

REPRODUCTIVE AND CARE FUNCTIONS:

FROM CARING TO SHARING

BACKGROUND PAPER, 01 FEBRUARY 2014

Prepared for the Working Group on Discrimination against Women in Law and Practice
United Nations Office of the High Commissioner for Human Rights

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Women's productive and reproductive roles are often described as being 'in conflict', as women's increasing labour force participation has not automatically resulted in fundamental change in their childcare and domestic responsibilities. Gender stereotypes regarding women's roles both at work and at home constrain their work opportunities and perpetuate the socio-economic model of a male breadwinner – a model which is no longer the reality in many developing and developed countries. Whilst maternity leave and part time work policies have allowed mothers to retain their participation in the workforce, they have also contributed to occupational gender segregation and discrimination, rather than triggering the labour force to adapt to working mothers' unique needs and constraints. The extension of formal childcare arrangements is welcome but largely falls short of what is required to comply with actual workforce conditions and hours, thereby limiting women's work opportunities. With women comprising a significant proportion of vulnerable workers in the formal and informal economies, many mothers lack basic rights to care and provide for their families. Women's unpaid work remains unacknowledged and unaccounted for in labour and social protection policies, and women continue to be the primary care givers to children at home, in addition to the main providers of both formal and informal childcare arrangements.

Women's choices (or lack thereof) regarding work, fertility and childcare differ between regions, countries and cultures. However, in all countries, women carry a disproportionate shouldering of the care burden. Women will continue to care, but the burden must be shared. Efforts to balance responsibilities between men and women, mothers and fathers, governments and citizens, are necessary conditions for gender equality and decent work for women, in all stages of life. However, labour policies are not always the drivers of social change. Greater sharing of responsibilities in child care and in the household depends on greater awareness and appreciation of such work. Governments can take the lead in this by providing extensive and suitable childcare options for working mothers and acknowledging and valuing the hidden role of other women (and girls) in the care of children.

PREPARED BY SHARON
OFFENBERGER

Bachelor of Laws (Hons)
Bachelor of Arts (Phil),
University of Melbourne

Master of Applied
Anthropology and
Participatory Development
(Gender and
Development), Australian
National University

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1. WOMEN'S WORKING PATTERNS

Across the world, women's labour force participation is generally lower than men's at all stages of life. Globally, men comprise 72.8 percent of the labour force, whereas women comprise 48 percent¹. The narrowest gender gap is during the young adult years (ages 15-19), while the widest gap is generally from ages 30-34 through 50-54². The regions with the lowest female workforce participation and largest gender gaps are South Asia³, the Middle East⁴ and North Africa⁵.

Whilst patterns of women's labour force participation differ between countries, they can reveal the ways in which women forego or curtail employment because of family responsibilities. A distinct pattern is seen among women in Northern Africa and Western Asia, where labour participation begins at ages 15-19, peaks at ages 25-29 and drops immediately and continuously thereafter⁶. Another pattern features a double peak, reflecting the situation where women to leave the labour force to have children and re-enter it later in life, such as in Japan and Korea⁷. Australia, Egypt, Indonesia, Ireland and the Philippines also have this double-peak pattern although there are variations according to age and duration⁸.

In all OECD countries, except Sweden and Iceland, mothers' employment rates are lower than those of non-mothers aged 25-49⁹. Couples with children tend to adopt one of three arrangements: both parents as full time workers (prevalent in Japan, Eastern Europe and the USA), one and a half (one full time and one part time worker) which is more common in Australia, Netherlands, UK and Austria) or the male bread winner model, such as in Chile, Mexico and Turkey¹⁰.

¹ ILO 2010, *Women in labour markets: Measuring progress and identifying challenges*, ILO, Geneva, p.10.

² UNSTATS, 2010, *The World's Women 2010: Trends and Statistics*, United Nations, New York, p. 80.

³ 77% male, 32% female.

⁴ 69% male, 21% female.

⁵ ILO 2010, *Women in labour markets: Measuring progress and identifying challenges*, ILO, Geneva, p.10.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ OECD 2102, *Closing the Gender Gap: Act Now*, OECD Publishing, p. 154 at <http://dx.doi.org/10.1787/9789264179370-en>

¹⁰ Ibid. p.206.

1.1 VULNERABLE AND PART TIME EMPLOYMENT

Wage and salaried employment constitutes the majority of *employed*¹¹ women and men in the more developed regions, Eastern Asia, Western Asia and the Caribbean. However, wage and salaried workers constitute less than 50 percent of employed men and women in Eastern and Western Africa and in Southern Asia¹². In these sub-regions, women and men are more likely to be an own-account or contributing family workers¹³. All over the world, women are about twice as likely as men to be contributing family workers¹⁴. Own-account and contributing family workers are considered to be in **vulnerable employment** because they are subject to a high level of job insecurity, without access to social protection and other employment safety nets. In 2012, more than half of employed women were in vulnerable employment globally (50.4 percent), compared with 48.1 percent for men¹⁵, masking larger regional difference such as North Africa (23.6 percentage points), the Middle East (15 points) and Sub-Saharan Africa (14.9 points)¹⁶. Only in the Developed Economies and European Union and Central and South-Eastern Europe (non-EU) and CIS regions was the share of women in vulnerable employment lower¹⁷.

The aim must not be to force women to fit into a labour market construct that is inherently male, but rather to adapt the labour market construct to incorporate the unique values and constraints of women.

Source: ILO 2010, *Women in labour markets: Measuring progress and identifying challenges*, Geneva.

Increasing women's employment has been accompanied by a similar increase in **part time working arrangements**, since part time work has offered a solution for women (and men) trying to balance working life and family responsibilities. Part time work options are largely taken up by women who, according to stereotype and in practice, are required to balance their caregiver role and contribute a secondary income. Whilst the flexibility of part time work can facilitate a greater degree of control over working hours and involve less stress than full time equivalents¹⁸, part time employment is also associated with reduced pensions, social benefits and career advancement potential. Although part time work may be a solution for women reconciling work with available childcare options, it can also reinforce

¹¹ Employment is defined according to the 13th Conference of Labour Statisticians (Geneva, 1992): Persons in paid employment include those who during the reference period were either (a) "at work" – i.e., performed some work for wage or salary, in cash or in kind, or (b) "with a job but did not work" – i.e., were temporarily not at work but had a formal attachment to their job, having already worked in their present job.

¹² UNSTATS, 2010, *The World's Women 2010: Trends and Statistics*, United Nations, New York, p.85

¹³ Ibid.

¹⁴ Ibid.

¹⁵ ILO 2012, *Global Employment Trends for Women*, December 2012, International Labour Organization, p. 22

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ OECD 2102, *Closing the Gender Gap: Act Now*, OECD Publishing, p.160

the values of the male breadwinner model¹⁹. Part time work amongst women is common in several Northern and Western European countries exceeding 35 percent in Germany, Ireland, Switzerland and the United Kingdom, and 60 percent in the Netherlands whereas in Argentina, Australia, Honduras and New Zealand, part time work is around 35 percent²⁰. Part time work is not as common in the USA and the countries of Eastern Europe²¹ or in Thailand²². The share of part time work in total female employment is higher in countries which have significantly higher childcare costs²³.

Discontinuous employment caused by maternity breaks and lack of childcare options can account for some of the unexplained factors leading to women's lower wages²⁴ and the subsequent **gender pay gap**. It has been particularly observed in Europe that the gender pay gap is greater in countries where there is little provision of childcare facilities for young children²⁵. Countries with generous work-family balance policies tend to have lower unexplained pay gaps²⁶.

1.2 MOTHERHOOD PENALTY

The term 'motherhood penalty' was coined to highlight the additional employment disadvantages experienced by working mothers. Whilst there may be a genuine gap in human capital development caused by interruptions from work, part time work and decreased seniority, it is believed that these factors account for only approximately one third of the wage penalty for mothers²⁷, which is estimated at an average of 5 percent²⁸. Budig and England conclude that the remaining wage gap likely arises either because employed mothers are somehow less productive at work or because employers discriminate against mothers, or some combination of these²⁹. The size of the motherhood penalty also appears to increase with the number of children – with one, two and three children associated with a 3.2%, 8.9% and 12.1% penalty³⁰.

¹⁹ UNSTATS, 2010, *The World's Women 2010: Trends and Statistics*, United Nations, New York, p. 94

²⁰ Ibid.

²¹ Ibid.

²² ILO 2010, *Women in labour markets: Measuring progress and identifying challenges*, ILO, Geneva, p.76

²³ OECD 2102, *Closing the Gender Gap: Act Now*, OECD Publishing, p. 162

²⁴ Ibid., p.171

²⁵ European Commission 2013, *Barcelona objectives The development of childcare facilities for young children in Europe with a view to sustainable and inclusive growth*, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee, p.6.

²⁶ OECD 2102, *Closing the Gender Gap: Act Now*, OECD Publishing, p. 171

²⁷ Budig, M. and England, P., 2001, 'The wage penalty for motherhood', *American Sociological Review*, Vol. 66, pp. 204-225.

²⁸ Correll, S., Benard, S., and Paik, I. 2007, 'Getting a Job: Is there a Motherhood Penalty?', *American Journal of Sociology*, Vol. 112 (5), p. 1297

²⁹ Budig and England 2001 cited in Correll, S., Benard, S., and Paik, I. 2007, 'Getting a Job: Is there a Motherhood Penalty?', *American Journal of Sociology*, Vol. 112 (5), p. 1299

³⁰ Ibid.

Further, occupational gender segregation appears to play an additional role in the motherhood penalty. In female dominated jobs such as nursing, elementary school teaching and administrative support, both men and women pay an earnings penalty. However, it is assumed that lower wages are compensated by other factors including flexibility, paid sick or vacation time and greater job satisfaction, making such occupations 'mother-friendly'³¹. Glauber's study of the motherhood wage penalty in female dominated professions has contradicted this assumption, finding that women who work in female-dominated jobs pay a larger motherhood wage penalty than women who work in other jobs, and that this penalty is not offset by such other factors³². Nonetheless, female dominated jobs can offer greater access to women for part time work, with surveys showing that many full time working women would prefer to part time work, and those working part time are content with their work hours³³.

The motherhood penalty is not only wage related. Cultural assumptions of the motherhood role appear to exist in tension with conception of the ideal worker³⁴. Social and cultural expectations are that mother should and will always prioritize children over work, whilst the 'ideal worker' is one which remains committed first and foremost to his/her employer. As a result, employers appear to subtly discriminate against mothers when making evaluations that affect hiring, promotion and salary decisions, by judging them as less competent and less committed³⁵.

It should be mentioned that precisely some of the employment propositions which are intended to help balance working women's lives, such as flexible working arrangements, make motherhood status a highly salient factor³⁶. This has the potential to add to ongoing gender occupational segregation by reinforcing a category of "mother's jobs", and to contribute to the other employer discrimination based on gender stereotypes.

2. WOMEN, WORK AND REPRODUCTIVE FUNCTIONS

2.1 POLICY FRAMEWORKS

2.1.1 CEDAW

In the preamble of CEDAW, women's unique productive and reproductive roles are cited, noting the social significance of maternity and the role of both parents in the family and in the upbringing of children³⁷. The most specific provisions of CEDAW which relate to women's work and maternity are contained in Article 11, requiring countries to protect women's rights to work, to ensure that women have the same training and employment

³¹Glauber, R. 2012, 'Women's Work and Working Conditions: Are Mothers Compensated for Lost Wages?', *Work and Occupations*, Vol. 39(2), p.116.

³²Ibid.

³³Ibid., p.117.

³⁴Correll, S., Benard, S., and Paik 2007, op cit., p. 1298.

³⁵Ibid., p.1332.

³⁶Ibid., p.1304.

³⁷<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

opportunities as men, that women receive equal pay for work of equal value, that women have access to the same benefits, compensatory schemes, and allowances as men, especially in relation to retirement and incapacity to work.

Article 11 requires States to introduce paid maternity leave without loss of benefits or career opportunities (Article 11 (2) (b)), and encourages the provision of supporting social services to allow parents to combine family obligations with work responsibilities. As the Convention does not use the term "full pay", or "full compensation for loss of income" resulting from pregnancy and childbirth, Article 11 (2)(b) is interpreted as allowing States a certain margin of discretion to devise a system of maternity leave benefits to fulfil Convention requirements³⁸.

Women's labour force participation is highly associated with her family choices, such as marriage and fertility decisions³⁹. Article 16 of CEDAW concerns family status and includes, *inter alia*, the same rights to decide freely and responsibly on the number and spacing of their children. Article 16 (1) (e) is further addressed in CEDAW Committee General Recommendation No. 21, which notes that *"the responsibilities that women have to bear and raise children affect their right of access to education, employment and other activities related to their personal development. They also impose inequitable burdens of work on women. The number and spacing of their children have a similar impact on women's lives and also affect their physical and mental health, as well as that of their children. For these reasons, women are entitled to decide on the number and spacing of their children"*⁴⁰.

2.1.2 INTERNATIONAL LABOUR ORGANIZATION

Since 1919, the ILO has adopted three Conventions on Maternity Protection [1919 (No. 3); 1952 (No. 103) and 2000 (No. 183)]. Together with the corresponding Recommendations⁴¹ these Conventions have progressively expanded the scope and entitlements of maternity protection, and remain the general framework for policy and legislative action around the world. Their goal is to allow women to combine successfully their reproductive and productive roles, and to prevent unequal treatment in employment due to women's ability to give birth⁴². Employment protection was addressed by the explicit prohibition of

³⁸ *Dung ThiThuy Nguyen v. The Netherlands*, Communication No. 3/2004, Views of the Committee, CEDAW, A/61/38 (2006), para. 10.2.

³⁹ See Ma, B. 2010, *The Occupation, Marriage, and Fertility Choices of Women: A Life-Cycle Model*, University of Maryland, Baltimore County at http://www.umbc.edu/economics/wpapers/wp_10_123.pdf

⁴⁰ CEDAW Committee General Recommendation No. 21 (13th session, 1994), Article 16 (1) (e) S.21

⁴¹ Recommendations No. 95 (1952) and No. 191 (2000).

⁴² Cruz, A.2012 'Good practices and challenges on the Maternity Protection Convention, 2000 (No. 183) and the Workers with Family Responsibilities Convention, 1981 (No. 156): A comparative study', Working Paper 2 /2012, International Labour Organization, p.24, at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_192554.pdf

dismissal during a woman's absence on maternity leave⁴³. Currently 83 countries were party to at least one of the Maternity Protection Conventions⁴⁴.

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. It also determined that cash maternity benefits: benefits should be fixed at a sufficient rate – at least two thirds of previous earnings.

Convention No. 183 on Maternity Protection and Recommendation No. 191 comprise the most recent ILO framework, introduced in 2000, and have, to date, been ratified by 28 countries⁴⁵. They apply to all employed women including those in 'atypical forms of dependent work'. Examples of these are part-time, casual and seasonal work, job-sharing, fixed-term contracts, temporary agency work, homework, remote/tele-working, piecework, informal work, and disguised employment relationships, which includes self-employed women⁴⁶. Maternity leave was extended to a minimum of 14 weeks of which six should be taken immediately after childbirth, and Recommendation No. 191 suggests that maternity leave be at least 18 weeks. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) has noted that maternity leave shall be granted as a right and no qualifying period may be imposed⁴⁷.

Convention No. 183 also establishes a right to additional leave in case of illness, complications or risks of complications arising out of pregnancy or childbirth. Where benefits are based on earnings, **the amount of the benefit shall not be less than two-thirds** of previous or insured earnings, and shall be provided through social insurance or public funds or in a manner determined by national law and practice. CEACR has commented that the principle of equal treatment requires foreign women to be covered by compulsory insurance in the same way as nationals⁴⁸. The basic principle of payment through social insurance or public funds is essential to help protect women from discrimination in the labour market. However, this can mean that these benefits are provided either by means of

⁴³ILO 2012, Maternity Protection Resource Package Module 5: International rights and guidance on Maternity Protection at work, Conditions of Work and Employment Programme (TRAVAIL), Geneva, p. 8.

⁴⁴ILO, NORMLEX website, Information System on International Labour Standards: Ratifications of C183 (28 ratification), C103 (41 ratifications) and C003 (34 ratifications) adjusted calculation for countries which have ratified more than one Convention.

⁴⁵Albania, Austria, Azerbaijan, Belarus, Belize, Benin, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Cuba, Cyprus, Hungary, Italy, Kazakhstan, Latvia, Lithuania, Luxembourg, Mali, Republic of Moldova, Montenegro, Morocco, Netherlands, Portugal, Romania, Serbia, Slovakia, Slovenia, The former Yugoslav Republic of Macedonia.

⁴⁶ILO 2012, Maternity Protection Resource Package Module 5: International rights and guidance on Maternity Protection at work, Conditions of Work and Employment Programme (TRAVAIL), Geneva, p. 9.

⁴⁷CEACR direct request, 2010 (Convention 103, Papua New Guinea).

⁴⁸CEACR direct request, 2010 (Convention No. 103, Tajikistan).

public funds or by means of compulsory insurance; the latter does not necessarily call for public financing but can be funded by employers' and workers' contributions⁴⁹.

Convention No. 183 states that member States should adopt measures to ensure that pregnant or breastfeeding women are not obliged to perform **work that is prejudicial to their or the child's health**, or where an assessment has established a significant risk to the mother or child. Recommendation No. 191 provides for adaptation of a pregnant or breastfeeding woman's working conditions in order to reduce particular risks. When it is safe for her to do so, the woman should retain the right to return to her job or an equivalent one paid at the same rate. She should also be allowed to leave her workplace, if necessary and after notifying her employer for **medical examinations related to the pregnancy**.

