

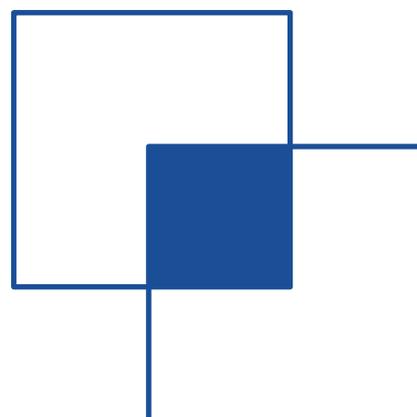


International
Labour
Organization

Republic of Zambia

Report to the Government

**Feasibility study of
establishing a
Maternity Social Insurance
Cash Benefit
Scheme**



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First published 2014

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978-92-2-129157-2 (print)
978-92-2-129158-9 (web pdf)
ILO Cataloguing in Publication Data

Republic of Zambia : feasibility study of establishing a maternity social insurance cash benefit scheme / International Labour Office, ILO Financial and Actuarial Service (ILO FACTS), Social Protection Department, ILO Decent Work Team Pretoria. - Geneva: ILO, 2014

International Labour Office; Social Protection Dept; International Labour Office; International Financial and Actuarial Service; ILO Decent Work Team for Eastern and Southern Africa and ILO Country Office for South Africa, Botswana, Lesotho, Namibia and Swaziland

maternity benefit / cash benefit / payment of benefits / role of ILO / international labour standards / Zambia

02.08

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Printed in South Africa

Report to the Government

Feasibility study of establishing a Maternity Social Insurance Cash Benefit Scheme

September 2014

Social Protection Department / conditions of Work and Equality Department
Decent Work Team, Eastern and Southern Africa / Country Office, Lusaka

Contents

.....	Error! Bookmark not defined.
Glossary of terms.....	4
Foreword.....	7
Part I. International labour standards on maternity cash benefits.....	8
1. Introduction.....	8
2. ILO Conventions and Recommendations on maternity cash benefits schemes ..	10
2.1 ILO maternity protection standards.....	10
2.2 Objectives of maternity cash benefits schemes.....	11
2.3 Maternity cash benefits schemes versus employer liability schemes	13
3. Policies and practices on maternity cash benefits schemes.....	14
3.1 Coverage of the schemes.....	14
3.2 Qualifying conditions and entitlement conditions.....	15
3.3 Periods of compulsory maternity leave	16
3.4 Level of paid maternity leave benefits	17
3.5 Frequency of payment	19
3.6 Who Pays?.....	19
3.7 Cost of paid maternity cash benefits: is it affordable?	20
3.8 Institutional arrangement.....	21
Part II. Issues regarding the Establishment of a Maternity Cash Benefits Scheme in Zambia.....	22
4. Demographics and Employment	22
5. General policy considerations.....	24
5.1 Basis of the recommendations made by ILO	24
5.2 Existing legal provisions on maternity cash benefits protection	24
5.3 Gaps between the existing legal provisions and the international norms in maternity protection.....	26
6. Policy considerations.....	30
6.1 Contingency covered.....	30
6.2 Coverage.....	30
6.3 Who pays for the proposed scheme?.....	32
6.4 Leave period, level and frequency of payment of maternity cash benefits....	33
6.5 Eligibility and Qualifying conditions.....	33
7. Financial, administrative and legislative considerations.....	34

7.1	Financial system	34
7.2	What are the costs of the new scheme?	35
7.3	Who administers the new scheme?	39
8.	Recommendations regarding the establishment of a maternity cash social insurance benefits scheme in Zambia	40

Glossary of terms¹

Social security The notion of social security covers all publicly mandated measures providing benefits, whether in cash or in kind, to secure protection, inter alia, from the lack of work-related income (or insufficient income) caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member, lack of access or unaffordable access to health care insufficient family support, particularly for children and adult dependants and general poverty and social exclusion. Social security schemes can be of a contributory (social insurance, paid by earmarked contributions) or non-contributory nature (financed by general taxes).

Medical care²: The contingencies covered include any morbid condition, whatever its cause, and the medical care required as a result, as well as the medical care necessitated by pregnancy, confinement and their consequences; medical care of a preventive nature is also covered.

Employment injury benefit: The contingencies covered include a morbid condition, incapacity for work, invalidity or a loss of faculty due to an industrial accident or a prescribed occupational disease.

Family benefit: The contingency covered is the responsibility for the maintenance of children, i.e., under school-leaving age or under 15 years of age.

Maternity benefit: The contingencies covered are both the medical care required by pregnancy, confinement and their consequences and the resulting suspension of earnings. For the purpose of this study, only cash maternity benefits are considered.

Social protection: The term “social protection” is used to mean protection provided by social security systems in the case of social risks and needs. Social protection is often interpreted as having a broader character than social security (including, in particular, protection provided between members of the family or members of a local community). It is also used in some contexts with a narrower meaning than social security (understood as comprising only measures addressed to the poorest, most vulnerable or excluded members of society).

Short term benefits are types of benefit that are aimed at replacing earned income in case of a temporary loss of earnings resulting from sickness, maternity or unemployment

Long term benefits relate to benefits aimed at replacing earned income in case of a long term loss of earnings resulting from old age, invalidity or as a result of the loss of the breadwinner (survivor benefits).

Parental leave Leave granted to parents of young children for child care (usually several months or years), at different moments of child life, not necessarily immediately after birth.

¹ ILO GESS http://www.ilo.org/gimi/gess/ShowGlossary.do?GLOSSAIRE_LETTRER=d&GLOSSAIRE_LANG=EN

² According to ILO (C, 102 on minimum social security standards)

Paternity Leave Leave usually granted to the father, usually taken immediately after childbirth, normally to enable fathers to spend some time with their new born and support mothers with additional physical and psychosocial demands on her.

Pay as you go scheme A scheme where expenditures are financed as they arise by current contributions

Administrative costs Any management and administrative expenditure incurred by the scheme directly responsible for the provision of social protection benefits, such as salaries, or the costs of running an office.

Periodic cash benefits paid on a regular basis. Benefits that are provided during a given time period, recurring at regular intervals (generally on a weekly, monthly or quarterly basis, e.g. old age pensions) and whose main reason is to provide income replacement by restoring, up to a reasonable level, income which is lost by reason of inability to work. In contrast, other cash benefits are generally paid at irregular intervals or once for each occurrence, also called 'lump sum')(e.g. funeral grant), whose primary aim is that of providing cash assistance and not of providing income replacement.

Replacement rate: Ratio of the level of benefits to some reference workers' wage during the time he or she is employed.

Abbreviations and Acronyms

CEACR	Committee of Experts on the Application of Conventions and Recommendations
CPI	Consumer Price Index
CSO	Central Statistical Office
Funding ratio	Ratio of end-of-year reserve to annual expenditure (benefits and administration)
GDP	Gross Domestic Product
ILO FACTS	ILO Financial and Actuarial Service
ILO	International Labour Office
IMR	Infant mortality rate
MMR	Maternal mortality rate
MOFNP	Ministry of Finance and National Planning
MLSS	Ministry of Labour and Social Security
MWCED	Minimum Wage and Conditions of Employment (Domestic workers) Order
MWCES	Minimum Wage and Conditions of Employment (Shop Workers) Order
NAE	National Average Earnings
NAPSA	National Pension Scheme Authority
NPS	National Pension Scheme
PAYG	Pay-as-you-go
Reserve ratio	<i>See above "Funding ratio"</i>
SI	Statutory Instrument
SOCPRO	Social Protection Department (of the ILO)
TFR	Total fertility rate
ZCTU	Zambia Congress of Trade Unions
ZFE	Zambia Federation of Employers
ZFEA	Zambian Farm Employers' Association
ZFFTU	Zambian Federation of Free Trade Unions

Foreword

The Ministry of Labour and Social Security (MLSS) of the Republic of Zambia requested the ILO to carry out an actuarial study of the establishment of a social security maternity benefits scheme. The Director-General of the ILO designated the ILO Financial and Actuarial Service (ILO FACTS) of the Social Protection Department (SOCPRO) to carry out the actuarial review.

In view of the design and validation of the study, a tripartite national social security task team was constituted, which was chaired by Mr. Victor Chikalanga, from the Ministry of Labour and Social Security (MLSS), and included representatives of ZCTU, Zambia Congress of Trade Unions, ZFE Zambia Federation of Employers, ZFEA, and ZFFTU Zambian Federation for Free Trade Unions.

This actuarial study is in line with standard actuarial practices for social security schemes, social security principles as embodied in ILO social security standards and international best practices.

Actuarial valuations and studies of public social security schemes play a central role in the improvement of the design and the governance of national social security schemes. The ILO makes its demographic and financial projection models available to actuaries in public social security schemes through the advisory services of its Financial and Actuarial Service (ILO FACTS) located within the Social Protection Department (SOCPRO). It also provides quantitative training and promotes and directly implements peer reviews with a view to assisting in the development of national actuarial practice in strengthening public financial governance.

Part I. International labour standards on maternity cash benefits

1. Introduction

Maternity protection has long been seen by the international community as an essential prerequisite for the achievement of women's rights and gender equality. The right for women to maternity protection has been included in various fundamental human rights instruments. Thus, maternity protection is enshrined in the *Universal Declaration of Human Rights*³ which states that motherhood and childhood are entitled to special care and assistance as well as the *International Covenant on Economic, Social and Cultural Rights*⁴ that include special protection for mothers during a reasonable period before and after childbirth including paid leave or leave with adequate social security benefits. Maternity protection contributes to the achievement of Millennium Development Goals 3, 4 and 5 which seek to promote gender equality and the empowerment of women, to reduce child mortality and to improve maternal health respectively.

Maternity protection also contributes to the advancement of gender equality in the world of work, and as such falls directly under the mandate of the ILO and has been a core issue since its foundation in 1919. It was during the first International Labour Conference in 1919 that *Maternity Protection Convention, 1919, (No.3)*, first convention on this issue, was adopted. This Convention was followed by two others: Convention No.103 in 1952 and Convention No.183 in 2000, which progressively expanded the scope and entitlements of maternity protection at work. The main concern on the protection of women workers has been, on one hand, to ensure that women's work does not pose risks to the health of the woman and her child. On another hand, it has been to ensure that women's reproductive roles do not compromise their economic and employment security. It is the global consensus that maternity leave supported with cash benefits is one of the crucial elements of maternity protection. This consensus is reflected in the fact that some kind of maternity cash benefits provision exist in the legislation of almost all countries developed or developing alike. Furthermore, in 2000 the ILC adopted a more progressive maternity protection convention in 2000 (Convention No.183⁵) and its related Recommendation No.191⁶, strengthening provisions on maternity leave supported with cash and medical benefits. These instruments demonstrate the crucial value placed on having paid leave available for working women as a replacement of lost income. As of January 2013, 65 ILO member states have ratified at least one of the maternity protection conventions.

Children represent the future for any nation and therefore the financial support of women during their maternity leave period should be seen as a worthwhile investment for society. In the recent years, there have been advances in maternity benefit schemes, especially in the adoption of provisions for maternity and parental leave in a number of countries. However, the most extensive coverage of maternity cash benefits schemes is still found in European and Central Asian countries and in the Americas.

Zambia's Draft Constitution recognizes the role and importance of the family, of children and of women's maternal role (draft constitution section 54). Zambia has thus demonstrated a commitment to recognizing and protecting maternity in the employment context.

