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Maternity protection and the childcare systems in Central Asia: national studies in Kazakhstan and Tajikistan



ILO Decent Work Technical Support Team and Country Office
for Eastern Europe and Central Asia

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Foreword

Gender equality is not only a basic human right but intrinsic to the global aim of Decent Work for all women and men. The International Labour Organization (ILO) is committed to promote the rights of all women and men at work and achieve equality of opportunity and treatment between them. Work-family and maternity protection laws and policies are one of the core elements of gender equality at work. Maternity protection at work aims to protect the health of mother and child as well as women's economic and employment security. Whereas work-family measures are policy solutions intended to facilitate all workers' access to decent work by supporting their unpaid family responsibilities.

In this context, the ILO together with the United Nations Development Programme (UNDP) came together to develop an analysis of existing laws and policies on maternity protection and childcare systems in Central Asia aimed to improve their systems. This publication is the final output of the ILO/UNDP joint subregional seminar on "Improving Maternity Protection Systems for a Better Balanced Work and Family Responsibilities in Central Asia" held in Dushanbe, Tajikistan on 1–2 December, 2011. Draft studies covering the countries in Central Asia have been presented by the national experts during the subregional seminar. The participants engaged in the active discussions included representatives of government, trade unions, and employers' organizations from these three countries as well as the donor community, academia, the other UN agencies and the international experts sharing good practices in Europe.

In its effort to improve national maternity protection system as well as to emphasize the importance of work and family balance in compliance with the international labour standards, Kazakhstan ratified the ILO Maternity Protection Convention, 2000 (No.183) in 2012 and the Workers with Family Responsibility Convention, 1981 (No.156) in 2013.

This publication is intended to reach to a wider audience, including policy-makers, social partners, civil society and academia. We hope the study provides a useful platform to build social policies for progressive promotion of maternity protection and more balanced work-family reconciliation policies and legislation in Central Asian countries.

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List of Abbreviations and Acronyms

ADB	Asian Development Bank
CEDAW	Convention on Elimination of All Forms of Discrimination Against Women
CIS	Commonwealth of Independent States
GDP	Gross Domestic Product
ILO	International Labour Organisation
IOM	International Organisation on Migration
IPEC	International Programme on the Elimination of Child Labour
LFS	Labour Force Survey
MLSPP	Ministry of Labour and Social Protection of the Population of the Republic of Kazakhstan
MOE	Ministry of Education
NGO	Non-Governmental Organisation
NHDR	National Human Development Report
PPP	Purchasing Power Parity
PRSP	Poverty Reduction Strategy Paper
PSE	Preschool Education
PSEI	Preschool Educational Institution
PSIF	Public Social Insurance Fund
SCPP	State Center for Pension Payment
SSA	State Statistics Agency of the Republic of Tajikistan
thous.	thousands
TLSS	Tajikistan Living Standards Measurement Survey
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Fund for Children
USD	United States Dollar
WB	World Bank

I. National study on maternity protection and the childcare systems in Kazakhstan

1. Introduction/Summary

Kazakhstan has adopted key regulations relating to maternity protection within the framework of the Labour Code, laws “On Mandatory Social Insurance” and “On State Benefits to Families Having Children”. They ensure protection of the rights of pregnant women and persons involved in childcare related to labour and employment, and are aimed at creating working conditions that would contribute to work-family reconciliation. In addition, during the period 2003 to 2008, social insurance and state benefits systems related to maternity and childcare were introduced in Kazakhstan. They provide guaranteed opportunities for social support of childbirth and childcare both for working women in the formal sector, non-working women, and those employed in the informal sector. Additionally, the system obligating employers to pay maternity leave directly to the employees—which was often a disincentive for employers to hire women in their childbearing years—was eliminated. Therefore, conditions for implementing international standards became more favorable within the framework of the ILO convention concerning maternity protection (Maternity Protection Convention, 2000 (No.183) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Some provisions of Kazakhstan’s existing childcare legislation are based on a gender neutral approach that provides for the exercise of relevant rights by both men and women. First of all, it relates to opportunities for taking unpaid parental leave and eligibility for respective social insurance and state social benefits. Nevertheless, gender neutral provisions of the legislation have so far not contributed to generating more balanced work-family reconciliation practices between parents, or strengthening the role of men in families. At the same time, some more traditional provisions of the labour legislation remain, which suggest that childcare obligations are expected to be performed exclusively by the mother, and, only in her absence, by the father. For example, according to article 189 of the Labour Code, the child’s father has the right to insist that his employer establish a part-time work arrangement in such case when the child has no mother.

The study has shown that the involvement of relevant state bodies, trade unions, employers’ associations and non-governmental organisations, in promoting maternity protection and work-family balance, is still limited in Kazakhstan. This is mainly due to a lack of effective mechanisms in facilitating the involvement of relevant bodies. Under current conditions, many provisions of the national policies and legislation relating to the promotion of gender equality in the area of labour and employment remain declarative only. In view of the above, the report discusses general approaches on how to improve the present situation related to maternity protection and work and family reconciliation in Kazakhstan.

2. Overview of national laws, policies and programmes related to maternity protection

2.1. Main socio-demographic indicators in Kazakhstan

In recent years, Kazakhstan has been characterised by substantial population growth, mainly due to an increase in birth rate. Moreover, the percentage of children born out of wedlock remains rather high in the country – approximately 20%. Also, there has recently been a rapid increase in divorce during the first 4 years of married life. Since 2006, the ratio of divorces during the first 4 years of family life compared to the total number of divorces has increased from 27.1% in 2006 to 34.6% in 2010. During the divorce process, children in Kazakhstan normally stay with their mother, and only in very rare cases will they stay with their father. Accordingly, the share of single mothers with children under the age of three is gradually growing in Kazakhstan, currently standing at about 22–25% of the total number of women with children in this age group.

The statistics regarding employed women in Kazakhstan remain relatively high, with about 48% of the workforce being female. This attests to the continued trend of women not quitting work after they have children. A woman's average income remains essentially lower than a man's average income in Kazakhstan – approximately 65%. This accounts for the fact that, traditionally, men have predominately been in more well-paid sectors of the economy and in more highly-paid jobs. Although it should be noted that the average monthly wage is constantly growing in Kazakhstan, increasing from 40,790 tenge in 2006 to 69,764 tenge in 2010. For women, it grew from 30,984 tenge in 2006 to only 61,104 tenge in 2010.¹

Table 1. Main indicators in the area of demography, labour and employment

Indicator	2006	2007	2008	2009	2010	2011
Population size, thous.	15,396.9	15,571.5	15,776.5	16,036.1	16,442.0	16,675.4
Number of women, thous.	7,987.6	8,079.9	8,185.9	8,317.4	8,516	8,632.6
Number of children born to unmarried women, thous.	68.3	67.8	75.4	72.7	70.8	66.3
Ratio of children born to unmarried women to the total number of newborn children, %	22.7	21.1	21.1	20.3	19.3	17.8
Number of divorces during the first 4 years of married life, thous.	9.7	10.5	11.8	13.5	14.4	16.6
Ratio of divorces during the first 4 years of married life to the total number of divorces, %	27.1	29.1	32.8	34.2	34.6	37.0
Workforce, thous.	7,403.5	7,631.1	7,857.2	7,903.4	8,114.2	8,301.6
Share of employed women among employees, %	47.6	47.9	47.9	48.0	47.8	48.8
Average monthly wage for women across all sectors of economy, tenge	30,984	41,202	46,922	53,276	61,273	72,430
Ratio of a woman's wage to a man's wage, %	62.3	65.8	63.8	66.2	65.9	68.0

Source: Statistical Yearbook “Kazakhstan in 2010” and “Kazakhstan in 2011”; Statistical Book “Women and Men of Kazakhstan” (2010 and 2011), Agency for Statistics of the Republic of Kazakhstan.

¹ 2010 Statistical Book “Women and Men of Kazakhstan”, Agency for Statistics of the Republic of Kazakhstan, Astana, 2011.

The social security system in Kazakhstan with regard to maternity protection is supported by two main sources: the state budget and the mandatory social security contributions made by employers to the Public Social Insurance Fund (PSIF). The employees also contribute to the state benefits and allowances which include support for parents with family responsibilities. They are aimed at compensating for loss of income due to maternity and childcare, adoption of a newborn child (children), and caring for a child up to the age of one. Respective state benefits are paid from the state budget and benefits for needy families with children under the age of 18 are financed from local governmental budgets. Public social benefits paid from local budgets are allocated to families whose average per capita income is lower than the cost of the consumer basket (60% of the cost of living). Their amount is set at the level of one monthly calculation index, which, in 2010, amounted to 1,431 tenge and 1,512 tenge in 2011.