In addition, Convention No. 183 provides for **employment security** by prohibiting maternity-related dismissal during pregnancy, maternity leave, and a period of time after the woman worker's return to work. It also provides for the right to reinstatement upon return to work in the same job or an equivalent one with the same pay. The Convention requires member States to take measures to ensure that maternity is not a source of discrimination in employment, including access to it. The Convention also **prohibits pregnancy tests** when a woman is applying for employment, except in very specific circumstances related to the nature of the work. The **breastfeeding** period recommended by the World Health Organization is six months of exclusively mother's milk. Breastfeeding upon return to work is therefore part of a mother and child's best health interests. Convention No. 183 entitles women to one or more daily breaks or a reduction of hours of work for breastfeeding. These breaks or reduced working hours shall be counted as working time and remunerated accordingly. The length and number of breaks are to be determined by national law.

2.2 REGIONAL FRAMEWORKS

2.2.1 EUROPEAN UNION

Of all regional agreements, the EU has developed the most detailed set of regional provisions for its 28 Member States, which intend to contribute to gender equality in labour market participation rates and allow better reconciliation of professional, private and family lives. The Strategy for Gender Equality in Europe 2010–2015⁵⁰ prioritizes the availability of affordable high-quality care, and notes that inequalities in the labour market are a reflection of women's disproportionate share in family responsibilities⁵¹.

EU Directive 92/85/EEC (**Pregnant Workers Directive**) 1992 protects the health and safety of the working environment for pregnant, post-birth and breastfeeding women, by detailing

⁴⁹CEACR direct request, 2009 (Convention No. 3, Zambia).

⁵⁰COM(2010) 491

⁵¹Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions, Strategy for equality between women and men 2010-2015, p.6.

dangerous chemical agents, industrial processes, physical movements and postures, mental and physical fatigue and other types of physical and mental stress. The Directive grants maternity leave for the duration of 14 weeks of which 2 weeks must occur before birth. Women must not be dismissed from work because of their maternity for the period from the beginning of their pregnancy to the end of the period of leave from work.

Amendments to the EU framework for maternity protection are still under debate. The European Commission⁵² has proposed to the European Parliament new measures aimed at improving maternity rights by extending maternity leave from 14 to 18 weeks. The proposal also allows for additional leave in the event of premature childbirth, children hospitalised at birth, the birth of children with disabilities and multiple births. Additionally, working women should receive a payment that is equal to their full salary, although that may be capped. At the end of maternity leave they have the right to return to work under equivalent conditions and to benefit from any improvements that have been made to working conditions. They may also request a re-examination of their working hours in order to better reconcile professional and family life.

The European Parliament proposal⁵³ provides the widest coverage of workers, specifically including workers who recently adopted a child and those employed in any type of contract including domestic workers. The European Parliament and other actors⁵⁴ have proposed 20 weeks paid maternity leave, and an entitlement to 2 weeks paid paternity leave. The European Women's Lobby advocate for maternity leave to be separate to other kinds of parental leave entitlement, so that member states do not reduce maternity leave allocations⁵⁵. The European Parliament proposal provides for fully paid maternity leave, although the last 4 weeks may be 'family-related leave'. Generous maternity leave policies without adequate compensation can lead to financial stresses particularly for lower income families, and research suggests that women who return to work without taking their full maternity leave entitlement usually do so for financial reasons⁵⁶.

⁵² See Proposal for a Directive of the European Parliament and of the Council of 3 October 2008 amending Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or who are breastfeeding

⁵³ European Parliament legislative resolution of 20 October 2010 on the proposal for a directive of the European Parliament and of the Council amending Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (COM(2008)0637 – C6-0340/2008 – 2008/0193(COD)), Official Journal of the European Union, 2012/C 70 E/26.

⁵⁴ European Women's Lobby, European Women's Lobby Priorities for the Irish Presidency of the European Union, January-June 2013, Statement 7 November 2012 at <http://www.womenlobby.org/spip.php?article4195&lang=en>

⁵⁵ See www.ibfan.org/art/xmp_europe_dec2010x.pdf

⁵⁶ Equality and Human Rights Commission (UK), Policy Briefing: EU Pregnant Workers Directive, July 2010, p.5.

2.2.2 LATIN AMERICA AND CARIBBEAN

At the Tenth Regional Conference on Latin American and Caribbean Women (**The Quito Consensus 2007**) governments committed to adopt measures of co-responsibility for work and family life, applying equally to women and men, and to recognize the value of unpaid work and its contribution to family welfare and countries' economic development⁵⁷.

Further, in the **Brasilia Consensus 2010**, governments undertook to attain greater economic autonomy and equality for women in the workplace, by paying particular attention to the social and economic value of unpaid domestic and care work performed by women, and foster the development of universal care policies and services, sharing the provision of care between the State, the private sector, civil society and households. They also undertook, *inter alia*, to adopt policies conducive to establishing or broadening parental leave and other childcare leave in order to help distribute care duties between men and women, including individual rights to paternity leave⁵⁸.

The **Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights 1988**⁵⁹, ratified by a majority of Latin American States, guarantees the right to paid maternity leave before and after childbirth, although without indicating any specific duration⁶⁰. Another obligation is to "provide special care and assistance to mothers during a reasonable period before and after childbirth", although again, no details concerning duration are specified⁶¹.

2.2.3 AFRICA

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (July 2003) sets out economic and social welfare rights in Article 13. Specifically, the Charter requires States Parties to adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement, including establish a system of protection and social insurance for women working in the informal sector⁶²; to guarantee adequate and paid pre- and post-natal maternity leave in both the private and public sectors⁶³ and recognise that "both parents bear the primary responsibility for the upbringing and development of children and that this is a social function for which the State

⁵⁷ Tenth session of the Regional Conference on Women in Latin America and the Caribbean, Quito, Ecuador, 6-9 August 2007.

⁵⁸ Eleventh Regional Conference on Latin American and Caribbean Women, Brasilia, Brazil, 16 July 2010.

⁵⁹ Organization of American States: "Protocol of San Salvador", Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, O.A.S. Treaty Series, No. 69, 1988.

⁶⁰ ECLAC 2007, quoted in ILO/UNDP 2009, Work and Family: Towards new forms of reconciliation with social co-responsibility, Santiago, p. 29.

⁶¹ Ibid.

⁶² African Commission on Human and People's Rights: Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Banjul, 2003). Article 13 (f); http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf

⁶³ Ibid. Article 13 (i)

and the private sector have secondary responsibility⁶⁴. The **Southern African Development Community (SADC) Code on Social Security 2007** sets out the provisions⁶⁵ relating to non-discrimination on grounds of maternity, appropriate and conducive working conditions for pregnant and nursing mothers, paid maternity leave of at least 14 weeks and cash benefits of not less than two-thirds of income, and to provide for paternity leave in order to ensure that child-rearing is a shared responsibility between father and mother. Zambia is the first country in the regional bloc of the Southern African Development Community (SADC) to discuss the ratification process of the ILO Convention 183 on maternity protection⁶⁶.

3. MATERNITY RIGHTS IN PRACTICE

Despite the existence of laws in many countries which forbid, at a minimum, dismissal of pregnant employees, actual levels of discrimination in hiring, firing and workplace treatment of pregnant women are difficult to determine, but considered to be underreported. Women appear unlikely or reluctant to make formal complaints of pregnancy discrimination, either due to stigma, fear of retribution, and in part due to the inaccessibility of the legal system⁶⁷. A rise in complaints (which may or may not represent a rise in actual rates of workplace pregnancy discrimination) has been reported in a number of countries including Costa Rica, USA⁶⁸ and New Zealand⁶⁹. In Hong Kong⁷⁰ and Australia, pregnancy discrimination comprises about 20 percent of complaints under national and regional anti-discrimination laws. Surveys indicate that even higher numbers of women feel that they have been discriminated against on the basis of their pregnancy⁷¹. The financial crisis may be leading to an increase in maternity discrimination complaints, for example in Greece⁷².

3.1 PREGNANCY AS A GROUNDS OF DISCRIMINATION

Pregnancy is explicitly included as a grounds of discrimination under anti-discrimination law. Labour laws also often specifically prohibit dismissal on the basis of pregnancy. But some constitutions and equal opportunity laws only prohibit discrimination on the basis of *sex* or *gender*, and in these cases protection against pregnancy discrimination is inferred. This

⁶⁴ Ibid. Article 13 (I)

⁶⁵ Article 8

⁶⁶ See ILO Press Release, 28 March 2013 at http://www.ilo.org/addisababa/information-resources/news/WCMS_208755/lang--en/index.htm

⁶⁷ ILO 2012, Maternity Protection Resource Package From Aspiration to Reality for All, Module 9: Employment protection and non-discrimination, p.5.

⁶⁸ Ibid., p. 3.

⁶⁹ See <http://www.labour.org.nz/node/4665>

⁷⁰ Cheung, F. 1998, Implementing the CEDAW Convention: the need for a Central Mechanism in Hong Kong, Paper presented at a seminar on CEDAW, 28 November 1998, Hong Kong.

⁷¹ See <http://www.telegraph.co.uk/women/mother-tongue/10230270/More-than-a-quarter-of-mothers-feel-discriminated-against-at-work.html>

⁷² ILO 2012, Maternity Protection Resource Package From Aspiration to Reality for All, Module 9: Employment protection and non-discrimination, p.3.

distinction is considered significant, because in a number of states a legal difficulty arose when showing that discrimination on grounds of pregnancy is unequal treatment on the grounds of sex. The difficulty was that this required proof that a similarly situated man would not have been equally badly treated⁷³. That is, it required a male comparator which did not exist. Attempts were also made to compare women to an ill male comparator⁷⁴. Eventually most countries have regarded pregnancy as a type of sex discrimination, without the need for a male comparator, but the inclusion of pregnancy as a ground of discrimination in its own right removes any confusion⁷⁵.

Malaysia provides an example of how ratification of CEDAW and constitutional protection against discrimination⁷⁶, without the enactment of specific national laws, can lead to gaps in protection. The 2005 case of *Beatrice Fernandez* considered the constitutionality of a discriminatory contractual clause contained in a collective agreement, which allowed Malaysian Airlines to fire a pregnant air-stewardess. This judgment did not involve a discussion of the applicability of CEDAW⁷⁷. It wasn't until the 2010 *Noorfodilla* case that the Court held that pregnancy discrimination was gender discrimination because of the biological fact that only women have the capacity to become pregnant⁷⁸.

Generally, protection is only afforded after a woman informs her employers of the pregnancy. However, in Benin, a woman worker dismissed by an employer who is not aware of her pregnancy is entitled to a period of 15 days to have her condition confirmed⁷⁹. In the United States, attempts have been made to introduce the *Pregnant Workers Fairness Act* which would require employers to make the same kind of workplace accommodations for pregnant women that current law requires them to make for people with disabilities⁸⁰. Currently, pregnant women are protected by the 1978 *Pregnancy Discrimination Act*, which makes it illegal to fire a woman just because she becomes pregnant, but employers can still refuse to accommodate pregnant women's basic, temporary medical needs at work⁸¹.

⁷³Fredman, S. 2013, Anti-discrimination laws and work in the developing world: A thematic overview, Background Paper for the World Development Report 2013, p 19.

⁷⁴Ibid.

⁷⁵Ibid.

⁷⁶Article 8(2) of the Federal Constitution states that there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

⁷⁷Neo, J. 2013, Calibrating Interpretive Incorporation: Constitutional Interpretation and Pregnancy Discrimination under CEDAW, Forthcoming in *Human Rights Quarterly*, November 2013.

⁷⁸See <http://workershub4change.blogspot.com.au/2013/07/cedaw-and-workers-malaysian-bar-right.html>

⁷⁹Cruz, A. 2012, Good practices and challenges on the Maternity Protection Convention, 2000 (No. 183) and the Workers with Family Responsibilities Convention, 1981 (No. 156): A comparative study, Working Paper 2 / 2012, ILO, p. 38.

⁸⁰See <http://rhrealitycheck.org/article/2013/05/14/pregnant-workers-fairness-act-introduced-in-both-house-and-senate/>

⁸¹See National Women's Law Centre at <http://www.nwlc.org/our-blog/%E2%80%9Cwe-don%E2%80%99t-pay-you-pee%E2%80%9D-and-other-reasons-why-we-need-pregnant-workers-fairness-act>.

In some countries, protection is even more limited. For example, in the United Arab Emirates, an ambiguity in the law may allow for an employer to dictate hiring terms, including pregnancy, but once hired an employer cannot terminate a pregnant woman's employment⁸². In Sri Lanka domestic workers are excluded from the application of labour legislation relating to dismissal⁸³. In Singapore, foreign workers can be deported on the grounds of pregnancy⁸⁴. In Micronesia, protection from discrimination is provided for public service workers, but not other workers⁸⁵.

Given the very real evidentiary difficulties in proving maternity was in fact the basis of discriminatory action by the employer, Article 8 of the Maternity Protection Convention No. 183 states that the burden to prove that dismissal is not related to maternity shall be on the employer. The provision regarding the **burden of proof** is reflected in many countries' legislation. Further, a complaints system needs to be accessible to employees. For example Moldova's Labour Code sets out that in labour discrimination cases, the burden of proof is on the employer and employees are exempt from paying court fees⁸⁶. Dismissal during the protection period is allowed in only specific, legitimate situations and the employer must demonstrate proof of these. In several countries, the employer is obliged to ask for judicial or administrative authorization before giving notice of dismissal which can provide additional safeguards to ensure that dismissal is unrelated to maternity⁸⁷.

Export Processing Zones (EPZ)

Also known as Free Trade Zones, EPZs are industrial areas specially set up by governments to attract foreign investment and create employment. Incentives provided to companies operating within zones can include duty free imports of raw materials, flexibility of labour laws and tax concessions. In China, EPZs are known as Special Economic Zones and in Mexico, they are known as Maquiladoras (or Maquilas). In some countries, women make up the majority of workers in EPZs, for example in Honduras, approximately 70 percent of the EPZ workforce is female⁸⁸. Bangladesh, Cote d'Ivoire, Sri Lanka and El Salvador also have female dominance in EPZs⁸⁹. EPZs often have dangerous work environments as well as excessively long hours. Young, unmarried women in developing countries are preferred as

⁸² See <http://www.thenational.ae/news/uae-news/courts/limited-protection-for-pregnant-women-against-unfair-dismissal>

⁸³ Cruz, A. 2012, op cit., p.74.

⁸⁴ See Singapore Ministry of Social and Family Development at <http://app.msf.gov.sg/Policies/WomenCelebratingWomen/CEDAWReports.aspx#sthash.JOHattVV.dpuf>

⁸⁵ Jivan V., and Forster, C. 2007, Translating CEDAW Into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries, UNDP Pacific Centre and UNIFEM Pacific Regional Office, p.69.

⁸⁶ Cruz, A. 2012, op cit., p. 54.

⁸⁷ ILO 2012, Maternity Protection Resource Package From Aspiration to Reality for All, Module 9: Employment protection and non-discrimination, p. 7.

⁸⁸ McCallum, J. 2011, Export processing zones: Comparative data from China, Honduras, Nicaragua and South Africa, Working Paper No. 21, ILO, Geneva, p. 4.

⁸⁹ Desai, M. 2010, *Hope in Hard Times: Women's Empowerment and Human Development*, Human Development Research Paper 2010/14, UNDP, p. 36.

EPZ workers, as a 'cheap and docile' labour force with high levels of productivity⁹⁰. It has been reported that in some such factories, women applying for work are asked if they are married, going out with men, planning to have children, and using birth control⁹¹. Some employers will only hire unmarried women with no children and some make each woman sign an agreement not to get pregnant as long as she works at the factory⁹². Compulsory pregnancy tests at the time of recruiting have been reported, and women who are pregnant or refuse the test are not hired⁹³. Workers who become pregnant may try to hide their condition as long as possible⁹⁴, resulting in potential exposure to work hazards.

3.2 PROTECTION UPON RETURN TO WORK

ILO Conventions have become increasingly comprehensive⁹⁵, by providing protection against dismissal not only during the period of maternity leave but for an identified period after return to work, usually corresponding to the period during which national legislation provides for breastfeeding arrangements⁹⁶. This is reflected in the legislation of many countries, for example Moldova (from pregnancy until the child is 6 years old), in Azerbaijan, Estonia, Lithuania and Mongolia (from pregnancy until the child is 3 years of age), in Portugal (from pregnancy until the child is 2 years old) and in Gabon (from pregnancy to 15 months after birth)⁹⁷. In others, the relevant period of protection relates to the nursing period, such as in Guatemala, Indonesia and Malta⁹⁸. There are still some countries where employment protection is limited only to the period of maternity leave and any extensions thereof, as in Cambodia, Fiji, Republic of Korea, Lebanon, Lesotho, Niger, Paraguay and Uganda⁹⁹.

Where maternity benefits are paid by the employer, there remains a danger that employers will terminate the employment of pregnant workers in order to avoid maternity leave obligations. Botswana law prevents such situations by specifying that dismissal of an employee without good cause within three months of the birth of her child, does not affect

⁹⁰ Soni-Sinha, U. 2006, 'Where Are The Women? Gender, Labor, And Discourse In The Noida Export Processing Zone And Delhi', *Feminist Economics*, Vol. 12(3), p.336.

⁹¹ See Barnes, W., and Kozar, J. 2008, "The exploitation of pregnant workers in apparel production", *Journal of Fashion Marketing and Management*, Vol. 12 (3), pp.285 – 293.