Zambia has put in place various laws and policies on maternity protection at work. The current labor laws provide for paid leave and benefits, as well as maternity leave and benefits. Maternity leave and remuneration is provided for by the Employment Act, minimum wage legislations and

³ Article 25(2) Universal Declaration of Human Rights, 1948

⁴ Article 10(2)

⁵ *Convention Concerning the Revision of the Maternity Protection Convention (Revised)*, 1952

⁶ *Recommendation Concerning the Revision of the Maternity Protection Recommendation*, 1952

various collective agreements. Presently, the law allows for 12 weeks with full pay upon completion of two years of continuous service or in cases where two years have elapsed since the last maternity leave. This means that only an employee who has served in a company or organization for two continuous years is eligible to take maternity leave.⁷

In the past, the burden of financing maternity protection was shared between the employers and the social security scheme. Previously, the Zambia National Provident Fund (Maternity Grant) Regulations provided support for maternity leave. However, since the repeal of the said Regulations there is no longer any provision or public support in Zambia for maternity leave benefits.⁸ Maternity protection is currently provided by individual employers, who are subject to a liability mandate under the Employment Act. The Government has recently expressed interest in ratifying ILO Convention 183 and moving to a system of social insurance. Zambia has ratified ILO's Convention No.103 on Maternity protection. This convention is closed for ratifications. Higher standards on maternity protection are in place namely Convention No. 183. Nevertheless, C.103 remains binding for all countries that have not denounced it or have not ratified Convention No. 183, the latter being the case of Zambia.

The Committee of Experts on the Application of Conventions and Recommendation (CEACR) in its last comment (2011) on maternity protection in Zambia expressed its regret regarding the requirement under Labor Law of two years continuous employment and noted that it has been included in a number of collective agreements. Other concerns regard the absence of a compulsory six-week postnatal leave and nursing breaks; the CEACR hopes that the Government will take the necessary steps to bring the legislation into conformity with Convention No. 103.⁹ In regards to the employer's liability scheme in place, the CEACR recalled "*that maternity cash benefits should be financed collectively by way of insurance contributions or taxes*" and urged the Government of Zambia to replace progressively its direct employer's liability scheme by a social insurance scheme.¹⁰ The CEACR also invited the Government to avail itself of the technical assistance of the ILO in this matter.

A national working group was set up in Zambia, under the leadership of Ministry of Labour and Social security which agreed on a road map towards ratifying ILO Convention 183. This road map included the feasibility study of converging to a system of social insurance provided maternity cash benefit system. Finally, the (draft) National social protection policy 2013 establishes as a social security policy measure, the undertaking of a feasibility study on introducing a maternity protection branch in Social insurance. This report responds to these requests.

⁷ Decent Work Country profile : Zambia p. 25

⁸ Decent work country profile: Zambia

⁹ Observation (CEACR) adopted in 2011, published 101st ILS session (2012) Maternity protection convention (Revised) 1952 (No.103)- Zambia. Available at:

http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2699226:NO

¹⁰ *Idem*

2. ILO Conventions and Recommendations on maternity cash benefits schemes

2.1 ILO maternity protection standards

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. Protecting working mothers did not stop there as ILO constituents adopted convention No.103 in 1952 the same year maternity was recognized as a distinct branch of social security by Convention No.102 key convention on social security. In recent years, ILO members have re-affirmed their commitment to protecting maternity and the social protection systems required to make maternity protection a reality for all women. It is in this spirit that ILO members revised Convention No.103 by adopting Convention No.183 and Recommendation No.191 in 2000. Maternity protection was included in *Recommendation No.202 concerning National Floors of Social Protection* in 2012, a global commitment towards building comprehensive social security schemes comprising, among others, basic social security guarantees that combine both maternal health care and basic income security in case of maternity.

With regards to Cash benefits, a consistent theme in all ILO maternity protection conventions is to ensure that maternity cash benefits are provided through public funds or social insurance. Convention No.103, ratified by Zambia, insists in article 4 paragraph 8 that “*under no case shall the employer be individually liable for the cost of maternity cash benefits due to women employed by him*”. In view of international law, once a country ratifies a convention it becomes legally binding to the ratifying country. The non-ratified conventions and Recommendations (which are not opened for ratification) serve as guidelines for national policies and legislation. In this regard, ILO’s Conventions and recommendation should be seen as representing a minimum level for the protection and countries are encouraged to grant more favorable conditions in line with national circumstances. In Zambia’s case, it has ratified Convention No.103 and has an international obligation to abide to its provisions. However, Zambia should also look to Convention No.183 and Recommendation No.191 as these instruments represent the most up-to-date minimum levels of protection.

Over the course of its history, the ILO has adopted three Conventions exclusively 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 providing detailed guidance to orient 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.

Part VIII of the *Social Security (Minimum Standards) Convention, 1952 (No. 102)* recognizes maternity as one of the nine branches of social security. According to this convention, maternity benefits should 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. Convention No. 102 provides that coverage should be provided to either all women in prescribed classes of employees, which have to constitute at least 60 percent of all employees, or to all women in prescribed classes of the economically active population which have to constitute at least 20 per cent of all residents. The cash benefit must correspond to at least 45 per cent of the former earnings of the woman worker. The Convention also envisages that entitlement to cash

benefit may be made subject to a qualifying period as considered necessary under national circumstances to preclude abuse of which should be determined by national authorities.

Convention No.102 adopted the same year as Convention No. 103 sets the minimum standard for maternity protection and the cash benefits that should accompany maternity leave while Convention No.103 sets higher and more comprehensive standards.

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. Cash 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 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). Convention No.103, extends coverage to women in industrial or non industrial undertaking as well as agricultural occupations and wage earners employed at home. The convention allows for exclusion of women working in family owned undertakings employing only family members. The maternity leave remains at 12 weeks but the amount of the cash benefits is raised to two-thirds of the woman’s previous earning and no qualifying period is necessary to be claim entitlement of maternity cash benefits.

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)*. 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, including those in atypical 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, by requiring measures to ensure that maternity does not engender discrimination, including in access to employment, and explicitly prohibiting pregnancy tests as part of candidate selection procedures (except in very limited specific circumstances to protect the woman’s and the baby’s health). Convention No.183 extends maternity protection to all employed women including those in atypical forms of dependent work. In addition, maternity leave is extended to 14 weeks and a periodic review in consultation with representatives of workers and employers is made necessary to insure the appropriateness of the level of benefits offered. However, the level of benefits is kept at two-thirds of the woman’s previous earnings. In terms of breastfeeding, Recommendation No.191 calls for the establishment of breastfeeding facilities at the workplace.

2.2 Objectives of maternity cash benefits schemes

The need for cash maternity benefit has been recognized by all ILO member States and most of them provide cash benefits for the total or partial duration of maternity leave¹¹. Loss of income is one of the important risks associated with pregnancy and confinement. Cash benefits are intended to replace a portion or all of the lost income caused by the interruption of women’s economic

¹¹ILO: *Maternity at work: A review of national legislation*, Findings from the ILO Database of Conditions of Work and Employment Laws, ILO Conditions of Work and Employment Branch, Second Edition, Geneva, 2010 p.17: “Out of the 167 countries studied for this paper, 97 per cent provide cash benefits to women during maternity leave.”

activities. This loss coupled with additional costs and expenses related to pregnancy can cause financial hardship to many families especially single women households, where the pregnant woman is the main breadwinner. Without income replacement, pregnant women may be compelled to work past their entitled leave or return to work before it is safe for them or their child in order to provide for their family needs. Therefore, it is important for women on maternity leave to have income replacement through cash benefits compensating the income lost before, during and after confinement making the right to maternity leave an economically viable option.

Cash maternity benefits are also an indispensable means of protecting the health of women workers and their children. The mother's right to a period of rest before and after delivery with the adequate financial support, together with the guarantee of being able to resume work after the leave are necessary tools for the reconciliation of women's work and family responsibilities. Maternity cash benefit schemes thus usually include and are associated with¹²:

- The provision of a period of leave from paid employment for mothers to move through the later stages of pregnancy and to recover from childbirth and to look after the baby;
- The provision of income replacement for the period of such leave,
- The protection of the employment of the women workers concerned and the guarantee that the same job or an equivalent job can be resumed on return from maternity leave, and
- That arrangements should be made to permit the mother to nurse her child during working hours

In addition, the following principles usually apply to cash benefit financing systems:

- Recommendation 191 emphasizes the way the collective resource pool should be comprised emphasizing that both men and women should contribute: “*Any contribution due under compulsory social insurance providing maternity benefits and any tax based on payrolls which is raised for the purpose of providing such benefits, whether paid by both the employer and the employees, ..should be paid in respect of the total number of men and women employed, without distinction of sex*”. In other words, both men and women shall contribute to maternity cash benefit schemes.
- It is an individual right to the replacement of income and not a derived right (as for example, the right to survivors' benefit or in some instances, medical coverage which includes entitlements for dependants), in other words a woman does not generally benefit indirectly from her spouse being a contributor to the maternity cash benefit scheme.
- As a social insurance mechanism, there is solidarity between non child bearing individuals and child bearing individuals, regardless of age, sex, and comparable to child benefits. Thus, even persons who can certify medically an inability to bear children should contribute.

These principles ensure a broad, stable pooling of resources that avoids adverse selection and ensures fair distribution of the costs and responsibilities for reproduction. **It should be noted that the cost of the scheme is not affected by the way the financial burden is shared. If the costs were not spread evenly across the working population, including men, the resulting scheme would not avoid the potential for discrimination against child bearing women.**

¹² ILO: *Feasibility study on the implementation of a maternity cash benefits scheme in the Hashemite Kingdom of Jordan*, Social Security Department, Geneva, 2007, p. 2.

2.3 Maternity cash benefits schemes versus employer liability schemes¹³

Maternity cash benefits can be financed through different types of schemes, from social insurance, social assistance, universal schemes and employer liability schemes (EL). While public funded and social insurance schemes are based on the principles of solidarity and pooling of risk, employer liability schemes places the legal responsibility on individual employers to compensate income loss due to confinement. The ILO advocates public funded or social insurance schemes by assigning the responsibility for sound financing of maternity schemes to the State through all its Conventions on Maternity protection. Thus financing the benefits related to maternity should be borne collectively by way of insurance contributions or taxation or a mixture of both ensuring a broad pooling of resources that avoid adverse selection, ensuring a fair distribution of the cost and responsibility of maternity protection. Thus employer liability does not meet these principles in obliging individual employers to pay both the wage replacement to the female worker on leave and her replacement.

First, EL schemes are unnecessarily costly and risky for employers. Without the pooling of resources as in social insurance, single employers run the risk that they may, by chance, have unusually high benefit obligations in a particular year. To protect themselves, they need to hold resources in reserve. Private insurance schemes that cover only a segment of the market face similar risks and costs. Individual employers' liability can impose an excessive cost on small enterprises. In an environment of general socio-economic deprivation, where many employers, especially those of small and medium sized enterprises, face severe financial constraints, reliance on EL mandates may lead to high levels of non-compliance, and even bankruptcies.

