO. A key means of action of the ILO is the adoption of international labour standards and action to assist countries in their implementation through supervision and technical assistance.

The ILO and international labour standards

International labour standards take the form of Conventions or Recommendations. As of January 2012, the International Labour Conference had adopted 189 Conventions and 201 Recommendations over the course of the ILO's 92-year history. These labour standards cover a broad range of subjects including fundamental rights at work, the employer–employee relationship and industrial relations, conditions of work, occupational safety and health, gender equality, social security and other work-related areas of social policy.

International labour standards are designed to provide a benchmark for the provision of human rights within the world of work and are used to guide the design and implementation of labour and social policies at the national level. Even where a country does not ratify a Convention, Conventions are often referred to with authority as the internationally recognized minimum standard.

These standards are characterized by two features: they are universal, as they are intended to be applied in all the member States of the Organization; at the same time they recognize that countries may have diverse levels of economic development and differing legal approaches. Hence, international labour standards may allow for a certain degree of flexibility in terms of the implementation of the universally recognized principles they embody. For instance, many Conventions contain so-called “flexibility” clauses allowing for progressive implementation.

International labour standards provide the legal framework for achieving decent work for all. They are the result of discussions among governments, workers and employers, and they are based on experiences from around the world. Thus, the Conventions and Recommendations provide a road map for policy- and decision-makers at the national level in their efforts to promote decent work and ensure social and economic progress. Hence, international labour standards on maternity protection are of direct relevance for the development and strengthening of national laws and policies in this field.

International labour standards on maternity protection

Maternity protection for women workers has been a core issue for the ILO since its foundation in 1919, when the governments, employers and trade union representatives of member States adopted the first Convention on maternity protection. Over the course of its history, the ILO has adopted three Conventions on maternity protection (No. 3, 1919; No. 103, 1952; No. 183, 2000). These Conventions, together, with their corresponding Recommendations (No. 95, 1952; No. 191, 2000) have progressively expanded the scope and entitlements of maternity protection at work and provided detailed guidance orienting national policy and action. The core concerns have been to enable women to successfully combine their reproductive and productive roles, and to prevent unequal treatment in employment due to their reproductive role.

As of January 2012, 65 countries were party to at least one of the Maternity Protection Conventions.³

The **Maternity Protection Convention, 1919 (No. 3)** was the first ILO standard concerning the employment of women before and after childbirth. This Convention was limited to women employed in public or private industrial or commercial undertakings. It laid out the basic principles of maternity protection: the rights to maternity leave (12 weeks), medical benefits, income replacement during leave and breastfeeding breaks. The right to leave was reinforced by the explicit prohibition of dismissal during a woman's absence on maternity leave or at such time that the notice would expire during such absence; employment protection was thus seen as a vital aspect of maternity protection from the start. Convention No. 3 is no longer open to ratification, but is still in force for those member States that have ratified it and have not subsequently denounced it.

The **Maternity Protection Convention (Revised) (No. 103)**, adopted in 1952, extended the scope of protection to a larger number of worker categories to include women employed in industrial undertakings and non-industrial and agricultural occupations, including "domestic work for wages in private households" (Art.1.3.h). It provided further protection by extending leave entitlement to cover illness resulting from pregnancy or confinement, and expanding upon the types of medical benefits provided. It also introduced for the first time a minimum level as regards cash maternity benefits: benefits should be fixed at a rate sufficient for the full and healthy maintenance of the mother and her child in accordance with a suitable standard of living (i.e. two-thirds of previous earnings where benefits are computed on the basis of earnings). Convention No. 103 is also no longer open to ratification, but remains in force for those member States that have ratified it, unless they have subsequently ratified Convention No. 183 (in which case, only the latter Convention remains in force).

The **Maternity Protection Convention, 2000 (No. 183)**, is the most recent maternity protection Convention adopted by the member States, and is accompanied by the Maternity Protection Recommendation, 2000 (No. 191). **Box 5.5** shows its key provisions.

Box 5.5 The Maternity Protection Convention, 2000 (No. 183), covers:

- Extension of protection to all employed women.
- 14 weeks of maternity leave, including six weeks of compulsory postnatal leave.
- Additional leave in case of illness, complications or risk of complications arising out of pregnancy or childbirth.
- Cash benefits during leave of at least two-thirds of previous or insured earnings (or at an equivalent level where benefits are not calculated on the basis of previous earnings).
- Access to medical care, including prenatal, childbirth and postnatal care, as well as hospitalization when necessary.
- Health protection: the right of pregnant or nursing women not to perform work prejudicial to their health or that of their child.
- Breastfeeding: minimum of one daily break, with pay.
- Employment protection and non-discrimination.

Note: For more details, see **Module 1**.

³ For ratification by country, see *Resource Sheet 5.3* at the end of this Module.

Convention No. 183 and Recommendation No. 191 are notable for several advances in protection from earlier standards on maternity protection. Convention No. 183 expanded the scope of maternity protection to cover all employed women,⁴ including those in atypical⁵ forms of dependent work in the informal economy. The minimum leave period was extended from 12 weeks in earlier Conventions to 14 weeks in Convention No. 183, while Recommendation No. 191 suggests 18 weeks. Convention No. 183 provides stronger employment protection, requires measures to ensure that maternity does not engender discrimination, including in access to employment, and explicitly prohibits pregnancy tests as part of candidate selection procedures (except in very limited specific circumstances). In terms of breastfeeding, Recommendation No. 191 calls for the establishment of breastfeeding facilities at the workplace. Research shows that national legislation has been gradually shifting toward the provisions set out by the most recent standards on maternity protection, in terms of length of leave, as well as the level and source of benefits (see **Box 5.6**).

Box 5.6 Ratification and application of ILO maternity protection Conventions

As of January 2012, 65 ILO member States were party to at least one of the maternity protection Conventions, with virtually all countries having adopted some measures of maternity protection. The 2010 ILO global estimates, based on the revision of the legal provisions of 167 countries, show that there have been noticeable improvements in maternity protection legislation since 1994. Globally, 30 per cent of the member States fully meet the requirements of Convention No. 183 on all three aspects: they provide for at least 14 weeks of leave at a rate of at least two-thirds of previous earnings, paid by social security or public funds. The regions with the highest proportion of countries in conformity with these aspects of the Convention are Central Asia and Europe, while conformity is particularly low in Asia and the Pacific and the Middle East.

Source: ILO: *Maternity at work: A review of national legislation. Second Edition. Findings from the ILO Database of Conditions of Work and Employment Laws*, (Geneva, 2010).

For an overview of maternity protection as set out by the Conventions, see **Module 1**. See **Part 2: Maternity Protection in Depth** for more detail on each element. **RESOURCE SHEETS 5.1** and **5.2** provide the text of the Convention and Recommendation, and **RESOURCE SHEET 5.3** tabulates the ratifications by country.

⁴ According to Convention No. 183, the term “employed women” comprises all women in an employment relationship, irrespective of: the form of contract (written or oral, express or implied), type of work, where it takes place, type of pay (wage or salary, cash or in-kind). According to the Resolution concerning statistics of the economically active population, employment, unemployment and underemployment, adopted by the Thirteenth International Conference of Labour Statisticians (Geneva, 1982), the “employed” comprise all persons above a specific age who during a specific brief period, either one week or one day, were in “paid employment” or “self-employment”. For a complete definition, see: ILO LABORSTATA at <http://laborsta.ilo.org/applv8/data/c2e.html>.

⁵ “Atypical forms of dependent work” include: fixed-term, contract, casual, seasonal, part-time, temporary agency workers; homeworkers; pieceworkers; unorganized, informal employees in all sectors; women in disguised employment relationships (disguised self-employment).



Other ILO standards and commitments related to maternity protection

ILO standards with relevance to maternity protection

Besides the specific maternity protection instruments and the ones regarding workers with family responsibilities, a number of other ILO instruments relate to one or several of the main elements of maternity protection. See **Box 5.7** for a list of relevant instruments.