⁹² See <http://www.labourbehindthelabel.org/news/item/746-harassment-and-violence>

⁹³ Ibid.

⁹⁴ Denman, C., 2006, Local Response to Global Development: An Emerging Culture of Health among Pregnant Women in Mexican *Maquiladoras*', in *Trading Women's Health and Rights?: Trade Liberalization and Reproductive Health in Developing Economies*, Grown, D., Braunstein, E. and Malhotra, A. (eds.), p.154.

⁹⁵ Convention No. 183 increased the protected period to cover pregnancy, and a period following return to work, whilst in earlier maternity protection Conventions (Nos. 3 and 103), protection against dismissal was limited to the period of absence for reasons related to maternity.

⁹⁶ ILO 2012, Maternity Protection Resource Package From Aspiration to Reality for All, Module 9: Employment protection and non-discrimination, p. 5.

⁹⁷ ILO 2012, Maternity Protection Resource Package From Aspiration to Reality for All, Module 9: Employment protection and non-discrimination, p. 6.

⁹⁸ Ibid.

⁹⁹ Ibid.

the employer's obligation to pay maternity benefits¹⁰⁰. In a few countries, protection from dismissal is extended to fathers who have taken leave in place of mothers, although this may apply only to 'single' fathers. In Mongolia, single fathers are protected from dismissal as long as their child is below 3 years of age and in the former Yugoslav Republic of Macedonia, the father can take maternity leave instead of the mother and be protected from dismissal during this period¹⁰¹.

CASE STUDY – AUSTRALIA

At the federal level, the *Sex Discrimination Act* 1984 is the main Australian legislation dealing with maternity discrimination, although the *Fair Work Act* 2009 also provides protection for employees against "adverse action" – including discrimination based on sex, pregnancy and against workers with family responsibilities – across all aspects of employment including hiring, promotion, training and dismissal. The *Sex Discrimination Act* 1984 specifically covers pregnancy, **potential pregnancy**, breastfeeding (including the act of expressing milk), family responsibilities¹⁰² and marital status. In addition, each state and territory of Australia has anti-discrimination legislation. Complaints may be lodged in either federal or state jurisdictions, but generally not in both. At the state and territory level, grounds for sex discrimination explicitly include pregnancy, family responsibilities (except in South Australia) and marital status. But not all state and territory laws expressly prohibit discrimination on the grounds of potential pregnancy or breastfeeding. Nonetheless, discrimination on these grounds may be considered unlawful sex discrimination.

In 2011, approximately 19 percent of female employees perceived experiencing some level of discrimination in the workplace while pregnant¹⁰³. The types of discrimination that were most commonly reported in the survey were 'Missed out on opportunity for promotion' (34%), 'Missed out on training or development opportunities' (32%) and 'Received inappropriate or negative comments from their manager/supervisor' (28%)¹⁰⁴.

The Australian government is undertaking an inquiry into discrimination against working mothers, specifically noting large number of reported cases of pregnancy discrimination¹⁰⁵. About 20 percent of complaints received by the Australian Human Rights Commission¹⁰⁶ relate to pregnancy

¹⁰⁰ Ibid., p. 8

¹⁰¹ Ibid.

¹⁰² The *Sex Discrimination Act* (sections 7A and 14[3A]) establishes that it is discriminatory behaviour if an employer dismisses an employee with family responsibilities because of their real family responsibilities or because of characteristics that generally appertain to or are imputed to people with family responsibilities. The scope of family responsibilities is defined in Sections 4 and 4A and relates to the responsibility to 'care for or support a dependent child or immediate family member, being a spouse, adult child, parent, grandparent, grandchild or sibling of the employee or of a spouse of the employee'.

¹⁰³ Australian Bureau of Statistics, 2011, Summary of Findings at <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4913.0Main%20Features3Nov%202011?opendocument&tabname=Summary&prodno=4913.0&issue=Nov%202011&num=&view=>

¹⁰⁴ Ibid.

¹⁰⁵ See <http://www.humanrights.gov.au/pregnancy-discrimination>

¹⁰⁶ See <http://www.abc.net.au/news/2013-04-08/working-mums-behind-20-per-cent-of-sex-discrimination-cases/4608666>

discrimination and data shows a high percentage (nearly one third) of women with children under two leaving the workforce either during pregnancy and/or shortly thereafter¹⁰⁷.

In addition, the Australian Human Rights Commission has recommended the enactment of a Family Responsibilities and Carer's Rights Act, even though family responsibilities are a basis for discrimination complaint under the Sex Discrimination Act. This distinction is considered important to highlight that family responsibilities is not a 'women's issue'¹⁰⁸.

3.3 MATERNITY LEAVE

Maternity leave is intended to ensure that working women can preserve their health and that of their baby, nurture the bond between them, as well as to provide a measure of job security. The current international standard for the duration of maternity leave is 14 weeks according to the Maternity Protection Convention No.183 (2000). Recommendation No. 191 goes further and suggests that member States increase the period of maternity leave to at least 18 weeks. Only 23 countries¹⁰⁹ have ratified this Convention, and globally, 51 percent of countries provide maternity leave of at least 14 weeks, whilst 20 percent of countries meet or exceed the 18 weeks of leave suggested in Recommendation No. 191. About one-third (35 percent) provide 12 to 13 weeks of leave, less than the duration specified by Convention No. 183, but consistent with the level set by Conventions Nos. 3 and 103. Only 14 percent of countries provide less than 12 weeks of maternity leave¹¹⁰.

	18+ weeks	14 - 17 weeks	12-13 weeks	Less than 12 weeks
Africa	0%	48 %	34 %	18 %
Asia/Pacific	0%	17%	65%	17%
Developed countries +EU	46%	46%	8%	0%
Central and South-Eastern European (non-EU)/ CIS	93%	7%	0%	0%
Latin America and Caribbean	9%	13%	72 %	6%
Middle East	0%	18%	0%	82%

Source: ILO 2010, Maternity At Work, A review of national legislation, Findings from the ILO Database of Conditions of Work and Employment Laws, Second edition.

¹⁰⁷ Australian Bureau of Statistics, 2011, Summary of Findings at <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4913.0Main%20Features3Nov%202011?opendocument&tabname=Summary&prodno=4913.0&issue=Nov%202011&num=&view=>

¹⁰⁸ Australian Human Rights Commission, 2007, It's About Time: Women, men, work and family, Final Paper, Chapter 3, at <http://www.humanrights.gov.au/publications/its-about-time-chapter-3>

¹⁰⁹ At February 2012.

¹¹⁰ ILO 2012, Maternity leave and related types of leave, *Maternity Protection Resource Package: From Aspiration to Reality for All*, Module 6, p. 6 at <http://mprp.itcilo.org/allegati/en/m6.pdf>

Whilst the Convention is intended to cover all kinds of female employees, in practice there are exemptions under national laws, for example, which may not apply to temporary contract workers. It has been reported that in certain industries in Africa, lack of permanent contracts are a way for employers to skirt maternity leave obligations¹¹¹.

3.3.1 CASH BENEFITS

Cash benefits during maternity leave are an essential form of maternity protection, and the majority of countries provide some kind of benefit, although the amount and basis for calculation varies significantly. Worldwide, only four countries have not legislated for paid maternity leave¹¹². However, the level of cash benefits does not always meet the standard set out in the ILO Convention which stipulates cash benefits be paid at the rate of at least two thirds of the woman's previous or insured earnings, for a minimum period of 14 weeks. Currently only 73 countries (44 percent) meet this standard, more than half of them (37 countries) in the more developed regions, whereas only 36 percent of the countries in Africa, 25 percent in Asia-Pacific and 24 percent in Latin America and the Caribbean are able to meet this standard¹¹³. In the EU, a comparison of countries at the full time equivalent (FTE) rate of paid leave reveals that Bulgaria is has the most generous maternity leave with 40.5 paid weeks, Ireland and Estonia pay around 20 weeks (FTE), whilst the bulk of the other EU countries pay 12-18 weeks (FTE)¹¹⁴.

Payment levels are decisive in women's choices regarding maternity leave. Even with paid maternity leave, women will generally experience an overall drop in earnings at a time when living costs have increased to account for the baby's needs as well as costly childcare arrangements. Unpaid maternity leave entitlements are often only partly used by women, due to financial restraints. The payment provision for maternity leave may influence women's return to work more than the specific number of week entitlements. Such a claim has been made in South Africa, where despite the entitlement to 16 weeks leave, it is the low payment rate which is considered to 'force' women back to work¹¹⁵.

Many schemes have additional limitations on eligibility or the amounts payable, for example, requiring a certain length of employment, length of contribution into the insurance scheme or type of contract. Benefits may be subject to a ceiling or are reduced after a given number

¹¹¹ See <http://www.industrialunion.org/events/maternity-protection-meeting-on-ratification-of-ilo-convention-183>

¹¹² Lesotho, Papua New Guinea, Swaziland and the United States of America. Australia introduced paid maternity leave in 2011.

¹¹³ UNSTATS, 2010, *The World's Women 2010: Trends and Statistics*, United Nations, New York,, p.104, at http://unstats.un.org/unsd/demographic/products/Worldswomen/WW_full%20report_color.pdf

¹¹⁴ Eurostat, 2009, *Reconciliation between work, private and family life in the European Union*, 2009 edition, p. 87 at http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-78-09-908/EN/KS-78-09-908-EN.PDF

¹¹⁵ Dupper, O., Malh, K, Shipman, B. and Bolan, E. 2000, *The Case for Increased Reform of South African Family and Maternity Benefits*, *Journal of Law, Democracy and Development*, Vol. 4(1) at p.33, <http://www.saflii.org/za/journals/LDD/2000/4.pdf>

of weeks. In some countries, the amount paid is greater at the beginning and decreases in time, such as Thailand which provides 100 percent of past wages for the first 45 days of maternity leave but 50 percent for the remaining 45 days¹¹⁶. In Albania, benefits are paid at 80 percent for 150 days and then at 50 percent for the rest of the period (215 days)¹¹⁷. Some countries provide benefits as a percentage of earnings but limit cash benefits to a ceiling, such as in Belgium, France, Israel, the Netherlands and the Russian Federation¹¹⁸. The Convention does not contain a definition of “previous earnings”, and countries have defined such earnings in different ways. For example, in Senegal, the rate of 100 percent is applied to the daily wage received on the last pay day¹¹⁹. In Peru, the benefit is calculated on the basis of the average daily wage during the four months preceding the start of benefits¹²⁰. In Mongolia, the average salary is calculated over the preceding 12 months¹²¹.

3.3.2 WHO PAYS?

Entitlements may be expressly set out in national laws and elaborated or underpinned by collective agreements or arbitration awards¹²². According to ILO Convention 183, benefits should be paid through social insurance or public funds, in order to mitigate discrimination against women of childbearing age in the labour market, by relieving employers of the direct costs of maternity. However, states may make exceptions either on grounds of previous practice or of national collective agreements¹²³.

The majority of countries which have ratified one of the ILO Maternity Conventions provide public or mixed funding for maternity leave, whilst 26 percent of countries continue to stipulate that payment during maternity leave be covered by the employer with no public or social security provision¹²⁴. This is the case in many countries in Africa and Asia, and is particularly prevalent in the Middle East¹²⁵. By contrast, South American countries (except for El Salvador and Ecuador) provide 100% public funding¹²⁶.

¹¹⁶ ILO 2010, *Maternity At Work: A review of national legislation Findings from the ILO Database of Conditions of Work and Employment Laws*, Second edition, p.19.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Ibid., p. 18

¹²⁰ Ibid., p. 18.

¹²¹ Ibid., p. 18.

¹²² ILO 2012, *Maternity leave and related types of leave, Maternity Protection Resource Package: From Aspiration to Reality for All*, Module 6, p. 5, at <http://mprp.ilo.org/allegati/en/m6.pdf>

¹²³ ILO Convention 183 Article 6 (8): In order to protect the situation of women in the labour market, benefits in respect of the leave referred to in Articles 4 and 5 shall be provided through compulsory social insurance or public funds, or in a manner determined by national law and practice. An employer shall not be individually liable for the direct cost of any such monetary benefit to a woman employed by him or her without that employer's specific agreement except where (a) such is provided for in national law or practice in a member State prior to the date of adoption of this Convention by the International Labour Conference; or (b) it is subsequently agreed at the national level by the government and the representative organizations of employers and workers.

¹²⁴ UNSTATS, 2010, *The World's Women 2010: Trends and Statistics*, United Nations, New York, p.104.

¹²⁵ Ibid., p.10

¹²⁶ El Salvador: 75% employer in advance and 25% social security system. Ecuador: 75% social security system and 25% employer.

In Africa, paid maternity leave has sometimes been negotiated through collective bargaining by unions¹²⁷. To that end, such benefits can translate to union members but not to all workers automatically. Collective bargaining also has its limits, given that it involves a prioritization of worker demands. For example, in Namibia it was found that the unions focused on wage-only negotiations, neglecting other rights such as maternity leave¹²⁸. The level of women's participation in union movements is likely to influence such debates, as maternity entitlements may otherwise be treated as a women-only issue.

3.3.3 SELF EMPLOYED WOMEN IN THE FORMAL SECTOR

Maternity leave benefits for self-employed women may differ from those provided to formally employed women. Self-employed women may be subject to different social insurance schemes, which subsequently exclude maternity benefits. For example, to qualify for maternity leave in Canada, a minimum of 600 insurable hours must be paid into the Employment Insurance system for each hour worked, whereas self-employed women do not work according to insurable hours and do not have the option to pay into the employment insurance system (except in Quebec), leaving them with little access to national maternity leave entitlements¹²⁹.

Motivated by the need to ensure equal treatment and non-discrimination, **EU Directive 2010/41/EU**¹³⁰ ensures that self-employed women, and female spouses or life partners who contribute to the activity of self-employed workers, shall be entitled to a maternity allowance for at least 14 weeks. The calculation will be based on average loss of income or profit (subject to ceiling), national allowance level and/or any other family related allowance provided by an EU country.

However, leave is not compulsory and the conditions on which it is paid differ between countries and may be on less favourable conditions than women in formal employment. For example, in Denmark, self-employed women (and men) are entitled to the rate of unemployment benefits rather than their usual income¹³¹. In the UK, self-employed women receive a Maternity Allowance which is paid at a fixed rate, whereas employed women

¹²⁷ Kalusopa, T., NyarkoOtoo, K., and Shindondola-Mote, H (eds), Trade Union Services and Benefits in Africa, African Labour Research Network at http://www.ituc-africa.org/IMG/pdf/BENEFITS_REPORT_FINAL_DRAFT.pdf

¹²⁸ Ibid., p. 276.

¹²⁹ See <http://www.babycenter.ca/a1031260/7-ways-to-improve-in-maternity-leave-in-canada#ixzz2b6Ostl6H>

¹³⁰ Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.

¹³¹ European Commission, 2010. *Self-employment in Europe 2010*, European Employment Observatory Review, p. 30 at See <http://www.eu-employment-observatory.net/resources/reviews/EEOReview-Self-Employment2010.pdf>

receive Statutory Maternity Pay which is calculated at 90 percent of her average earnings for the first six weeks, and then a fixed amount for the subsequent 33 weeks¹³².

A 2013 Opinion of the European Parliament Committee on Women's Rights and Gender Equality on social protection for all, including self-employed workers has called for greater transparency in social security systems and a revision of the EU Directive in order to ensure that self-employed workers are entitled to leave rights under their social security systems. In the EU, Spain has been noted for its good practice, and New Zealand, similarly offers the same maternity leave rights for employed and self-employed women¹³³.

3.4 VULNERABLE WORKERS

3.4.1 INFORMAL ECONOMY

Just as women in developed countries may be both accommodated and disadvantaged by 'mother-friendly' employment arrangements such as part time work, women in developing countries are more likely to be affected by the opportunities and constraints of the informal economy, which is seen as both a vital source of income for women as well as a grounds for exploitation. The informal sector has been (controversially) viewed as a possible development solution, particularly for poor women in developing countries¹³⁴, promoted through a proliferation of microcredit programmes over the last decade¹³⁵. Informal sector enterprises are characterized by their smallness, frequently relying on family labour. Women in the informal economy tend to be non-paid contributing family workers, supplementing the family wage (but not earning sufficient independent income) or self-employed in home based activities which allow them to combine reproductive and productive activities. Women-specific income generating projects also tend to be formulated along sex-specific occupations which are an extension of women's domestic chores, such as cooking and sewing (handicrafts)¹³⁶ as well as comply with cultural norms restricting their mobility. CEDAW **General Recommendation No. 16**¹³⁷ addresses the high percentage of women who work without payment, social security and social benefits in enterprises owned usually by a male member of the family, and notes that Country Reports generally do not refer to the problem of unpaid women workers of family enterprises.

¹³² See <https://www.gov.uk/maternity-allowance/overview>

¹³³ See <http://www.lisdatacenter.org/wp-content/uploads/parent-leave-details1.pdf>

¹³⁴ Jennings, M. 1993-4, 'Gender Issues in the Informal Sector: Constraints and Opportunities', *Trocaire Development Review*, p. 50.

¹³⁵ Desai, M. 2010, *Hope in Hard Times: Women's Empowerment and Human Development*, Human Development Research Paper 2010/14, UNDP, p. 37

¹³⁶ Jennings 1993-4, 'Gender Issues in the Informal Sector: Constraints and Opportunities', *Trocaire Development Review*, p.58

¹³⁷ Tenth session, 1991; Outlining the steps to be taken to recognise the contribution of unpaid women workers in rural and urban family enterprises.