Secondly, EL benefits fail to provide basic security for workers. Workers whose employers do not comply with the law or go out of business are left with no compensation at all. Moreover, on a compliance level, individual employer liability schemes are often problematic, particularly in developing countries. There are no means, be it in practice and sometimes in law to enforce the nonpayment of entitled maternity cash benefits to the women employees who qualify. Thirdly, EL schemes make it difficult for workers to change jobs, i.e., impede labour mobility. Workers may be reluctant to make career moves for fear of losing their earned rights to benefits available only through their current employer in the event of contingencies such as becoming pregnant or falling sick as a result of pregnancy. When workers fail to accept better job opportunities, not only are they harmed economically; national productivity also suffers.

Fourthly, placing the burden for paying benefits on single employers creates financial incentives to discriminate in hiring. According to worldwide experience, employer liability schemes work against the interests of women workers, as employers may be reluctant to hire women who are pregnant or may seek to find reasons to discharge pregnant employees in order to avoid paying the costs of wage replacement during the maternity leave period¹⁴. In many cases, this means not hiring women of childbearing age at all to avoid paying maternity leave on top of the cost of replacing the pregnant worker.

In this respect, employers' liability schemes have long been viewed as detrimental to the promotion of equal treatment for men and women in the labour market.

¹³ ILO: *Maternity Protection Resource Package: From Aspiration to Reality for All*, ILO Conditions of Work and Employment Programme (TRAVAIL), Geneva, 2012, adaptation of: *A note on employer liability schemes* Module 7, p. 26.

¹⁴ *Ibid.*

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

As a consequence, over the last 15 years there has been a shift away from employer liability systems to finance maternity benefits. The percentage of countries that finance cash benefits through employer liability systems decreased from 31 per cent in 1994 to 26 per cent in 2009.

3. Policies and practices on maternity cash benefits schemes

3.1 Coverage of the schemes

This section focuses on who is covered by maternity protection as understood from ILO conventions but also worldwide practices. **In principle, all employed women should be covered by maternity protection.**

ILO conventions have broadened the scope of maternity protection to cover all women. At first, Convention No.3 covered working women in public or private industrial or commercial undertaking. Convention No. 103, extended the scope of protection to a larger number of categories of women workers, to include women employed in non-industrial and agricultural occupations, including women wage earners working at home. Finally, Convention No.183 broadened the scope of coverage to all employed women, no matter what occupation or type of undertaking, including women employed in atypical forms of dependent work, who have often received no protection.¹⁵ Atypical forms of dependent work can be understood to include a broad range of non standard work arrangements like part-time, casual, seasonal, job-sharing, fixed-term, temporary agency work, home work and remote working, informal work and disguised self employment.¹⁶ This last extension is crucial to reach the main objectives for maternity protection: protection of mothers' health and well being of their child and promoting equality of opportunity and equality of treatment for men and women in labour market.

To measure the effective access of women to their right to maternity protection on a national level, it is important to look at the national legislation and identify the women covered by or excluded from maternity protection in labour laws or social security legislations along with the conditions of eligibility to obtain the benefits provided in law (see the next section). A recent study by the ILO's department on Conditions of work and employment showed that workers explicitly excluded from the scope of labour or social security laws or even corresponding laws regulating cash benefits are¹⁷:

- Domestic workers (e.g., Argentina, Bangladesh, Cambodia, Egypt, Honduras, Jordan, the Republic of Korea, Kuwait, Lebanon, Madagascar, Panama, the Philippines, Singapore, Sudan, Tunisia, and Yemen)
- Workers earning over a certain ceiling (e.g., the Dominican Republic and El Salvador).
- Managers/business executives (e.g., Nigeria, Paraguay, the Philippines and Singapore).
- Members of the employer's family or women working in family undertakings (e.g., the Dominican Republic, Ecuador, Egypt, Republic of Korea, Lebanon, Nigeria, the Philippines, Sudan, Tunisia and Uganda).
- Casual or temporary workers (e.g., the Dominican Republic, Honduras, the Republic of Korea, Kuwait, Panama, Sudan, Viet-Nam and Zambia).

¹⁵ *Ibid.* Note 5, p.35

¹⁶ *Ibid.* Note 6, p.2.

¹⁷ *Ibid* note 5, pp. 35-37.

- Agricultural workers (e.g., Bolivia, Egypt, Honduras (if less than 10 employees), Lebanon, Sudan, Swaziland and Thailand).
- Workers in the armed forces and/or police (e.g., Somalia, South Africa, Sudan, Swaziland and Zambia).

With regards to excluding categories of workers, the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR), in its 2008 report, expressed concern that some categories of workers are excluded from coverage in several countries that have ratified at least one of the Conventions related to maternity leave.

3.2 Qualifying conditions and entitlement conditions

With regards to qualifying conditions ILO's conventions have different approaches, but a recent trend has been to eliminate the conditions in order to cover all working women. Convention No.102 allows for qualifying conditions to preclude abuse and for the sake of sustainability of the scheme. Convention No.103 mentions no such period, requiring only the production of a medical certificate mentioning the presumed date of confinement. However, Convention No.183 permits qualifying conditions for cash benefits as far as such conditions can be fulfilled by the majority of women it covers.

With regard to world practices, almost all countries which have maternity cash benefits in place have some kind qualifying conditions.¹⁸In most social insurance schemes, the qualifying conditions are usually linked to the period of contributions or employment prior to confinement. In countries where cash benefits are financed through taxes or public funds, the condition attached is based on the period of legal residency. These conditions are regarded by countries as necessary for the viability of the chosen schemes but also as necessary way to prevent abuse. Therefore, Member States want to ensure that all beneficiaries make a minimum contribution to the scheme before they are entitled to benefits. Allowing immediate entitlement to benefits, without any qualifying conditions, may destabilize the scheme as people may affiliate to the scheme only in case of pregnancy¹⁹.

In many countries where employer liability is in place (ex. Zimbabwe), women need to have worked for the same employer for a specified period of time to claim entitlement to maternity cash benefits. Another eligibility criterion for paid leave is found in laws that limit the number of times a woman can obtain maternity cash benefits as the case of Sri Lanka, Tanzania and Malaysia. In response to this criterion, the Committee of Experts noted that maternity protection should be available to all women covered by the Convention irrespective of the number of their children.²⁰

With regards to other qualifying conditions, the Committee of Experts (2004) noted that in many countries the provision of cash maternity benefits is subject to a minimum qualifying period or coverage by the insurance system. It accepted these restrictions, provided that the qualifying periods are set at a reasonable level and that women who do not meet these conditions are provided with benefits financed through social assistance funds subject to certain means-related conditions.²¹ The Committee of Experts also noted that, in certain cases, national programmes have the objective of progressively eliminating qualifying periods consequently providing a

¹⁸ *Ibid* note 6, p. 8.

¹⁹ *Ibid* note 6, p.8.

²⁰ ILO: Report of the Committee of Experts on the Application of Conventions and Recommendation, Report III (Part 1A), International Labour Conference, 95th Session, Geneva, 2006, p.418.

²¹ *Ibid* Note 5, p. 42.

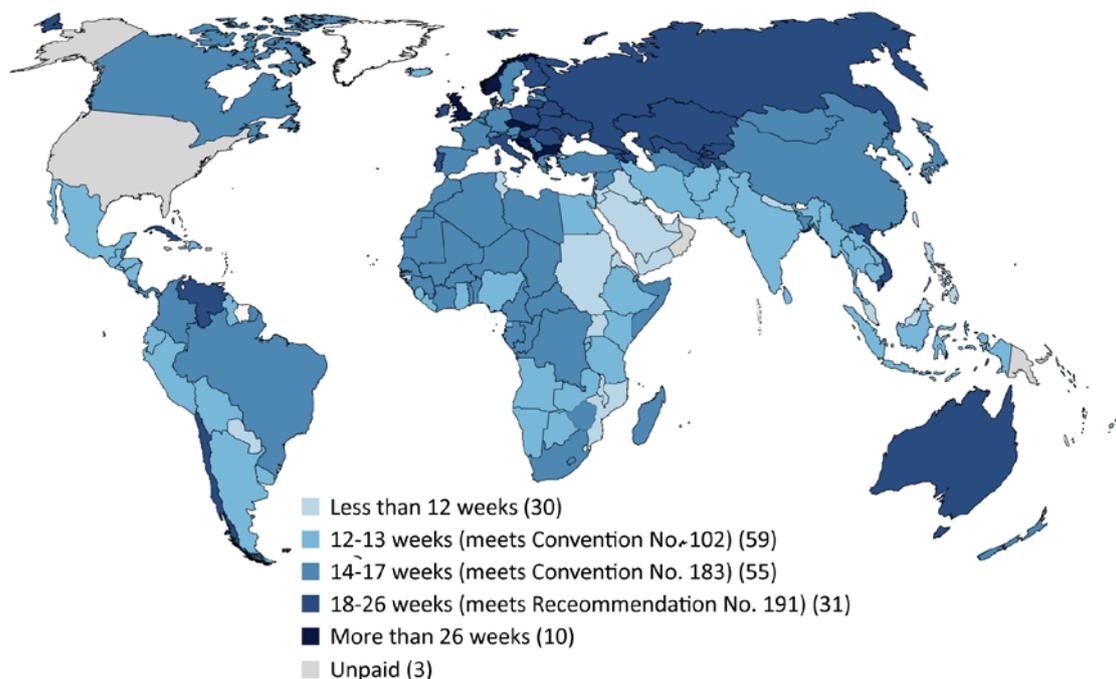
greater number of working women with financial protection during maternity leave (International Labour Office, 2004).²²

In addition to the qualifying conditions above, many countries require further conditions to claim entitlement to maternity cash benefits. Almost all countries require the beneficiary to produce a medical certificate indicating the presumed date of confinement. This requirement is in line with all maternity protections conventions. Furthermore, most countries require the claimant to stop all paid employment during the period which she is receiving cash benefits failure to do so resulting to a reimbursement of the benefits received while receiving a wage and interruption of further payment. This is consistent with international social security law, as it discourages women to return too quickly to work (at least 6 weeks after confinement under convention No.103 and No.183), which could endanger their health and that of their new-born.

3.3 Periods of compulsory maternity leave

The periods of compulsory maternity leave are intended to protect the health of the mother and her child by avoiding pressure to go back to paid employment, often detrimental to her health and that of her new-born. This is a fundamental component of maternity protection provided by ILO conventions. All three conventions (Nos. 3, 103, 183) on maternity protection have a compulsory leave period of at least six weeks after the birth of a child where the mother is prohibited to go back to work. Convention No.183 introduces a flexibility clause by allowing a tripartite agreement within the national level on different arrangements of compulsory periods. Neither Conventions named above stipulates on how the maternity leave period should be distributed but for the compulsory post-natal leave. This is left to appropriate bodies at the national level to decide.

Duration of maternity leave in the world



Source: World Social security report, 201/2015.

²² *Ibid.* Note 5, p.42.

In a study conducted by the ILO among 111 countries, around three-quarters mandate a period of compulsory leave before or after childbirth²³. Although there are many variations regarding the duration of this compulsory leave period and how it is distributed before and after childbirth, more than half of the countries analysed (Lesotho, Niger, El Salvador, Dominican Republic among others) provide for at least six weeks' compulsory leave after childbirth as specified in Convention No.183, with some of them stipulating more than six weeks of compulsory leave²⁴. Some countries (ex. Bahamas, Afghanistan and Senegal) provide for periods of compulsory leave both before and after childbirth. Yet other countries like Algeria, Hungary, Macedonia and Zimbabwe provide compulsory periods only before birth.