Cash and medical benefits

Four instruments address the question of maternity protection within a wider framework of health-care provision and income security. They are:

- **The Income Security Recommendation, 1944 (No. 67)** asserts that income security schemes should relieve want and prevent destitution by restoring, up to a reasonable level, income which is lost due to inability to work. The particular contingency for which maternity benefits should be paid is the loss of earning resulting from women's absence from work during prescribed periods before and after childbirth. This benefit should be ensured for self-employed women, provided they meet certain conditions regarding the regularity of their contribution payment.
- **The Medical Care Recommendation, 1944 (No. 69)** stresses that the availability of medical care constitutes an essential element of social security. Paragraph 21 specifies that the medical care afforded should comprise the care given by qualified midwives and other maternity services at home or in hospital as well as maintenance in hospitals or other medical institutions; Paragraph 29 specifically mentions nursing, maternity and pharmaceutical services.
- **Part VIII of the Social Security (Minimum Standards) Convention, 1952 (No. 102)** recognizes maternity benefits as one of the nine branches of social security, and that maternity benefits provide for medical care and periodical payments in respect of suspension of earnings. The Convention envisages the provision of maternity medical care (at least prenatal, confinement and postnatal care either by medical practitioners or by qualified midwives, and hospitalization where necessary) and the provision of cash benefits for at least 12 weeks (corresponding to at least 45 per cent of the former earnings of the woman worker).

Health Protection

- **The Night Work Convention, 1990 (No. 171) and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948** do not prohibit night work for pregnant and nursing workers. Article 7 of the Convention provides instead that measures be taken to ensure that an alternative to night work is available to women night workers before and after childbirth for a period of at least 16 weeks, and for additional periods if necessary for the health of the mother or child. Transfer to day work and the provision of social security benefits for an extension of maternity leave are among the measures mentioned.
- **Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200)** covers all workers under all forms of arrangement and in all workplaces. The Recommendation stresses that HIV and AIDS are a workplace issue and that women's empowerment is a key factor in the global response to the disease.

Prevention should be a priority and workers as well as **their** families should be entitled to preventive measures and treatment, including for mother-to-child transmission and treatment. Measures in workplaces to reduce HIV-transmission should also include the protection of sexual and reproductive health and sexual and reproductive rights of women and men, and workers should not be required to undertake HIV tests or to disclose their status.

Employment protection

- **Termination of Employment Convention, 1982 (No. 158)** affirms that invalid reasons for the termination of employment include race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction, social origin, maternity leave and union membership or participation.
- **The Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)** proscribes that prior unemployment cannot be a criterion to deny a woman her entitled maternity benefits.

Non-discrimination

- **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** aims to guarantee that every job application should be considered fairly, without discrimination based on gender, marital status, family situation, pregnancy or confinement.
- **The ILO Code of Practice, 1997**, on the protection of workers' personal data stipulates that the processing of such data should not have the effect of the unlawful discrimination in employment or occupation dealt with in Convention No.111.

Working conditions

- **The Holidays with Pay Convention (Revised), 1970 (No. 132)** guarantees that maternity leave shall not be counted as part of entitled vacation.
- **The Part-Time Work Convention, 1994 (No. 175)** mentions maternity protection as one of the areas in which part-time workers should enjoy the same conditions as full-time workers in a comparable situation.
- **The Private Employment Agencies Convention, 1997 (No. 181)** provides for measures to ensure that workers employed by private employment agencies enjoy adequate maternity protection and benefits, as well as parental protection and benefits.
- **The Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189)** calls for a review of legislation to ensure that women in small and medium-sized enterprises receive social protection for maternity.

Migrant workers

- **The Migration for Employment Convention (Revised), 1949 (No. 97)** provides for treatment of migrant workers that is not less favourable than that received by national workers with respect to social security, including that related to maternity.

Specific sectors

- **The Nursing Personnel Convention, 1977 (No. 149)** provides for maternity leave and social security for nursing personnel that is at least equivalent to that enjoyed by other workers in the country.
- **The Home Work Convention, (No. 177) and Recommendation (No. 184), 1996** aims to achieve equal treatment of homeworkers in the field of maternity protection.
- **The Safety and Health in Agriculture Convention, 2001 (No. 184)** provides protection for women workers in agriculture in relation to pregnancy, breastfeeding and reproductive health. It also addresses preventive and protective measures for the use and handling of chemicals.
- **The Maritime Labour Convention, 2006 (MLC)** establishes that maternity leave should not be considered annual paid leave, and emphasizes the need for a comprehensive social security scheme for women in maternity.
- **The Domestic Workers Convention, 2011 (No.189)** states that appropriate measures should be taken in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity.

Social dialogue and collective bargaining

- **The Freedom of Association Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98)** are fundamental international labour standards to enable social dialogue and negotiation between workers and employers to improve maternity protection and the rights of workers with family responsibilities.

Box 5.7 ILO Conventions and Recommendations relating to maternity protection at work

The international labour standards specifically concerning maternity protection include:

- Maternity Protection Convention, 1919 (No. 3)
- Maternity Protection Convention, revised, 1952 (No. 103), (no longer open for ratification), and Recommendation, 1952 (No. 95)
- Maternity Protection Convention, revised, 2000 (No. 183) and Recommendation, 2000 (No. 191)

Other ILO instruments related to maternity protection:

- Equal Remuneration Convention, 1951 (No. 100)
- Social Security (Minimum Standards) Convention, 1952 (No. 102)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Holidays with Pay Convention (Revised), 1970 (No. 132)
- Workers with Family Responsibilities Convention, 1981 (No.156) and Recommendation (No. 165)
- Part-time Work Convention, 1994 (No. 175)
- ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)
- Safety and Health in Agriculture Convention, 2001 (No. 184) and Recommendation (No. 192)
- International Labour Conference Resolution on Gender Equality, Pay Equity and Maternity Protection, 2004
- Promotion Framework for Occupational Safety and Health Convention, 2006 (No. 187)
- International Labour Conference Resolution on Gender Equality at the Heart of Decent Work, 2009
- Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200)

To consult ILO Conventions and Recommendations, see *ILOLEX: the ILO Database on Labour Standards*, at <http://www.ilo.org/ilolex/index.htm>.

Broad ILO commitments to maternity protection

Maternity protection was included as one of the aims and purposes of the ILO from its creation. In particular, Article III of the Declaration concerning the aims and purposes of the ILO (Declaration of Philadelphia, 1944), which is part of the ILO Constitution, states that:

The Conference recognizes the solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve: [...]

- (f) the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care;*
- (g) adequate protection for the life and health of workers in all occupations;*
- (h) provision for child welfare and maternity protection; [...]*

The member States of the ILO have repeatedly re-affirmed their commitment to maternity protection, as well as the social protection systems required to realize it, including:

- **The Declaration on Equality of Opportunity and Treatment for Women Workers** adopted by the International Labour Conference in 1975. The Declaration recalls that “maternity is a social function” and that equality of opportunity and treatment of women require elimination of discrimination on the grounds of pregnancy, childbirth and family responsibilities. “All women workers shall be entitled to full maternity protection [...], the costs of which should be borne by social security or other public funds or by means of collective arrangements” (Art. 8). The Declaration also states that studies and research should be conducted and measures taken to protect against processes which might have a harmful effect on women and men from the standpoint of their social function of reproduction (Art. 9).
- **The Resolution on equal opportunities and equal treatment for men and women in employment**, adopted by the ILC in 1985, encourages supportive measures related to the burden of family and household responsibilities.
- **The Resolution on gender equality, pay equity and maternity protection**, adopted by the ILC in 2004 links maternity protection to non-discrimination by calling on all governments to ratify and apply Conventions Nos. 100 and 111 and calling on all the social partners to contribute actively to the elimination of gender discrimination and the promotion of gender equality.
- **The Declaration on Social Justice for a Fair Globalization** in 2008 reinforced the “solemn obligation” of the ILO to further all the objectives set out in the Declaration of Philadelphia and to promote, among others, the development and enhancement of “measures of social protection – social security and labour protection – which are sustainable and adapted to national circumstances” [Art. I A. (ii)].
- **The Resolution on gender equality at the heart of decent work**, adopted by the ILC in 2009, states that discrimination related to pregnancy and maternity is one of the major challenges to advancing gender equality in the world of work and is key to equality in the workplace. The Resolution states that “the need for integration of maternity protection as part of governments’ responsibility for social and economic policy should be recognized and applied.” Eliminating discrimination due to family responsibilities, particularly hiring and firing policies that discriminate against women of childbearing age, through better legal frameworks including effective application is necessary. In order to progress towards giving effect to the principle of paid maternity leave and paternity and/or parental leave, the Resolution observes that public support systems and other measures need to be developed. Among its Recommendations, the Resolution indicates that the ILO should “compile and disseminate good practices on parental leave and paternity and maternity leave and benefits, and provide technical support to governments to develop effective laws and policies”.
- **The Global Jobs Pact**, adopted by the ILC in 2009, identified the building of social protection systems to assist the vulnerable as one of the key Decent Work Responses to the economic and social crisis. It called upon countries to give consideration, among others, to introducing cash transfer schemes for the poor to meet their immediate needs and to build adequate social protection for all by drawing on a basic social protection floor including access to health care, income security and child benefits.