Lack of regulation characterizes the informal economy, and as such it is largely outside the scope of ILO Convention 183, although Article 2.1 specifies that the Convention applies to 'atypical forms of dependent work'. Article 2.2 allows Member States to exclude limited categories of workers when its application to them would raise problems of a substantial nature. Overall, low income countries have the highest proportions of female workers in the informal economy. In Zambia, 72 percent of informal workers are women and in Indonesia, they are 65 percent¹³⁸. In Benin and Tanzania, women comprise over 90 percent of the informal economy¹³⁹. In sub-Saharan Africa, 84 percent of women non-agricultural workers are informally employed compared to 63 percent of male non-agricultural workers¹⁴⁰.

In the case of India, 95 percent of female workers are in the informal economy¹⁴¹ - an estimated 142 million workers. India's legislation for maternity protection¹⁴² largely applies to employers with ten or more employees. Three segments of workers completely excluded from the legislation are agricultural workers in the monetized sector, temporary and informal non-agricultural workers and 'invisible' workers -unpaid family help, self-employed, home based workers, domestic workers in private households and migrants labourers¹⁴³. Only 3 percent of workers are estimated to be eligible to maternity benefits¹⁴⁴. A maternity benefit scheme which takes the form of a condition cash transfer programme has been piloted but does not apply to women who are pregnant with their third child and women below the age of 19 during their pregnancy¹⁴⁵. This particular scheme – the Indira Gandhi Matritva Sahyog Yojana – provides an example of combining maternity entitlements with other social protection schemes which have poverty reduction rather than gender equality as their focus. In addition, the unionization of informal workers through the Self Employed Women's Association (SEWA) has led to improved work conditions and resulted in a legislative shift providing informal workers with the same protections as formal workers¹⁴⁶.

Undoubtedly one of the greatest challenges for improving maternity protection is the extension of maternity rights and social protection to workers in the informal sector.

Community-based health-financing schemes have been found to be successful in providing

¹³⁸ Maternity Protection Coalition, 'How to Support Women in the Informal Economy to Combine their Productive and Reproductive Roles' Maternity Protection Campaign Kit, Section 9.

¹³⁹ ILO 2009, The informal economy in Africa: Promoting transition to formality: Challenges and Strategies, p. 6 at http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_policy/documents/publication/wcms_127814.pdf

¹⁴⁰ Ibid.

¹⁴¹ Maternity Protection Coalition, 'How to Support Women in the Informal Economy to Combine their Productive and Reproductive Roles' Maternity Protection Campaign Kit, Section 9.

¹⁴² Employee State Insurance Act 1948, Maternity Benefits Act 1961

¹⁴³ Dasgupta, J. 2013, 'Maternity and women wage workers in the informal sector', Background Paper prepared for Medico Friend Circle, National Alliance for Maternal Health and Human Rights.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Desai, M. 2010, *Hope in Hard Times: Women's Empowerment and Human Development*, Human Development Research Paper 2010/14, UNDP, p. 38

maternal health care to women in the informal sector¹⁴⁷. Whilst such schemes focus on pre- and post-natal benefits rather than loss of livelihood, there is potential, as a financing mechanism, to include maternity payments in the packages provided to mothers in the informal sector¹⁴⁸. Another mechanism of providing maternity leave is through **union based mutual funds**¹⁴⁹ such as the MUPRESSI (Social Providence Fund for Informal Workers) in Burkina Faso, which is open to all informal sector workers and offers full social coverage, insuring members against risks such as health and safety hazards at work and occupational disease¹⁵⁰. Such initiatives are welcome, but rely on other social processes toward unionization or may in any event be beyond the financial reach of poor women.

3.4.2 DOMESTIC WORKERS

Domestic Workers comprise a specific sub-category of the informal sector which has received increased attention with the introduction of the ILO Domestic Workers Convention No. 189 (2011). The ILO estimates that domestic workers represent 4 to 10 percent of the total workforce in developing countries and 1 to 2.5 percent of the workforce in developed countries¹⁵¹, with a significant overrepresentation of women. Domestic workers are also part of the gendered employment cycle, particularly in developed countries, where affordable domestic workers fill in the gap in care responsibilities and 'free up' women to go to work. This can lead to a 'care deficit' in domestic workers own homes¹⁵². It is estimated that more than a third of domestic workers are excluded from maternity protection laws¹⁵³. Because of their isolated working conditions, they tend to be vulnerable to exploitation and abuse¹⁵⁴. Other maternity leave entitlement restrictions, such as minimum period of continued employment also may exclude domestic workers.

¹⁴⁷ See <http://www.waba.org.my/pdf/67p1.pdf> and case study in the Philippines at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-manila/documents/publication/wcms_205468.pdf.

¹⁴⁸ For example, an ILO study of community health in the Philippines noted that none of the community based health insurance scheme offered financial compensation for time lost from work, but did not go on to explore the reasons why. See Indon, R. & Evangelista, M. 2004, *Extending Maternity Protection to Women in the Informal Economy: The Case of the Philippines*, ILO, p.33 http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-manila/documents/publication/wcms_205468.pdf

¹⁴⁹ http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_policy/documents/publication/wcms_210468.pdf

¹⁵⁰ International Trade Union Federation, 2007, Burkina Faso: Informal economy at the centre of new solidarity initiatives, Union View, P. 10, http://www.ituc-csi.org/IMG/pdf/Burkina_EN_Smaller.pdf

¹⁵¹ ILO 2010, Decent work for domestic workers, Report IV(1), International Labour Conference, 99th Session 2010, p. 6.

¹⁵² UNRISD 2010, Structural Change, Social Policy and Politics, United Nations Research Institute for Social Development, Geneva, p. 202.

¹⁵³ Addati, L. and Cheong, L. 2013, 'Meeting the needs of my family too: Maternity Protection and work-family measures for domestic workers', Domestic Work Policy Brief, International Labour Organization p.1.

¹⁵⁴ ILO 2012, Achieving decent work for domestic workers: An organizer's manual to promote ILO Convention no. 189 and build domestic workers' power, p. 2 at http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_181344.pdf

In the Middle East, only in Iran and Israel provide that domestic workers are entitled to maternity leave¹⁵⁵, and in Asia and the Pacific about 76 percent have no such entitlement¹⁵⁶. Conversely, in Latin America and the Caribbean, close to 98 percent of domestic workers have the same maternity leave entitlements as other workers and similarly in Africa, this applies to 92 percent of female domestic workers¹⁵⁷. In a small number of cases, domestic workers have *more* favourable maternity leave entitlements than other workers, such as in Bolivia where they receive 90 days instead of 60¹⁵⁸.

Receiving cash benefits during maternity leave is an even bigger challenge. More than three quarters of domestic workers in Asia and the Pacific are excluded from this entitlement¹⁵⁹. Even in the developed countries, 33 percent are excluded and 41 percent in Eastern European and the CIS countries¹⁶⁰. In particular, where cash benefits are paid solely by employers this is likely to be the case. Latin America has a better track record, with 91 percent of domestic workers having the same entitlements as other workers¹⁶¹. Some countries have made specific efforts to improve condition for domestic workers, for example Uruguay adopted decent working standards under the Domestic Service Law (2008) and El Salvador launched a national campaign to increase contributions to voluntary social insurance schemes¹⁶².

The rights of domestic works have been promoted by the ILO Decent Work for Domestic Workers Convention 2011 (No. 189) which requires Members take appropriate measures to ensure domestic workers enjoy conditions not less favourable than those generally applicable to workers in respect to social security protection, including maternity benefits¹⁶³. The Convention came into force in September 2013 and to date 11 countries have ratified it¹⁶⁴. The Decent Work for Domestic Workers Recommendation No. 201 (2011) stipulates that member States should, in consultation with representative organizations of employers and workers, address the work-life balance needs of domestic workers¹⁶⁵. Furthermore, members should ensure that no domestic worker is required to undergo pregnancy testing, or to disclose pregnancy status¹⁶⁶.

¹⁵⁵ ILO 2010, Decent work for domestic workers, Report IV(1), International Labour Conference, 99th Session 2010, p.4.

¹⁵⁶ Addati, L. and Cheong, L. 2013, op cit., p.3

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Ibid., p. 4.

¹⁶² Ibid. p.8

¹⁶³ Article 14(1).

¹⁶⁴ Bolivia, Italy, Mauritius, Nicaragua, Paraguay, Philippines, South Africa, Uruguay, Germany, Guyana, Ecuador.

¹⁶⁵ Article 25

¹⁶⁶ Article 3 (c)

3.4.3 MIGRANT AND RURAL WORKERS

Migrant workers often comprise a still more vulnerable sub-set of domestic workers, where the privacy of the house environment can allow undocumented workers to remain hidden from authorities but increase the likelihood of exploitation. In general, homes may be more difficult to regulate under labour laws, particularly due to the constraints of supervision and inspection. Migrant workers may have working visa restrictions which impact them adversely upon pregnancy¹⁶⁷ or make the nature of their continued employment untenable, for example, for 'live-in' domestic workers.

Rural workers are covered by a number of Conventions¹⁶⁸ and yet agricultural workers often remain outside many of the regulatory and supervisory mechanisms which should ensure that rights are being protected in practice. Some of the major concerns of rural workers are lack of stable and permanent employment opportunities for women in the sector; reproductive health concerns related to poor occupational safety and health, and limited access to maternity rights¹⁶⁹. Abusive use of short terms contracts to circumvent women's maternity entitlements has been reported¹⁷⁰. In other cases, women must take pregnancy tests in order to be recruited¹⁷¹. ILO supervisory bodies have commented on problems including the exclusion or non-coverage of women in the agricultural sector with respect to maternity leave, as well as the lack of statistical data on coverage in this sector¹⁷².

4. WOMEN AND CARE FUNCTIONS

4.1 UNPAID WORK

With the labour force still largely arranged along gender lines, it is unsurprising that working women continue to bear most of the responsibilities for the unpaid work at home; caring for children and other dependent household members, preparing meals and doing other housework. Capturing data on this work is a new challenge, as it is outside the System of

¹⁶⁷ For example, in Singapore, foreign domestic works were subject to periodic pregnancy testing which led to their repatriation. Thailand, in 2011, proposed a labour regulation which would deport female migrant workers upon them becoming pregnant. In Israel, a similar provision was held to unconstitutional and the regulation revoked in 2011, although new regulations still places some limitation on the ability of a migrant worker to remain in the country with her child.

¹⁶⁸ Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Plantations Convention, 1958 (No. 110); Labour Inspection (Agriculture) Convention, 1969 (No. 129); Rural Workers' Organisations Convention, 1975 (No. 141); Workers with Family Responsibilities Convention, 1981 (No. 156); Maternity Protection Convention, 2000 (No. 183); Safety and Health in Agriculture Convention, 2001 (No. 184)

¹⁶⁹ See Contribution to the ILO International Women's Day Panel: Empower Rural Women - End Hunger and Poverty by Ms. Sue Longley, Coordinator Global Agriculture, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), Statement, 8 March 2012, at http://www.ilo.org/actrav/info/WCMS_175451/lang--en/index.htm

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Ibid.

National Accounts and therefore not commonly counted in economic activity¹⁷³, although it is widely understood to have a significant impact on women's access to full and productive employment. 'Unpaid care work' denotes activities which serve people and their well-being, including both personal care and care-related activities, such as cooking, cleaning and washing clothes¹⁷⁴. Unpaid work is also referred to as reproductive or domestic work, as a way to distinguish it from market based work¹⁷⁵. CEDAW **General Recommendation No. 17** deals with the measurement and quantification of the unremunerated domestic activities of women and their recognition in the gross national product.

According to time use surveys, women in more developed regions spend on average 5 hours a day on domestic work, whereas men spend as average of less than 2.5 hours¹⁷⁶. In some countries, for example Italy, Japan, Portugal, Spain and the former Yugoslav Republic of Macedonia, the difference is even greater, with women spending three to four times the amount of time spent by men on domestic work¹⁷⁷. Men perform far less domestic work in the occupied Palestinian territory, Pakistan and Turkey, where the time men spend on domestic work is not even one fifth of what women spend¹⁷⁸. The female share of unpaid work may be greater among parents than in couples without children, as was found in Ireland¹⁷⁹. In addition, the types of unpaid work differ between the sexes, with men more likely to perform tasks such as house repairs and gardening which have less impact on paid work schedules, whilst women perform the daily tasks such as cooking, cleaning and child care which cannot be postponed, and thus tend to influence paid work options¹⁸⁰. Men may also tend to spend more unpaid work time performing community service than in the care of the house or persons¹⁸¹.

States play a significant role in determining how the provision of unpaid work is distributed, whereby unpaid care work is intensified in the absence of adequate

The disproportionate burden of unpaid work in and outside the household limits women's abilities to engage in paid work and perpetuates the male wage earner myth.

Desai, M. 2010, *Hope in Hard Times: Women's Empowerment and Human Development*, Human Development Research Paper 2010/14, UNDP p.43.

¹⁷³ UNSTATS 2010, *The World's Women 2010: Trends and Statistics*, United Nations, New York. p. 98

¹⁷⁴ Falth, A. And Blackden, M. 2009, *Unpaid Care Work, Policy Brief – Gender Equality and Poverty Reduction, Issue 1*, UNDP, New York, p. 1.

¹⁷⁵ Ibid.

¹⁷⁶ UNSTATS, 2010, *The World's Women 2010: Trends and Statistics*, United Nations, New York , p.100

¹⁷⁷ Ibid.

¹⁷⁸ UNSTATS, 2010, *The World's Women 2010: Trends and Statistics*, United Nations, New York p.100

¹⁷⁹ McGinnity, F., and Russell, H. 2008, *Gender Inequalities in Time Use: The Distribution of Caring, Housework and Employment Among Women and Men in Ireland*, The Economic and Social Research Institute, Dublin, <http://equality.ie/Files/Gender-Inequalities-in-Time-Use.pdf>.

¹⁸⁰ OECD 2102, *Closing the Gender Gap: Act Now*, OECD Publishing, p. 203

¹⁸¹ Desai, M. 2010, *Hope in Hard Times: Women's Empowerment and Human Development*, Human Development Research Paper 2010/14, UNDPp. 40.

government services¹⁸². The unequal and disproportionate burden of care work perpetuates poverty among women who due to the significant financial and opportunity costs which care work entails¹⁸³.

Change may be slow but a trend towards a more equitable division of household work is evident in some countries. In the Nordic countries and the USA, where time use studies over a number of years allow long term comparisons, findings indicate that the number of hours spent by the average woman on household work has decreased while the time spent by the average man has increased¹⁸⁴. In OECD countries, there appears to be a correlation between women's working hours and more equitable sharing of unpaid work – the higher the female full time employment rate, the more men are engaged in unpaid work¹⁸⁵.

A large share of unpaid domestic work for mothers relates to their children. Women spend between 15 and 40 hours a week on childcare whereas most men spend less than 20 hours a week¹⁸⁶. Finland, Denmark, and Sweden come the closest to parity¹⁸⁷. However, whilst number of hours dedicated to childcare may be increasing amongst men, the responsibilities undertaken by mothers and fathers continue to be different, with women spending more time in physical care activities, whereas men spend more likely to engage in play, educational and recreational activities¹⁸⁸. This has implications for gender stereotypes in child rearing, as well as highlighting that men's care is more discretionary and may not be drastically relieving women of their care burden. As Craig notes,

*Gender is a predictor of different child care practice even when men and women share all other characteristics, including full-time participation in the paid workforce. This implies that masculinization of women's work patterns has been matched neither by masculinization of women's care patterns nor by feminization of men's care patterns*¹⁸⁹.

In conceptual and normative terms, the responsibility for children is a joint responsibility¹⁹⁰. However patriarchal assumptions about men and women's roles and the domestic division of labour persist in the developed and developing world¹⁹¹. Without concerted efforts to change practices and social and cultural norms, women, and specifically mothers, will remain limited in their advancement toward social and economic equality.

¹⁸² Report of the Special Rapporteur on extreme poverty and human rights, United Nations General Assembly, Sixty-eight session, A/68/293, para 8.

¹⁸³ Ibid. para 16.

¹⁸⁴ UN STATS 2010, op cit., p. 100

¹⁸⁵ OECD 2102, op cit., p.201

¹⁸⁶ Desai, M. 2010, op cit., p. 41.

¹⁸⁷ Desai, M. 2010, op cit., p. 41.

¹⁸⁸ Craig, L. 2006, 'Does Father Care Mean Fathers Share? A Comparison of How Mothers and Fathers in Intact Families Spend Time with Children', *Gender & Society*, Vol. 20 (2), p.262.

¹⁸⁹ Ibid. p.274.

¹⁹⁰ See for example CEDAW Article 5(b).

¹⁹¹ Desai, M. 2010, op cit., p.42

The disproportionate burden of unpaid work in and outside the household limits women's abilities to engage in paid work and perpetuates the male breadwinner myth¹⁹². Governments have been encouraged to attend to the "three R's" of care work -- recognize, reduce, and redistribute -- by improving basic infrastructure needs such as clean water, energy, sanitation, and transportation as well as paid child care¹⁹³. In addition, the third R -- Redistribution - can be achieved by changes in gender norms and practices that can be supported by both state and social movements¹⁹⁴.

4.2 THE 3 R'S: RECOGNIZE, REDUCE AND REDISTRIBUTE

CEDAW Article 11(2) requires states to take measures to prevent "discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work". In order to do so *"the principle of equality makes it essential to offset the disadvantage faced by women as to conditions for access to and participation in the labour market, which reflect gender stereotypes that women are chiefly responsible for unpaid work related to looking after a family, as wives or mothers, while paid work derived from an economic activity is mainly the responsibility of men. The linking in Article 11(2) of preventing discrimination on grounds of marriage or maternity with the effective right to work emphasises that implementing equality requires proper measures to counter gender stereotypes. The Committee has expressed concern at the overemphasis on legislative protection of and cultural promotion of motherhood and family roles for women, rather than on women as individuals in their own right. The traditional, stereotyped view of women as mothers is thereby reinforced and negates the participation of fathers in child care. That perception reflects a misunderstanding of such critical concepts as gender roles, indirect discrimination and de facto inequality"*¹⁹⁵.