In addition, most national legislation offer an extended maternity in cases of unusual or unexpected circumstances like illness or complications related to child-birth, multiple births, early birth or adoption. This is in conformity with ILO standards which prescribe additional leave in case of illness and complications arising from confinement of which the duration is to be determined nationally.

3.4 Level of paid maternity leave benefits

Maternity cash benefits combined with maternity leave are intended to replace income loss as a result of childbirth and the interruption of professional activity. Thus cash benefit is a substantive part to the right of women to maternity leave and makes the human right to maternity protection a reality. In principle, ILO standards require that the level of income replacement assure that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living (Convention No.183, Article 6(2)).

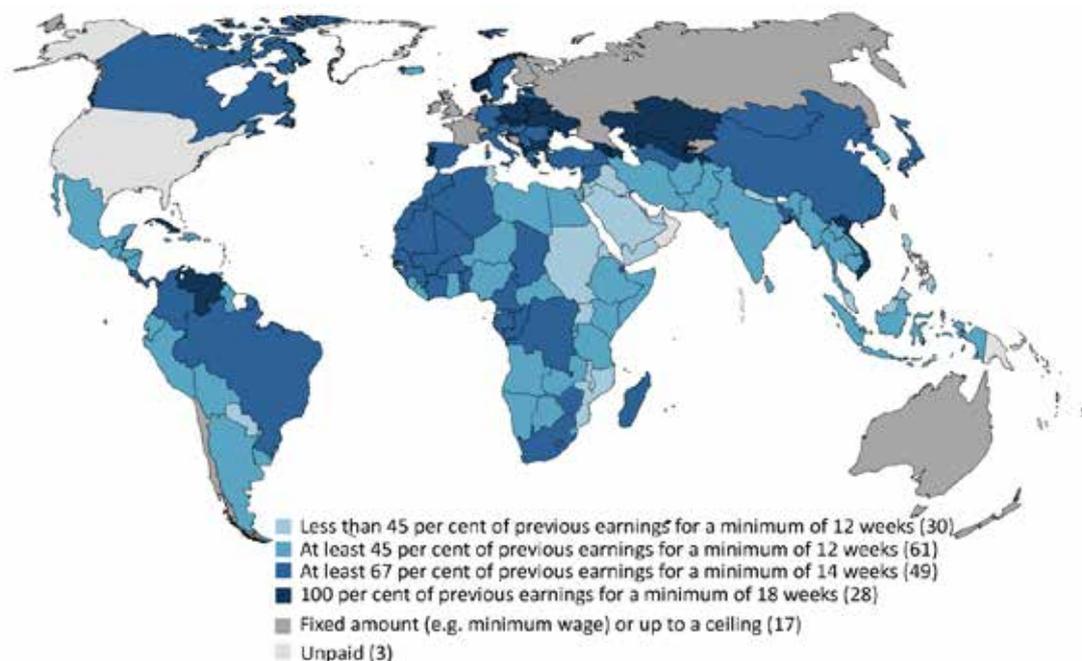
In terms of calculations, the minimum level of cash benefits is defined in Convention No.102 as 45% of the woman's previous earnings or if flat-rate at least 45% of the unskilled workers wage. The higher standards (Convention Nos.103 and 183) call for at least two-thirds of the woman's previous earnings. However, the conventions do not define previous earnings leaving the definition to national entities.

Furthermore, ILO standards require that the nationally chosen level benefits be reviewed periodically in consultation with representative of both workers and employer on the national level to meet the specific needs and developments.

²³ Ibid note 5, p. 13.

²⁴ The following countries are among those that provide more than six weeks of compulsory leave after childbirth: Central African Republic (eight weeks), Iran (45 days), Japan (eight weeks), Republic of Korea (45 days), Panama (eight weeks), Madagascar (eight weeks), Slovakia (14 weeks), Switzerland (eight weeks) and Viet Nam (two months). *Ibid.* p.13

Level of income replacement of maternity benefits, World



Source: World Social security report, 2014/2015.

As a general rule, the duration of cash benefits coincides with the length of leave. There is a fairly wide degree of divergence in the level of maternity cash benefits. In many countries, the cash benefit is linked to the insurable wage of woman workers, with the insurable wage being usually the wage upon which social security contributions have been paid for a specified period. The benefit paid can be either as the full insurable wage or a proportion of it²⁵.

Below are examples of different levels of maternity level²⁶:

- A number of countries, particularly in Europe provide for **100 per cent of the covered salary**. Examples include Austria, Belarus, Croatia, Denmark, Estonia, France, Latvia, Luxembourg, Norway, Poland, Portugal, Spain, and Russia. 100 per cent is also paid in Algeria, Argentina, Barbados, Brazil, Guatemala, Mexico, Morocco, Panama, Peru, Uruguay and Vietnam, amongst others.
- In some countries there are **ceilings on the insurable earnings and/or ceilings** on the maximum amount of benefits with the consequence that the benefit, even if it represents 100 per cent of the former earnings, it is capped at a specified level, so that very high-income earners receive a benefit which is less than 100 per cent of their former earnings. A maximum on the benefit paid can be found, for example, in Belgium, Cyprus, Czech Republic, Denmark, Egypt, France, Greece, Ireland, Honduras, Luxembourg, Mexico, Morocco, Peru, Slovakia, Sweden and Tunisia.
- In some other countries a **proportion of usual wage or the insurable wage** is paid. In Bulgaria the cash benefit amounts to 90 per cent of the former wage, while in Belize,

²⁵ *Ibid.* note 6, p.10.

²⁶ *Ibid.* Note 6, pp.10-11 updates have been made on the examples to reflect the legislative changes that occurred from 2007, year that the Jordan report was published and this report in 2013.

Italy and Sweden it amounts to 80 per cent, and in Cyprus and Egypt, to 75 per cent. In Hungary and Ireland, the benefit is 70 per cent of the former wage, whereas in Honduras, Tunisia and Turkey, it is 66 per cent, and in Finland, 65 per cent. In Japan, it amounts to 60 per cent and in Costa Rica and Greece, to 50 per cent. In the Caribbean countries, most replacement ratios range from 60 per cent as in Trinidad and Tobago to 70 per cent in Guyana.

- In a few countries, cash benefits are set at **staggered rates**: in Belgium the payment is set at 82 per cent of the covered wage for the first 4 weeks of leave, and thereafter at 72 per cent. Grenada pays a benefit of 100 per cent of the former wage for the first two months of leave, but 60 per cent for the last month.
- Many countries have set a **minimum benefit**, e.g. as Finland, Grenada, Ireland, Mexico, Portugal and the United Kingdom.
- In some countries, the benefit is a **flat-rate benefit** set at a certain amount, e.g. in Jamaica where the maternity cash benefit is set at the minimum wage.

3.5 Frequency of payment

It is ILO's policy that maternity cash benefits should be paid on a periodic frequency rather in a onetime lump sum. As cash benefits serve as income replacement, it is important to have them at the same frequency as the income they are replacing, for instance if the wage is paid on a monthly basis then the cash benefit should be monthly, if bi-weekly then the cash benefit should bi-weekly and so forth. This is to avoid the undesirable effect of having mothers return to work before the end of their maternity leave and receiving cash benefits on top of a salary.

In practice, most countries worldwide provide maternity cash benefit payments on a monthly basis or at the same frequency of payment as salaries and wages.

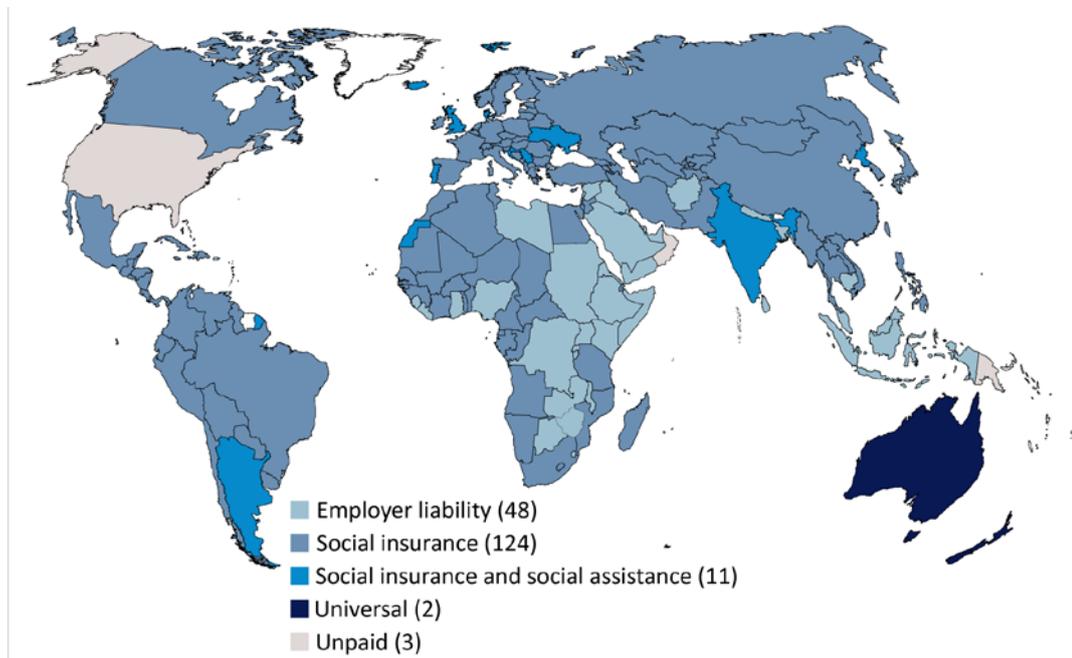
3.6 Who Pays?

There is a global tendency to move from relying on employers to finance maternity benefits (employer's liability schemes) and towards insurance schemes or mixed financing schemes. According to ILO studies, employer liability has declined by 5% from 1994 to 2009²⁷. Countries like Tanzania, Namibia and Jordan have shifted from employer liability to social security, while other like Singapore has shifted to a mixed system²⁸. Where countries adopt a social security scheme approach to finance cash benefits, the contributions are a result of some sort of combination of employer, employee (both male and female) and government contributions used to create an insurance pool.

²⁷ Ibid. Note 5, *Figure 2.6: Who pays the benefit, 1994 and 2009 (138 countries)*, p. 31.

²⁸ Ibid. Note 5, p.24.

Forms of financing maternity protection in the World



Source: World social security report 2014/2015

Other countries will opt for an alternative financing scheme under the control of the government. For instance, Iceland and New Zealand use a universal coverage scheme for maternity cash benefits while China and Switzerland require an individual account in which they collect and pay cash benefits through social security and a mandatory private insurance²⁹.

Additionally, some countries will use mixed systems meaning that both employer and social security system contribute to the payment of cash benefits. The employer's contribution varies from one country to another. Often the employer will pay the difference between social security cash benefits and the woman's previous earnings. In this regard, the trend is that the employer and social security system split equally the cost of benefits. To this, the CEARC decided that, in terms of compliance to Convention No.103, a Member state complies if the employer's contribution is less than a third of insured income and where the social security's share is at least two thirds³⁰.