2.2. Legal framework and state support for maternity protection and childcare

2.2.1. Key legal, political and programme documents

The Republic of Kazakhstan ratified the International Covenant on Economic, Social and Cultural Rights in 2006. As a participant in the international legal regime of human rights protection established by this treaty, Kazakhstan is committed to ensuring equal rights of men and women to exercise all economic, social and cultural rights. Along with this, Kazakhstan ratified the UN Convention on the Elimination of All Forms of Discrimination against Women in 1998 and its Optional Protocol in 2001. Today, this convention represents a basic binding international legal instrument for the protection of women's rights, also in the sphere of labour and employment. Furthermore, the Republic of Kazakhstan has already ratified the following conventions adopted by the International Labour Organisation (ILO):

- Equal Remuneration Convention, 1951 (No.100) ratified in 2001;
- Discrimination (Employment and Occupation) Convention, 1958 (No.111), ratified in 1999;
- Maternity Protection Convention, 2000 (No.183), ratified in 2012 and
- Workers with Workers with Family Responsibilities Convention, 1981 (No.156), ratified in 2013.

The main national law of the Republic of Kazakhstan regulating the rights of persons with family responsibilities in the sphere of labour is the Labour Code, dated May 15, 2007. This law declares the prohibition of gender discrimination (Article 4 in relation to Paragraph 2 of Article 7) and under this law, women and other persons with family responsibilities receive improved social and legal protection. Also, the Labour Code includes a number of special provisions for workers with family responsibilities regarding their working conditions. In addition to that, maternity benefits and childcare benefits during an annual paid parental leave for working women in Kazakhstan are regulated by Law No. 405-II “On Mandatory Social Insurance”, dated April 25, 2003. Social support of persons with family responsibilities is funded by the state in accordance with Law No. 63-III “On State Benefits to Families Having Children”, dated June 28, 2005.²

Moreover, on December 8, 2009, Kazakhstan adopted Law No. 223–4 “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women”. The provisions of this law are of a general

² In this report, the benefits, allowances and grants related to maternity and childcare are described as follows:

- Maternity benefits: social insurance-based benefits given to working mothers during maternity leave instead of income which is financed by the PSIF;
- Birth grant: one-time state allowance, which is financed from the state budget, is provided to all women who give birth to a child/children
- Childcare benefits: social insurance-based benefits, which are financed by the PSIF, are provided to one of the parents up until the child reaches the age of one;
- State childcare benefits: childcare benefits (until the child reaches the age of one) are financed from the state budget to those who are not eligible to receive social insurance-based childcare benefits.

and declarative nature, in particular with regard to labour relations. They state that men and women shall be ensured equal rights and opportunities for entering into an employment agreement, and gaining access to job openings, professional development, re-training and career growth. This law again concedes the labour legislation's stance that social and legal protection of defined groups of workers, including women and other persons with family responsibilities, is not a measure of a discriminatory nature. However, there are no mechanisms for either implementing norms or provisions of this law or assuring gender equality in labour relations, so its provisions have no great importance for the law enforcement practice.

2.2.2. Maternity leave and maternity benefits

In accordance with the Labour Code, the following types of maternity and childcare leave are granted in Kazakhstan:

- paid maternity leave—Article 193 of the Labour Code;
- paid adoption leave for a newborn child—Article 194 of the Labour Code;
- unpaid parental leave (childcare leave)—Article 195 of the Labour Code.

Each of these three types of leave of absence has specified length, terms and conditions, and provides different opportunities for compensation of income while on leave. The provisions of the Labour Code on maternity leave are applicable to all women who have been participating in the social insurance system for a minimum of 24 calendar months without any exemption with regard to citizenship, field of activity, category of employment, etc. Parental leave is provided for both the adoption of a child under Article 194 of the Labour Code and childcare after maternity leave under Article 195 of the Labour Code. The scope of unpaid parental leave is not limited by gender and employment category, thus being applicable to all workers in the formal sector. Therefore, either parent can take time off from work for unpaid childcare leave until the child reaches the age of three, or take 56 calendar days when it concerns the adoption of a child. In both cases, parents can choose themselves who will take leave of absence.

Maternity leave, generally lasting a total of 126 calendar days, is only granted to mothers,. This includes 70 calendar days before confinement and 56 days afterwards, but they are calculated cumulatively. In practice, the length of maternity leave may also be increased by using paid annual leave. According to Article 192 of the Labour Code, such leave is granted by the employer at the request of the worker prior to or immediately after maternity leave.

A document of temporary incapacity is issued to a pregnant woman by an obstetrician-gynecologist, or in his/her absence, by a physician from the 30th week of pregnancy, and this serves as the basis for granting maternity leave. The issuance of this document is regulated by the rules approved by Order of the Minister of Health No. 556, dated October 23, 2009. Taking maternity leave is mandatory and the employer is obligated to grant this leave regardless of the employment conditions (full-time or part-time) prior to leave of absence. Traditionally, maternity leave is considered as a necessary rehabilitation process for the child's mother, and both pregnant and postnatal mothers are considered as being temporarily indisposed on medical grounds.

The above mentioned regular length of leave after giving birth (56 calendar days) is increased in case of obstructed labour, or the birth of two or more children. In these situations, leave after childbirth is extended to 14 days upon confirmation of a maternity welfare clinic's physician at the place of medical supervision. Consequently, the total length of maternity leave in the case of obstructed labour or the birth of two or more children is 140 calendar days. The length of this leave is also increased if the mother resides in a territory exposed to nuclear test impact. This mainly relates to residents near the Semipalatinsk nuclear test site that was shut down on August 29, 1991. Maternity leave for mothers in this area is provided from the 27th week of pregnancy and lasts 170 calendar days. In cases of ob-

structured labour or the birth of two or more children, leave of absence for these women is extended to 184 calendar days.

As regards adopting a newborn baby, 56 calendar days leave is granted. This usually relates to situations wherein a child is adopted directly from a maternity clinic. In order to obtain paid adoption leave, mothers are required to get a document of temporary incapacity issued by a medical organisation, together with a medical consultation commission certificate. Either the adopted child's mother or father may take paid parental leave. Leave extension (to more than 56 calendar days) is not provided for under Kazakh legislation in the case of adopting two or more children.

Nowadays, maternity leave settlement for working mothers and adoption parental leave for one of the working parents is funded by the mandatory social insurance system. These funds are raised via the employer's monthly social contributions to the PSIF. Maternity benefits from the PSIF are calculated on the basis of an average monthly income for the previous 12 calendar months during which mandatory social insurance contributions are made and the entire period of maternity leave is covered by maternity benefits. When calculating the amount of benefit, an average individual monthly income is multiplied by a set ratio. In the case of normal maternity leave (126 calendar days); the set ratio is fixed at 4.2. The same approach is applied when calculating social (benefits?) for an adopted newborn, but in this case a ratio of 1.9 is applied which corresponds to 56 calendar days of paid leave.

Maternity benefit is given only to the child's mother because one of the documents to be provided prior to taking leave of absence is documentation of temporary incapacity. This document may be issued to the child's father only in the case of the mother's demise at work or during the postnatal period. This is expressly stated in Paragraph 42 of Order of the Minister of Health No. 556, dated October 23, 2009. In the case of adopted children, social benefits during newborn childcare leave may be arranged for either the mother or father, and accordingly documentation of temporary disability may be arranged for either one of the adopting parent.

In addition, a one-time birth grant for the newborn child paid out of the state budget in Kazakhstan is applicable for both working and non-working mothers. The birth grant amounts to 30 minimum calculation indices for the first, second and third child, and in the case of a fourth child or more the grant increases to 50 minimum calculation indices. If a pregnant woman has had social insurance contributions for 24 calendar months before obtaining documentation of temporary incapacity, she is then allotted a birth grant as well as a maternity allowance. However, if a pregnant woman stops working earlier, for example by resigning or taking unpaid leave, she will lose the right to receive maternity benefits from the PSIF. Nevertheless, a pregnant woman still has the right to receive a one-time birth grant.

2.2.3. Parental leave and childcare benefits

In accordance with the labour legislation, parental leave shall be granted until the child has reached the age of three. There are two types of parental leave: paid and unpaid. The Labour Code specifies that the first year of parental leave is covered by the PSIP, whereas the second and third year of childcare leave are on an unpaid-basis. For those who are not eligible to receive social insurance-based childcare benefits, state childcare benefits financed from the state budget are paid until the child is one year old. Parental leave may be granted to either parent or to the grandmother, grandfather, or any relative or trustee designated to care for the child. It should be noted that childcare benefits related to paid parental leave are specified in the Law on Mandatory Social Insurance as compensation for loss of income.

Childcare benefits may be arranged for the child's mother or father out of the PSIP or respective state benefits up until the child reaches the age of one. Childcare benefits are provided to either parent who has taken paid parental leave. This especially relates to the mandatory social insurance system because relevant social benefits are defined in the Kazakh legislation as compensation for loss of in-

Table 2. Minimum monthly state childcare benefits

Monthly state childcare benefits	Monthly calculation indices	2010, in tenge	2011, in tenge
for the first child	5.5	8,316	8,890
for the second child	6.5	9,828	10,517
for the third child	7.5	11,340	12,135
for the fourth child and subsequent children	8.5	12,852	13,753

come for the reason of childcare. It is important to note that the child's father is entitled to part-time work upon consent of his employer only if the child has no mother.