- **The Resolution concerning the recurrent discussion on social protection (social security)**, adopted by the ILC in 2011, recognizes that women tend to face higher social security exclusion than men, “due to discrimination throughout the life cycle and the burden they shoulder in family and care responsibilities” (Para.7). In addition it includes among the policy options indispensable for sustainable growth and higher levels of decent employment “facilitating reconciliation of work and family responsibilities for women and men, and ensuring effective access to comprehensive social services to address care needs [of dependents]. This includes, maternity protection such as adequate pre and post natal care and income guarantees and other supports for women during the last weeks of pregnancy and the first weeks after delivery” (Para. 20.h).

Ratification and application of ILO Conventions

Conventions become legally binding for an ILO member State only following an act of ratification duly registered by the ILO. Ratifying an ILO Convention entails a decision to this effect by the competent national authority or body, the communication to the ILO of a so-called “instrument of ratification”, and the registration of the ratification by the ILO Director-General. A Convention generally enters into force for the country concerned one year following its registration with the ILO. Periodic reporting for the purpose of supervision starts two years following ratification. Upon request, the ILO provides technical assistance with regard to the ratification and application of Conventions.

To monitor the status of ratifications of ILO Conventions and their application, the ILO International Labour Standard Department (NORMES) has developed an on-line database on the application of international labour standards (see **Key Resources**, this Module). The database contains information on countries that have ratified ILO Conventions on maternity protection and how they have applied them in law and practice.

The pre-ratification stage

While the decision whether to ratify a Convention remains with each ILO member State, they have an obligation under the ILO Constitution to submit newly adopted Conventions (and Recommendations) to the national body that has the power to legislate or to take other action to implement the instrument.⁶ This competent authority is normally the parliament or legislative assembly. The aim of this procedure is to promote measures at the domestic level for the implementation of the Convention. It also aims to promote ratification.

In placing the text of a Convention (or Recommendation) before the competent legislative body, governments are invited to indicate what measures might be taken to give effect to the instrument in question. Hence, many governments establish a comparative analysis of national law and practice on one hand, and the ILO instrument on the other. Governments may also make recommendations to the legislature on possible ratification.

It is good practice (and an obligation under the Tripartite Consultation Convention, 1976 (No. 144) where ratified)⁷ to consult representatives of employers’ and workers’ organizations before making proposals in the context of submission to the national legislature.

⁶ See ILO: *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*, (Geneva, 2005).

⁷ As of July 2011, 132 member States had ratified Convention No. 144.

Under the ILO Constitution, governments have 12 months (18 months in exceptional cases) to submit new ILO instruments to the competent authority.⁸ Following such submission, countries may occasionally re-examine non-ratified Conventions to consider what measures might be taken to promote their implementation and ratification as appropriate. Given that Convention No. 183 revises the earlier maternity protection Convention No. 103, the Governing Body of the ILO has specifically invited member States for which Convention No. 103 is in force to consider ratifying the newer Convention No. 183.

Re-examination of non-ratified Conventions and of Recommendations at appropriate intervals may be initiated by the governmental authorities responsible for labour matters (usually the Ministry of Labour). Such a process can be launched by placing the matter on the agenda of the national tripartite body responsible for international labour standards matters, where such bodies exist, or other fora for social dialogue. The examination of Convention No. 183, with a view to possible ratification, can also be pursued through the commissioning of a review of national laws and policies on maternity protection, comparative research into international good practices and the holding of technical workshops with the participation of workers, employers' representatives and other relevant stakeholders. It is often during the pre-ratification stage that governments seek the assistance of the ILO in assessing and strengthening national law and practice, as well as exploring the meaning and implications of the provisions of the Convention in question.

Some of the questions and concerns that arise about ratifying Convention No. 183 can be found in **RESOURCE SHEET 5.4**.

The ratification procedure

Once the responsible line ministry of the national government has decided to propose ratification, the next step is the initiation of the formal procedures at the national level towards ratification. While these procedures vary from country to country, they normally involve a submission of the line ministry to the Cabinet or Council of Ministers for endorsement of the ratification proposal and subsequent submission to the legislature for approval.

Following completion of the formal ratification procedures at the national level, it is the government's role to communicate the ratification to the ILO. To this effect, the government sends a document ("instrument of ratification") to the Director-General of the ILO stating which particular Convention has been ratified. The letter should clearly convey the State's will to be bound by the Convention concerned, as well as its undertaking to fulfil its provisions, with specific reference to Article 19(5)(d) of the ILO Constitution. The instrument of ratification provided to the ILO has to be an original document (not scanned or photocopied) signed by a person who has the legal authority to engage the State (e.g. the Head of State, Prime Minister, Minister of Labour or Minister of Foreign Affairs).

Once the instrument of ratification is received by the ILO, the Director-General registers the ratification, which is subsequently published in the ILO Official Bulletin and on the ILO website.

In the case of Convention No. 183, there is one additional formal requirement in order for the Director-General to register the ratification of the Convention: the government must

⁸ See ILO Constitution Article 19(5)(b).

provide the ILO with a declaration indicating the length of the period of maternity leave prescribed at the national level. This declaration is mandatory, as provided in Article 4(2) of the Convention. **Box 5.8** explains the requirement for the declaration that must be submitted to the ILO Director-General as part of the ratification process and provides an example of a declaration letter.

Box 5.8 Member States' declaration required by Convention No. 183

Several Conventions require *declarations* to be made either in the instrument of ratification itself or in an accompanying document. This is among others the case for the Maternity Protection Convention, 2000 (No. 183). Article 4(1, 2) states the following:

- (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.*

This means that the ratification of Convention No. 183 cannot be registered by the Director-General of the ILO without such a declaration having been provided to the ILO by the government concerned. It is thus important that the substance of the declaration (in this case the length of the period of maternity leave) be considered during the preparations for ratification and before the instrument of ratification is prepared.

Several member States have submitted to the ILO a ratification instrument without joining the declaration. These countries are currently not considered to have ratified the Convention on Maternity Protection, 2000 (No. 183) according to international law.

The declaration in accordance with Article 4(2) of the Convention can be made in the form of a letter addressed to the Director-General, in which a *statement* is made that indicates the length of maternity leave in the ratifying State, according to its national legislation. The period of leave provided for and indicated in the declaration must be at least 14 weeks. The declaration may be formulated, for example, as follows:

Subject: Declaration required by Article 4, paragraph 2, of the Maternity Protection Convention (No. 183), 2000

Dear Director-General,

With reference to Article 4, paragraph 2, of the Maternity Protection Convention (No. 183), 2000, I have the honour to specify, on behalf of the Government of [name of country], that the length of maternity leave is [14, 15, 16 ... weeks].

[Salutation, signature, title of signatory]

A letter containing such a declaration must be submitted as an original document and has to be signed by a person having the legal authority to engage the State (as the instrument of ratification itself).

The ILO provides, upon request, technical advisory services on questions relating to the ratification of ILO Convention No. 183.

Source: ILO: *Handbook of procedures relating to international labour Conventions and Recommendations* (Geneva, 2006).