3.7 Cost of paid maternity cash benefits: is it affordable?

The cost of a maternity social insurance scheme is relatively low compared to other branches of social security. When a social security administration already exists, the introduction of maternity on the basis of social insurance becomes affordable. According to US SS/ISSA, financing maternity cash benefits usually takes less than 0.7 of covered wages.³¹ This is also supported by world practice. For example, in the Namibian social insurance scheme covering maternity, sickness and death, the cash benefits programme is financed at 1.5% contribution rate with 0.35% attributed to maternity. In addition, where schemes combine maternity benefits and sickness, the

²⁹ *Ibid.* Note 5, footnote 38, p.23.

³⁰ *Ibid.* Note 5, p.24

³¹ *Ibid.* Note 7, Module 7, p.46

contribution rate ranges between 1% and 3% and sickness expenditures consume a major share of the scheme's revenue.³²

Overall this must also be compared with the cost of not providing or providing inadequate social protection in maternity to women, employers and society at large. For the majority of women in the world, especially amongst workers in micro and small enterprises, the absence of protection in maternity means mothers unable to work face a direct loss of income. The periods of absence from work can be increased by inadequate planning and preparation for delivery and the conditions in which it takes place. Also out-of-pocket financing of maternal medical care can be unbearable for many families and increase the risk of financial hardship of families. This increases poverty directly, inequality, health risks and increase the risks of health problems due to stress as women are compelled to work until late pregnancy or feel pressurized to resume work in conditions which are not always the most suitable for them; this has a detrimental effect on productivity. Society can thus bear a high cost for low investment in maternity protection.

3.8 Institutional arrangement

ILO flagship convention on social security, Convention No.102, offers two core directives on the administration of social security schemes: the responsibility of the Member state for the sound management and financing of social security institutions³³ and social dialogue (representation workers, employers and government) in the administration structure. Furthermore, Recommendation No.202 reaffirms this principles in its first part outlining the objectives, scope and principles³⁴.The first directive ensures that a Member state shall not assume its responsibility to private entities even when it assigns certain aspects of the administration them, while the second gives a voice to all stakeholders in managing the scheme through tripartite boards of directors for example or other arrangements. Although these principles are not explicitly mentioned in either convention on maternity protection, they should be included in any blueprint for maternity protection schemes, thus assuring a sound administration.

It is equally important to make sure that the administration of maternity protection systems and social security systems globally, be enshrined in a legal framework (laws, statutes, etc) that outlines the rights and obligations of all constituents and stakeholders. This helps insulate the administration from factors like change of government, applicant's income, social status and other subjective factors that can destabilize the system. Also a legal framework provides a clear basis and guideline for the actors in the administration of social security systems including maternity protection. Lack of a clear legal framework will undermine the public's trust due to lack of clear guidelines of the functioning of the social security scheme.

³² *Ibid.* Note 7, Module 7, p.47

³³ Social Security (Minimum Standards) Convention, 1952 (No. 102), Article 72(2): “*The member shall accept general responsibility for the proper administration of the institutions and services concerned in the application of the Convention*”

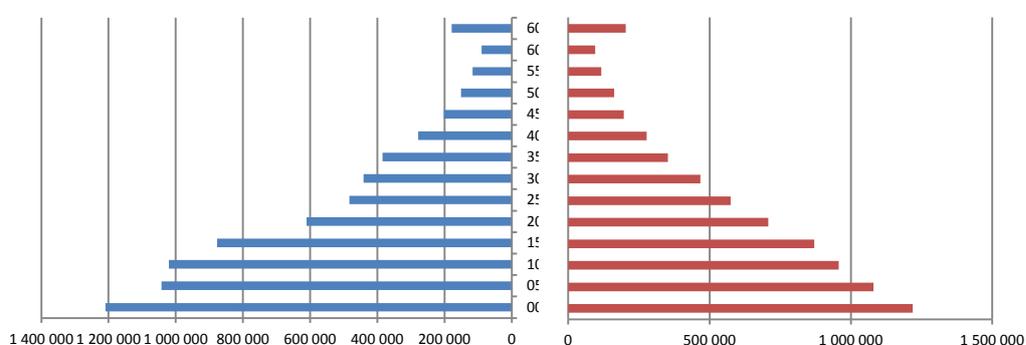
³⁴ Social Protection Floors Recommendation, 2012 (No. 202), Paragraph 3, 3(r)

Part II. Issues regarding the Establishment of a Maternity Cash Benefits Scheme in Zambia

4. Demographics and Employment

In 2012, Zambia's total population was estimated at 14,365,719, of which 49.3 percent were males and 50.7 percent were females (CSO, Labour Force Survey 2012). Out of the population of 14.4 million persons, 16.9 percent were aged 4 years and below, while those below 15 years collectively accounted for 45.3 percent. Persons aged 65 years and older accounted for 2.7 percent.

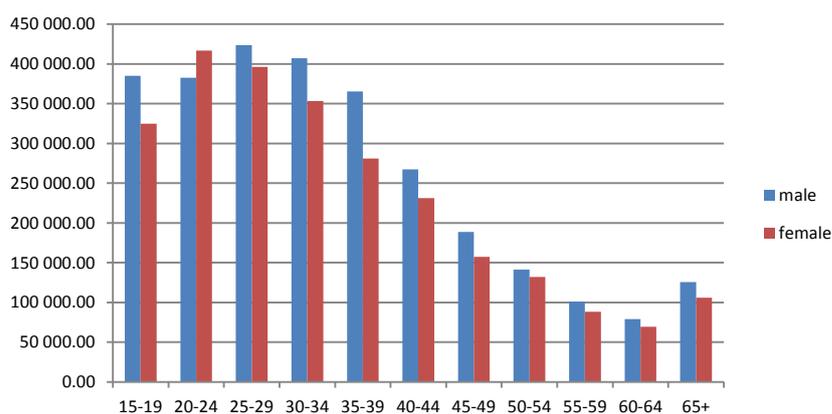
Population structure by age and sex, Zambia, 2012



Source: CSO, Labour Force Survey 2012

In 2012, Zambia's working age population was estimated at 7,837,038. Of these, 5,845,250 were in the labour force (or were economically active) while 1,991,788 were outside the labour force. On a total labour force participation rate of 74.6 percent, the male population participation rate was 80.0 percent while in the female population, participation rate was 69.5 percent. The labour force participation rate was lower in urban areas (66.2 percent) than in rural areas (81.1 percent).

Employed people by age and sec, Zambia, 2012



Source: CSO, Labour Force Survey 2012

Zambia's total employed population (excluding the unemployed) was estimated at 5,386,118. The majority of the employed persons were in the Agriculture industry at 56.0 percent. This is followed by the Trade industry at 12.2 percent. Activities of Households as Employers ranked third after Agriculture and Trading industries in terms of number of employed persons with, 366,985 persons.

Zambia distinguishes between formal sector jobs (in registered trades), and formal employment (written contract, making social security contributions, entitled to paid leave, pay income tax).

Out of 5.4 million employed persons, formal sector employment accounted for 16.6 percent (894,175)³⁵. 83.4 percent employed were in the informal sector. In the rural areas, 94.2 percent were in the informal sector while the corresponding estimate in the urban areas was 63.9 percent. Agriculture Industry had the highest workforce (3.0 million), out of whom, 97.1 percent were employed in the informal sector. Trade Industry had the second highest workforce of 652,143, out of whom 89.3 percent were in the informal sector.

Out of the total employed population, 88.7 percent had informal jobs and 11.3 percent had formal jobs. There were more formal jobs in Mining and quarrying (71 percent); Electricity, gas, steam and air conditioning supply (84.7 percent); Financial and Insurance activities (73.1 percent); Administrative and support services (72.8 percent); Public administration (81.7

³⁵ The most recent available information from the LFS 2012 does not show a disaggregation of informal sector jobs or informal employment by sex.

percent); Education (81.4 percent); Human health and social work (68.7 percent); and Activities of extraterritorial organizations and bodies (91.8 percent).

5. General policy considerations

5.1 Basis of the recommendations made by ILO

The ILO's recommendations concerning the establishment of a maternity cash benefits scheme in Zambia are based on:

- Consultations held with Zambian stakeholders
- The relevant maternity protection provisions under the *Employment Act* and Minimum wages and conditions of employment legislations
- International best practices, and
- The relevant ILO social security standards. As indicated in Part I of the Report, Zambia has ratified Convention No. 103 on maternity protection and is bound to comply with the minimum standards set by it.
- Convention No. 183, which covers maternity protection in a comprehensive manner provides for higher standards has been considered to some degrees. However, **the establishment of a social insurance based maternity protection scheme, such as the one under consideration, does not require the ratification or full adherence to the principles and conditions set in Convention 183.**

The recommendations were formulated bearing in mind the need to achieve a balance between the different political concerns of the stakeholders involved in the process, the international obligations Zambia has contracted and world best practices adapted to the national context. They represent the most politically acceptable solutions in order to gain the widest support from all parties involved, which is needed in order to guarantee the well-functioning of the scheme from the onset. On these grounds, they aim at providing a sound basis for decision-making regarding the establishment of a fair and affordable maternity protection scheme in Zambia.

5.2 Existing legal provisions on maternity cash benefits protection

The Draft Constitution of Zambia, currently being debated for adoption, will provide for maternity protection. Indeed, section 54 of the Draft Constitution focuses on family and recognizes the maternal role of women in addition to the nurturing role of both parents.

With this regard, the State will have an obligation to “[...] ensure the right of women to maternity leave; (b) ensure the availability of adequate parental leave [...] availability of adequate maternal health care [...]”³⁶This will make maternity protection, including the right to a maternity leave and medical care, a constitutional right, a much stronger legal foundation.

Zambia has put in place various laws and policies on maternity protection at work. The current labour laws provide for paid leave and benefits, including maternity leave and cash benefits. These statutes are the *Employment Act*, minimum wage legislations and various collective agreements³⁷. This section will focus only on the legislation in place and will not comment on existing collective agreements which differ from one company/employer to another.

³⁶ Section 54 (3), *Draft Constitution of the Republic of Zambia*, available at: <http://zambianconstitution.org/downloads/First%20Draft%20Constitution.pdf>

³⁷ ILO: *Decent work country profile: Zambia*, International Labour Office, Geneva, 2012, p. 24.

5.2.1 The Employment Act

*Employment Act*³⁸ is the foundation of labour relations in Zambia as it outlines and defines employment relations, the actors of the formal sector labour market and their obligations to each other. The *Employment Act (EA)* applies to any person who works under a contract of service, be it express or implied, oral or in writing, and whether the remuneration is calculated by time or by work done, in cash or kind (Section 3 definition of employee). This act does not apply to members of the Defense Force (Zambia Army, Zambia Air Force and Zambia National Service), the Zambia Police Force, and the Zambia Prison Service³⁹. Apprentices and casual employees (workers who are paid at the end of each day and have a contract of less than six months) are also excluded from the general definition of ‘employee’ set out by Section 3, consequently not included in the scope of maternity protection afforded under this act.

Maternity protection is primarily covered by section 15A of the *Employment Act*. The paragraph that covers maternity leave and cash benefits reads as follows:

EMPLOYMENT ACT 15A (1)

- (1) Subject to any agreement between the parties, or any other written law, providing for **maternity leave** on conditions not less favourable than are provided for in this section, every female employee who has **completed at least two years of continuous service** with her employer from the date of first engagement or since the last maternity leave taken, as the case may be, shall, on production of a medical certificate as to her pregnancy signed by a registered medical practitioner, be entitled to maternity leave of **twelve weeks with full pay**.