The average monthly income for the last 24 months before maternity leave serves as a basis for calculating the amount of social insurance-based childcare benefits. Only that income against which social contributions were made is taken into consideration. Ultimately, monthly childcare benefit during a parental leave is set at

40% of the above average monthly income, and parental leave is paid from the moment the child is born. If two or more children are born, such monthly social payments are made for each individual child. The maximum childcare benefit paid by the PSIP per child may not exceed 4 minimum wages or 63,996 tenge for 2011. The minimum monthly childcare benefit depends on the number of children per working mother, but it may not be lower than the state childcare benefit. The state childcare benefit is calculated using minimum calculation indices by applying ratios based on the number of children.

The Labour Code establishes an employer's obligation to grant parental leave on the basis of a worker's written application. The leave may be used in full or for a limited period of time, i.e. it may be taken for a few months, one year, two years, etc. Additionally, women with children up to the age of three may be able to work on a part-time basis, having first sought permission from their employer.

For working women with children aged under 18 months, additional breaks for feeding their child (children) shall be provided by the employer according to Article 188 of the Labour Code. This should not be less than every three working hours, and the duration a minimum of thirty minutes in the case of one child, and not less than one hour for two or more children. Nursing breaks are included in the working mother's business hours. If the child has no mother, child (children) feeding breaks should be allotted to the father (or adopting father) until the child is 18 months of age. It is necessary to note that the Labour Code has no requirements for providing premises (amenities) for child feeding. Such requirements are kept to the standard of the obsolete Soviet era hygiene regulations. In practice, feeding breaks may be used for feeding children at home.

Until the child /adopted child has reached the age of three, a mother shall retain her position of employment whilst taking her entire maternity leave and parental leave. This period will also be included in her overall length of service. The same goes for the father, grandmother, grandfather, and other relative or trustee who is granted unpaid parental leave until the child has reached the age of three.

2.2.4. Opportunity and conditions relating to paternity leave

A child's father may be granted paternity leave in order to look after a child up to the age of three. In accordance with Article 195 of the Labour Code, parents may decide amongst themselves who will take parental leave. The father may also be granted paternity leave on the same conditions when caring for an adopted newborn child from a maternity clinic (56 calendar days). After giving birth (56 calendar days), the mother is only entitled to take maternity leave. Maternity leave is covered under Article 193 of the Labour Code, and documentation of temporary incapacity, issued only to a pregnant woman at the time of maternity leave, serves as the basis for such leave.

Although cases of parental leave taken by fathers is not common in Kazakhstan, individual cases do exist.³ There are a number of constraints on the child's father when taking paid parental leave any earlier

³ The rare cases known to the author of this report relate to situations in which a woman took paid maternity and childcare leave for the first year of the child's life, and the man took unpaid childcare leave following on from when the child was one until the age of three.

than that. The first simply relates to societal stereotypes, and the second to the fact that the social insurance system for income loss due to childcare in the first year of the child's life only came into effect on January 1, 2008 and has yet to take hold. Until recently, employers had only paid women for maternity leave, as stipulated by law, which meant that previously, fathers who took parental leave would have lost income without any compensation. The fact that men tend to earn a higher income than women also adds to the disincentive to taking time off. In addition, the state childcare benefit was paid until the child turned one, regardless of whether the child's mother was working during this period.

The mandatory social insurance system provides more opportunities for paternity leave. In principle, insurance-based childcare benefits can be paid to the child's father, and in many cases it is even more financially beneficial to make the child's father the recipient of benefits by using his higher social contributions into (from?) the PSIF. However, as indicated above, these payments are set in such cases as loss of income due to childcare. Therefore, if the practice of arranging insurance-based childcare benefits for fathers increases in the country, the fact that the person receiving the benefits must also be the one actually performing childcare obligations. This will undoubtedly be raised as an issue. In such cases, parents will be required to prove to the PSIF that the child's father did in fact terminate labour activity in order to undertake childcare obligations. It should be noted here that under labour legislation, a man with family responsibilities may acquire part-time work only if he is caring for the child without the mother. In addition, insurance-based childcare benefits are provided to a single father only when he is caring for the child.

Also, joint childcare after the birth of a child is not acknowledged in Kazakhstan. Maternity payments are arranged for the child's mother, and re-arranged for payment to the father only in the case of the mother's death during labour or in the postnatal period. Article 194 of the Labour Code grants childcare leave to only one parent for the entire childcare period established by the legislation. However, as regards adopted newborn children, the legislation expressly specifies that either parent can take leave and receive childcare benefits.

As far as the arrangement regarding one-time state birth grants and monthly childcare benefits during the child's first year is concerned, legislation provides such an opportunity for both the child's mother and father. Benefit rates only depend on the number of children in the family. This may be questioned in individual cases where the child's father also has children from previous marriages. For example, if a man has children from other marriages, then it is more likely that the children from the previous marriage will also be considered. However, for a woman in the same situation, both newborn benefits and childcare benefits will be provided, taking into consideration as well children from previous marriages.

Paid parental leave to care for a child up to the age of one and subsequent unpaid parental leave to look after a child aged from one to three is normally granted in Kazakhstan to one of the parents. Article 195 of the Labour Code expressly states that even unpaid parental leave, caring for a child up to the age of three, is granted to "either the mother or father of the child", i.e. to one of the parents. In ordinary cases, a joint or alternating parental leave for both parents is not provided for by any existing legislation. It is expected that such selection be made only once for the entire parental leave. At the same time, the Labour Code provides an opportunity for partial use of unpaid parental leave to care for a child up to the age of three. This usually means that shorter leave be taken. Additionally, Kazakhstan's legislation does not set a limit for the length of parental leave within the said three year period.

2.2.5. Other legislative measures on protection of persons with family responsibilities

Along with the above mentioned measures to grant maternity leave, parental leave, and feeding breaks, the Labour Code of Kazakhstan provides a number of additional measures to protect the rights of persons with family responsibilities relating to the following:

- Early termination of the employment agreement;
- Night work, working weekends and during public holidays;
- Overtime work;
- Rotation-based work;
- Secondment;
- Early recall from paid annual leave.

The most protected are pregnant women, who are (1) not to be dismissed on the grounds of staff reduction (Article 185 of the Labour Code); (2) not requested to be involved in night duties, overtime or rotation-based work, working weekends or during public holidays and (3) not to be sent on business trips, or recalled from annual leave earlier than expected (Paragraph 1 of Article 187 of the Labour Code). In addition, if an appropriate medical certificate is provided, the employer must assign the pregnant woman to another job with no exposure to harmful and/or hazardous production factors while still maintaining an average wage (Article 191 of the Labour Code). According to Article 185 of the Labour Code, various measures are provided to women with children under the age of three, single mothers caring for children under the age of 14 (under 18 in the case of disabled children). However, the legislations do not cover the rights of men with children and single fathers in that they are not entitled to these same measures given to women with children. Women with small children and single mothers with children may not be dismissed by the employer due to staff reduction. This right is extended to fathers caring for children under the age of 14 (under 18 in the case of disabled children). Additionally, mothers of children up to the age of seven (in the mother's absence – the father), and persons with disabled children needing to be looked after are not requested to engage in night duties, overtime or rotation-based work, or to be sent on secondment without their written consent (Paragraph 2 Article 187 of the Labour Code).

The Republic of Kazakhstan's law No. 149 "On Employment of the Population", dated January 23, 2001, defines single parents and parents with many children (4 or more children) under the age of 18 as one of the target groups for whom special measures to ensure employment are being implemented. Based on the aforesaid statutory regulation, local executive authority departments of employment and social programmes render services in order to facilitate employment of such target groups, including single mothers with children.

Together with the above mentioned legal measures, social support for needy families with children under the age of 18 is provided in Kazakhstan. In accordance with Law No. 63-III "On State Benefits to Families Having Children", dated June 25, 2005, those, whose per capita income is lower than the cost of the consumer basket, are paid a state benefit for each child under the age of 18. The monthly benefit rate amounted to 1 minimum calculation index (1,512 tenge in 2011). Also, schoolchildren of needy families are provided with school books out of the local budget, free meals at schools, and in some regions, free clothing and footwear. There are, however, no clearly established legislative guidelines to define "needy families", and in practice, children raised by single mothers may also be considered as such.