The effects of ratification

One year after the date of the registration of the ratification, the Convention enters into force for the country concerned (i.e. its provisions become binding under international law). When a member State has ratified a Convention, it agrees to two important things:

- It accepts to take the measures required to give effect to all the Convention's provisions. Hence, national legislation and practice must be reviewed vis-à-vis the provisions of the Convention and amended if necessary. However, many of the Convention's provisions enable ratifying States to apply them in a manner consistent with national law and practice, taking into account the level of development of the given member State's economy and social security systems.
- In line with its obligations under the ILO Constitution, the government must submit periodic reports to the ILO on the measures taken to apply the Convention. In the case of Convention No. 183, reports are due every five years. The first report is due two years following ratification (i.e. one year after entry into force). Reports submitted by governments are examined by the ILO supervisory bodies (see below).

After ratification by a member State, the Convention is valid in that State for a period of at least 10 years. After this period, the State may denounce the Convention if desired, though this is extremely rare in practice. However, member States that have ratified Convention No. 103 (1952) on maternity protection automatically denounce it when ratifying Convention No. 183.

The role of workers' and employers' organizations

Workers' and employers' organizations have a key role to play in the process of ratification of ILO standards. As noted above, national tripartite consultations regarding the re-examination of non-ratified Conventions and measures of their implementation and possible ratification are mandatory under the Tripartite Consultation Convention, 1976 (No. 144) (international labour standards). Where Convention No. 144 has not been ratified, tripartite consultations are still very strongly recommended. As enshrined in the ILO Constitution, inputs and comments from these organizations are essential to the adoption of comprehensive and effective measures.

In addition, a number of provisions of Convention No. 183 expressly give a consultative role to social partners regarding key aspects of maternity protection at work. In particular, Article 2.2 gives ratifying member States the ability to wholly or partly exclude limited categories of workers when the Convention's application to them would raise special problems of a substantial nature, but only in consultation and agreement with social partners. Article 3 describes representative consultation on decisions regarding the type of work that is potentially dangerous. Article 4.4 enables governments and respective organizations of employers and workers to determine the duration of compulsory postnatal leave. Finally, Article 11 extends this consultative role to the appropriateness of expanding the period of maternity leave or of increasing the amount or the rate of maternity cash benefits.

Supervision of international labour standards and follow-up through technical assistance⁹

International labour standards are backed by a supervisory system that is unique at the international level and that helps to ensure that countries implement the Conventions they ratify. The ILO regularly examines the application of standards in member States and points out areas where they could be better applied. If there are any problems in the application of standards, the ILO seeks to assist countries through social dialogue and technical assistance.

The ILO has put in place two kinds of supervisory mechanisms for the supervision of standards:

- **the regular system of supervision:** the examination of periodic reports submitted by member States on the measures they have taken to implement the provisions of ratified Conventions;
- **special procedures:** a representations procedure and a complaints procedure of general application, together with a special procedure for freedom of association.

Once a country has ratified an ILO Convention, it is obliged to report regularly on measures it has taken to implement it. Governments are required to submit copies of their reports to employers' and workers' organizations. These organizations may comment on the governments' reports; they may also send comments on the application of Conventions directly to the ILO.

The regular system of supervision

The regular system of supervision is based on the examination of these government reports and any observations sent by workers' and employers' organizations. Two ILO bodies are charged with this supervisory role.

The Committee of Experts on the Application of Conventions and Recommendations (CEACR). The Committee of Experts was set up in 1926 to examine the growing number of government reports on ratified Conventions. Today it is composed of 20 eminent jurists appointed by the Governing Body for three-year terms. The experts come from different geographic regions, legal systems and cultures. The Committee's role is to provide an impartial and technical evaluation of the state of application of international labour standards.

When examining the application of international labour standards, the Committee of Experts makes two kinds of comments: **observations** and **direct requests**. Observations contain comments on fundamental questions raised by the application of a particular Convention by a State. These observations are published in the Committee's annual report. Direct requests relate more to technical questions or requests for further information. They are not published in the report, but are communicated directly to the governments concerned. This process is undertaken for each ILO Convention, including the three on maternity protection (i.e. Convention Nos. 3, 103 and 183).

⁹ This section draws from ILO: *Applying and promoting international labour standards*, <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/lang-en/index.htm> [accessed 21 Sep. 2011].

The annual report of the Committee of Experts, usually adopted in December, is submitted to the International Labour Conference the following June, where it is examined by **the Conference Committee on the Application of Standards**. The Conference Committee is made up of government, employer and worker delegates. It examines the report in a tripartite setting and selects from it a number of observations for discussion. The governments referred to in these comments are invited to respond before the Conference Committee and to provide information on the situation in question. In many cases, the Conference Committee draws up Recommendations that governments take specific steps to ameliorate a problem or to invite ILO missions or technical assistance. The discussions and conclusions of the situations examined by the Conference Committee are published in its report. Situations of special concern are highlighted in special paragraphs of its General Report.

The regular supervisory system is an effective way of bringing about progress in the realization of the principles of international labour standards. Since the Committee of Experts started keeping track of progress in 1964, it has registered over 2,300 cases of positive changes in law and practice that improved the application of a ratified Convention. However, the impact of the regular supervisory system extends well beyond such progress made in ratifying countries. Member States that have not ratified a particular Convention may still review the Committee's comments on the application of a Convention in other countries and may amend their own legislation and practice so as to avoid similar problems in the application of a standard, or in order to emulate good practices. Some examples of the Committee's comments relating to the ILO Conventions on Maternity Protection that can serve as guidance for these and other member States can be found in **Box 5.9**.

Where a Convention has been ratified, the Committee often makes direct requests to governments, highlights apparent problems in the application of a standard and gives the countries concerned time to respond and tackle these issues before any comments are published. The Committee's interventions facilitate social dialogue, requiring governments to review the application of a standard and to share this information with the social partners, who may also provide complementary information. The ensuing social dialogue can lead to further problem-solving and prevention.

Box 5.9 CEACR comments on Maternity Protection

Since its creation, the CEACR has actively assessed the compliance of member States with ILO Conventions and in providing guidance as to the meaning of a given Convention's provisions and their better application. With regard to maternity protection, a number of observations and direct requests have been published regarding how Conventions Nos. 3, 103 and 183 have been implemented so far. These comments are essential to properly understand the underlying principles of each Convention and the measures to effectively put them into practice. These measures can serve as important guidance for the member States directly concerned and others seeking to improve their national law and practice in line with the Conventions. Some examples are shown below; more can be found online in the ILO databases on international labour standards.

Dismissal during maternity leave

"[...] the Convention does not allow notice of dismissal to be made on any ground during the protected period when a woman is absent from work on maternity leave, nor at such time that the notice would expire during such absence."



(C103, Ghana, CEACR individual observation, 2009).

"The Committee [...] wishes to recall that the purpose of the Convention is not to force employers to maintain employment contracts in all circumstances, but simply to protect women workers on leave by preventing a dismissal from taking effect during that leave for whatever reason."



(C103, Spain, CEACR direct request, 2010).

Benefits during maternity leave

"The Committee therefore requests the Government to ensure that these benefits are provided either by means of public funds or by means of compulsory insurance; the latter does not necessarily call for public financing but can be funded by employers' and workers' contributions."



(C3, Zambia, CEACR direct request, 2009).

"[...] the Convention guarantees women the entitlement to cash benefits and free medical care during the period of maternity leave with the aim of protecting the health and livelihood of the woman, even if her child is stillborn or subsequently abandoned."



(C3, Latvia, CEACR direct request, 2009).

Qualifying period

"The Committee recalls that, [...], the period of maternity leave shall be at least 12 weeks and shall include a period of compulsory leave of six weeks after confinement; furthermore, the maternity leave shall be granted as a right and no qualifying period may be imposed."



(C103, Papua New Guinea, CEACR direct request, 2010).

Foreign women

"The Committee reminds the Government that the principle of equal treatment requires foreign women to be covered by compulsory insurance in the same way as nationals."



(C103, Tajikistan, CEACR direct request, 2010)

Special procedures

Unlike the regular system of supervision, special procedures are based on the submission of a **representation** or a **complaint**. The **representation procedure** grants an industrial association of employers or of workers the right to present to the ILO Governing Body a representation against any member State which, in its view, “has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party”. A three-member tripartite committee of the Governing Body may be set up to examine the representation and the government’s response. The report that the committee submits to the Governing Body states the legal and practical aspects of the case, examines the information submitted, and concludes with Recommendations. Where the government’s response is not considered satisfactory, the Governing Body is entitled to publish the representation and the response. Representations concerning the application of Conventions Nos. 87 and 98 are usually referred for examination to the Committee on Freedom of Association.