Convention No. 156 on Workers with Family Responsibilities and Recommendation No. 165 are intended to promote equality of opportunity and treatment in employment for men and women, as well as between workers with family responsibilities and those without such responsibilities. The Convention is broad, covering all categories of workers in all economic activities. The Convention clearly includes dependent sick or elderly as well as children. CEACR points out that the Convention does not imply preferential treatment but an attempt to place workers who are disadvantaged in particular ways, on an equal footing with workers not similarly affected, as all workers may need to assume responsibility for family members at some point¹⁹⁶.

¹⁹² Desai, M. 2010, op cit., p.43

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ CO Slovakia, A/53/38 (Supp), 19th Session (1998) para 74. For similar sentiments, see also CO Greece, A/57/38 (Supp), Exceptional Session (2002) para 285; CO Czech Republic, A/41/45 (Supp), 5th Session (1986), para 185. See also Report of the Special Rapporteur on extreme poverty and human rights, United Nations General Assembly, Sixty-eight session, A/68/293.

¹⁹⁶ *Workers with family responsibilities, Report III (Part 4B)*, General Survey of the Reports on the Workers with Family Responsibilities Convention (No. 156) and Recommendation (No. 165), 1981 – Report of the Committee of Experts on the Application of Conventions and Recommendations

The Convention provides that family responsibilities should not constitute a valid reason for termination of employment. The need to develop community services, including childcare facilities, as well as to support workers with family responsibilities to remain in the labour force by providing vocational training and guidance, are also mentioned. CEACR has noted the flexibility of the Convention which can be applied by stages, in order to enable ratification by all countries, **whatever their stage of economic development**¹⁹⁷. The substantive provisions of the Convention are drafted in terms that take account of limitations in national resources, by making it clear that the measures required are those which are compatible with national conditions and possibilities¹⁹⁸. This can affect coverage of the Convention as the Committee of Experts considers that differential treatment of limited categories of workers would not be contrary to the Convention, provided that efforts were demonstrably made to progress towards the coverage of these groups as national circumstances permitted and provided that such differential treatment did not amount to discrimination between men and women¹⁹⁹.

Family responsibilities discrimination litigation is growing in the USA, affecting men as well as women. Providing more options for parents to take leave from work to manage care responsibilities does not automatically mean that this will occur without consequence. Stereotypes about working mothers are mirrored by stereotypes about working fathers, who are presumed to be freed of caring responsibilities by their wives²⁰⁰. Without changes in such stereotypes and workplace cultures, men using family leave rights may find themselves subject to similar presumptions, discrimination or hostility as women who use their leave entitlements.

4.2.1 RECOGNITION OF CARE EXPENSES

4.2.1.1 Social Protection

Financial incentives and benefits are provided parents, more specifically working parents, through a range of mechanisms. In developed economies, this tends to be implemented through the tax system, whereas in developing countries, it may be more directly provided through social protection or welfare payments. The impetus behind such benefits may be to encourage labour participation, increase (or decrease) birth rates or may relate to poverty reduction.

(Articles 19, 22 and 35 of the Constitution), 80th Session of the International Labour Conference, ILO, Geneva, 1993, para. 255.

¹⁹⁷ *Workers with family responsibilities, Report III (Part 4B)*, General Survey of the Reports on the Workers with Family Responsibilities Convention (No. 156) and Recommendation (No. 165), 1981 – Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution), 80th Session of the International Labour Conference, ILO, Geneva, 1993.

¹⁹⁸ *Ibid.*, para 254.

¹⁹⁹ *Ibid.*, para 260.

²⁰⁰ Albiston, C. Dickson, K., Fishman, C and Levy, L. 2007, 'Ten Lessons for Practitioners About Family Responsibilities Discrimination and Stereotyping Evidence', *Hasting Law Journal*, Vol. 59, p.1301.

Targeted social protection programmes have expanded recently, most notably through cash transfer programmes which do not rely on formal labour relationships and previous contributions, thereby accessing informal sectors in low income countries²⁰¹. Conditional cash transfers have both been encouraging for poverty reduction and addressing children's needs by targeting women who are more likely to invest in the welfare of children. Conversely, they have been criticized for reinforcing the responsibility of women for the care of children, and lacking incentives for men to share care work²⁰². Similarly it has been noted that to be gender sensitive, social programmes need to be physically accessible, because the populations most in need of social protection will often face obstacles such as long distances and high transportation costs in order to access the benefits to which they are entitled²⁰³. In addition, parental tax benefits are often paid to the father as the assumed head of household²⁰⁴ – a practice which needs to be avoided.

The **Social Protection Floor** was developed and endorsed by the United Nations and by governments in the 2010 Millennium Development Summit. The focus of the floor is to extend basic income security and access to social services to all, particularly those currently excluded²⁰⁵. The global collection and coordination of data of countries providing child benefits or family benefits (either in cash or in kind) currently being undertaken will assist in the qualitative assessment of social protection floors²⁰⁶. Regional examples of collated data on conditional cash transfers already exist for the Latin America region²⁰⁷, and on child/family benefit expenditure within Europe²⁰⁸. In the OECD countries, cash benefits (e.g. child allowances) and "in-kind" support (e.g. care services such as kindergartens) can comprise 7 – 8% of the incomes of families with young children²⁰⁹. Whilst the mix of cash benefit and in-kind support can vary from 10%/90% to 80%/20%, comparative analysis shows that both forms of support have a significant impact on reducing child poverty and inequality, whilst there is no set formula which is best for all countries²¹⁰.

²⁰¹ UNRISD, 2010, *Structural Change, Social Policy and Politics*, United Nations Research Institute for Social Development, Geneva, p. 138.

²⁰² *Ibid.*, p. 187

²⁰³ Sepulveda, M., Nyst, C. And Hautala, H. 2012, *The Human Rights Approach to Social Protection*, Ministry of Foreign Affairs of Finland, p. 43 at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2114384

²⁰⁴ SIDA, *Quick Guide to What and How: Unpaid Care Work – Entry Points to Recognise, Reduce and Redistribute*, *Women's Economic Empowerment Series*, Swedish International Development Cooperation Agency.

²⁰⁵ ILO 2011, *Social Protection floor for a fair and inclusive globalization*, Report of the Advisory Group chaired by Michelle Bachelet, p. 58.

²⁰⁶ Bonnet, F and Tessier, L. 2013, *Report on the workshop "Mapping existing international social protection statistics and indicators that would contribute to the monitoring of social protection extension through social protection floors"*, Geneva, Switzerland, 13th-15th March 2013, ESS Working Paper no. 38, ILO.

²⁰⁷ *Ibid.*, p. 18.

²⁰⁸ *Ibid.*, p. 21.

²⁰⁹ Förster, M. 2012, 'Money or Kindergarten? Distributive Effects of Cash versus in-kind family transfers for young children', *OECD Social, Employment and Migration Working Papers No. 135*.

²¹⁰ *Ibid.*

Attention to gender equality in policy development is critical to ensure that social protection programmes do not reinforce gender stereotypes, such as exclusive responsibility of women for childcare. In order to be gender equal, social protection policies need to address women's care burden, as well as differences in access to services, work and productive activities²¹¹. Specific care related policies can be broadly categorized according to time-related measures (such as parental leave), financial resources (such as child allowances) and services (such as childcare facilities)²¹². Such policies are complementary, not substitutes for each other. Nor can child/family allowances substitute for quality, accessible care services²¹³.

4.2.1.2 Child and Working Parent Benefits

In the United Kingdom, the Child Tax Credit (CTC) and the Working Tax Credit (WTC) are the two main tax incentives for parents, both of which are income tested. CTC supports families with dependent children, is paid directly to the main carer in the family (usually the mother) and does not depend directly on the family's work status. However, a proposal for a new Universal Credit, paid in the name of one member of the household, has been criticized as it is estimated that in 80 percent of cases this would be the male partner²¹⁴. WTC has a minimum working hours requirement for a recipient to work a minimum of 16 hours to be eligible. In New Zealand, a similar credit called the "In Work Credit" requires a recipient to be working 30 hours a week.

The CTC and WTC payments have been found not to significantly impact the movement from part time to full time work, or vice versa²¹⁵. Conversely, the Earned Income Tax Credit (EITC) in the USA has been found to significantly increase the work effort of its recipients, according to substantial research, with the most significant gains in employment occurring among mothers with young children and mothers with low education²¹⁶. The EITC's primary recipients are working parents with children, and single mothers represent the largest recipient group of the EITC – 31 percent of EITC recipients and 41 percent of EITC funds²¹⁷. In addition, the Child Tax Credit, which provides taxpayers up to \$1,000 for each of their

²¹¹ Sepulveda, M., Nyst, C. and Hautala, H. op cit., p. 33.

²¹² UNRISD, 2010, *Structural Change, Social Policy and Politics*, United Nations Research Institute for Social Development, Geneva, p. 187.

²¹³ Ibid., p. 203

²¹⁴ Warburton, C. 2011, Should Mum Get the Credit? The impact of paying tax credits directly to mothers, University of Glasgow, PhD conference presentation, p. 2

²¹⁵ See Chzhen, Y., and Middleton, S. 2007, The impact of tax credits on mothers' employment, Loughborough University

²¹⁶ Marr, C., Charite, J. and Huang, C. 2013, "Earned Income Tax Credit Promotes Work, Encourages Children's Success at School, Research Finds," Center on Budget and Policy Priorities, p.3 at www.cbpp.org/files/6-26-12tax.pdf.

²¹⁷ Athreya, K. and Reilly, D. 2012, The Earned Income Tax Credit for Single Mothers: Insurance Without Disincentives?, p.6

dependent children under age 17, is designed to help families offset the costs of raising children but, unlike the EITC, is not targeted specifically to low income families²¹⁸.

In order to address **fertility and women's labour participation rates**, the Spanish government introduced an income tax reform by substantially increasing child deductions, which further increased and was supplemented per additional child²¹⁹. Mothers' labour participation was targeted through the introduction of a new tax credit conditional on employment²²⁰. A study of the tax policy found substantial effects on the participation of mothers of children under the age of 3 years old (the target group), which increased by 1.6 percentage points, and even more so amongst low education groups²²¹. Singapore is trying to encourage an increase in birth rate by providing a Parenthood Tax Rebate - a lump sum offset against taxes, which increases with every child²²². In addition, the Working Mother Tax credit is intended to reward families with children holding Singapore citizenship and to encourage parents to take up citizenship for their children, and to encourage **married** (divorced or widowed) mothers to remain in the workforce after having children²²³. Marital status plays a part in child tax benefits in Japan, where a special tax deduction is currently given to mothers who are divorced or widowed, but it is not applied to single mothers who have never married²²⁴.

Other countries look to support the costs of child rearing through direct cash grants such as the South African Child Support Grant (CSG), which pays a small monthly cash amount to poor children under the age of 16 years old via their primary caregivers. Like conditional cash transfers in Latin America, the CSG has been found to be well targeted, with an excellent reach of poor children but unable to transform social relations²²⁵. The results of one study indicate that the CSG can reinforce the common assumptions that women are solely responsible for domestic work and for the financial support and care of children²²⁶.

4.2.1.3 Childcare Credits/Allowances

Generally, child allowances in developed countries were not intended to pay for care, but rather to assist families with some of the material costs of raising children²²⁷. To that end, separate childcare benefits have developed alongside.

²¹⁸Marr, C., Charite, J. and Huang, C. 2013, op cit., p.5.

²¹⁹Azmat, G., and Gonzalez, L. 2008, Targeting Fertility and Female Participation Through the Income Tax, Economics Working Papers 1113, Department of Economics and Business, Universitat Pompeu Fabra, revised May 2009, p. 2 at www.econ.upf.edu/~gonzalez/Research_archivos/LE_2009.pdf

²²⁰Ibid.

²²¹Ibid. p. 3

²²² See www.smcp.com.sg/pdf/TaxCircular2010.pdf

²²³ See <http://www.iras.gov.sg/irasHome/page04.aspx?id=6080>

²²⁴ See <http://www.japan-press.co.jp/modules/news/index.php?id=5478>

²²⁵ See Patel, L. and Hochfeld, T. 2011. "It buys food but does it change gender relations? Child Support Grants in Soweto, South Africa", *Gender & Development*, Vol. 19, no. 2, pp. 229–240.

²²⁶ Ibid.

²²⁷ UNRISD 2010, *Structural Change, Social Policy and Politics*, United Nations Research Institute for Social Development, Geneva, p. 197

UK parents are entitled to assistance with up to 70 percent of **childcare costs**, for people working more than 16 hours a week. This can cover child-minders and nannies as well as childcare facilities. The UK is currently considering the introduction of a childcare voucher system, similar to the employer supported assistance scheme system, which would increase assistance to up to 85 percent²²⁸. In Canada, a tax deduction for childcare reduces the parent's taxable income, however, the allowance is significantly lower than actual childcare costs²²⁹. In Israel, a Supreme Court ruling in 2009 determined that parents should be able to deduct childcare expenses from their taxes as a necessary expenditure to allow parents to work and earn an income²³⁰. This ruling remained theoretical as the Israeli government chose to dedicate increased resources to the provision of childcare facilities and other measures in place of implementing a tax deduction. Childcare subsidies in Russia are indicated to be a greater contributor to increasing maternal employment than wage subsidies²³¹.

As the impact of women's care on their longer term financial prospects is starting to be recognized, some countries have introduced **carer credits** into the pension system, which provides a method for explicitly recognizing the years spent in unpaid care of a child or other family member²³².

4.2.2 RECOGNIZING THE ROLE OF OTHER WOMEN IN CARE

4.2.2.1 Informal - family care

In OECD countries, the level of informal care provided by families (mainly grandparents) can range from 20 percent to over 50 percent²³³. Data from the EU shows regular and intensive grandchild care being provided in Southern countries, such as Italy²³⁴, Portugal, Spain and Romania – all countries where mothers often work full time and which have weaker formal childcare infrastructure²³⁵. In countries where the policy framework *does not assume* that grandparents will provide care and where parents are expected to work full time, formal childcare is well provided and as well as maternity benefits, such as Sweden, Denmark and

²²⁸ See <http://www.bbc.co.uk/news/uk-politics-21842014>

²²⁹ See <http://www.cbc.ca/news/business/taxes/7-important-tax-credits-for-families-1.1139389>

²³⁰ See <http://www.haaretz.com/print-edition/business/supreme-court-approves-childcare-tax-deductions-1.275180>

²³¹ Lokshin, M. 2000, Effects of Child Care Prices on Women's Labor Force Participation in Russia, Policy Research Report on Gender and Development, Working Paper Series No. 10, The World Bank, p. 25.

²³² Australian Human Rights Commission (2013) *Investing in care: Recognising and valuing those who care, Volume 1 Research Report*, Australian Human Rights Commission, Sydney, p. xxiii.

²³³ See OECD Family database PF3.3: Informal childcare arrangements at www.oecd.org/els/soc/45584427.pdf

²³⁴ 20 percent of grandparents in Italy provide almost daily care

²³⁵ Glaser, K., Price, D., Montserrat, E., di Gessa, G. And Tinker, A. 2013, Grandparenting in Europe: family policy and grandparents' role in providing childcare, Summery March 2013, Grandparents Plus, London, p. 3.

to a lesser extent, France²³⁶. In other countries there is either an *explicit* assumption that grandparents will provide care, or a childcare *policy gap* which can only be filled, in practice, by grandparents or other informal carers²³⁷. Cultural and social norms, opinions of formal childcare facilities, as well as the level of labour force participation of women aged 55+ all play a role in such trends. A study in the UK found that single parents have a preference for informal childcare provided by family members because it is founded on trust and familiarity, and is often free and more flexible than formal arrangements²³⁸.

Informal childcare provided by grandparents is usually provided on a part-time basis, although the tendency to extend working life could make the option of using grandparents even more difficult²³⁹. In addition, more families are migrating to urban areas (or other countries) in search of paid employment, often losing access to kin support networks for childrearing and child care²⁴⁰. At the same time, the growth of single-mother households means that many women are assuming responsibility alone as the economic provider and caregiver for their children²⁴¹. Few countries have a system for recognizing or regulating informal care, but in the Netherlands, under the *Childcare Act*, grandparents who babysit on a regular basis can also be registered as self-employed childminders and formal childcare providers, thus allowing parents to receive an allowance for this form of care²⁴².

In countries in South-East Asia, as more mothers work outside the home, the increased need for childcare is met by older children, aunts and grandmothers, who often become the primary caregivers of young children in rural areas²⁴³. For example, in Indonesia, 40 percent of working women will care for their children at work, 37 percent depend on female relatives and 10 percent rely on older female children to help, whilst in rural areas, reliance on older female children for care is much higher²⁴⁴. Studies conducted in China show that grandmothers, in particular, play an active role in childcare when mothers are away at work²⁴⁵.

In Vietnam and Botswana, one quarter of poorer parents took their children to work regularly, and half of parents working in the **informal economy** did so²⁴⁶. When mothers who work in the informal sector rely on relatives for child care or keep children with them

²³⁶ Ibid. p. 11

²³⁷ Ibid.