Currently, fee-based preschool childcare services, formed on the model of public and private nurseries and kindergartens, have been set up in Kazakhstan. The preschool facilities' and activities are regulated by the Standard Rules for Preschool Educational Organisations' Activity approved by Government Resolution No. 1353, dated December 21, 2004. In the 1990s, many public nurseries and kindergartens were shut down due to an expected decline in birth rate. However, in recent years, a number of nurseries and kindergartens have been reinstated in the country, including the creation of many private childcare organisations. Nevertheless, there remains a heavy deficit for places in public kindergartens in Almaty and Astana. Furthermore, there are still no kindergartens in many rural populated areas. The cost of services in private nurseries and

Table 3. Number and enrolment status of nurseries and kindergartens

Indicator	2005	2006	2007	2008	2009	2010	2011
Total number of nurseries and kindergartens	1,179	1,327	1,500	1,692	1,852	4,781	6,133
Number of children attending nurseries and kindergartens, thous.	185.3	207.8	232.9	257.1	274.9	390.8	489.4
Availability of nurseries and kindergartens, number of children per 100 places	102.6	105.3	108.0	107.5	106.3	104.9	104.3

Source: Statistical Book “Women and Men of Kazakhstan” (2010 and 2011), Agency for Statistics of the Republic of Kazakhstan

kindergartens is substantially higher (at least double or triple) than in public ones. In addition, a system of subsidies for children aged 5 and 6 is applied in public kindergartens only. Among other things, it is also a reason that more than 260,000 children were registered as those in need of public nurseries and kindergartens according to information from early 2010. In general, the number of children attending public and private nurseries and kindergartens was 38.7% of the number of preschool children in early 2010, and there were no nurseries or kindergartens at all in 69% of populated areas.⁴

2.2.6. National policy and programmes

Today, there is not a single document in Kazakhstan defining national policy for maternity protection and promotion of measures to ensure that men and women with underage children have the right to work. Measures provided by the Labour Code, and the laws “On Mandatory Social Insurance” and “On State Benefits to Families Having Children” are implemented on the basis of strategic plans of respective state authorities, including the Ministry of Labour and Social Protection of the Population and local executive bodies. The provisions of the Law on Employment of the Population are implemented based on the 2020 Employment Programme approved by Government Resolution No. 316, dated March 31, 2011. However, single parents and parents with many children are not mentioned in this programme document, whereas they are defined as one of the target groups in the Law on Employment of the Population. In order to support the initiative of employment creation for women, the Programme puts emphasis on the participation of women wishing to start their own business in rural areas. For this purpose, the state plans to grant microcredits, render consultation services, and give training in the fundamentals of entrepreneurship. Yet, the Action Plan to implement this 2020 Employment Programme needs to clearly reflect these priorities in order to improve the working conditions of women, including those with family responsibilities.

The main areas of Kazakhstan’s gender policy implementation are defined in the Strategy for Gender Equality in the Republic of Kazakhstan for 2006–2016 approved by Presidential Decree No. 1677, dated November 29, 2005. One of the six main directions of the gender policy strategic document being considered is to achieve gender equality in Kazakhstan’s economy, to further develop entrepreneurship among women, and improve women’s competitiveness in the labour market. The main challenges in this field are as follows:

- less competition in the labour market, especially for women with higher and vocational secondary education who are aged 45 and older;
- a high number of women employed in the informal sector and so-called self-employed women;
- lower pay for women which has varied from 60% to 70% of men’s pay over the last decade.

⁴ The “Balapan” Programme for 2010–2014 approved by Government Resolution No. 488, dated May 28, 2010.

State measures to ensure accessibility of nursery and kindergarten services in Kazakhstan are currently being implemented as part of the “Balapan” Programme for 2010–2014, approved by Government Resolution No. 488, dated May 28, 2010. Under this programme, new public nurseries and kindergartens are to be constructed, and a state subsidy granted to children aged 5 and 6 to attend kindergartens. With regard to such children attending public kindergartens, parents only pay for the cost of meals, while the cost of services for younger children incorporates childcare, facility maintenance, and public utility services.

In general, reports and statistical data on maternity benefits, childcare benefits, other state assistance, and services to promote employment of single families and families with many children, and childcare services based on nurseries and kindergartens are fairly accessible in Kazakhstan. They are posted on state authority websites, including those of the Ministry of Labour and Social Protection of the Population and local executive bodies. Much needed information is included in statistical reports available on the website of the Agency for Statistics.

At the same time, the available information about public services provided to families with children is a difficult reality which they have to face. For example, the 2010 Statistical Book “Women and Men of Kazakhstan” demonstrates that as of 2010 the availability of places in nurseries and kindergartens accounts for 106.3 children per 100 available places (see Table 3). These data are not compatible with the above-mentioned information which shows many parents being in need of nurseries and kindergartens as quoted in the “Balapan” Programme for 2010–2014. In reality, many of the places in private childcare facilities are not in high demand due to excessive cost. So far, no quantitative data are available in Kazakhstan regarding fathers who provide childcare services, including any childcare social benefits they receive, nor concerning single women and men looking after the children on their own. It may be concluded that the legislation and statistical records in Kazakhstan are based on the assumption that childcare obligations are performed by mothers and only in their absence—by fathers, grandmothers, grandfathers, and other relatives of the child.

3. Discussion of selected facts and data regarding the implementation of the existing maternity protection legislation and policies

3.1. State benefits for those working, previously unemployed and employed in the informal sector

As discussed above, two systems of providing childcare support exist in Kazakhstan: a mandatory social insurance-based system for those employed in the formal sector and a state-financed system for non-working or working mothers in the informal sector with no contribution records to the PSIF during the last 12–24 calendar months.

Migrant workers are considered as temporary migrants in that they have no right to obtain a residence permit on the grounds of carrying out labour activity in the country. Therefore, in accordance with Article 8 of the law “On Mandatory Social Insurance”, they may not participate in the mandatory social insurance system, as employers are not obligated to make social contributions to the PSIF on their behalf. Similarly, the law “On State Benefits to Families Having Children” covers only those citizens of Kazakhstan who permanently reside in the country’s territory and oralmans (ethnic repatriates).

With regard to maternity leave, maternity benefits for working women in Kazakhstan may substantially exceed the amount of social benefit provided to non-working women or women working in the informal sector and without paying mandatory social insurance. Among those who contribute to the system, the difference in the amount of benefit differs for those women who worked for more than one year prior to going on maternity leave and those who did not, ranges from 240% to 1,600%. For example, if a woman receives a wage equal to the amount of a legally established minimum wage during 12 calendar months prior to maternity leave, the maternity benefit in this case would increase approximately 1.4 times in comparison to the state benefit for the newborn child. It is still a fairly common practice in Kazakhstan to underclaim one’s income to the authorities, mainly to evade various types of tax and social contributions. Therefore, employees of small enterprises and entrepreneurs may pay social contributions based on the reduced amount of income, such as the minimum wage specified by the legislation.

As mentioned, non-working women who do not participate in the social insurance system have the right to a one-time birth grant and monthly state childcare benefits. Women employed in the informal sector are in almost the same situation due to the fact that employers often do not make any social contributions for them. This relates to many women employed in agriculture, housekeeping, and street trading. In these cases, the amount of one-time birth grants for the first, second and third child equals 30 minimum calculation indices (45,360 tenge for 2011). In addition, in the case of the first child, she receives a monthly childcare benefit amounting to 5.5 minimum calculation indices, or (8,316 tenge for 2011).. Thus, the amount of total state benefit normally provided to those who are unemployed or working in the informal sector, woman during leave of absence before and after birth, is approximately 60,000 tenge. The Kazakh legislation sets progressive amounts of maternity and childcare benefits depending on the number of children in a family in order to stimulate birth rate growth in the country. An increase in the amount of maternity and childcare benefits, with regard to the first and second child, also seems to be important in this respect.

Childcare benefits for working mothers and fathers (or the caretakers of the child) provided by the PSIF are set at 40% of their average monthly wage for the last 24 calendar months. The statistical data shown in Table 4 indicate that there is a small difference in childcare benefits between social insurance-based childcare benefits financed by the PSIF and state childcare benefits financed from the state budget. It is important to note that in both cases the average payments are less than the legally

established minimum wage. Therefore, a difference of 3,000–4,000 tenge for those employed in formal sectors is not that significant, for example, if compared to the average monthly wage of women in all sectors of economy.

The statistics show that even on average, working women received slightly more during childcare than those who did not previously work. In any case, the maximum monthly social insurance-based childcare benefits for a working woman is limited to four minimum wages regardless of the amount of insurance contributions during the previous employment period.

3.2. Combining employment and paid parental leave

Currently, many women in Kazakhstan go back to work before their parental leave expires. During this period, a grandmother, grandfather, unemployed father or other relatives help them care for the children. Unfortunately, there are no statistical data on such early resumption of work by women in Kazakhstan. State childcare benefits are provided regardless of employment status so that women may be able to continue receiving these benefits in addition to their income. It is necessary to note here that going back to work is not specified among the reasons to stop the payment of state childcare benefits stipulated in Paragraph 1 of Article 11 of the law “On State Benefits to Families Having Children”. Also, Paragraph 10 of the Rules for charging and paying state benefits to families having children, approved by Government Resolution No. 1092, dated November 2, 2005, states that childcare benefits shall be fixed regardless of the family’s income. This means that there is no legal basis to deprive women who have returned to work of state childcare benefits.