The *Employment Act* provides for a statutory maternity leave for the duration of twelve weeks with a level of benefits at 100 percent of previous earnings for the full maternity leave entitled to the beneficiary. In the event of sickness or complications arising out of pregnancy preventing the new mother from resuming work after 12 weeks, and on production of a medical certificate attesting to her condition, the beneficiary is entitled to a sick leave of a maximum of twenty-six (26) working days in a period of twelve months⁴⁰. For the twenty-six (26) days of additional leave, the employer remains liable to pay cash benefits (full salary). If additional time is needed to recuperate from confinement, the provisions on sick leave make it possible, but cash benefits become optional to the employers consent (section 54(1)): «... *an employer may continue to pay such employee for any longer period if the employer so agrees*».

With regards to qualifying conditions and entitlement to maternity cash benefits Section 15A (1) of the *Employment Act* requires the completion of two years continuous service or two years since the last maternity leave.

5.2.2 Minimum wages and conditions of employment legislations

The minimum wage and conditions of employment legislations overlap with the *Employment Act* on a number of issues including maternity leave. These Statutory Instruments are permitted by

³⁸ *Employment Act*, Act No.57, dated 1 October 1965 (Government Gazette, No. 70, Supplement, 1 October 1965, p.449, Ch. 512), as amended up to Act No. 15 of 1997.

³⁹ *Ibid* Section 2(1)

⁴⁰ *Ibid* Section 15A (3) entitlement to a sick leave; Section 54(1) for the maximum duration of the sick leave.

Employment Act in as far as their provisions are not less favorable than those set out in it⁴¹. There either cover all employees or target a specific groups/ category of workers.

The *Minimum Wages and Conditions of Employment (General) Order*, 2011 (S.I No. 2 of 2011) (MWCEG) applies to all employees except employees of the Government, employees of a local authority and employees whose wages and conditions of employment are regulated through collective bargaining or employees in management⁴² as well as shop workers and domestic workers who are covered by specific Statutory Instruments. MWCEG provides for maternity cash benefits associated with maternity leave⁴³ in paragraph 7(1) of the Schedule. The qualifying conditions are the same as those mentioned in the *Employment Act*: two years of completed continuous service or two years since the last maternity leave and a medical certificate signed by a registered medical practitioner. The claimant is entitled to same level of cash benefit as that of the *Employment Act*: full paid maternity leave but for 90 days⁴⁴ which slightly higher than the 12 weeks (84 days) provided for in the *Employment Act*.

Similar to the *Employment Act*, the beneficiaries of maternity leave under MWCEG are entitled to a sickness leave in accordance with section 7(3) « [w]here, by reason of illness arising out of pregnancy, a female employee becomes incapacitated of performing her normal duties, [...] in accordance with paragraph 6 of this Schedule». However, the duration and level of benefits has a different treatment. According to Paragraph 6(1) of the Schedule to MWCEG referred to, the cash benefits are: « (a) at full pay during the first three months; and (b) thereafter at half pay for the next three months».

The *Minimum Wage and Conditions of Employment (Shop Workers) Order (MWCES)* and *Minimum Wage and Conditions of Employment (Domestic workers) Order (MWCED)* apply respectively: to all employees employed in a shop except listed categories of workers found in section 2 of MWCES and domestic workers with exceptions identified in section 2 of MWCED. For both orders qualifying/entitlement conditions are the same as those in the *Employment Act* and MWCEG discussed above. Regarding the level of maternity cash benefits and their duration, the MWCES are the same as those in the MWCEG. However, domestic workers only have a right to maternity leave without cash benefits⁴⁵ attached to it for a longer period, namely 120 calendar days⁴⁶. Domestic workers are entitled to full paid sick leave in accordance with Section 9, where illness or complication arises from pregnancy for a period not exceeding one month.⁴⁷

5.3 Gaps between the existing legal provisions and the international norms in maternity protection

This section assesses the gaps between the existing maternity protection legislations described in section 3.2 above and the international standards contracted by Zambia, specifically as a result of the ratification of Convention No.103 in 1979. This analysis is based on the comments made by the Committee of Experts on the Applications of Conventions and Recommendation (CEACR).

⁴¹ Section 15A (1) regarding maternity benefits : «*Except as may be provided in any contract of service, collective agreement or other written law more favourable to the employee*».

⁴² Section 2 MWCEG

⁴³ Maternity leave is additional to any other leave, MWCEG Paragraph 7(2) of the Schedule: « *The maternity leave shall be additional to any other leave to which the employee may be entitled* »

⁴⁴ MWCEG Paragraph 7(1) of the Schedule.

⁴⁵ Section 10(5) of MWCED : « *A domestic worker shall not be entitled to receive a salary during the time that the domestic worker is on maternity leave*»

⁴⁶ Section 10(1) of MWCED.

⁴⁷ Section 9(1) of MWCED

- The first gap assessed is the 2 years of continued service with the same employer qualifying condition. This period limits greatly the number of women entitled to maternity cash benefits, as it discriminates against women who are employed under temporary or short-term contracts. This is inconsistent with Article 3(1) of Convention No.103 which does not limit the time of employment and only requires a medical certificate to qualify for cash benefits. In fact, the CEACR has drawn the Zambian government's attention to this fact including in its last comment adopted in 2011: « [...] *the Committee has been drawing the Government's attention to the fact that section 15(A) of the Employment Act (Cap 268) does not comply with the Convention on the following points: (i) contrary to this provision of the Convention, section 15(A)(1) of the Employment Act, and section 7(1) of the Schedule to the Order of 14 January 2002, submit entitlement to maternity leave to the completion of two years of continuous service from the date of the first engagement or since the last maternity leave taken*»⁴⁸. However, CEACR recommended that should the qualification period be maintained, the law should guarantee expressly that the women who do not qualify for maternity benefits should at least have access to unpaid maternity benefits accompanied by provisions protecting their employment against dismissal.⁴⁹ In addition, Convention No.183 states that Members should ensure that conditions to qualify for cash benefits can be satisfied by a large majority of the woman to whom the convention applies.
- Furthermore, the qualifying period requiring that two years elapse since the last maternity cash benefit infringes Convention No.103 in as far as entitlement to cash benefits is unavailable to women who would otherwise qualify under the duration of employment, but have taken maternity leave due to subsequent pregnancy.

Recommendation #1: It is therefore recommended that the Social security maternity branch provides for maternity leave without qualification.

- The existing legal framework for maternity protection is based on employer liability, meaning that each employer is responsible for paying qualifying employees full salary during their maternity leave. This method of financing maternity cash benefits is expressly prohibited by Convention No. 103 article 4(8): «*In no case shall the employer be individually liable for the cost of such benefits due to women employed by him. »* Regarding this matter, the CEACR recalled in its last comment « *that the maternity cash benefits should be financed collectively by way of insurance contributions or taxes*». The government of Zambia has expressed reservations about providing medical and cash benefits through public funds, citing inadequate financial means to bear the costs of benefits. In response to these concerns, the CEACR has suggested that benefits be funded by social insurance schemes financed by employer and employee contributions without the use of public funds. This is necessary to prevent employers from not employing women of a child-bearing age so as to avoid the costs associated with providing maternity leave, thereby preventing discrimination on the grounds of maternity. CEACR expressed its hope that «*the Government would undertake to replace progressively the direct employer liability system by a social insurance scheme*».

⁴⁸ ILO: Report of the Committee of Experts on the Application of Conventions and Recommendation, Report III (Part 1A), International Labour Conference, 95th Session, Geneva, 2012, pp.901.

⁴⁹ *Ibid.*

Recommendation #2: Social security maternity branch should be funded by employers, including Government as an employer, and workers. The affordability of the scheme can be assessed by simulating options of replacement rate and period of maternity leave that meet ILO convention 183 as a benchmark.

- In terms of cash maternity benefits there is a disparity between domestic workers and other workers covered by the Minimum wage statutory instruments. The latter are entitled to a paid maternity leave while domestic workers are only entitled to an unpaid leave. This places an extra financial burden to bear maternity leave to an already vulnerable group of workers.

Recommendation #3: Social security should address the disparity between shop and domestic workers who are not entitled to paid maternity leave and those that are entitled to paid maternity leave.

- There is a disparity in the period of maternity leave between domestic workers and other workers covered by the Minimum wage statutory instruments. Convention No. 103 stipulates a minimum of 12 weeks' maternity leave, while Convention No. 183 provides for 14 weeks. Maternity leave in terms of the Employment Act therefore falls short of the provisions of Convention No. 183, while the provisions in the SIs are in excess of the minimum stipulated by both Conventions. The lengthier maternity leave period under the SIs is a matter of concern to employers who are required to provide paid maternity leave.

Recommendation #4: The period of maternity leave should be harmonized between different occupations within a harmonized social security framework. Progressive attainment of Convention 183 requirements on the period of maternity leave (14 weeks) can be envisaged within a time frame. The affordability of the social security scheme can be assessed by simulating options of replacement rate that meet ILO convention 183 (minimum 2/3 of past earnings). It may also be possible to allow more favorable SIs to provide for maternity leave that exceeds social security provision, in a form of a hybrid system of financing, in sectors or occupations where this is necessary and feasible.

- With regards to compulsory post-natal leave, neither the *Employment Act* nor the statutory instruments studied in the section above mention a compulsory post-natal leave as required by Convention No.103 article 3(2) and (3). Conventions No.103 requires that national laws or regulations prescribe a compulsory leave after maternity not less than six weeks. The CEACR in its last observation recalled that to combat the high mortality related to pregnancy and childbirth in Zambia, such a measure is essential to safeguard the health of the mother and her newborn⁵⁰. The Committee urged the government to see how a compulsory post-natal leave of at least six weeks could be incorporated in maternity protection schemes. **This is minimum post natal maternity leave duration. The total maternity leave period is subject to national consultations and includes in addition, a certain period which is taken before child birth and can exceed the required six weeks post natal leave.**

⁵⁰ *Ibid.*

Recommendation #5: Social security should prescribe a compulsory post natal leave of at least six weeks.

- When looking at the broader context of maternity protection, in its preventive component, it is important to consider that the provisions of the Employment Act prohibiting an employer from terminating employment or disadvantaging an employee for reasons connected with her pregnancy seem to be insufficient. According to the CEACR, this does not give full effect to Article 6 of Convention No. 103. This provision requires State Parties to prohibit employers from issuing a notice of dismissal during the period of maternity leave, or issuing notice of dismissal that would expire during the period of maternity leave. The Employment Act does not provide for breastfeeding breaks for nursing mothers. It therefore does not give effect to Article 5 of Convention No. 103, which requires that breastfeeding breaks should be counted as working hours and remunerated accordingly. Furthermore, the Employment Act does not require employers to protect pregnant employees from harmful work.
- Finally, the Employment Act does not presently provide for paternity leave. According to Evance Kalula et al (2013), The Draft Constitution of Zambia would impose an obligation on the state to provide for adequate paternity leave in recognition of the nurturing role of both parents. The Draft Amendment Act proposes to introduce five days' paid paternity leave. He recommends that at least five days' paternity leave be provided as proposed in the Draft Amendment Act and as would be required by the Draft Constitution. It is recommended that paternity leave be granted free of the two-year qualification period for the same reasons relating to maternity leave.

Recommendation #6: Labour legislation should be reviewed when introducing new Social security legislation to up-date existing preventive as well as compensatory provisions of maternity protection in Zambia.