Under the **complaint procedure**, a complaint may be filed against a member State for not complying with a ratified Convention by another member State which ratified the same Convention, a delegate to the International Labour Conference or the Governing Body in its own capacity. Upon receipt of a complaint, the Governing Body may form a Commission of Inquiry, consisting of three independent members, which is responsible for carrying out a full investigation of the complaint, ascertaining all the facts of the case and making Recommendations on measures to be taken to address the problems raised by the complaint. A Commission of Inquiry is the ILO’s highest-level investigative procedure; it is generally set up when a member State is accused of committing persistent and serious violations and has repeatedly refused to address them. The use of such special procedures has been relatively rare throughout ILO history.

Follow-up through technical assistance: The ILO does not just supervise the application of ratified Conventions. It also provides different forms of technical assistance whereby ILO experts help countries to address problems in legislation and practice in order to bring them in line with the obligations under ratified instruments. Forms of technical assistance include advisory and direct contact missions (during which ILO officials meet government officials to discuss problems in the application of standards with the aim of finding solutions); and promotional activities, including seminars and national workshops, with the purpose of raising awareness of standards, developing national actors’ capacity to use them and providing technical advice on how to apply them to benefit all stakeholders. The ILO also provides assistance in drafting national legislation in line with its standards.

Regional frameworks

Nations worldwide have formed regional, political and economic alliances, and have agreed upon many forms of multilateral cooperation. Both regional policies and trade agreements influence, or in some cases determine, national regulation for working conditions and the treatment of workers. The main regional inter-governmental organizations (IGOs) that have adopted provisions on maternity protection include:

- AU – African Union
- EU – European Union

- OAS – Organization of American States
- SADC – Southern African Development Community

Regional laws and policies can provide more detailed and protective provisions than global Conventions. At the European level, the *European Social Charter* of 1961 guarantees the right to special protection for working women. This includes 12 weeks of maternity leave paid by adequate social security benefits or benefits from public funds; the right for a woman to return to her job after leave; sufficient time off for mothers that nurse their children; and regulating night work as well as prohibiting for women any work that is of a dangerous, unhealthy or arduous nature.

Of all regional agreements, the EU has developed the most detailed set of regional provisions for its Member States, which go far beyond strictly economic, commercial and trade regulations to cover most spheres of public life, including maternity protection.

The overall objective of the new EU framework on leave policies and work–family balance is to contribute to the recent Lisbon Strategy for growth and jobs by achieving greater gender equality in labour market participation rates and allowing women and men to achieve a better reconciliation of their professional, private and family lives. The more specific objectives are to:

- reduce the employment rate gap between women with and without children, especially among the most vulnerable groups (i.e. migrant, rural and elderly);
- widen the scope of family-related leave and the conditions for taking it;
- reduce the gender leave-taking imbalance by promoting parental leave;
- guarantee access to adequate childcare facilities for children under three years of age;
- give financial support during leave;
- ensure that family-related leave does not compromise job security or lead to discrimination.¹⁰

All of these measures have been reaffirmed in the recent strategy to assess and reduce gender disparities throughout Europe, The Strategy for Gender Equality in Europe 2010–2015. This broad strategy discusses, alongside measures linked to maternity protection, critical issues such as access to employment, equal pay and political representation.¹¹

To give effect to this regional framework, a number of EU Directives defining maternity protection and family responsibility provisions and policies have been adopted and are implemented throughout the Union. For example, in October 2010, the EU Parliament backed the reform of Council Directive 92/85/EEC (Pregnant Workers Directive) of 19 October 1992, which provides for the extension of maternity rights and protections in line and often beyond the provisions of the ILO Convention on Maternity Protection, 2000 (No. 183) and the corresponding Recommendation (No. 191) (see **Box 5.10**). In 2010, the EU also adopted new directives on maternity protection for self-employed women (see **Box 2.4** of **Module 2**) and on parental leave (see **Box 6.13** of **Module 6**).

¹⁰ Communication to the Spring European Council: *Working together for growth and jobs - A new start for the Lisbon Strategy*, Communication from President Barroso in agreement with Vice-President Verheugen, Brussels, 2005.

¹¹ European Commission: *Strategy for gender equality in Europe 2010-2015* (Brussels, EU, 2010).

Box 5.10 EU - Proposed Reform to amend Council Directive 92/85/EEC

In 1992, the EU released *Directive 92/85/EEC on the improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding*. This directive was an important step towards a regional framework on comprehensive standards for maternity protection.

In October 2010, the European Parliament voted and approved a first proposal to reform this framework with a view to achieving greater compliance with current ILO standards on maternity protection at work and beyond. The table below shows how the provisions of Directive 92/85/EEC might be reformed and how they would compare with the Maternity Protection Convention, 2000 (No. 183).

	C183	92/85/EEC	Proposal 2010
Maternity Leave	No less than 14 weeks	No less than 14 weeks	No less than 20 weeks
Postnatal leave	Compulsory postnatal leave of six weeks	Compulsory pre/postnatal leave of minimum two weeks	Compulsory postnatal leave of six weeks
Cash Benefits	The amount of benefits for maternity leave shall not be less than two-thirds of the worker's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits	Income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health, subject to any ceiling laid down under national legislation	Workers on maternity leave shall be paid their full salary and the allowance shall be 100 per cent of the last monthly salary or the average monthly salary
Right to return	Each worker is guaranteed the right to return to the same position or one equivalent with same pay at the end of her maternity leave	Each worker is guaranteed the right to return to the same position with equivalent pay or adequate allowance after her maternity leave	Each worker is guaranteed the right to return after maternity leave to the same position or one equivalent with same pay, and must benefit from any promotions, raises or improvement of working conditions implemented during leave
Breastfeeding	One or more daily breaks, paid , no specified duration	No provision	Two separate periods, one hour each, paid , with 30 additional minutes per additional child of breastfeeding age
Health and Safety at Work	All work that could endanger the health or safety of the mother or child is prohibited . If a risk is identified, protective measures shall be taken	The employer is to conduct a risk assessment based on a non-exhaustive list of working hazards. If there is a risk, the employer must adjust working conditions to avoid it, without economic loss for the worker. Exposure to certain chemicals listed under the directive is also prohibited	In addition to 92/85/EEC, the assessment must take into account reproductive risks for men and women . Also, pregnant women shall not be required to perform tasks such as carrying and lifting heavy weights or tasks that are dangerous or exhausting or which pose health risks

Note: Emphasis our own.

Source: European Parliament: Texts adopted at the sitting of Wednesday 20 October 2010, P7_TA-PROV(2010)10-20, (Brussels, EU, 2010).

Boxes 5.11, 5.12 and 5.13 show examples of other regional efforts on maternity protection in Latin America and Africa.

Box 5.11 Latin American instruments and Maternity Protection

The Quito Consensus, 2007

The Tenth Regional Conference on Latin American and Caribbean Women (Quito, 2007) addressed issues fundamental to gender equality, particularly women's contribution to the economy and social protection, and especially their unpaid work. In the Quito Consensus, governments committed to adopt measures of co-responsibility for work and family life, applying equally to women and men, and to recognize the value of unpaid work and its contribution to family welfare and countries' economic development. They acknowledged the need for States to assume responsibility for social reproduction, care giving and the population's welfare as an economic goal and an inalienable public duty.

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 1988

This protocol, ratified by a majority of Latin American States, contains two main provisions pertaining to maternity protection. The first guarantees the right to paid maternity leave before and after childbirth, although without indicating any specific duration. The second is to "provide special care and assistance to mothers during a reasonable period before and after childbirth", although again, no details concerning duration are specified. The protocol also seeks to guarantee adequate nutrition for young children during the nursing stage, even though no specific mention is given to breastfeeding rights.

Sources: ECLAC, 2007a, quoted in ILO/UNDP: *Work and Family: Towards new forms of reconciliation with social co-responsibility* (Santiago, ILO, 2009) p. 29.