Table 4. Data on childcare benefits

Type of payment per child	2008	2009	2010	2011
Average monthly childcare benefits (contribution-based) to working mothers, in tenge	9,403	10,884	13,357	14,736
Social childcare benefits to non-working mothers, in tenge	5,840	6,365	7,772	8,316

Source: Statistical Book “Women and Men of Kazakhstan” (2010 and 2011), Agency for Statistics of the Republic of Kazakhstan

A slightly different situation has emerged in the case of receiving social insurance-based childcare benefits. In the legislation, it is stated that these benefits relate to a social risk of loss of income due to childcare until the child turns one. This raises several questions: Does a working mother reserve the right to receive insurance-based childcare benefits while engaging in full-time employment? Is it necessary

to take into consideration that benefits amount to 40% of the average monthly wage for the previous 24 calendar months, i.e. not the full previous wage amount? Does this mean that such workers should be employed on a part-time basis so that they do not lose the right to insurance-based childcare benefits? The answers to all these questions depend on the main purpose of childcare benefits: whether insurance-based childcare benefits are meant to compensate loss of income in the case of extended childcare leave or to supplement income, like “family benefits” as known in some other countries, to help towards the financial cost for having children. If childcare benefits are meant to provide additional support income for childcare purposes, the entitlement of childcare benefits should not be affected by the employment status. Also, in many countries, the entitlement of childcare benefits is also linked to the amount of household income, meaning that high income-earners are not eligible for childcare benefits.

3.3. Effects of maternity protection requirements on employment and job opportunities during maternity and childcare leave

Before 2003, maternity and childcare benefits during maternity and childcare leave were under full responsibility of the employer in Kazakhstan. Since then, one-time state birth grants have been

introduced, and as of July 1, 2006, monthly childcare benefits have also been added for the child up until the age of one. Furthermore, as of January 1, 2008, the maternity and childcare benefit system came into effect. Under these new conditions, the employer's burden has been eased and the new system has gradually been contributing towards reducing the discriminatory dismissal of women due to incidents of pregnancy and childbirth. Also, employers are not obliged to lower women's salaries for the purpose of saving extra funds to compensate for their salaries during maternity leave. Articles 8 and 9 of C183 define the standards on employment protection and non-discrimination during pregnancy, maternity leave and maternity-related sick leave periods, including dismissal and access to employment.

Now that this social problem has been solved in the case of formal employment, the employer is interested in using the social insurance-based maternity and childcare benefit systems (based on the employer's contributions to the social insurance fund) in order to make up for the salary of employees who are on maternity/childcare leave.

In the Kazakh legislation, it is stipulated that pregnant women are prohibited from engaging in night work, overtime and rotation-based work, duties at weekends and public holidays, and being sent on secondment. Article 3 of C183 defines the conditions of health protection for pregnant and breast-feeding women so that they are not obliged to perform duties which are considered to be prejudicial or significantly detrimental to the health of the mother or child. However, working overtime and working on weekends are still observed both in public and private sectors and pregnant women are not an exception. It also largely accounts for the previously established employer-worker relationship under which many pregnant women were interested in continuing to work as long as possible during their pregnancy, mainly for financial reasons. As for rotation-based work in Kazakhstan, employees are often comparatively well-paid, for example, in the oil and gas sector. Therefore, the inability to use pregnant women in rotation-based work may not be a big problem from the employer's perspective. Furthermore, there may be the issue of ensuring alternative employment for pregnant women.

Apart from the ratification of C183, the main improvement of a pregnant working woman's status in recent years is that, now, whilst working in the formal sector, they receive a relatively high amount of maternity benefit as a lumpsum when they obtain the documentation for incapacity and take maternity leave, i.e. from the 30th week of pregnancy. This allows them not to necessarily continue working until the last days of pregnancy, which previously was common practice. Of course, this practice does not apply to informal employment due to the fact that pregnant women, whilst working in the informal sector, only receive the state birth grant once having given birth. Accordingly, when working under informal employment terms, pregnant women often continue to work until the last stages of pregnancy due to lack of social protection providing supporting income during maternity leave.

If women or men combine employment and childcare, the need to provide feeding breaks and part-time employment (part-time work) as required by the worker can be considered as a serious concern for employers. In the case of large companies, such requirements are often met, but for employees of small companies or individual entrepreneurs, it is more likely that the employer will consider it impossible to provide such a flexible work schedule. In such situations, many of them may refuse to provide employment opportunities if the child's mother receives insurance-based childcare benefits. It is not legitimate but it is sometimes observed that women are refused the right to return to work after paid and unpaid maternity and childcare leave. Of course, this is more typical in small companies or with individual entrepreneurs than in larger companies.⁵

⁵ During an interview with an attorney specialising in the protection of women's rights, it was mentioned that women in such cases often prefer not to take up court proceedings to appeal against the decisions of their employer. This is also confirmed by the lacking evidence of regional court proceedings to reinstate employees into previous positions.

According to the results of an interview conducted with an attorney specialising in the protection of women's rights, there are discriminatory practices with employment of women. While conducting interviews with women employers often ask questions relating to whether or not the female candidate has any young children requiring childcare. This relates back to the fact that in Kazakhstan, caring for children remains primarily the responsibility of the mother, and accordingly, many women with young children frequently take days off when their children become sick, or when the mothers cannot work overtime. For this reason, employers sometime prefer not to hire women with preschool aged children.

3.4. Increasing choice and flexibility in maternity protection and employment

The recent development in the social security system in Kazakhstan provides more opportunities for maternity protection and employment for persons with family responsibilities. It also contributes to work-family reconciliation opportunities for the father and mother provided by the Labour Code. The current social insurance system provides partial compensation (40%) of one's previous income during the child's first year in the case of taking childcare leave. At the same time, the Labour Code has yet to suggest granting unpaid childcare leave or part-time employment for the father during the period when respective benefits can be received by the child's mother. Legislation provides for such an option, but there are no flexible terms for simultaneous handling of childcare obligations by both parents.

In addition, due to limited amounts of income compensation provided by childcare benefits, many people return to work or start new jobs before the child reaches the age of one. This is particularly applicable for high-income earners who tend to go back to work after hiring babysitters instead of receiving insurance-based childcare benefits and taking care of the children themselves.

One of Kazakhstan's specific features related to maternity protection is the very active involvement of grandmothers and grandfathers in childcare. This is commonly observed in other CIS countries also. Their involvement varies from family to family, but for many young parents they play the role of a free childcare service provider. This has been specifically reflected in Article 195 of the Labour Code, under which employers are obligated to grant unpaid parental leave to grandmothers or grandfathers who actually provide care for a grandchild. Their provision of childcare is especially important in cases of single mothers and fathers, unavailability of nurseries and kindergartens, and for cases when the mother returns to part-time or full-time work before the child reaches the age of one.

4. Involvement of various actors in policy implementation

Policies relating to maternity protection and childcare are now established in Kazakhstan, first and foremost, through protecting the rights of pregnant women, women and other persons with family responsibilities by providing them with social insurance benefits or state benefits. Hence, one of the key actors in this sphere in Kazakhstan is the Ministry of Labour and Social Protection of the Population (MLSP). Some of the main tasks of this ministry are to create state policies, and effect intersectoral coordination and state governance in the sphere of labour, safety and labour protection, employment, social security of the population, and mandatory social insurance. Working pregnant women and women/men with children, are viewed by the MLSP as major groups needing special protection with regard to safety and labour protection and working conditions. Also, the MLSP is in charge of planning social security and social protection measures on national level, including issues such as social insurance and social assistance to women on maternity leave and persons involved in childcare.

Social benefits and services are arranged by the MLSP through the PSIF and State Center for Pension Payment (SCPP). The PSIF accumulates employers' contributions of the social insurance contribution for the workers, including maternity and childcare up to the age of one. The SCPP makes mandatory social insurance benefits and state social benefits. The SCPP has branches in Almaty and Astana, and in all regions of Kazakhstan. The types of payments conducted by the SCPP include the following:

- Maternity benefits, benefits for newborn adopted children (resources of the PSIF);
- Childcare benefits for children up to the age of one (resources of the PSIF);
- State birth grants for newborn children (state budget resources);
- State childcare benefits for children up to the age of one (state budget resources).

State benefits paid out of the state budget are charged by regional departments of the Committee for Control and Social Protection of the Population of the MLSP.

Along with the MLSP, PSIF and SCPP, it is also necessary to mention the role of local executive bodies. Key departments in their structure are employment and social programme departments and they provide employment services and charge and pay benefits, which are allocated from local budgets, for children under the age of 18 to needy families. In addition, educational departments of local executive bodies ensure the construction of new nurseries and kindergartens, and also give social assistance to children from needy families, providing them with school books, meals, clothing and footwear.

Monitoring compliance with regard to the requirements for maternity protection set out in the labour legislation is done by the Committee for Control and Social Protection of the Population of the MLSP. These functions are performed by regional department state labour inspectors (regions including the cities of Almaty and Astana) of this Committee. For the purpose of monitoring compliance with legislation relating to working conditions, safety and labour protection of pregnant women, women and other persons with family responsibilities, labour inspectors carry out inspections according to approved plans (scheduled checks). They may also carry out spot checks at the request of individuals and legal entities, and state authorities in cases of non-compliance with safety and labour protection requirements (unscheduled checks). Currently, no available updated data, which would allow the evaluation on how to comply with the legislation on labour conditions and the protection of women and other persons with family responsibilities, is being monitored in Kazakhstan.