²³⁸ Skinner, C., and Finch, N., 2006, Lone parents and informal childcare: a tax credit childcare subsidy?, *Social Policy and Administration*, Vol. 40(7), pp. 807-823.

²³⁹ European Commission 2013, op cit., p.11.

²⁴⁰ UNESCO, 2006, Strong foundations: Early childhood care and education, Education for All Global Monitoring Report, p.125 at unesdoc.unesco.org/images/0014/001477/147794e.pdf

²⁴¹ Cassirer, N. and Addati, L., 2007, Expanding women's employment opportunities: Informal economy workers and the need for childcare, Working Paper, Conditions of Work and Employment Programme, ILO, p. 4

²⁴² Council of Europe 2009, Family Policy Database: Reconciliation of Work and Family Life, at http://www.coe.int/t/dg3/familypolicy/Source/3_4_3%20Informal%20child%20care%20systems.pdf

²⁴³ Cassirer, N. and Addati, op cit., p. 4

²⁴⁴ Ibid.

²⁴⁵ 2007, The State of the World's Children, p. 45

²⁴⁶ Ibid.

during working hours, the welfare of male children may take precedence over that of female children²⁴⁷. In countries with strong son-preference, parents are more likely to send sons to pre-primary institutions, leading to disadvantages for girls in primary school²⁴⁸. As noted above, in low income countries, childcare costs can influence prospects for younger daughters. Since investment in girls' education is considered to be one of the more important policies for developing countries, government would do well ensure that women's employment does not adversely affect their daughter's schooling²⁴⁹. A study in Kenya found that the probability of girls aged 14-17 to remain in school was reduced by 41 percent if there was a child aged 3 or less in the household²⁵⁰.

4.2.2.2 Formal childcare and educators

In almost all countries, early childhood care and education is considered a natural extension of women's unpaid family duty to care for children. As a result, wages for early childhood educators are usually extremely low, in turn acting as a barrier to recruiting and sustaining good educators²⁵¹. Formal childcare facilities are dominated by women. In the EU, the sector is characterised by a mainly female workforce with 2 percent to 3 percent being men, except for Denmark with slightly higher male participation at 8 percent²⁵². In the USA, about 1.3 million people are working formally in child care, 94.6 percent of whom are women²⁵³.

Men may also face societal and institutional barriers to becoming ECCE educators. Societal labeling of ECCE as women's work creates a stigma that pushes men away from the profession²⁵⁴. It has been asserted that the number of men working in the sector should reach 10 % in order to combat gender stereotyping²⁵⁵.

4.2.3 REDUCING CARE WORK

One of the features of domestic activities is their significant time burden which in some instances can be reduced by investing in infrastructure and labour-saving technologies. Women often carry the task of fuel and water collection and food preparation, all of which could be addressed through a prioritization of investments in water and irrigation systems,

²⁴⁷ UNESCO, 2006, op cit., p. 120

²⁴⁸ Rao, N. 2007, Strong Foundations for Gender Equality in Early Childhood Care and Education - Advocacy Brief, UNESCO Bangkok, p.4

²⁴⁹ Lokshin, M, Glinskava, E, and Garcia, M. 2000, The Effect of Early Childhood Development Programs on Women's Labor Force, Policy Research Working Paper 2376, The World Bank, p. 21 at <http://elibrary.worldbank.org/doi/pdf/10.1596/1813-9450-2376>

²⁵⁰ Ibid., p. 2.

²⁵¹ Ibid., p. 10

²⁵² European Commission 2013, op cit., p.14.

²⁵³ Women's Economic Security Campaign, 2012, Child Care Matters: Building Economic Security for Low-Income Women, p.7

²⁵⁴ Rao, N. 2007, op cit., p.19

²⁵⁵ University of East London, Cass School of Education and University of Ghent, Department for Social Welfare Studies 2011, Competence Requirements in Early Childhood Education and Care: A Study for the European Commission's Directorate-General on Education and Culture, Final report, p. 48 at ec.europa.eu/education/more-information/doc/2011/core_en.pdf

domestic energy and rural transportation²⁵⁶. In developing countries, poor households use lower productivity technologies, thus adding to their time burden²⁵⁷. With infrastructure industries largely dominated by men, gender sensitivity planning is vital at the inception stage. At a minimum, infrastructure projects should address their impact on the time burdens of women in care work.

The provision of public services also impact the extent of women's care work, where women tend to 'pick up the slack' when public services for children, sick family members and the elderly are restricted. Particularly in the time of economic and financial crisis, cuts in government services in the fields of childcare can affect paid work previously carried out by women, as the provision of care is shifted to unpaid care work in the household²⁵⁸. The kinds of public services which can assist to reduce unpaid care work are providing children with meals at school and improving public transportation²⁵⁹.

4.2.4 REDISTRIBUTING CARE WORK

The common responsibility of men and women in the upbringing of children is addressed in CEDAW Article 5b. General Recommendation No. 3²⁶⁰ urges all States parties to adopt education and public information programmes, which will help eliminate prejudices and current practices that hinder the full operation of the principle of social equality of women.

ILO Recommendation No. 165 outlines concrete actions that can be taken by countries to enhance the reconciliation of work and family life, including reliable and quality child and eldercare services, paid or unpaid leave provisions such as paternity and parental leave, working time arrangements such as flexi-time, and work-family provisions in collective bargaining agreements. All such initiatives should explicitly aim to promote gender equality and recognize and encourage men's more equitable sharing of family responsibilities²⁶¹.

Nonetheless, whether in childcare facilities or amongst kinship and family systems, it is invariably women (and girls) who are caring for children, despite evidence of some positive shifts in the involvement of fathers and men. Both government policies and public attitudes will ultimately determine how future childcare structures will contribute to gender equality, with a high level of interdependence between these factors. In some OECD countries, such as the Russian Federation, Israel and Switzerland, there was a higher level of agreement amongst both mothers and fathers with the statement: *that women should be prepared to reduce their labour force participation for the sake of the family*²⁶². Such attitudes may be

²⁵⁶ Falth, A. and Blackden, M. 2009, Policy Brief – Gender Equality and Poverty Reduction, Issue 1, UNDP, New York, p. 4.

²⁵⁷ Esquivel, V. 2011, 'Sixteen Years after Beijing: What Are the New Policy Agendas for Time-Use Data Collection?', *Feminist Economics*, Vol. 17(4), p.225.

²⁵⁸ Falth, A. and Blackden, M. 2009, Policy Brief – Gender Equality and Poverty Reduction, Issue 1, UNDP, New York, p. 2.

²⁵⁹ *Ibid.*, p. 5.

²⁶⁰ CEDAW Committee Sixth Session 1987

²⁶¹ Cruz, A. 2012, *op cit.*, p.27.

²⁶² OECD 2102, *Closing the Gender Gap: Act Now*, OECD Publishing, p. 210

formed in part by the lack of extensive formal childcare options in these countries. Nordic countries, where more balanced leave policies have been in operation for a longer, there was less agreement with that statement²⁶³. It appears that the global financial crisis has also influenced attitudes, with an increasing acceptance of mothers' labour force participation evident in Spain and Portugal²⁶⁴. Childcare policies which facilitate great female labour participation may promote gender equality more than parental leave or flexible workplace arrangements²⁶⁵.

4.2.4.1 Flexible Working Arrangements

Options for flexible working arrangements are varied, and utilized mainly by people with family responsibilities, particularly those who care for young children. Flexible working arrangements include: Job sharing, working from home, flexitime²⁶⁶, annualised hours²⁶⁷ and staggered hours²⁶⁸. In some countries, there is a statutory right for parents to request flexible working arrangements, such as a change to their working hours, patterns of work and/or work location, from their employers. Legislation in the UK, Belgium, Austria, Greece, Finland, Portugal and Italy provide that right whilst attempting to balance employer needs as well²⁶⁹. In Poland, new initiatives have resulted in the creation of a specially equipped room in the workplace, allowing parents to perform work, while being with their child²⁷⁰.

In Latin America, collective bargaining has proven a crucial tool for advancing the work–family balance. In Brazil, Chile, Colombia and Uruguay, some enterprises allow flexitime and other working time arrangements for family reasons as part of collective bargaining agreements, workplace measures or informal practices. These arrangements were in the interest of employers as well as employees in order to retain personnel and avoid turnover costs²⁷¹. Additionally, initiatives like the EU Working Time Directive²⁷² ensure reasonable daily and weekly working hours for all workers, and sets minimum standards for rests, shift work, nights work and holidays.

An overview of part time work is presented in Section 1.1. Whilst part time work arrangements has allowed for greater female labour force participation, it nonetheless comes with a substantial cost in terms of lower hourly wages, job security, non-wage

²⁶³ Ibid.

²⁶⁴ Ibid., p. 211

²⁶⁵ Ibid., p.214

²⁶⁶The employee chooses when to start and end work (within agreed limits) but works certain 'core hours', eg 10am to 4pm every day.

²⁶⁷The employee has to work a certain number of hours over the year but they have some flexibility about when they work. There are sometimes 'core hours' which the employee regularly works each week, and they work the rest of their hours flexibly or when there's extra demand at work.

²⁶⁸ The employee has different start, finish and break times from other workers.

²⁶⁹ Hegewisch, A., and Gornick, J. 2008, *Statutory Routes to Workplace Flexibility in Cross-National Perspective*, Institute for Women's Policy Research, Washington, DC, p.18

²⁷⁰ See <http://www.mpips.gov.pl/aktualnosci-wszystkie/ministerstwo/art,6343,pokoj-do-pracy-dla-rodzica-z-dziekiem-w-mpips.html>,

²⁷¹ ILO 2011, Work Life Balance, Policy Development Section: Employment and Social Protection Segment GB.312/POL/4 , Governing Body 312th Session, Geneva, November 2011, p.13.

²⁷² 2003/88/EC

benefits, social protection, career advancement and training²⁷³. The ILO recommends improving the quality of part-time work by providing pro-rata entitlements, as well as to increase the availability of quality jobs on a part-time basis²⁷⁴. In addition, career advancement and pension contributions need to be reconciled.

Work-life balances policies have been increasingly introduced as a means to affect workplace culture for the benefit of all workers. Undoubtedly, such policies have the potential to reduce the stigmas surrounding family responsibilities of workers and could encourage men to dedicate more time to childcare, without suffering perceived or actual penalties at work.

4.2.4.2 Paternity leave

Paternity leave is a (usually) short period of leave provided to the father around the time of the birth of his child. No international standard exists for paternity leave, although provisions are becoming more common around the world, with an increased awareness of men's parenting roles and their need to reconcile work and family life²⁷⁵.

Paternity leave benefits are usually much shorter than maternity leave, often unpaid, and may be optional or compulsory. Belgian fathers have 3 days of compulsory paternity leave, paid by employers at 100 percent of usual salary²⁷⁶. In Spain, two employer-paid days are complemented by a further entitlement to 13 days paid by Social Security²⁷⁷. Portugal has 20 fully paid days, ten days of which are obligatory - the first country to introduce such a measure²⁷⁸. In Ecuador, fathers have the right to 10 days paid leave which can be extended by 5 days in the event of multiple births or Caesarean delivery²⁷⁹. In Africa, paternity leave is rare. Algerian men have three days²⁸⁰, and in Cameroon, Chad, and Gabon, men are entitled to 10 days of paid leave²⁸¹. Countries that have no paternity leave at all include Angola,

In the political vision of the dual-earner, dual-carer family, paternity leave is understood as a tool to achieve long term changes in the gender division of family work.

Klinth, R. 2008, 'The Best of Both Worlds? Fatherhood and Gender Equality in Swedish Paternity Leave Campaigns, 1976–2006', *Fathering*, Vol. 6 (1), p.23

²⁷³ ILO 2011, Work Life Balance, Policy Development Section: Employment and Social Protection Segment GB.312/POL/4, Governing Body 312th Session, Geneva, November 2011 p. 4

²⁷⁴ Ibid., p. 13

²⁷⁵ UNSTATS, 2010, The World's Women 2010: Trends and Statistics, United Nations, New York

²⁷⁶ Ray, R. 2008, *A Detailed Look at Parental Leave Policies in 21 OECD Countries*, Center for Economic and Policy Research, Washington, p.6.

²⁷⁷ Ibid. p.26

²⁷⁸ Moss, P (ed), 2010, International Review of Leave Policies and Related Research, Employment Relations Research Series No. 115, Institute Of Education University Of London, p. 189 at http://www.ics.ul.pt/rdonweb-docs/Karin%20Wall_2010_n3.pdf

²⁷⁹ ILO 2012, Maternity leave and related types of leave, *Maternity Protection Resource Package: From Aspiration to Reality for All*, Module 6, p.15.

²⁸⁰ See http://www.nationmaster.com/graph/lab_par_lea_pai_pat_lea-labor-parental-leave-paid-paternity

²⁸¹ Ibid.

Benin, Botswana, Burkina Faso, Burundi, Comoros, Congo, Egypt, Mali, and Somalia²⁸². In the Philippines, *married* men have 7 days paid maternity leave²⁸³.

4.2.4.3 Parental leave

Parental leave refers to an extended period of time off work by either parent and may replace or follow individual maternity or paternity leave periods. Parental leave may be unpaid or paid at a flat rate or as a percentage of previous earnings. Parental leave is not included in any of the ILO Maternity Protection Conventions. However, both Recommendation No. 191 and Recommendation No. 165 (accompanying Convention No. 156 on Workers with Family Responsibilities) contain provisions on parental leave.

Parental leave is often viewed in terms of "individual" or "family" rights. Where parental leave is viewed collectively (as a family)²⁸⁴, the parents divide the leave between them. In these cases, it is overwhelmingly the mother who takes a majority of the leave entitlement²⁸⁵. Since fathers usually earn more than mothers, there is a financial consideration in addition to gendered expectations. Where "individual" rights exist²⁸⁶, each parent has an allocation of parental leave which is usually non-transferable. Iceland, Norway and Sweden, which have mixed systems, combine family and individual entitlements. This is considered to be more progressive by ensuring at least part of the parental leave is taken by each parent or is foregone. The low take-up of parental leave amongst fathers led to this policy redesign which moves towards non-transferable individual rights. For example the **EU Directive 2010/18/EU on Parental Leave** not only increases the duration of parental leave from three to four months per parent, but also designates one of the four months as non-transferable between the parents²⁸⁷. Slovenia offers 90 days of non-transferable paternal leave, with 15 days full paid and the remainder paid at minimum wage level²⁸⁸.

Countries which do not provide parental leave include Brazil, South Africa and Switzerland (the only European country not to provide parental leave). In some cases, father may be entitled to 'share' the mother's maternity entitlement, such as in Israel, where paid maternity leave of 14 weeks can be divided between the mother and the father.

²⁸² Ibid.

²⁸³ Ibid.

²⁸⁴ For example in Australia, Austria, Canada, Denmark, Estonia, Finland, France, Germany, Hungary, New Zealand, Poland, Russia and Spain

²⁸⁵ Moss, P. (ed) 2010, International Review of Leave Policies and Related Research, Employment Relations Research Series No. 115, Institute of Education University of London, p. 8, at http://www.leavenetwork.org/fileadmin/Leavenetwork/Annual_reviews/2010_annual_review.pdf

²⁸⁶ For example in Belgium, Croatia, Czech Republic, Greece, Ireland, Italy, Luxembourg, Portugal, Slovenia, the Netherlands and the United Kingdom

²⁸⁷ Council Directive, 2010/18/EU, Official Journal L 68, Brussels, pp. 13–20. For additional information, see European Network of Legal Experts in the field of Gender Equality: European Gender Equality Law Review 2010, Brussels, p. 145.

²⁸⁸ Moss, P. (ed), 2010, op cit., p.201

4.2.4.4 Differences in men's and women's use of parental leave

Not all fathers take advantage of paternity or parental leave even when it is available. Families may be concerned about sacrificing income, as often parental leave entitlements are unpaid or poorly paid. The **gender wage gap** is a persistent contributor to this situation, as women continue to earn less than men. Previous analysis in developed countries has indicated a relationship between fathers' use of leave entitlements and the availability of well-paid 'father-only' leave – the more such leave there is, the more leave fathers take²⁸⁹ - and vice versa. In Ireland, where parental leave is unpaid, take-up rates are low for fathers (5%) and in Japan, the take-up rate of childcare (parental) leave was about 72% for mothers, but only 0.5% for male employees²⁹⁰.

Protection against dismissal and the right to return to the same position, without loss of seniority or promotion opportunities, is also a crucial element for better take-up rates. Gendered expectations also work to the disadvantage of fathers who would wish to take paternity leave but are discriminated against when there is a perception that they are less committed workers. Parental leave introduced in the Republic of Korea in 2006 still has a low take-up rate by both mothers and fathers, which is believed to be related to workplace discrimination against workers who take the leave²⁹¹.

Different approaches to encourage fathers' take-up of parental leave have been undertaken. Since the introduction of parental leave in the mid-1970s, campaigns in Sweden have focused on **attitude change**. Initially such campaigns largely promoted the benefits for men in utilizing their leave entitlement, thus reinforcing that care is choice for men, rather than a duty. Where campaigns emphasized complementary gender identities, they ran the risk of essentializing gender differences²⁹². Klinth explains that in the Swedish context, *"paternity leave has been treated as a right rather than a duty, highlighting men's freedom of choice rather than radical gender equality... therefore, the impact of parental leave on gendered power structures in society is questionable"*²⁹³. More recently, fatherhood has been represented in campaigns in positive terms and as an important part of men's personal development, but it has also been communicated as a long-term commitment and as the fully shared responsibility for both men and women²⁹⁴.