Organization of American States: "Protocol of San Salvador", *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*, O.A.S. Treaty Series, No. 69, 1988.

Box 5.12 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (July 2003)

Art. 13: Economic and Social Welfare Rights

States Parties shall adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement and other economic opportunities. In this respect, they shall:

- i) Guarantee adequate and paid pre and postnatal maternity leave in both the private and public sectors.

Source: African Commission on Human and People's Rights: *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa* (Banjul, 2003).

Box 5.13 Southern African Development Community (SADC) Code on Social Security (2007)

In 2007, the SADC issued a code on Social Security provisions, to be harmonized on a regional level. Article 8 of the code sets out the following provisions regarding maternity and paternity:

- Member States should ensure that women are not discriminated against or dismissed on grounds of maternity and that they enjoy the protection provided for in the ILO Maternity Protection (Revised) Convention No. 183 of 2000.

- Member States should ensure that working conditions and environments are appropriate for and conducive to pregnant and nursing mothers.
- Member States should progressively provide for paid maternity leave of at least 14 weeks and cash benefits of not less than two-thirds of income.
- Member States are encouraged to provide for paternity leave in order to ensure that child-rearing is a shared responsibility between father and mother.

Although in terms of application there is still quite some work to be done, these provisions already provide solid guidelines in striving for universal maternity protection, in strict accordance with the ILO Convention on Maternity Protection, 2000 (No. 183). This issue is especially important in this region, which is particularly affected by high poverty rates, precarious conditions for pregnant workers and high maternal mortality rates.

Source: SADC: *Code on Social Security in the SADC* (Gaborone, 2007).

Key points

- ➔ Commitments to maternity protection human rights have been affirmed repeatedly in global treaties and declarations, in particular the CEDAW and CRC, which have been universally ratified – and thus are legally binding – or involve a moral obligation for all countries.
- ➔ The ILO is the specialized tripartite UN agency, whose mandate covers maternity protection at work. The ILO is responsible for the development, adoption and application of international labour standards.
- ➔ ILO Convention No. 183 (2000) and Recommendation No. 191 on Maternity Protection are the most recent international labour standards on maternity protection and set out comprehensive guidance for national law and practice on maternity protection.
- ➔ Global and regional standards set minimum requirements so that when a country ratifies a Convention, national or subnational legislation can be strengthened, rather than weakened.
- ➔ These instruments can serve as models and provide guidance for national laws and policies in all countries.
- ➔ In order for ratifications of Convention No.183 to be registered by the ILO, the competent authority of a member State has to submit, along with the ratification instrument, a declaration indicating the length of maternity leave.
- ➔ The ILO supervisory system and technical assistance offer support to countries in progressively designing and implementing laws, policies and programmes on maternity protection at work, taking into account the level of economic development and other national circumstances.
- ➔ In its Directives on maternity protection and on family responsibilities, the EU has proposed the most advanced legal instruments of any region, including maternity cash benefits for self-employed workers and parental leave.

Key resources



ILO-ITC: Employers' organizations and the ILO supervisory machinery (Turin, 2006).

This book reviews the ILO's machinery for the supervision of international labour standards. It includes descriptions on the functioning of the CEACR and the Conference Committee. It also details how these bodies can be approached by Employers' Organizations. Although mainly for employers, this book contains useful information for anyone willing to have a deeper understanding of how the ILO can ensure compliance with its norms and standards.

Available at:

http://training.itcilo.org/ils/materials/public/english/Publication_employers.pdf



ILO: Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities (Geneva, 2005).

This document elaborates on the obligation of ILO member States to submit newly adopted ILO instruments to the national authority. It reminds States of their constitutional obligations in this respect, and measures the ILO may take in case these obligations are not met.

Available at:

http://www.ilo.org/global/standards/information-resources-and-publications/WCMS_087324/lang-en/index.htm



IBFAN-GIFA: Analysis of the WHA Global Strategy on Infant and Young Child Feeding from the Perspective of Maternity Protection (Geneva, 2006).

This booklet lists, explains and analyses the twelve paragraphs in the WHA Global Strategy (2002) referring to maternity protection and the 2000 ILO Convention in particular.



ILO: Handbook of procedures relating to international labour Conventions and Recommendations (Geneva, 2006).

This handbook provides an overview of the ratification and post-ratification processes for ILO Conventions. It goes over the most important compliance mechanisms of the organizations and State obligations towards these mechanisms, as well as a walkthrough of how a normal ratification process is carried out.

Available at:

http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/publication/wcms_087791.pdf



ILO standards and fundamental principles and rights at work

The ILO International Labour Standards Department operates a database containing information on ILO international labour standards and their application, in particular:

- **the ILO Constitution**
- **ILO Conventions and Recommendations** as well as their ratification by member States and explanations as to their interpretation where necessary
- **CEACR Observations and Direct Requests:** reports and Recommendations by the ILO supervisory machinery on the application of Conventions by member States
- **Reports of the Conference Committee on the Application of Standards** which cover the response of ILO constituents to CEACR reports and the discussion that follows at the ILC
- **General Surveys** provide an in-depth analysis of member State practices on certain subjects, as identified by the Governing Body
- **Complaints and Representations** addressed by ILO constituents to member States, for not respecting their obligations in ratifying ILO Conventions
- **CFA cases** against freedom of association in member States, as well as a **digest of their decisions**

All of these documents can be accessed via **NORMLEX**, the new ILO Information System on International Labour Standards, available at: <https://www.ilo.org/dyn/normlex/eng>

Resource and tool sheets

Resource Sheet 5.1: Text of Maternity Protection Convention, 2000 (No. 183)

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 therefore 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.

Resource Sheet 5.2: Text of Maternity Protection Recommendation, 2000 (No.191)

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.

Resource Sheet 5.3: Ratification of Maternity Protection Conventions (January 2012)

Country	Ratified Maternity Protection Conventions		
	C3	C103	C183
Albania			24 July 2004
Algeria	19 Oct. 1962		
Argentina	30 Nov. 1933		
Austria		D**	30 Apr. 2004
Azerbaijan		D**	29 Oct. 2010
Bahamas		14 June 2001	
Belarus		D**	10 Feb. 2004
Belize		D**	9 Nov. 2005
Benin			10 Jan. 2012
Plurinational State of Bolivia		15 Nov. 1973	
Bosnia and Herzegovina	2 June 1993	D**	18 Jan. 2010
Brazil	D*	18 June 1965	
Bulgaria	14 Feb. 1922		6 Dec. 2001
Burkina Faso	30 June 1969		
Cameroon	25 May 1970		
Central African Republic	9 June 1964		
Chile	D*	14 Oct. 1994	
Colombia	20 June 1933		
Côte d'Ivoire	5 May 1961		
Croatia	8 Oct. 1991	8 Oct. 1991	
Cuba	6 Aug. 1928	D**	1 June 2004
Cyprus			12 Jan. 2005
Ecuador		5 Feb. 1962	
Equatorial Guinea		12 June 1985	
France	16 Dec. 1950		
Gabon	13 June 1961		
Germany	31 Oct. 1927		
Ghana		27 May 1986	
Greece	19 Nov. 1920	18 Feb. 1983	
Guatemala		13 June 1989	
Guinea	12 Dec. 1966		
Hungary	D*	D**	4 Nov. 2003
Italy	22 Oct. 1952	D**	7 Feb. 2001
Kyrgyzstan		31 Mar. 1992	
Latvia	3 June 1926		9 Feb. 2009
Libyan Arab Jamahiriya	27 May 1971	19 June 1975	

Country	Ratified Maternity Protection Conventions		
	C3	C103	C183
Lithuania			23 Sep. 2003
Luxembourg	16 Apr. 1928	D**	8 Apr. 2008
Mali			5 June 2008
Mauritania	8 Nov. 1963		
Mongolia		3 June 1969	
Montenegro	3 June 2006	3 June 2006	
Republic of Moldova		D**	28 Aug. 2006
Morocco			13 Apr. 2011
Netherlands		D**	15 Jan. 2009
Nicaragua	12 Apr. 1934		
Panama	3 June 1958		
Papua New Guinea		2 June 2000	
Poland		10 Mar. 1976	
Portugal		2 May 1985	
Romania	13 June 1921		23 Oct. 2002
Russian Federation		10 Aug. 1956	
San Marino		23 Sep. 1998	
Serbia	24 Nov. 2000	D**	31 Aug. 2010
Slovakia			12 Dec. 2000
Slovenia	D*	D**	1 Mar. 2010
Spain	4 July 1923	17 Aug. 1965	
Sri Lanka		1 Apr. 1993	
Tajikistan		26 Nov. 1993	
The former Yugoslav Republic of Macedonia	17 Nov. 1991	17 Nov. 1991	
Ukraine		14 Sep. 1956	
Uruguay	D*	18 Mar. 1954	
Uzbekistan		13 July 1992	
Bolivarian Republic of Venezuela	20 Nov. 1944	D	
Zambia		23 Oct. 1979	
Total (January, 2012)	29	27	23

Source: ILO Database of Ratifications, www.ilo.org/standards

D = denounced; D* = denounced but ratified 103; D** = denounced but ratified 183

Resource Sheet 5.4: FAQs on ratification of Maternity Protection Convention, 2000 (No.183)

The following are some of the frequently asked questions (FAQs) regarding the ratification of Convention No. 183 and related concerns and challenges.