Promotion of gender equality refers first of all to the competence of the National Commission for Women Affairs and Family-Demographic Policy, which is a consultative-advisory body under the

President of Kazakhstan. One of the affirmed main goals of this Commission is to promote women's competitiveness in the labour market and achieve equal opportunities for women in family relationships. The 2009–2010 Action Plan to be implemented by this Commission provides for annual consolidation of the practice of applying legislation aimed at protecting women's rights in the field of labour. The General Prosecutor's Office is specified as being responsible for implementing this measure.

The largest association of trade unions in the country is the Federation of Trade Unions of the Republic of Kazakhstan. It consists of 26 republican sectoral trade unions, 14 regional associations and the Trade Union Confederation of Astana. They include primary, district, city and regional trade union organisations. One of the Federation's tasks is public monitoring of the employer in compliance with the labour protection requirements. Public monitoring by trade unions covers compliance with the requirements for labour and working conditions for women with family responsibilities. In late 2010, the Commission for Working Women Affairs was established under the Federation of Trade Unions, and the establishment of such commissions is being considered at various levels of the organisation (regional, city, primary trade unions). One of the agreed tasks of this Commission is to improve legislation and arrange public monitoring of compliance relating to women, maternity, child labour and health protection.

Today, a number of entrepreneurs and employers' associations have been created and are operating in Kazakhstan: the Employers' Confederation of the Republic of Kazakhstan, the "Atameken Union" National Economic Chamber, Eurasian Industrial Association, and Kazakhstan's Manufacturers and Exporters' Union. First, it is necessary to mention that an updated role for employers' associations in relation to maternity protection has not been clearly defined. The insurance payment system for maternity, childcare for children aged under one year was introduced in Kazakhstan effective from January 1, 2008, and as mentioned above, the PSIF resources are generated out of employers' contributions. Currently, maternity and insurance-based childcare benefits are paid by the employers to the PSIF and many employers consider that their maternity protection obligations are fulfilled to a large extent. The existing General Agreement for 2009–2011 provides for the implementation of measures aimed at "ensuring maternity and childhood protection and women's social support, solving gender problems in the area of socio-labour relationships, and eliminating employment discrimination against women". In principle, these provisions may be then implemented as part of collective agreements entered into between employers and trade unions. However, the approach that employers and trade unions should take to implement the above provisions of the General Agreement in the conditions of compulsory social insurance system availability has yet to be elaborated.

Civil society organisations in Kazakhstan working on women's topics often specialise in raising awareness, consultation work, training and micro-crediting. Their activity is largely focused on socially vulnerable groups (trafficking, victims of domestic violence, female migrant workers, disabled children's families, etc.). Also, a number of NGOs deal with women's entrepreneurship development in the country, especially in rural areas. Pregnant women and women attending to small children, generally fall out of the focus of these organisations because they are often more bound up in household life. In addition, due to an abrupt reduction in scholarship programmes provided by international organisations and overseas sponsoring organisations, in recent years most NGOs in Kazakhstan have ceased operation, or implement only small projects, often without any continuity and consistency in their activity.

5. Conclusion

The ILO study on youth employment in Kazakhstan conducted in 2006–2007⁶ confirmed that disparity between men and women in the labour market first starts while the woman looks after her young children. Accordingly, a gender sensitive approach to childcare should focus on expenses and workload related to respective family responsibilities, being shared in a more reasonable way by the child's father and mother. This means that legislation should not be limited to a declared option with regard to who will take up the childcare burden (mother or father). The legislation needs to be flexible in order for each parent to jointly handle family responsibilities. In the context of Kazakhstan, it is important that the main employment terms applicable during childcare are not only limited to mothers but could also be used by fathers performing respective family obligations. This relates to opportunities for arranging insurance-based childcare benefits for a child's father, and granting both parents the right to work part-time. Also, it is important to encourage men to take a more active role in looking after children, and prepare some relevant performance indicators into the policies on gender equality. Additionally, a paradigm shift from the traditional perception of women as “caregivers” and men as “breadwinners” needs to be introduced into school educational programmes.

The insurance-based childcare benefit system needs to give men and women opportunities to concurrently undertake full-time or part-time employment options while receiving benefits. This is extremely important for single parents caring for small children. The statistical data given in this report show a high percentage of unmarried and single women caring for children in Kazakhstan. Therefore, national policy and legislation need to take into account the specific features of the childcare situation in Kazakhstan. The proposed measures include a strong legal enforcement of non-discrimination principles related to employment, the creation of an effective mechanism for their implementation through state labour inspection and NGOs protection of women's employment rights, and the implementation of judicial and administrative procedures for protecting those rights. For example, the Government could develop a system of subsidies for single low-income parents in order to make childcare services more affordable for them. So far, available subsidies only address the 5–6 year old age group in an effort to encourage their attendance at kindergartens for preschool education.

The state efforts aimed at improving the demographic situation should not only be limited to measures on childbirth. More feasible options for parents to provide care for their children shall be provided by improving more flexible working conditions. Relevant standards could be promoted in accordance with the principles stipulated in the ILO Convention No. 156, social partnership agreements, collective agreements, trade unions, and mass media as a constituent of business social responsibility. As a first step, specific provisions for workers with small children could be elaborated in a general tripartite agreement on social partnership for future periods, e.g. on measures for providing part-time employment and work places with a flexible work schedule for single parents with small children. This could serve as a basis for specifying and introducing relevant provisions in collective agreements between employers and representatives of workers.

One of the main obstacles for promoting childcare, based on a more equitable distribution of respective family responsibilities between the father and mother, is stereotypes existing both in society overall and the family unit. Although taking paternity leave is still rare, it is only taken under exclusive circumstances. Undoubtedly, in this context, it is necessary to review the legislative provisions anticipating the handling of childcare obligations by the child's father only in the absence of a mother. Other behavioral model samples in society and the family may be promoted with the help of edifying work in the educational system and mass media.

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II. National study on maternity protection and the childcare system in Tajikistan

1. Introduction¹

Several international standards, such as the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) provide its members with guidelines on how to ensure maternity protection with a focus on the resolution of work and family conflict.² It should be mentioned that Tajikistan, a party to CEDAW, ratified the ILO's Convention on maternity protection (revised), 1952, (No.103) and is currently facilitating the process of ratifying the Maternity Protection Convention, 2000 (No.183).³ The Labour legislation of Tajikistan follows a protectionist approach towards women and focuses on safeguarding reproductive functions of women.⁴ The maternity protection legislation of Tajikistan applies this approach as well. Although these provisions are beneficial to women, they may negatively affect the role of women in economic activities and reinforce existing stereotypes of women as the only care-givers. Currently, Tajik women are in a less favourable position on the labour market compared to men, due to the fact that they mostly work in low paid sectors like agriculture, health and education. There is no reliable data as regards the quantitative estimation of informal employment of women in Tajikistan. However, since the majority of women work in the agricultural sector, where informal employment is a common practice, it could be pointed out that most women working in this sector are informally employed. In this situation, they are particularly vulnerable in terms of receiving guarantees before and after the confinement period, including access to social security benefits related to maternity. Special protection measures established for women by the legislation may also influence women's employment in the formal sector. Additional responsibilities of the employer ensuring the compliance with the requirements of the labour legislation may result in the unwillingness to sign employment contracts with women. In this respect, the national legislation should reflect, on the one hand, changes that have taken place in social and economic situations and, on the other hand, a new role which women have to assume in the current state of affairs. These changes would be necessary in order to ensure that work and family responsibilities do not affect women's economic activities and encourage men to assume family responsibilities. Thus, it should progressively move from a protectionist approach to an egalitarian approach.

This study consists of the following sections: the introduction provides general remarks on maternity protection in Tajikistan and a description of the methodology used in this study. Chapter 2 draws attention to the country's social and demographic situation, followed by the general introduction to the social security system and maternity protection measures. The same chapter explains the provisions of the labour legislation on granting women with guarantees before and after the confinement period and other employment guarantees for women and men during child-caring period. Chapter 2 also depicts the situation regarding child care facilities in Tajikistan as family-friendly measure. In chapter 3, the findings of the review and a general assessment of the implementation of the policies are discussed. Chapter 4 focuses on the implications of the policy on maternity protection and also touches upon the responsibilities of governmental bodies, trade unions and associations of employers with regard to maternity protection. Finally, concluding remarks are presented in the final chapter in order to give a summary of the recommended actions to improve the situation under review.

¹ Comments provided by Mariko Ouchi, Koh Miyaoi and Laura Addati are gratefully acknowledged.

² In the CEDAW, Article 11 establishes an obligation to foster maternity protection and ILO instruments (C3, C103 and C183).

³ Decent Work Country Programme between Tajikistan and the ILO for 2011–2013.

⁴ De Silva De Alwis R. (2009), *Advancing Equal Rights for Women and Girls: The Status of CEDAW Legislative Compliance in Eastern Europe and Central Asia*, p. 21.