²⁸⁹ Ibid., p.32

²⁹⁰ OECD 2010, *Use of childbirth-related leave by mothers and fathers*, OECD Family Database, OECD, Paris, p. 4 at <http://www.oecd.org/els/soc/41927348.pdf>

²⁹¹ UNRISD, 2010, *Structural Change, Social Policy and Politics*, United Nations Research Institute for Social Development, Geneva, p 195.

²⁹² Klinth, R. 2008, 'The Best of Both Worlds? Fatherhood and Gender Equality in Swedish Paternity Leave Campaigns, 1976–2006', *Fathering*, Vol. 6(1), p. 27.

²⁹³ Ibid. p. 23.

²⁹⁴ Ibid. p. 33

Countries which have introduced a bonus for fathers, as an incentive to encourage fathers to take parental leave, include Sweden, Portugal, Austria, Croatia and Italy²⁹⁵. In Sweden both parents receive around €5.6 each per day for every day they use the leave equally, and overall the bonus can reach a total of €1,500²⁹⁶. In Italy, fathers taking three months paternity leave are entitled to one month of additional parental leave, which is partly paid at the same rate²⁹⁷.

Parental leave take-up is also sometimes low among women, especially when it is unpaid or paid at fixed rates, for example at the level of minimum wage. Paid leave is necessary also to establish the basis for valuing care work. Lower paid workers particularly, will find it difficult to use parental leave entitlements or will have to balance the cost of childcare against income losses. There is a further concern that an extended leave period can lead to **de-skilling, disconnection** and subsequent disadvantage for mothers returning to the workforce. Ultimately this can have a negative impact on women's participation and advancement in the labour market, as well as exacerbating the gender pay gap and increasing gender occupational segregation. Even in Sweden, the gender-based division of parental leave has contributed to the distinct gender division of the Swedish labour market whereby women are directed to the public sector where child-related absence is expected²⁹⁸. In some countries, long parental leave is seen as a response to the lack of sufficient childcare services, particularly for young children for whom services can be relatively expensive.

Policies need to support parents who re-enter employment after parental leave, a high percentage of whom are women. In Australia, employees who are on parental leave can use 'keeping in touch days' to come to work for up to 10 days during their parental leave, without it affecting their unpaid parental leave entitlements²⁹⁹. Another option is facilitating parental leave on a part time basis.

CASE STUDY: ICELAND

Iceland's system is considered gender-neutral and equitable. It offers nine months parental leave, three months each for the mother and father (non-transferable) and a further three months for the parents to divide as they choose. Entitlements apply also to adoptive parents where the child is under 8 years old or where a child has been placed in permanent foster care. The only recognition of childbirth is the obligation for women to take two weeks leave after birth, with the possibility of an extended leave if a woman has suffered

²⁹⁵ Moss, P. (ed) 2012, *International Review of Leave Policies and Related Research 2012*, International Network on Leave Policies And Research, p.21
http://www.leavenetwork.org/fileadmin/Leavenetwork/Annual_reviews/2012_annual_review.pdf

²⁹⁶ Ibid. p.260.

²⁹⁷ Ibid. p.166.

²⁹⁸ Klinth, R. 2008, 'The Best of Both Worlds? Fatherhood and Gender Equality in Swedish Paternity Leave Campaigns, 1976–2006', *Fathering*, Vol. 6(1), p. 24.

²⁹⁹ See <http://www.fairwork.gov.au/leave/parental-leave/pages/keeping-in-touch-during-leave.aspx>

complications at or after giving birth. Unsurprisingly, the take up rate of fathers compared to mothers is around 90%³⁰⁰. Austerity measures affected the level of payments since 2008, reducing entitlements from 80% to 75% of previous income.

In 2012, a bill proposed extending parental leave to 12 months. After initial consideration of a 4-4-4 system (4 months mother, 4 months father, 4 joint entitlement), the bill has proposed a 5-5-2 system, thereby increasing each parent's allocated time, and leaving only 2 months as joint entitlements to divide as the parents chose³⁰¹. The new arrangements will come into effect incrementally until 2016.

Effects on gender equality are as yet still unknown. There is an apparent correlation, whereby the proportion of care provided by mothers of children under 3 is seen to be largest when fathers do not take any parental leave, and smallest when fatherstake 3 or more months of parental leave³⁰². A 2008 survey of father's attitudes revealed an increased bond with the child as a result of parental leave arrangements, but there was less impact on the equal standing of mother and father, with housework and child rearing still considered more than mother's responsibility than the fathers³⁰³.

5. CHILDCARE

CEDAW Article 11(2) (c) requires states "To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities". As noted by Raday, CEDAW was the first international treaty to refer to the need for child care facilities:

The Convention does not impose an obligation on States parties to provide child care services but only an obligation to encourage their provision. It also does not impose any obligation with regard to state funding of child care. It will be up to the Committee to introduce guidelines which will interpret 'the necessary supporting social services' as services which render childcare affordable and accessible. Some indication of the Committee's preparedness to impose an obligation on States to provide such services can be inferred from its recommendation that a 'State party ... ensure that maternity leave is available in all public and private

³⁰⁰ OECD 2010, *Use of childbirth-related leave by mothers and fathers*, OECD Family Database, OECD, Paris, at <http://www.oecd.org/els/soc/41927348.pdf>

³⁰¹ Eydal, G. And Ingulfor, G. 2012, *Iceland 2012 - Revised law on paid parental leave*, University of Iceland, Reykjavik, at http://thjodmalastofnun.hi.is/sites/thjodmalastofnun.hi.is/files/skrar/eydal_and_gislason-paid_parental_leave_in_iceland-2012_dvelopment_ts-1.pdf

³⁰² Eydal, G. 2009, *Equal legal rights to paid parental leave - the case of Iceland*, Paper prepared for Espanet: The future of the welfare state-paths of social policy innovation between constraints and opportunities, 17-19 September 2009, Urbino, p.28.

³⁰³ Jonsdottir, S. 2008, *National Report on the Icelandic Experience of Parental Leave Provision, The Parental Leave System in Iceland*, Seminar reports: 22-23 October 2008, Reykjavik, at ec.europa.eu/social/BlobServlet?docId=2265&langId=en

*employment, especially through the enactment of a law on maternity leave, and expand the number of crèches available for working mothers*³⁰⁴.

The importance of childcare for workers with family responsibilities is clearly recognized in the ILO Workers with Family Responsibilities Convention No. 156 (1981) and Recommendation No. 165, which call upon all member States to take measures to develop or promote community services, public or private, such as childcare and family services and facilities³⁰⁵. Within the global Education for All (EFA) strategy, the 2000 **Dakar Framework for Action**³⁰⁶ committed states to expanding and improving comprehensive early childhood care and education³⁰⁷. It places responsibility on governments, across relevant ministries, to formulate early childhood care and education policies within the context of national EFA plans³⁰⁸.

Known as the **Barcelona Objectives**, the European Council in 2002 set objectives in this area: EU Member States should remove disincentives to female labour force participation, taking into account the demand for childcare facilities and in line with national patterns of provision, to provide childcare to at least 90 percent of children between 3 years old and the mandatory school age and at least 33 percent of children under 3 years of age, by 2010³⁰⁹. Although some progress has been made since 2002, the provision of childcare facilities at European level in 2010 was still not in line with these objectives. Furthermore, the situation appeared to deteriorate in some Member States in 2011³¹⁰.

The provision of childcare not only stimulates female participation in the labour force, but also recognizes that women already comprise significant proportions of the labour force, the main source of income in many families in developed countries³¹¹, and an increasing number of female headed households, which in some developing countries is over 30 percent³¹². In most societies, four main institutions are involved in the design, funding and delivery of care: households and families; markets; the state; and the non-profit sector³¹³. This holds true for childcare as well as care of other family members. The role of the State, however, needs to be emphasized, as it not only a provider of public services but also a key

³⁰⁴CO Maldives, CEDAW/C/MDV/CO/3 (2007) para 30; CO Bangladesh, A/59/38 (Supp), 31st Session (2004) paras 253-254; CO Switzerland, A/58/38 (Supp), 28th Session (2003) para 133; CO Guyana, A/56/38 (Supp), 25th Session (2001) para 169.

³⁰⁵ Article 5

³⁰⁶ UNESCO, 2000, Education For All: Meeting Our Collective Commitments, Text Adopted at World Education Forum, Dakar, Senegal, 26-28 April 2000 at http://www.unesco.org/education/efa/fr/ed_for_all/dakfram_eng.shtml

³⁰⁷ Paragraph 7.

³⁰⁸ Paragraph 31.

³⁰⁹ European Commission 2013, op cit., p.4.

³¹⁰ Ibid.

³¹¹ In the USA, women comprise 40.4% of main income providers, of which 37% are married and 67% are single mothers. See <http://www.pewsocialtrends.org/2013/05/29/breadwinner-moms/>

³¹² For example in Armenia, Colombia, Ghana, Kenya, Liberia, Rwanda, Maldives and Zimbabwe. See <http://data.worldbank.org/indicator/SP.HOU.FEMA.ZS>

³¹³ UNRISD 2010, *Structural Change, Social Policy and Politics*, United Nations Research Institute for Social Development, Geneva, p. 186.

decision maker over the rights and responsibilities of the other care-related institutions³¹⁴. Lack of adequate state supported childcare inevitably drives greater participation of private and non-profit sectors in the provision of childcare, and ultimately relies on unpaid work of family carers to fill the gap.

Access to childcare facilities for young children is a significant factor influencing women's participation in the labour market. In Asia, childcare is a major issue in women's labour force participation. In Malaysia, it was estimated that the percentage of women who stopped work due to childcare reasons was 23 percent³¹⁵. In Japan, a survey indicated that housework and working hours were the primary reasons that women were not participating in the workforce, and in Korea, a survey by the Ministry of Labor in 2007, found that for 60 percent of the women surveyed, child rearing was the biggest obstacle to participating in the labor force³¹⁶.

In EU countries, a correlation has been noted in countries which have been aiming to facilitate work-life balance, high rates of female employment and higher birth rates³¹⁷. Norway, Sweden and France which have relatively high birth rates (near or at replacement levels) also have relatively generous child allowances (lump sum cash transfers), and a mix of other instruments like child care subsidies or parental leave³¹⁸. By contrast, countries which prefer cash transfers over child care or parental leave policies, such as Germany, Italy and many Eastern European countries, have relatively low fertility rates (around 1.4 children per women)³¹⁹. As a means to reconcile work and family, Spain (one of the countries with the lowest female participation and lowest fertility) tried to target both issues through an income tax reform in 2003³²⁰.

In other regions, where women's educational achievements and workplace participation only more recently on the rise, there is a stronger tendency for women to delay or forego marriage and reduce fertility³²¹. Where parent lack sufficient childcare options, they turn to individual coping strategies, such as having less children, employing low-paid domestic workers, or depending on low-quality, informal childcare arrangements such as enlisting

³¹⁴ Ibid., p.187.

³¹⁵ ILO 2011, Work Life Balance, Policy Development Section: Employment and Social Protection Segment GB.312/POL/4, Governing Body 312th Session, Geneva, November 2011, p.7

³¹⁶ Steinberg, C. 2012, 'Can Women Save Japan (And Asia Too)?', *Finance and Development*, www.imf.org/external/pubs/ft/fandd/2012/09/pdf/steinberg.pdf

³¹⁷ European Commission 2013, op cit., p.6.

³¹⁸ See Luci-Greulich, A. and Thevenon, O. 2013, The Impact of Family Policies on Fertility Trends in Developed Countries, *European Journal of Population*, July 2013 at <http://link.springer.com/article/10.1007/s10680-013-9295-4>

³¹⁹ Ibid.

³²⁰ Azmat, G., and Gonzalez, L. 2008, Targeting Fertility and Female Participation Through the Income Tax, Economics Working Papers 1113, Department of Economics and Business, Universitat Pompeu Fabra, revised May 2009, at www.econ.upf.edu/~gonzalez/Research_archivos/LE_2009.pdf

³²¹ ILO, 2011, Work Life Balance, ILO Policy Development Section: Employment and Social Protection Segment GB.312/POL/4, 312th Session, Geneva, November 2011, p.3.

older children to care for younger ones, leaving children unsupervised or taking them to the workplace³²².

5.1 CHILDCARE OPTIONS

An overview of early childhood care and education (ECCE)³²³ in eighty-eight countries identified five types of institutions: kindergartens, nursery schools, ECCE institutions attached to primary schools, day care centres and others³²⁴. Most countries will have a combination of facilities, with about half the countries reported having kindergartens and about 40 percent had institutions attached to primary schools³²⁵. In about 85 percent of countries, age 3 is the nominated entrance age for pre-primary education in 70 percent of the world's education systems³²⁶. In about one-quarter of countries, particularly in the Arab States, sub-Saharan Africa, and Latin America and the Caribbean, children are eligible to enrol at age 4³²⁷.

Childcare is often provided via subsidies to non-state institutions³²⁸, including private for-profit, non-profit and faith-based providers, alongside more or less developed systems of public childcare services and/or purely private (fee-based) facilities, as in Germany, Italy and the Republic of Korea³²⁹. In developing countries childcare facilities may be run by the State, trade unions, local government, charities or NGOs³³⁰. Some facilities are established by donor funding, which can create sustainability problems over time.

The other most common forms of childcare are nannies/babysitters/au pairs who care for children in their own home, in some cases living in the child's home. Migrant workers employed as nannies, combine childminding with other domestic work, are considered a more affordable option for more financially stable parents. A relaxation of immigration laws in some countries has helped fill in the 'care deficit' by increasing the number of foreign domestic workers³³¹.

A childminder (also called day mother, family daycare) offers private care for children usually in her own home, and can be a convenient income generation opportunity for mothers who can mind other children along with their own. The number of children that

³²² Ibid., p.7

³²³ Early childhood is defined as the period from 0 -8 years.

³²⁴ UNESCO 2006, *Strong foundations: Early childhood care and education*, Education for All Global Monitoring Report 2007, p.123.

³²⁵ Ibid.

³²⁶ Ibid., p.129

³²⁷ UNESCO 2006, op cit., p.129

³²⁸ For example in the Netherlands

³²⁹ Staab, S. and Gerhard, R. 2010, *Childcare Service Expansion in Chile and Mexico: For Women or Children or Both?*, Gender and Development Programme Paper Number 10, United Nations Research Institute for Social Development, Geneva, p. 6.

³³⁰ Cassirer, N. and Addati, L., 2007, op cit., p.8.

³³¹ UNRISD 2010, *Structural Change, Social Policy and Politics*, United Nations Research Institute for Social Development, Geneva, p. 195.

can be looked after by a childminder is in some countries limited by legislation³³², and some countries have a systems of registration and minimum training requirements³³³, but both these forms of childcare are more often unregulated. In Latin America, there has been government support for childminding or home based programmes. For example in Colombia³³⁴, Bolivia³³⁵, Brazil and Guatemala City, government sponsored programmes provides daycare, nutrition and educational services to children who live in poor, predominantly urban areas via parent associations that elect a “community mother”, who opens her home to as many as 15 children. Such programmes are considered adequate in terms of hours of operation and carer/child ratios³³⁶, but have been criticised for the limited training given to caregivers. Such programmes, often promoted by donors and driven by low state investment, may have low quality services and inadequate remuneration of women's labour, thus reinforcing the gender stereotype of caregivers' work as an extension of maternal care³³⁷.

Rural women usually have distinctive needs in relation to the accessibility of childcare options, given their remote location and lack of access to transport. In the Philippines, enrolment rates in rural villages were affected by the long distance of the centres from children's homes and because families cannot afford the cost of public transport to and from the centres³³⁸. In some state-run rural works programmes, childcare is provided close to or at the worksite, including mobile facilities. Botswana's Labour-Intensive Rural Public Works Programme and India's National Rural Employment Guarantee Schemes, offer work close to participants' homes, while in some other states on-site crèches have started³³⁹.

5.1.1 CHILDREN AGED 0-3 YEARS

In the European Union, a 2008 review revealed that the demand for formal systems of childcare was far from being met, in particular for children under 3³⁴⁰, with high costs incurred by parents and the opening hours of facilities being incompatible with full-time

³³² Hein, C. and Cassirer, N. 2010, *Workplace Solutions for childcare*, ILO Geneva, p. 7 at http://www.ilo.org/global/publications/books/WCMS_110397/lang--en/index.htm

³³³ For example in France, the United Kingdom and Singapore.

³³⁴ Hogares Comunitarios programme

³³⁵ Proyecto Integral de Desarrollo Infantil (PIDI)

³³⁶ See Ruel, M., de la Brière, B., Hallman, K., Quisumbing, A., and Coj, N. 2002, 'Does Subsidized Childcare Help Poor Working Women in Urban Areas? Evaluation of a Government-Sponsored Program in Guatemala City, Discussion Paper 131, International Food Policy Research Institute Discussion Paper at <http://www.ifpri.org/divs/fcnd/dp/papers/fcndp131.pdf>

³³⁷ See Rosemberg, F., and Puntch, A., 2003, Multilateral Organizations and Early Child Care and Education Policies for Developing Countries, *Gender and Society*, Vol. 17(2), pp. 250-266.

<http://www.jstor.org/stable/3594690>

³³⁸ Rao, N. 2007, op cit., p. 10.

³³⁹ ILO 2011, Work Life Balance, Policy Development Section: Employment and Social Protection Segment GB.312/POL/4, Governing Body 312th Session, Geneva, November 2011, p.18.