Q: Why is the ratification rate of Convention No. 183 still low?

A: As of January 2012, 23 countries had ratified the Convention on Maternity Protection, 2000 (No. 183).

It is important to keep in mind that Convention No. 183 is a recent Convention and for a Convention this recent, 23 ratifications is not an unusual total. If we exclude the Worst of Forms of Child Labour Convention, 1999 (No.182), which is a fundamental ILO Convention and has benefited from extensive promotional efforts, the trend for ratifications of Convention No.183 is rather in line with ILO practice. For comparative examples, see for instance the Safety and Health in Agriculture Convention (No.184) of 2001 with 14 ratifications; or the Private Employment Agencies Convention (No.181) of 1997 with 23 ratifications (as of January 2012).

Furthermore, there are two preceding international Conventions on maternity protection: Convention No. 3 and Convention No. 103. A member State could have ratified one of these two earlier ILO Conventions on maternity protection, or other ILO standards that include maternity protection related provisions. Overall, 65 ILO member States (more than one-third) are party to at least one of the maternity protection Conventions (as of January 2012).

In addition, other reasons for the still low rate of ratification of Convention No.183 relate to its specific provisions. This Resource Sheet reviews some of these issues as they were highlighted by ILO Members during the discussions preceding the adoption of this Convention by the ILC in 2000,¹² and discusses possible ways to address them. Other impediments may exist and member States are welcome to contact the ILO and request information or assistance in overcoming any challenges related to the ratification of Convention No. 183.

Q: Isn't Convention No. 183 too inflexible, with standards that are too rigorous as to the length of maternity leave and the compulsory postnatal period?

A: While Convention No. 183 provides specific standards in regards to maternity leave, including compulsory postnatal leave, these standards are not superfluous. Independent studies suggest that an adequate period of maternity leave has a substantial effect in protecting maternal and infant health, and that 14 weeks ensure an adequate period of rest without risking the deterioration of workers' skills and without imposing too great a burden on the employer. The six-week compulsory leave is also crucial for the mother's recovery and the well-being and proper development of her child. Making this period mandatory ensures that neither the employer nor the woman will seek to shorten this important period (see **Module 6** for more details). It is also important to note that half (51 per cent) of ILO member States for which information is available already provide 14 weeks or more of mandatory maternity leave. Most others are close to meeting this standard: an additional 35 per cent of member States require between 12 and 14 weeks of maternity leave.¹³

¹² ILO: *Maternity Protection at work*, Report V(2), International Labour Conference, 87th Session, Geneva, 1999.

¹³ ILO, 2010, op. cit.

Q: Don't long maternity leaves lead to discrimination at the workplace and make it harder for women to return to their jobs without some form of economic loss?

A: In determining how long maternity leave should be, it is indeed important to find a balance between the positive effects of leave on the well-being and health of the mother and her child and the potentially negative effects of burdening the employer and disrupting women's position in the labour market. Research has shown that in industrialized countries, maternity leave provisions increase women's labour force participation rates,¹⁴ but that long leaves, particularly those extending over a number of years, can create 'leave traps' for women, reducing future prospects for earnings and career development.¹⁵ Concerns have also been raised about the burdens that very long leaves might place on employers who may be required to hold a position for a very long period of time.¹⁶

Following a review of legal practices, their effects around the world, and the views of ILO constituents on this issue, ILO Convention No. 183 and Recommendation No. 191 set out 14 to 18 weeks of leave as the most realistically obtainable length of time to allow adequate rest and recovery without compromising women's labour market status or undermining the economic needs of business.

Beyond this period of maternity leave, the careful design of paternity or parental leave schemes can promote gender equality by enabling men and women to play more equal parts in child-rearing while enjoying equal opportunities and treatment at work (see **Module 11**).

Q: Isn't it unrealistic to ask for maternity benefits paid at two-thirds of a woman's previous salary, especially for countries with weak social security schemes or general budgetary problems at the national level?

A: Women and their children need a minimum level of economic security during maternity leave. Without this security, the risk of serious health concerns is greater: mothers would have to return to work earlier than what is medically advisable for themselves and their newborn (see **Module 7**). In the case of complications, women may be less inclined to consult medical experts or provide themselves with medication if the cost is believed to be too high. Furthermore, without this level of financial security, a woman's rights may be compromised as the loss of her income due to maternity may place her in a position of dependency on others.

Setting the lower limit of benefits at two-thirds of a woman's previous earnings is a minimum level for guaranteeing this economic security, preserving women's economic autonomy and supporting the health of the mother and her baby. Strengthening social protection systems to provide benefits requires political will and follow through, but can reap dividends from the investments in the nation's present and future economy and health. For more on strengthening social protection (see **Module 7**).

¹⁴ See, for example, C. Hein: *Reconciling work and family responsibilities: Practical ideas from global experience* (Geneva, ILO, 2005) pp. 120-121.

¹⁵ A. Selim: "Labour market regulations for women: are they beneficial?" in *PREMnotes*, No. 94 (Washington, D.C., World Bank, 2004).

¹⁶ C. Hakim: "Employment law: The mother of paradoxes", in *Prospect*, Dec. 2009, pp. 23-24. See also C. Hein, 2005, op. cit.

Moreover, it is important to note that the Convention's provisions regarding benefits specifically allow for flexibility as to the level of benefits. In fact, with a view to accommodating member States who are still developing their economic and social security systems, Article 7 of the Convention allows for progressive application of the provisions on cash benefits. In this case, these can be provided at a rate lower than two-thirds of previous earnings, but at least equivalent to sickness or temporary disability benefits. Hence, ratifying States may temporarily provide a lower level of benefits, while explaining the reasons therefore in their first report on the application of the Convention to the ILO. In future reports, the States concerned are then invited to describe the measures taken to progressively raise benefit levels.

Finally, Article 6.4 of the Convention also allows for alternative ways of calculating the rate of maternity benefits (for example flat rate benefits schemes), which may thus be below the two-thirds rate, provided that such a level is comparable, on average, to the amount that would be granted by earnings related schemes.