Current Labour Legislation imposes other contingent costs on employers including for health, sickness leave and dismissal, without protection in unemployment (Evance Kalula et al, 2013). In the absence of comprehensive social security provision, these will similarly impose direct costs of doing business especially for small and medium enterprises/ entrepreneurs, with lower guarantees for workers. There is a national policy objective given to the implementation of a social insurance based health protection in Zambia. This would probably be implemented in the framework of a unified social security framework. There are many advantages to providing a comprehensive set of benefits. Maternity protection and other short term benefits can help increase the coverage amongst the currently uncovered by pensions. On the other hand, a more comprehensive package would increase incentives to contribute to maternity benefits (for example, the contribution of people older than 40 to maternity benefits only may face more implementation challenges as a standalone benefit). Consideration could therefore be given to introduce other contingencies including sickness cash benefits.

Recommendation #7: Align maternity social security design (for example personal coverage, administration) with existing social security regulatory framework, and establish a time bound plan to extend the scope of social security regulation.

6. Policy considerations

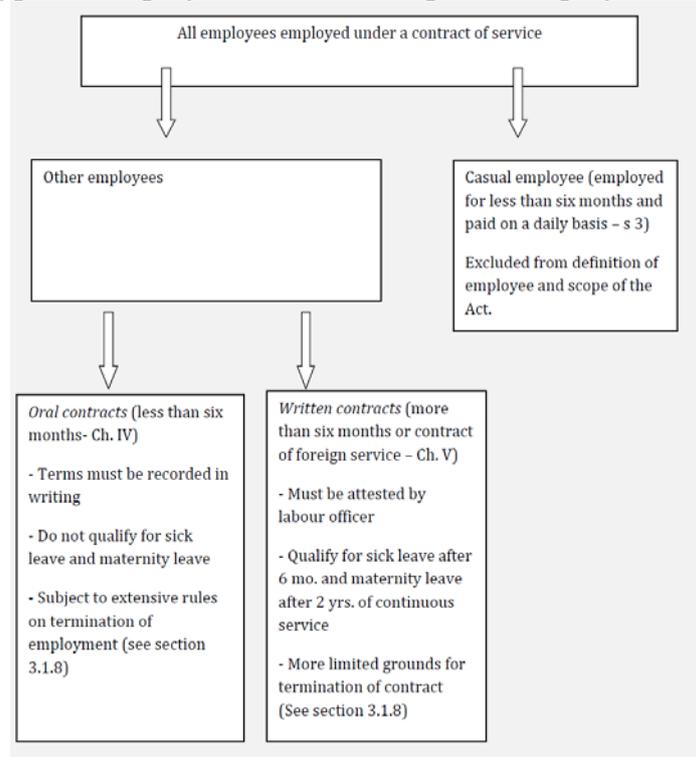
6.1 Contingency covered

The benefit scheme provides periodic payments in the event of suspension or loss of earnings due to pregnancy and confinement and their consequences.

6.2 Coverage

According to stakeholders consulted the coverage under the new social insurance maternity benefits branch should be firstly aligned with the Employment Act.

Types of employment relationship and Employment Act



Source: Kalula (2013)

Secondly, the coverage should be extended to all those covered also under the National Pension Scheme Authority⁵¹. NAPSA is compulsory for all regularly employed persons in the private sector, quasi-government and para-statal organizations as well as the civil service and the local authority employees.

Thirdly, according to the stakeholders, workers not covered under NAPSA should also be covered, after a transition period, under the maternity social security branch.

⁵¹ The National Pension Scheme Authority (NAPSA) administers a defined benefit scheme under the provisions of the National Pension Scheme (NPS) Act Number 40 of 1996. NAPSA became operational in February 2000, and implements policies relating to the National Pension Scheme, controls and administers the operations of the Scheme.

- Such workers not covered by NAPSA currently are members of the armed forces (covered under the Public Service Pension Fund), members of a public service pension scheme who joined before 1 February 2000, employees earning below K15 per month (ie about 3 USD per month), teachers, local civil servants, the spouse of an employer or family members of an employer living in the same home, employees of foreign governments or international organizations who are resident in Zambia but are not citizens of Zambia.

Finally, it is necessary to clarify the following special coverage issues:

- Coverage of short term and atypical contracts: The NPS Act covers all workers between ages of 16 and 55 whether engaged on⁵²: part time, probation or casual basis, contract or permanent, including non-Zambians employed by local institutions. In that sense it is more inclusive than the Labour Law only. **They should be covered by the new maternity branch provided the contract or a succession of immediately sequenced contracts covers the waiting period, and subject to a minimum weekly or daily time to be defined, such that the Law covers a majority of atypical workers.**⁵³
- Shop workers and domestic workers are covered under NAPSA and should also be covered under the maternity branch. However, they enjoy differentiated maternity benefits because they are not covered by Employment Law but by distinct specific Statutory Instruments. **The option for coverage of shop workers and domestic workers suggests a modality of harmonized basic benefits for all workers including domestic workers.**
- Self-employed (to be covered voluntarily). The NPS Act does not specifically mention self-employed workers. **The maternity social security Act should specifically include self-employed workers, and allow them to contribute on a voluntary basis.**
- Apprentices and learners employed for vocational training are currently covered by the Workers' Compensation Act, in compliance with the Workmen's Compensation (Accidents) Convention, 1925 (No. 17). Apprentices and learners are however excluded from the definition of an employee in the Employment Act and by implication, excluded from the NPS Act. **Stakeholders indicated that they should not be included in maternity benefit provision because of the necessary waiting period and resulting unnecessary costs to the scheme and to preclude abuse of the benefit.**
- There is no restriction on the number of employees a company must have.
- In alignment with international standards, all men and women contribute to maternity benefits, **regardless of age (until retirement age) and sex**, in the assumption of solidarity and equal sharing of costs and benefits of reproduction.
- The benefit is an individual right for compensation and not a derived right from the spouse contribution.

⁵² <http://www.napsa.co.zm/index.php/employees> ; see NAPSA Act http://www.napsa.co.zm/index.php/about-us/napsa-and-you/doc_download/3-napsa-act

⁵³ Note (from a review of Law)⁵³.

6.3 Who pays for the proposed scheme?

Stakeholders indicated that funding would be equally shared between employers (private or government in the condition of employer) and workers (50% by each). This is a fairly standard situation where social insurance exists in the world.

Financing mechanisms for statutory maternity cash benefits

	Universal schemes	Social assistance	Hybrid systems (Social + Employer liability)	Social insurance	Employer liability
Financing source	Taxation	Taxation	Financing maternity	Contributions	Financed directly by the employer
Distribution of responsibility	Redistribution	Solidarity	Benefits shared between social security and the employer. The percentage required of each party varies according to national legislation.	Pooling of risks and finances	Individual Employer provision
Benefits provided	Flat-rate	Discretionary (Means-tested)		Prescribed in Social security law	Benefits prescribed in labour law or collective contracts
Eligibility	Based on residence or citizenship	Based on need		Based on employment contribution history	Based on continued employment relationship between individual employer and employee
Example of countries	Iceland State universal flat rate for non-qualifying women, New Zealand	UK, Australia	Benin (50% social security; 50% employer) Egypt (75% social security; 25% employer), Thailand (2/3 employer, 1/3 social security)	Examples: South Africa (50% each employer and employee), Namibia (same), Senegal (same), Jordan (same)	Botswana, Rwanda

6.4 Leave period, level and frequency of payment of maternity cash benefits

Stakeholders required the following two main options to be simulated:

Option 1: 12 weeks, 100% Replacement Rate.

This option includes domestic workers, at a reduced duration to their current entitlement, but one that is funded and paid.

Option 2: 14 weeks, 2/3 Replacement Rate, provided it is not under the national minimum wage.

This option follows the recommendation of some experts (Kalula, 2013), that indicate that a higher level of leave duration compliant with higher level convention 183 could be achieved by negotiating a reduced income replacement rate under social security. Under this option, the social security law could still guarantee 1) that the Law cannot result in a reduction of existing rights to workers, 2) for new workers, the top up could still be possible on a voluntary basis.

In line with international standards, the benefit comprises a **minimum of 6 weeks compulsory leave after birth** within the statutory leave. This is not only a rights based recommendation but also in conformity with medical evidence and practice in most parts of the world that indicate that a period of 6 weeks of postnatal recovery is required for reproductive organs to return to their non-pregnant state and in order to avoid postpartum problems/complications⁵⁴.

Furthermore, upon medical requirement (illness, complication, multiple births), leave can be extended **up to some period to be agreed upon.**

The benefits are paid monthly during the leave period in the mandatory system. Leave days correspond to week days where the employee is absent from work, excluding weekends and other entitlement for holidays, which are not lost. **They will be paid by the employer which will later claim the benefits from the fund.**

Special payment arrangements may be provided for special categories of workers being covered on a voluntary basis. For example, small benefits may require that bi monthly payments be instituted for ease of administration and reduce transaction costs per payment.

6.5 Eligibility and Qualifying conditions

In short the eligibility and qualifying conditions are defined the following way. The maternity social insurance benefit is:

- Payable to all female employees (as discussed above) and self-employed on a voluntary basis
- Granted in the event of suspension of earning, due to pregnancy and confinement and their consequences
- Minimum of 3 months of contribution before becoming pregnant.
- Medical certificate with indicative date of birth: only if leave starts before delivery if not, then birth record.
- No Requalification
- No Limit on number of times of claim
- Payment ceases upon return to work

⁵⁴ ILO Maternity Resource Package Module 6 Maternity leave and related types of leave page 3.

In addition, the extension of leave is granted for differences between presumed and actual leave so that it does not change compulsory post natal leave.

In case a female worker stays away from work due to sickness resulting from pregnancy, the benefit will be granted until its maximum duration, and the applicable condition will thereafter be qualified as sick leave, outside the scope of maternity social insurance.

The 3 months guarantee period is the minimum number of contribution months a worker is required to make into the social insurance fund for her to access the benefits.

Furthermore, an entitlement to Paternity Leave can be instituted. The Employment Act does not presently provide for paternity leave. Stakeholders recommended that the Employment Act be amended to provide for 5 days to 10 days paternity leave paid by employers. It is recommended **to provide such benefit outside the scope of the maternity social insurance, until such time as proper controls and checks be instituted in the management of the fund to avoid abuse of the benefit (maternity is more easily verifiable as a medical condition).**

7 Financial, administrative and legislative considerations

7.5 Financial system

“Financial System” is a mechanism of ensuring financial equilibrium between income and expenditure of a scheme. The fundamental objective of the financial system is to systematically secure revenue to provide stipulated benefits over time.

The proposal examined in this paper is a scheme of maternity cash benefits organized under *social insurance* principles, to replace the existing system of benefits payable on the basis of *employers’ liability*. It will thus be a contributory scheme established in the form of social insurance.

Financing methods of a social insurance scheme should take due consideration of the following elements:

- the development of expenditures and income over a long period of time.
- maintaining the solvency (i.e. benefit and administration expenses are met when they fall due) of the scheme.
- maintaining long-term stability of the contribution which will lead to the trust of employers and employees in the scheme, especially in the case of an introduction of a new scheme.
- the affordable level of contribution rate.

In the case of maternity, benefits are payable for a limited short period (usually not more than a year), annual expenditures are relatively stable over time. Therefore, the PAYG financial system is usually adopted to set contribution rates. Under this system, contributions are estimated to meet annual benefit and administrative expenditures.