³⁴⁰ European Commission, 2008, Implementation of the Barcelona Objectives concerning childcare facilities for pre-school-age children, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2008) 638

work. In 2013, the position remains more or less the same³⁴¹. While 10 EU Member States have reached the Barcelona targets for this age group in 2011, the majority of Member States have yet to make any substantial effort to meet the targets, notably Poland, the Czech Republic and Slovakia, whose coverage rate is less than 5 percent³⁴². Committed government policies appear to bear fruit, for example, in France where the childcare rate went from 31 percent in 2006 to 43 percent in 2010³⁴³. Slovenia increased its childcare rate most likely because of a legal amendment which introduced state- funded childcare for second and subsequent children³⁴⁴.

In developing countries, figures of childcare are more difficult to obtain. It is estimated that overall, around 53 percent of the world's countries have at least one government-run early childhood programme for children under 3, but with very limited coverage³⁴⁵. For example, in Brazil only about 15.5 percent and in Chile only 4 percent of children were in formal childcare in 2006³⁴⁶. Regionally, Western Europe and USA had the highest number of available programmes, followed by Latin America and Central Asia, with the lowest number of programmes per region found in Arab States and Central and Eastern Europe³⁴⁷.

Location and hours of operating are critical to women's choices and options surrounding childcare arrangements. For example, in Burkina Faso, Kazakhstan and Mozambique, infants and toddlers can attend day care for as much as ten to twelve hours per weekday³⁴⁸. In Finland and Sweden, where many mothers work part time, municipalities have a legal obligation to provide day care that meets the complex schedules of working parents³⁴⁹. In Cambodia, Eritrea, Lebanon, Malaysia, Panama, Uruguay and Vanuatu, many programmes for children below age 3 are available for four hours or less per day³⁵⁰. One of the major problems identified in a study of 30 European countries, was the incompatibility of the childcare services on offer with the working hours of parents, and even those that provide care from 9 am until 5pm do not meet the current workforce demands on working parents³⁵¹. A similar issue is being advocated in Thailand³⁵².

³⁴¹ European Commission 2013, op cit., p. 7.

³⁴² European Union, 2013, Progress of Equality between men and women in 2012: A Europe 2020 Initiative, p.11

³⁴³ European Commission 2013, op cit., p. 7.

³⁴⁴ Ibid.

³⁴⁵ UNESCO 2006, *Strong foundations: Early childhood care and education*, Education for All Global Monitoring Report 2007, p. 106.

³⁴⁶ ILO 2011, Work Life Balance, Policy Development Section: Employment and Social Protection Segment GB.312/POL/4, Governing Body 312th Session, Geneva, November 2011, p.5

³⁴⁷ UNESCO 2006, op cit., p. 126

³⁴⁸ Ibid.

³⁴⁹ Ibid.

³⁵⁰ Ibid.

³⁵¹ Hein, C. and Cassirer, N. 2010, Workplace Solutions for childcare, ILO Geneva, p. 25.

³⁵² Ibid.

5.1.2 CHILDREN AGED 3-6 YEARS

Worldwide, an increase of 10.7 percent was achieved in pre-primary enrolment (children aged 3 and above) from 1999 until 2004³⁵³. The greatest increases were in sub-Saharan Africa (43.5%), the Caribbean (43.4%) and South and West Asia (40.5%), although the gross enrolment ratio for sub-Saharan Africa remains below 10 percent, except in Mauritius and Seychelles where the ratios are close to 100 percent³⁵⁴. In 2007, Mauritius established an Early Childhood Care & Education Authority which aims to provide equal access for all children to quality pre-schooling. A National Curriculum for 3-5 years olds has been developed together with the Ministry of Education³⁵⁵. With 75 percent of pre-primary facilities being privately operated, ensuring that all facilities are of a consistent quality is a future challenge³⁵⁶.

In the EU, the childcare rate for children between 3 and the compulsory school age is about 86 percent, although significant differences remain between countries. Luxembourg increased its rate by 22 percentage points, after childcare centres offering before and after school care for children up to the age of 18 were introduced in 2005, the school system was reorganised to integrate younger age groups, and childcare vouchers were introduced in 2009³⁵⁷. But even if the targets are met, the provision of formal childcare in some countries is part-time so does not cover a full week of work, such as in The Netherlands, Ireland and the United Kingdom where part-time childcare places may be for less than 20 hours a week³⁵⁸.

A UNESCO study found that pre-primary and ECCE programmes are open most of the workweek, with nearly 88 percent of the programmes for which data was available operating five days a week³⁵⁹. However, 'full time' was defined in this study as at least 4 hours a day which is incompatible with full time working hours, more likely to be defined as at least 8 hours a day. Within countries, there can be differences in the operating hours of ECCE programmes, even for the same age group. For example, in Cambodia, government pre-schools targeting 3- to 5-year-olds operate for five hours more per week than community pre-schools, and are open thirty-eight weeks a year – between two and fourteen weeks longer than the community schools³⁶⁰.

³⁵³ UNESCO 2006, *Strong foundations: Early childhood care and education*, Education for All Global Monitoring Report 2007, p. 20.

³⁵⁴ *Ibid.*, p. 133

³⁵⁵ Kistamah, S. 2010, Multisectoral coordination: The Case of Mauritius, Presentation for the World Conference on Early Childhood Care and Education, 27-29 September 2010, Moscow.

³⁵⁶ *Ibid.*

³⁵⁷ European Commission 2013, *op cit.*, p.8.

³⁵⁸ European Union 2013, *Progress of gender equality between men and women in 2020*, p.11

³⁵⁹ UNESCO, 2006, *op cit.*, p.131

³⁶⁰ *Ibid.*

5.1.3 AGES 6+

For working parents, childcare needs extend beyond age 6 and can remain an issue until children become teenagers. For example, in Australia, use of informal child care continues regardless of age, with 32 percent of three year olds in an informal care arrangement, compared with 27 percent of five year olds, 29 percent of nine year olds, and 24 percent of 12 year olds, indicating that many parents still have a need for some form of regular child care arrangements after their children start school³⁶¹.

In addition, **school holiday periods** are generally much longer than statutory annual leave entitlements for employees, leaving parents to find additional childcare solutions during the year, which can be both costly and inconvenient. In Canada, parents have the possibility to use childcare tax credits for summer camps provided they are sports or arts related³⁶². The ILO notes that when parents need to juggle a multiplicity of care arrangements for children in order to be able to cover their working hours, this can discourage the use of childcare³⁶³. Sick leave provisions can sometimes include allowances for care of sick children, although such entitlements do not commonly increase with the number of children in the family.

5.1.4 AFFORDABILITY

Formal childcare services can only support working parents if they are affordable. In the EU, the price of these services is considered an obstacle for 53 percent of European mothers who do not work or work part-time on account of childcare, and even more so in Ireland, the Netherlands, Romania and the UK where price is considered an obstacle for more than 70 percent of mothers³⁶⁴. The net costs of childcare services in the UK and Ireland can reach 41 percent of net income in a household where both parents work³⁶⁵.

The governments of most EU Member States subsidise formal childcare services through direct grants, means tested parental allowances, tax breaks and vouchers. In the Netherlands, the government provides subsidies directly to parents, who choose the day-care centre for their children, employers are required to contribute one sixth of the cost of childcare per employee, while the local government monitors quality and regulates operators³⁶⁶. In the UK, some employers can offer 'salary sacrifice' in the form of vouchers for approved childcare facilities and employees do not pay tax or National Insurance on the amount of the salary sacrificed³⁶⁷. Further discussion of tax benefits for working parents is contained in Section 4.3.

³⁶¹ Australian Bureau of Statistics, 2010, at

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features50Jun+2010>

³⁶² See <http://www.cbc.ca/news/business/taxes/7-important-tax-credits-for-families-1.1139389>

³⁶³ Hein, C. and Cassirer, N. 2010, Workplace Solutions for childcare, ILO Geneva, p.25.

³⁶⁴ European Union, 2013, Progress of Equality between men and women in 2012: A Europe 2020 Initiative, p.11

³⁶⁵ Ibid.

³⁶⁶ UNICEF 2007, The State of the World's Children 2007: Women and Children: The Double Dividend of Gender Equality, UNICEF New York, p.45 at <http://www.unicef.org/sowc07/>

³⁶⁷ See <http://www.hmrc.gov.uk/calcs/ccin.htm>

The use of childcare services may depend on income status. In France, for example, 64 percent of households in the top income quintile use childcare services compared with just 15 percent of households in the bottom quintile³⁶⁸. Conversely, in Denmark the childcare rate is very high among households in the bottom quintile, while in Sweden, Slovenia and Germany use of childcare facilities is the same across all households³⁶⁹. Low income earners, especially single mothers, in the USA not only face significant cost barriers, but are also more likely to be engaged in shifting work schedules and evening hours for which childcare centres and other arrangements are unavailable³⁷⁰. In such cases, only informal options or expensive in-house care (babysitters, nannies etc) are available.

The cost of childcare relative to wages is critical in developing countries for future gender equality. Reliance on older daughters to care for younger children, whilst mothers are at work, constrains educational and other opportunities for teenage girls. A study in Kenya found that a 10 percent increase in women's wages resulted in an 11 percent increase in boys' school attendance, but reduced girls' school attendance by about 8.8 percent³⁷¹. Higher prices of childcare had no significant effect on boys' attendance, but again reduced girls' school attendance³⁷². The effect is presumed to be greater amongst single mother households which rely even more on childcare³⁷³.

Other social and fiscal policies that have an impact on family incomes need to be considered. The advantages of heavily subsidised childcare services will be outweighed if parents, particularly the lower earner which is frequently women, are taxed heavily for additional wages³⁷⁴.

5.1.5 QUALITY

The balance between availability, affordability, accessibility and quality childcare is an ongoing challenge common to all countries. Characteristics which can determine the quality of a childcare service is the number of children in group facilities, ratio of carers to children, qualifications and turnover of staff as well as health and safety of the facility. In the EU, the size of the group varies on average from 10 to 14 children for the 0–3 age group and from 20 to 25 children for the 3–6 age group³⁷⁵. The ratio of staff to children is around 1:15 in most Member States, ranging from 1:6 in Estonia to 1:21 in France for pre-school education³⁷⁶.

³⁶⁸ European Commission 2013, op cit., p.12.

³⁶⁹ Ibid.

³⁷⁰ See Women's Economic Security Campaign, 2012, Child Care Matters: Building Economic Security for Low-Income Women at womensfundingnetwork.org/sites/wfnet.../WESCCase%20Study_2013.pdf

³⁷¹ Lokshin, M, Glinskava, E, and Garcia, M. 2000, The Effect of Early Childhood Development Programs on Women's Labor Force, Policy Research Working Paper 2376, The World Bank, p. 20

³⁷² Ibid., p.21

³⁷³ Ibid.

³⁷⁴ European Commission 2013, op cit., p.13.

³⁷⁵ Ibid., p.14

³⁷⁶ Ibid., p. 14

Quality must be considered in context, as research in Bangladesh, India and Nepal indicates that programmes which would be considered of low or mediocre quality by Western standards in terms of group size, teacher-child ratios and teacher qualifications still have had positive outcomes for girls and boys, in terms of school readiness, attendance and cognitive development³⁷⁷. The 2000 Dakar Framework for Action³⁷⁸ committed states to expanding and improving comprehensive early childhood care and education, by way of programmes which focus on all of the child's age appropriate needs and encompass health, nutrition and hygiene as well as cognitive and psycho-social development³⁷⁹. There is some concern that in the 0-3 age group, the priority is to keep children safe and clean, rather than investing in their development³⁸⁰. Such an approach is reflected in the lack of placement of under 3 childcare within the ministries of education. Ensuring that children have the necessary interaction and stimulation needed for their development is dependent on the quality of staff³⁸¹.

Many early childcare series are characterized by low wages and high staff turnover. In the Republic of Korea, the very small percentage of public childcare centres (6 percent) are characterized by qualified staff who enjoy, good working conditions and union representation as they are classified as public servants, which is not the case with the remaining majority of private and non-profit centres which operate³⁸².

CASE STUDY – CHILE

The rate of female participation in the labour market in Chile is about 38 percent, amongst the lowest in Latin America, and goes down to 19 percent for mothers of children younger than 5 years old³⁸³. A survey in Chile shows that 70 percent of inactive women would like to have a paid job, but are unable to work due to childcare problems³⁸⁴.

While men have long ceased to be the sole breadwinners, women continue to be the main providers of unpaid care, with women who participate in the labour market spending only about an hour less on paid work than men per day, while they put in longer hours in all

³⁷⁷ Rao, N. 2007, Strong Foundations for Gender Equality in Early Childhood Care and Education - Advocacy Brief, UNESCO Bangkok, p.8 at http://www2.unescobkk.org/elib/publications/125_126/

³⁷⁸ UNESCO, 2000, Education For All: Meeting Our Collective Commitments, Text Adopted at World Education Forum, Dakar, Senegal, 26-28 April 2000, http://www.unesco.org/education/efa/fr/ed_for_all/dakfram_eng.shtml

³⁷⁹ Paragraphs 30 and 31

³⁸⁰ Hein, C. and Cassirer, N. 2010, op cit., p. 21.

³⁸¹ Ibid.

³⁸² UNRISD, 2010, *Structural Change, Social Policy and Politics*, United Nations Research Institute for Social Development, Geneva, p. 195.

³⁸³ Cassirer, N. and Addati, L., 2007, op. cit., p. 10.

³⁸⁴ ILO 2011, Work Life Balance, Policy Development Section: Employment and Social Protection Segment GB.312/POL/4, Governing Body 312th Session, Geneva, November 2011, p.7

other activities³⁸⁵. Childcare services for children under 6 years increased to about 35 percent in 2003, but tended to cater to high income families³⁸⁶. One study found that almost 6 percent of 0-2 year old infants attend day care, but this varied from 3 percent in the lowest income quintiles to 13 percent among high income families³⁸⁷.

ECCE services are structured according to age groups: the crèche level is attended by children from the age of 84 days up to two years; the intermediate level is in charge of two- and three-year-olds; and the transitional level caters to four- and five-year-old children³⁸⁸. While some services are targeted to “vulnerable” groups and are provided by specialized institutions, most of them are overseen by the Ministry of Education³⁸⁹.

In 2006, under the Bachelet Administration, Chile launched “Chile Crece Contigo” (Chile grows with you) to provide free childcare for the most vulnerable 40 percent of the population. Two of its goals were (i) guaranteed access to crèches and kindergartens for all children up to three years old from the two poorest income quintiles and (ii) universal preschool coverage for four- and five-year-olds³⁹⁰. Since 2005, the number of free public nursery places for children aged 3 months to 2 years who are living in the poorest areas of Chile increased from 14,400 to 64,000 in 2008³⁹¹. Kindergarten places for children aged 2-4 years increased from about 84,000 to 127,000 places³⁹², leading to an increase in attendance of 2-4 years olds, which in 2006, reached 26.5 percent³⁹³.

Crèche and intermediate levels (up to two years old and two- to three-year-olds) are divided between public and purely private providers, with two institutions playing a particularly important role: (i) centres run or accredited by JUNJI, a government body; and (ii) centres run by Fundación Integra, a private non-profit foundation that belongs to the presidency’s network of foundations³⁹⁴. Their centres are free of charge for children from households belonging to the first two income quintiles, and such centres account for about half of all enrolments at the younger age groups.

The Chilean system demonstrates the real tension between mothers' working needs, and children’s development needs. The majority of children attending JUNJI and Integra centres at the crèche and intermediate level are enrolled in full-day programmes (from 8:30 to

³⁸⁵ Staab, S. and Gerhard, R. 2010, Childcare Service Expansion in Chile and Mexico: For Women or Children or Both?, Gender and Development Programme Paper Number 10, United Nations Research Institute for Social Development, Geneva, p.5-6.

³⁸⁶ Cassirer, N. and Addati, L., 2007, op cit., p. 10

³⁸⁷ Medrano, P. 2009, Public Day Care and Female Labor Force Participation: Evidence from Chile, Serie Documentos De Trabajo, University of Chile, p.9

³⁸⁸ Staab, S. and Gerhard, R. 2010, op cit., p.12

³⁸⁹ Ibid

³⁹⁰ Ibid.

³⁹¹ See ILO 2012, Maternity Protection Resource Package, Module 11 Beyond maternity and back to work: Coping with childcare, Conditions of Work and Employment Programme (TRAVAIL), p. 19.

³⁹² Ibid.

³⁹³ Medrano, P. 2009, Public Day Care and Female Labor Force Participation: Evidence from Chile, Serie Documentos De Trabajo, University of Chile, p.9.

³⁹⁴ Ibid., p. 5.

16:30), and there are efforts to offer extended schedules until 7:30 pm³⁹⁵. The Chilean government is working at expanding the number of childcare places for children under 3³⁹⁶. However, despite considerable achievement in extending childcare coverage, there is some criticism of the quality of these facilities, particularly regarding under staffing, and difficulties in complying with the required staff- child ratio, set by the Ministry of Education³⁹⁷. In addition, cultural perceptions may play a role in the usage of childcare facilities. A survey amongst poor Chilean families, indicated that the main reason for not enrolling children between ages 4 and 6 was a perception that they were too young or better cared for at home³⁹⁸.

³⁹⁵ Staab, S. and Gerhard, R. 2010, op cit., p. 16.

³⁹⁶ Hein, C. and Cassirer, N. 2010, op cit., p.30.

³⁹⁷ Staab, S. and Gerhard, R. 2010, op cit., p.16

³⁹⁸ UNICEF/ILO 2012, Supporting Workers with Family Responsibilities: Connecting Child Development and the Decent Work Agenda, UNICEF/ILO Working Paper presented at the Annual Ministerial Review of the High Level Segment of Economic and Social Council, New York, 2-9 July 2012, p. 43.