2. Overview of national laws, policies and programmes related to maternity protection

2.1. Socio-demographic information

Tajikistan is a country that, after the collapse of the Soviet Union and the civil war, strives for developing and establishing a stable market economy. Several reforms are ongoing in the economic sector in order to establish a favourable environment for small and medium businesses to grow and to increase investments in the Tajik economy. Gender mainstreaming in economic reforms is poorly applied despite the fact that more and more women are entering the labour market. The current level of unemployment and labour migration of men have altered traditional roles of men as breadwinners and women as housewives. Male labour migration has adverse affect on women and children being left behind. Left without husbands and any financial support, women have to assume full responsibility for running the household and family.⁵ Moreover, their legal literacy is very low and they are mostly unaware of their legal rights, Tajik legislation and procedures.⁶ In this respect, women are forced to do low income generating activities, such as working in the *dekhkan* farms and engaging in entrepreneurial activities. They work at home sewing national clothes or cook food to sell afterwards etc.⁷ Cotton growing and aluminium constitute the main source of the country's income. Though there has been a steady growth of Gross Domestic Product (GDP) since 2003 until the financial crisis started, approximately 53% of the population still remains

Box 1. What is poverty in Tajikistan?

The TLSS-2007 for estimating poverty was based on the absolute poverty line that was derived by using the Cost of Basic Needs approach, and is equal to 139 Somoni per month (while the value of the Purchasing Power Parity (PPP) US\$2.15 poverty line is equal to 120 Somoni).

Source: World Bank (2009), Poverty Assessment in the Republic of Tajikistan, p.15.

poor.⁸ There is a steady trend of feminisation of poverty. In 2003, both men- and women-headed households were almost at the same level of poverty. However, in 2007, 57.2% of female-headed households were poorer, compared to 52.8% of men-headed households.⁹ National statistics do not provide any data on the number of female-headed households; however, according to the estimations of the World Bank (WB), every second household in Tajikistan is headed by women. The Tajikistan Living Standards Measurement Survey (TLSS) –2007 states that every fifth household in Tajikistan is headed by women.¹⁰

The data of 2009 shows that the total population of Tajikistan is 7.37 million compared to 6.78 million in 2005. The majority of the population resides in rural areas and women constitute 49.8% of the total population. Although the rate of the population growth increases by 2.2% every year, the number of women in the total population has stayed at the same level since 2005. The difference between the number of women and men indicates a higher number of male births compared to female births. However, due to high mortality rates among boys by the age of 25–30 years, the number of women

⁵ International Organisation on Migration (IOM) (2009), Abandoned Wives of Labour Migrants, p. 6.

⁶ Ibid, p. 7.

⁷ Khegai, M (2010), Gender Analysis of the Programme on Improvement of Entrepreneurship “200 days of reform”, p. 8.

⁸ State Statistics Agency of Tajikistan (SSA) & UNICEF (2007), TLSS, p. 28.

⁹ Ibid.

¹⁰ UNDP (2010), National Human Development Report: Employment in the Context of Human Development, p. 177.

and men reaches equal levels.¹¹ By the age of 85, the number of women is twice more compared to the number of men.¹² The fertility rate of 3.5 hasn't changed significantly since 2005 though the number of births per 1,000 women in rural areas has been higher in comparison with urban areas. This indicates that the rural population still follows the traditional pattern of having a large family. Still, a high rate of population growth and fertility rate result in a high proportion of the young population entering into the labour market that is characterised by a lack of employment opportunities within the country. In this context, labour migration is one of the alternatives to employ the population and a strategy to reduce poverty.

There is a notable reduction of economic activity among male and female workers of any age. According to the Labour Force Survey conducted in 2009 (LFS-2009), the economic activity of the population reduced by 3.9% compared to 2004 and reached 51.2%. This decrease is mainly due to a reduction in employment among women. The impact of the financial crisis and limited opportunities for opening new working places are other reasons for reducing the economic activity of the population.

A decrease in the economic activity of women since 2004 has been striking. LFS-2004 indicated that 77.8% of women were economically active. By 2009 women's economic activity fell by 20% and reached 55.4%. The same indicator for men was 77.8% in 2004 and 72.2% in 2009 respectively.¹³ The reduced economic activity of women is explained by a high concentration of female labour in the agricultural sector which is poorly developing due to an increased import of agricultural products and unfavourable conditions for farming development in Tajikistan.¹⁴ Employment of men is twice more compared to women. LFS-2009 data indicates that employment of women was 33.9% compared to 45% for men. Women have less employment opportunities due to child deliveries associated with high birth rates. Large families with many children prevent mothers from going to work. Mothers in these families do not work or they are employed in unskilled labour.¹⁵ Women work primarily in low paid jobs like agriculture, health and education. It is said that about 82.5% of employed women work in these sectors. It should also be mentioned that the marital status of women impacts their employment status. Among married women only 36% are working. The employment rate among divorced, separated and widowed women varies from 72–81%.¹⁶

The assessment of informal employment of women is hampered by the lack of a definition of informal employment and a respective lack of reliable sex-disaggregated data. For instance, LFS-2009

Box 2. Self-employment

Group of self-employed includes the following (i) individual employers (that are using hired labour); (ii) individual entrepreneurs working alone or engaging members of their families without pay; members of productive cooperatives; (iii) unpaid workers of family enterprises (helpers-family members); (iv) persons producing goods and services for personal consumption or consumption in the household if produced goods and services constitute a significant part of the consumption of stock of their families.

Source: Resolution of the 15th International Conference on Labour Statistics (1993) as cited in the UNDP (2010), National Human Development Report "Employment in the Context of Human Development, p. 75.

¹¹ The infant mortality rate among boys is approximately 10–15 deaths per 1,000 live births, which is higher than among girls (TLSS, 2007, p. 60).

¹² SSA (2010), Women and Men in Tajikistan: Compendium of Statistics, pp. 23–25.

¹³ SSA (2009), Situation in the Labour Market in the Republic of Tajikistan: Results of the Labour Force Survey for the period of June-July 2009, p. 85.

¹⁴ High taxes, social payment, maintenance costs and low income are amongst the reasons for the poor development of the Tajik agricultural sector (TLSS, p. 85).

¹⁵ SSA, UNICEF (2007), TLSS, pp. 89–90.

¹⁶ Ibid, p. 91.

Box 3. Dekhkan Farms

Concentration of women working in agriculture and the ongoing increasing trend of women working in this sector are alarming due to the fact that this sector is one of the most low-paid sectors. The majority of women working in this sector are neither holders of the right to land nor members of *dekhkan* farms. *Dekhkan* farm is an independent entity engaged in entrepreneurial activity that is based on the work of the individual, the member of one family or group of individuals and on the plot of land and other property that belongs to its members. Most of the women working in this sector are not formally employed and neither are they aware of their rights as members of *dekhkan* farms. *Dekhkan* farms function under the Law of the Republic of Tajikistan on *Dekhkan* Farms adopted in 2009 (Law). The Law specifies that *dekhkan* farms can be of three kinds, i.e. (i) individual *dekhkan* farm that is established by the individual entrepreneur; (ii) family *dekhkan* farm that is an entrepreneurship of the family and is based on common property; (iii) partnership, whereby a *dekhkan* farm is established by shares and whose activities are governed by the contract on joint activities. *Dekhkan* farm doesn't have a status of a legal entity; however, members of *dekhkan* farms and individual *dekhkan* farms can establish a partnership of *dekhkan* farms or productive (agricultural) cooperatives that can have a status of a legal entity. Parents, spouses, children and other capable people engaged in joint work on the farm are members of the *dekhkan* farms. Their membership is registered in the book of labour records (*trudovaya knijka*) and in the contract on joint activities of members of *dekhkan* farms. Workers hired in accordance with the provisions of the Labour Code are not members of *dekhkan* farms, but employees. Therefore, their relationship with the *dekhkan* farm is governed by the Labour Code. Members of *dekhkan* farms are subject to state social insurance. Social insurance contributions shall be paid from a wage fund of the *dekhkan* farm. Members of *dekhkan* farm in the event of a temporary inability to work shall be provided with relevant benefits and payments in accordance with the relevant legislation.

included to informal employment entrepreneurial and individual activities in small businesses and non-registered small businesses and works performed without concluding the employment contract in writing or work with no leave, sick leave and social benefits.¹⁷ Other experts, like Maltseva and Khagai, include to informal employment work related to women's households, small businesses and hired labour in non-registered businesses.¹⁸ Nevertheless, both sources (LFS and Maltseva & Khagai) agree that informal employment of women negatively affects them due to the fact that it gives insecure employment and poor social security coverage, violation of labour standards prescribed by the Labour Code, low salary, lack of pensions and limited opportunities for developing and investing in human capital.¹⁹ LFS-2009 provides some quantitative estimations of informal employment though this data is not aggregated by sex. This means that about 49% of workers are employed in the informal sector compared to 51% of workers in the formal sector. 77% of workers were self-employed. In the formal sector, 9% of workers didn't conclude the employment contract in writing, thus not being entitled to any leave, social benefits and pensions. Informal employment is attributed to retail and trade (95.3% of all workers in this sector), construction works (91.2%), hotels and restaurants (81%), transport (70.8%), non-governmental organisations (69.1%) and youth employment in general.