7.6 What are the costs of the new scheme?

The proposal examined in this paper is a scheme of maternity cash benefits organized under *social insurance* principles, to replace the existing system of benefits payable on the basis of *employers' liability*. The financial system applied was described above.

Table 1: Main basis assumptions for the projection calculations

Assumptions	Description
Total fertility rate	4.55 in 2010 decreasing linearly to 2.72 in 2065
Participation rates to the labour force	Age specific participation rates increases from 2010 to 2020 and remains constant afterwards for both males and females.
PAYG rate	The computed annual PAYG rate is the total expenditure (total benefit and total administrative expenditure) divided by the total contributory salaries by taking into account the density of contribution.
Covered population	NAPSA current covered workers
Administrative expenditure	It is the 15% of the total benefit expenditure

The simulations were done on the basis of the best available data using on national household data (2010). The costs are computed with the most conservative assumptions such as mainly:

- The current use of the national urban fertility rate
- The assumption of constant density of contribution from $t=2014$ for all the projection period (no increase) and
- The assumption that all the female workers will be eligible

On the basis of these assumptions, age specific participation rates increases from 2010 to 2020 and remains constant afterwards for both males and females. The population covered is presented below:

Table 4: Projection of the both sexes covered population, females covered population and births between 2014 and 2034

Year	Number of males and females contributors	Number of females contributors	Number of births
2014	433,358	67,878	8,570
2015	448,727	70,118	8,544
2016	465,151	72,669	8,578
2017	481,269	75,142	8,598
2018	498,013	77,725	8,646
2019	516,519	80,575	8,754
2024	613,563	95,221	9,513
2029	720,840	111,671	10,995
2034	848,544	131,049	12,961

The benefit expenditure formula is as follows:

$$B = \left(\sum_x N \times T \times S \right) \times E \times R \times D$$

Where:

B: Estimated benefits expenditures in the financial year

N: Number of females in the population covered by the system at each age x in the financial year

T: Proportion women of age x who give birth in the financial year (known also as the age fertility rate)

S: Average monthly salary of women of age x

E: Proportion of women who satisfy the qualifying period

R: Proportion of salary paid during the maternity leave

D: Average duration of maternity leave expressed in month.

The costs are obtained by multiplying the projected number of claimants by the number of weeks during which the cash benefit is paid per birth and the weekly benefit rates.

The projected number of claimants constitutes the future number of births multiplied by the assumed ratio of the number of claimants to the number of births.

An administrative expenditure of 15% of the total benefit expenditure was applied.

Table 5: Benefit, administrative and total expenditure from the period 2014-2034 for the two main costing options (Million Kwacha)

Year	option 1 (12 weeks, 100%)			option 2 (14 weeks, 2/3)		
	Total benefit expenditure	Total administrative expenditure	Total expenditure	Total benefit expenditure	Total administrative expenditure	Total expenditure
2014	218,952	32,843	251,794	168,593	25,289	193,882
2015	252,204	37,831	290,035	194,197	29,130	223,327
2016	288,875	43,331	332,206	222,434	33,365	255,799
2017	327,872	49,181	377,052	252,461	37,869	290,330
2018	369,692	55,454	425,146	284,663	42,699	327,363
2019	415,487	62,323	477,810	319,925	47,989	367,914
2024	700,984	105,148	806,131	539,757	80,964	620,721
2029	1,146,398	171,960	1,318,358	882,727	132,409	1,015,136
2034	1,838,137	275,721	2,113,858	1,415,366	212,305	1,627,670

An average benefit amount can then be derived from the above for the different scenarios for 2014 and 2034.

Table 6: Average benefit amount computed for all possible scenarios regarding the replacement rate and the duration of benefit the year 2014

		Weeks	
		12	14
Replacement rate	66%	5,620,561.90	5,620,561.90
	100%	8,516,002.88	8,516,002.88

Table 7: Average benefit amount computed for all possible scenarios regarding the replacement rate and the duration of benefit the year 2034

		Weeks	
		12	14
Replacement rate	66%	31,200,548	31,200,548
	100%	47,273,558	47,273,558

The PAYG cost rate is the proportion of the total insurable wages of the covered population needed to cover the entire costs each year. The computed annual PAYG rate is the total expenditure (total benefit and total administrative expenditure) divided by the total contributory salaries by taking into account the density of contribution. In order to maintain stable contribution rates, a small margin can be added to the contribution rate and held in a contingency reserve in order to prepare for fluctuations of expenditure and income.

According to the calculations, the PAYGO cost is decreasing along all the projection period. The cost indicator varies from a total of 0.63% of wages for option 2 (14 weeks, 66% replacement rate) to 0.81% of wages for option 1 (12 weeks, 100% replacement rate) in 2014.

Table 2: PAYG indicator computed for all possible scenarios regarding the replacement rate and the duration of benefit the year 2014.

		Weeks duration of Leave	
		12	14
Replacement rate	66%	0.54%	0.63%
	100%	0.81%	0.95%

The PAYG decreases due to the decrease on the number of births. As fertility decreases over time, it is estimated that the PAYG cost also decreases to 0,42% and 0,54% respectively.

Table 3: PAYG indicator computed for all possible scenarios regarding the replacement rate and the duration of benefit the year 2034.

		Weeks duration of Leave	
		12	14
Replacement rate	66%	0.36%	0.42%
	100%	0.54%	0.63%

7.7 Who administers the new scheme?

Stakeholders have recommended that the administration and payments of the maternity cash benefit falls under the responsibility of the Ministry of Labor and Social Security. The implementation body could be an entity under its responsibility. One option is 1) to use NAPSA, another would be 2) to set up a dedicated independent institution. There was also a suggestion to rely on private sector administration. We will also discuss the option of decentralized private sector delivery.

The latter option of setting up of a *dedicated agency* running maternity benefits only may not be affordable, because the administrative costs of running a dedicated scheme would be too high compared to the revenues of the fund. **This option would only be sustainable if consideration was given to implement maternity benefits together with other short term benefits such as sickness cash benefits, employment injury/compensation.** This is regardless of the new scheme being privately or publicly run. The examples of such short term benefit schemes are the UIF – Unemployment Insurance Fund in South Africa or the Social security Commission in Namibia.

What about the options of a *centralized* publicly managed fund such as NAPSA, compared to a *decentralized* privately managed scheme? **There was a general agreement to use an existing institution to allow administrative costs to be shared over different schemes.** This would clearly be a first advantage of a centralized scheme against decentralized provision. Other benefits are as follows. The regulation of maternity benefits is facilitated under a national fund; the constitution of a **broad funding pool would ensure a harmonized and non-discriminatory package for all employers and employees.**

The additional advantage of the option of NAPSA is the possibility to implement the scheme within an established social security legal environment which is in conformity with the governance and administration requirements of ILO Convention 102 on minimum social security benefits, namely in so far as:

- ILO C. 102 holds governments responsible for adequately managing and financing social security institutions (it may assign certain aspects of administration to private entities whilst retaining overall responsibility).
- It calls for governments to give all stakeholders a voice in scheme management (this could involve different ministries including Gender, Health, Labour, Finance).
- This can also be done by establishing a tripartite board of directors, which is already the case with NAPSA's.

Management under NAPSA would also bring operational synergies leading to reduced incremental administration costs with implementing the new scheme; for example by combining registration of employers and insured persons, collection of contributions and payment of benefits. There is international good practice of joining the administration of short term and long term benefits, although it does require a few adjustments. That is the case in Tanzania, Mozambique, Angola, for example.

In 2010, Jordan moved from an employer liability system to a maternity insurance scheme following the creation of a new social security branch within the framework of the social security Law reform. The branch was implemented in the framework of the existing national pension fund.

Some incremental costs will still need to be supported. They mainly relate to added staff and work with processing claims and informing and assisting contributors and beneficiaries, as well as with the creation and maintenance of a database for maternity contributions and benefits. **The maternity benefit will contribute its pro rata share to the administration costs (a simulated 15% of the contribution rate).**

To limit additional costs with the new short term benefit scheme, the use of technology is encouraged (making contributions payable through internet, and benefit payments as much as possible through banking systems, post offices or even cell phones where possible).

The implementation of maternity protection can offer a platform to increase the penetration of pension coverage amongst some groups of workers, for example domestic workers, but specific investments may be needed in terms of technological platform to reach out to them.

Consideration must be given to the fact that although the scheme may be run by NAPSA, the target population will progressively be broader than NAPSA's and therefore the scheme may need to collaborate with other social security funds to share information. That will also be the case when a medical package, including for maternity benefits comes into place under the expected Social Health Insurance Authority, under Ministry of Health. It is therefore recommended that in the medium term, an overall social security institutional framework be implemented to bring different types of schemes under one same roof.

8 Recommendations regarding the establishment of a maternity cash social insurance benefits scheme in Zambia

This section provides recommendations on the scheme design and implementation of a new maternity cash benefit in a financial sustainable way that provides reasonable and consistent maternity cash benefits to its members.

- The scheme is financially sustainable when the contribution rate is set at:
 - 0.63% of wages for option 2 (14 weeks, 66% replacement rate)
 - 0.81% of wages for option 1 (12 weeks, 100% replacement rate).
- This means a total 0.315% cost on wages for employers and workers each to 0.395% cost on wages for employers and workers each for options 2 and 1 respectively.
- The PAYG cost will decrease as fertility decreases and this will have a substantial positive impact in the total cost.
- Periodic actuarial valuations need to be carried in order to have an acknowledgement of the on-going performance of the fund and to better manage future reforms. The present actuarial study should reviewed yearly.
- The present report should be understood as a first estimation of the future costs. Further analysis has to be developed when actual data will be available in order to better foresee costs and adapt the design of the scheme to be sustainable.
- It is imperative to have a good management of data administration on insured members and on contingencies cases in the first years of the scheme based on the fund experience. These inputs are the basis to predict the development and sustainability of the fund more accurately. The good management of the following sets of data is recommended:

- Total number of insured members by age and sex. The status (active or inactive) of each member should also be specified.
- Collection data about the maternity cases among the female workers would help to find an adequate fertility rate specific to the fund.
- The value of the reserve for the last three years should be given in order to evaluate the profits of the Fund and the evolution of its value.
- Administrative costs in absolute current numbers or as a percentage from the total contributions.
- Rate of return on fund reserve investments and detailed information about investment allocations.

In accordance with Stakeholders, the maternity cash benefit should be introduced with certain accompanying measures:

- The Employment Act should protect the applicant's income and ensure that once they return for work they should be introduced back on the payroll timely so as to avoid gaps in their income; there should be stronger prohibition from employers from issuing a notice of dismissal during the period of maternity leave, or issuing notice of dismissal that would expire during the period of maternity leave.
- It is also recommended that the Employment Act be amended to align it with Convention No. 103 concerning breastfeeding breaks and protection from harmful work.

In addition, an information/education campaign should be implemented to sensitize employers and workers on different aspects of maternity leave and its funding under social insurance, in particular :

- The need for women to increase their take up of leave and not be forced to work until they are due for delivery (the incentives for employers to collaborate is much stronger since they do not have a direct liability under the social insurance scheme).
- The need to ensure solidarity between men and women and between all women including those above child bearing age or incapacitated to bear children (this ensures a stable and wide funding pool and prevents effectively against discrimination in hiring women of child bearing age).