Resource Sheet 5.5:**Example of the ratification process for Convention No. 183 (2000)¹⁷**

1. ILO Convention No.183 has been adopted in Geneva (June 2000) and is open for ratification.
2. An official of the responsible line ministry or government department, e.g. an officer at the Ministry of Labour prepares a memo for a **tripartite consultation meeting** of the Government, alongside workers' and employers' organizations, with a view to examining Convention No. 183.
3. Information placed before the consultation meeting could include the findings and results of any previous examination of the Convention, including available analysis of existing national practice and the provisions of the Convention. It could also include updates on new developments in law and practice, statistical information, available studies and research reports on maternity protection, international comparative experiences and relevant Recommendations of the ILO supervisory bodies or UN human rights treaty bodies, such as the Committee on the Elimination of Discrimination against Women.
4. The consultations may identify needs for further information or research on particular issues, including through studies, the holding of technical workshops or advice from the ILO.
5. On the other hand, the consultation may result in a Recommendation to ratify the Convention. In this case, the Government is initiating the formal procedures for ratification, which normally involve a submission to Cabinet or the Council of Ministers for endorsements of the ratification Recommendation and subsequent submission to Parliament for approval.
6. Once the legislature has approved ratification, it is the Government's role to complete the formal procedures for ratification with the ILO. **A formal document (instrument of ratification) must be sent to the Director-General of the ILO** stating that the Convention on Maternity Protection, 2000 (No. 183) was ratified, convey the State's will to be bound by this Convention, as well as its undertaking to fulfil the provisions of the Convention, with specific reference to Article 19(5) (d) of the ILO Constitution. The letter has to be an **original document** (not scanned or photocopied) signed by a person who has the legal authority to engage the State (e.g. the Head of State, Prime Minister, Minister of Labour or Minister of Foreign Affairs).
7. Alongside the ratification instrument, a **declaration** stating the length of the period of maternity leave under national law (see **Box 5.7**) must be sent, also to the Director-General, and also as an original letter. This declaration is required by a specific Article of the Convention (Article 4(2) of Convention 183). The period of leave thus declared may not be less than 14 weeks.
8. Upon receiving the ratification instrument and the declaration in accordance with Article 4, paragraph 2, of the Convention, the Director-General registers the instrument and notifies the ratifying State thereof. Twelve months after the registration, the Convention enters into force for the country concerned (i.e. it becomes binding under international law).

¹⁷ ILO, 2006, op. cit.

Visual presentation model

SLIDE 1: Key contents

Mod. 5 International rights and guidance on Maternity Protection at work

Key contents

This module looks at global frameworks related to the principle of maternity protection and highlights guiding instruments for its implementation. In particular, this chapter highlights:

- Global treaties, declarations and platforms of action that refer to maternity protection rights
- International labour standards on maternity protection
- How to ratify the most recent ILO Convention on Maternity Protection, 2000 (No. 183)
- How the ILO supervisory machinery works
- Regional frameworks to improve and promote maternity protection

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SLIDE 2: Global frameworks on Maternity Protection

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Global frameworks on Maternity Protection

Global frameworks can be found in several sources, such as:

- Human Rights Treaties (UDHR, ICESCR, CEDAW, CRC)
- The Beijing Declaration and Platform for Action
- World Health Assembly Resolutions
- The *Innocenti* Declarations on Breastfeeding and Infant and Young Child Feeding

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SLIDE 3: The International Labour Organization

Mod. **5** International rights and guidance on Maternity Protection at work

The International Labour Organization

The **International Labour Organization (ILO)**:

- Is a specialized agency of the United Nations
- It promotes labour rights, social justice, decent and productive work
- Is a tripartite agency governed by representatives of governments, employers and workers



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SLIDE 4: ILO International labour standards

Mod. **5** International rights and guidance on Maternity Protection at work

ILO International labour standards

International labour standards:

- Are the definitive instruments on maternity protection, which fall directly under the mandate of the ILO
- The Conventions are international treaties, subject to ratification by ILO member States
- Recommendations set out guidelines and are non-binding instruments



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SLIDE 5: International labour standards on Maternity Protection at work

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International labour standards on Maternity Protection at work

Most recent ILO standards on Maternity Protection:

- ILO Convention on Maternity Protection, 2000 (No. 183)
- ILO Recommendation on Maternity Protection, 2000 (No. 191)

ILO Conventions including maternity protection rights for specific sectors:

- Nursing personnel (C149)
- Agriculture (C184)
- Seafarers (MLC)
- Domestic workers (C189)




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SLIDE 6: Other international labour standards and commitments on Maternity Protection

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International rights and guidance on Maternity Protection at work

Other international labour standards and commitments on Maternity Protection

Examples of ILO Conventions including maternity-related issues:

- Cash and medical benefits (C102, C130)
- Health protection (C171)
- Employment protection (C168)
- Non-discrimination (C111)
- Working conditions (C175)

Broader ILO commitments to maternity protection:

- The Declaration on Equality of Opportunity and Treatment for Women Workers (1975)
- The Resolution on equal opportunities and equal treatment for men and women in employment (1985)
- The Resolution on gender equality, pay equity and maternity protection (2004)
- The Resolution on Gender Equality at the Heart of Decent Work (2009)


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SLIDE 7: Ratification and implementation of ILO Conventions (1)

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Ratification and implementation of ILO Conventions (1)

For a Convention to become legally binding upon a member State, it must be ratified.

Ratification procedures differ from one country to the next.

For a Convention to be ratified, a State must

- Submit it to approval by a competent authority (usually a parliament)
- Upon approval, communicate the ratification to the Director-General of the ILO for registration

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SLIDE 8: Ratification and implementation of ILO Conventions (2)

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Ratification and implementation of ILO Conventions (2)

For C183, the government must include a declaration stating the length of maternity leave. Without it, the ratification will not be registered. Leave must be a minimum of 14 weeks.

Ratification has the following effects:

- One year after registration, the Convention enters into force and becomes legally binding
- National legislation must be reviewed to fit the Convention's provisions
- Reports are to be submitted regularly on implementation, and will be reviewed by the ILO supervisory mechanism

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SLIDE 9: Supervision and follow-up of international labour standards: The regular supervision system

Mod. 5 International rights and guidance on Maternity Protection at work

Supervision and follow-up of international labour standards: The regular supervision system

The ILO has two main supervision mechanisms:

- Regular supervision mechanism (RSM) for periodic review
- Special supervision procedures in case of complaints

The RSM is based on reports sent to the ILO and examined by two bodies:

- The Committee of Experts on the Application of Conventions and Recommendations (CEACR) provides impartial and technical evaluation of the state of application of international labour standards
- The Conference Committee on the Application Standards examines certain observations made by the CEACR and asks governments to provide information on urgent matters

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SLIDE 10: Supervision and follow-up of international labour standards: Follow-up through technical assistance

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Supervision and follow-up of international labour standards: Follow-up through technical assistance

The ILO does not just supervise. It also provides technical assistance, such as:

- Missions where the ILO meets government officials to solve specific problems
- Promotional and technical activities: seminars and workshops to raise awareness of international labour standards policy advice and capacity development of national actors to use and implement them
- Assistance in drafting national legislation in line with ILO standards

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SLIDE 11: Regional frameworks

Mod. **5** International rights and guidance on Maternity Protection at work

Regional frameworks

Regional inter-governmental organizations providing standards and frameworks on maternity protection include:

- AU – African Union
- EU – European Union
- SADC – Southern African Development Community
- OAS – Organization of American States

Regional laws and policies can provide more detailed and protective provisions than global Conventions, as they are tailored to a specific region.

The EU has the most advanced and comprehensive set of maternity protection-related directives, including maternity benefits for self-employed workers.

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SLIDE 12: Key points

Mod. **5** International rights and guidance on Maternity Protection at work

Key points

- Commitments to maternity protection human rights have been affirmed repeatedly in global treaties and declarations, in particular the CEDAW and CRC, which have been universally ratified – and thus are legally binding – or involve a moral obligation for all countries.
- The ILO is the specialized tripartite UN agency, whose mandate covers maternity protection at work. The ILO is responsible for the development, adoption and application of international labour standards.
- ILO Convention No. 183 (2000) and Recommendation No. 191 on Maternity Protection are the most recent international labour standards on maternity protection and set out comprehensive guidance for national law and practice on maternity protection.
- Global and regional standards set minimum requirements so that when a country ratifies a Convention, national or subnational legislation can be strengthened, rather than weakened.
- These instruments can serve as models and provide guidance for national laws and policies in all countries.
- In order for ratifications of Convention No. 183 to be registered by the ILO, the competent authority of a member State has to submit, along with the ratification instrument, a Declaration indicating the length of maternity leave.
- The ILO supervisory system and technical assistance offer support to countries in progressively designing and implementing laws, policies and programmes on maternity protection at work, taking into account the level of economic development and other national circumstances.
- In its Directives on maternity protection and on family responsibilities, the EU has proposed the most advanced legal instruments of any region, including maternity cash benefits for self-employed workers and parental leave.

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- **Part 1: Maternity Protection at work: The basics**
- **Part 2: Maternity Protection at work in depth: The core elements**
- **Part 3: Taking action on Maternity Protection at work**



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