¹⁷ SSA, UNICEF (2007), TLSS, pp. 91–92.

¹⁸ Maltseva, I (2007), Gender Equality in the Sphere of Employment in Tajikistan, 2007, p. 11; Khagai, M (2010) Gender Analysis of the Programme on Improvement of Entrepreneurship "200 days of reform", p. 32.

¹⁹ Ibid.

LFS-2009 suggests that informal employment is higher among men, 60.4%, compared to women, 37.4% respectively. However, this estimation doesn't take into account the employment of women in the agricultural sector where informal employment is a common practice.²⁰

The social security system of Tajikistan is a legacy of the Soviet Tajik era. This system includes social insurance, social assistance or cash and in kind benefits, including a range of social services such as child care facilities, free medical assistance, subsidies for covering housing, communal payments and maternity leave.²¹ Access to these services and benefits was mainly through labour activities providing employment to the whole population. The current situation on the labour market and the growth of the population contribute to the increasing demand for social security and social services. In addition to pensioners and disabled people, low paid workers, large families, or families that lost main breadwinners constitute the group of the poor, the vulnerable and the unprotected requiring social protection. The crisis of social security negatively affected women in view of their reliance on cash benefits and services (maternity leave, maternity and child care benefits, child care facilities). The current reforms of the social security system comprise of three areas: the reform of social insurance, the reform of social assistance (services) and the reform of the social care system.²² The system of state social insurance is meant to provide social security to insured persons who lost their income due to several reasons including pregnancy and deliveries. The social security is based on the mandatory social security taxes paid by the employer and the employee.²³ In Article 5 of the Law on State Social Insurance (1997), a scope of the application of state social insurance was provided. It says that state social insurance covers all individuals employed under labour contracts working in enterprises, institutions and organisations regardless of property (public, private) and legal status, individuals and members or shareholders of the enterprises.²⁴ Thus, the condition of accessing the state social insurance is the employment contract for employees and the payment of social taxes for all categories of people engaged in economic activities (employees, employers, members and shareholders of the enterprises).

Concerning maternity protection, several benefits have been established: 1) maternity benefit during maternity leave; 2) monthly child care benefits; 3) lump-sum benefit once a child has been born. Benefits should be paid by the employer. If parents are not employed, they are entitled to a lump-sum benefit once a child has been born and monthly child care benefits. These benefits should be paid by the departments of social protection if both parents are neither working nor studying.²⁵ Insured persons (women and men) engaged in individual entrepreneurial activity are also entitled to family benefits, which are to be paid by the social protection bodies.²⁶ The same provision specifies that there should be a special procedure developed and adopted by the Government of Tajikistan on the payment of family benefits to individual entrepreneurs. In 2011, this regulation was adopted by the Government of Tajikistan²⁷ in order to clarify the procedure of tracking the insurance record²⁸

²⁰ National Programme on the Labour Market Development till 2020.

²¹ Asian Development Bank (ADB) (2005), *Reconstructing Social Protection Sector*, Factsheet; Kobzar, E (2007), *Gender Equality in Social Protection Sector*, p. 4.

²² Summarised from Kobzar, E (2007), *Gender Equality in Social Protection Sector*, pp. 4–5.

²³ The Law of the Republic of Tajikistan on State Social Insurance, 1997, article 1.

²⁴ *Ibid*, article 5.

²⁵ The Law of the Republic of Tajikistan on State Social Insurance, 1997, article 14.

²⁶ *Ibid*, article 16.1.

²⁷ Rules on the Assignment and Payment of Social Benefits to Individual Employers adopted by the Resolution of the Government of the Republic of Tajikistan #117 on 3 March 2011.

²⁸ Insurance record implies the period of time during entrepreneurial activities when social tax was paid.

²⁹ This regulation covers individual entrepreneurs undertaking their activities based on the receipt of the certificate and patent.

of individual entrepreneurs²⁹ and confirm the access to social insurance. The problem of social security and access to maternity protection is the most crucial for women working in the agricultural sector. Despite the fact that approximately 80% of women are working in this sector, only 12% of *dekhkan* farms are headed up by women. As women get less access to land, they mostly work in *dekhkan* farms as employees with limited possibilities of having access to social benefits and services. This problem is worsened by the prevalence of informal employment of women working in the sector. Women do not enter into employment contracts. Detailed provisions governing the procedure of women working in *dekhkan* farms with access to family benefits and maternity leave do not exist.³⁰ In theory, any woman is entitled to receive monthly child care benefits, together with a lump-sum benefit once a child has been born. However, women have a limited understanding of their rights, which prevents them from getting access to these benefits. If a woman is not formally employed, maternity protection in form of maternity leave and associated payments are not rendered to her. Besides, access to these benefits requires submission of birth certificate. It is a known fact that women do not see any benefit of receiving birth certificates before the child reaches the age of enrolment to primary school.

The Tax legislation establishes the procedure of collecting contributions for social insurance through social tax that needs to be paid by all the employers, be it an individual entrepreneur, legal entity or members of *dekhkan* farms without a registration. Employers should ensure payment of social tax for all employees hired either under the employment contract (regulated by the Labour Code) or the contract on the provision of services (regulated by the Civil Code of Tajikistan) and without any written contract.³¹ Social tax is a mandatory tax that is collected in order to ensure social insurance.³² Social insurance, in addition to maternity and family benefits, covers pensions, disability benefits, unemployment benefits, funeral benefits, covering expenditures related to the rehabilitation of workers and members of their families, other activities contributing to the objectives and functions regarding occupational health and safety, increments in pension, saved on individual accounts.³³ Social tax consists of two contributions, which are paid by employer and by employee. Employers should pay 25% of the total wage bill. Employees' contribution is equal to 1% of the salary.

The contribution by workers employed by individual entrepreneurs and individual entrepreneurs themselves constitutes 0.2% of their gross profit, though not less than 95 Tajik Somoni.³⁴ Tax of entrepreneurs working upon receipt of the patent (a certificate for the provision of certain types of entrepreneurial activities that are not registered as legal entities) is deducted from the payment for the receipt of the patent. This tax also includes a contribution to social insurance. The amount paid for the patent depends on the nature of the entrepreneurial activities. Rules of taxation of individual entrepreneurs working under the patent establish a scale of fees for having the patent that also indicates a level of contributions to social insurance. This scale includes the following types of entrepreneurial activities: retail and sale, food production, transportation services and other services (construction, agricultural services, car repairs, entertainment services). The fee for the patent ought to be adjusted according to location (rural or urban). This scale provides a fixed amount of contributions to social insurance.³⁵ There is no clear understanding of the social insurance contributions of *dekhkan* farms

³⁰ Summarised by Kobzar, E (2007), Gender Equality in Social Protection Sector In Tajikistan, pp. 13–14 and Khagai, M (2010), Gender Analysis of the Programme on Improvement of Entrepreneurship “200 days of reform”, pp. 31–32.

³¹ Tax Code of the Republic of Tajikistan, article 259.

³² Tax Code, article 258.

³³ The Law on State Social Insurance, article 9.

³⁴ Tax Code, article 262.

³⁵ Rules of Taxation of Individual Entrepreneurs who are not Registered as a Legal Entity, adopted by the Resolution of the Government of Tajikistan #656 on 2 December 2009.

towards their employees and members. The Tax Code establishes that members of *dekhkan* farms should pay one single tax to producers of agricultural products that depends on the size of land.³⁶ The Tax Code stipulates that the amount of social tax to be paid by members of *dekhkan* farms should be established by the Government of Tajikistan. Nonetheless, this review didn't find any relevant by-law on this matter.

In 2011, the Labour Code introduced a new category of workers, i.e. workers working from home. It should be mentioned that social tax for this category of workers is not regulated by the Tax Code. Thus, women working from home are not provided with maternity protection despite legal guarantees established by the Labour Code. There are no national level statistics available regarding the number of women taking maternity leave, women and men taking child care leave and the use of benefits associated with maternity and child care. However, according to the findings of LFS-2004 and LFS-2009, only female workers took child care leave (child care leave taken until children reaching the age of 1.5 years and child care leave taken for children between 1,5–3 years of age).³⁷

2.2. Legal framework and public spending on family support and financing maternity protection

Legal framework on maternity protection includes several laws and regulations. The general obligation of the state with regard to maternity protection is set by the Constitution of the Republic of Tajikistan. Article 34 mentions that the mother and child are under special protection of the state. Moreover, Article 35 states that any restrictions in labour relations ought to be prohibited. Female labour which requires working underground or in hazardous conditions is prohibited. These constitutional provisions are further translated into several laws. The Law on State Guarantees of Equal Rights of Women and Men and Equal Opportunities of Their Exercises is meant to provide constitutional guarantees on equality of women and men in social, economic, political and other fields. Furthermore, the law acknowledges in Article 7 that provisions of the legislation on rights and guarantees rendered to persons of either sex with family obligations should be taken into account when hiring, promoting, providing professional education, establishing labour regimes and dismissing workers, including public servants. Besides, the same Article ensures that the system of retraining and improving professional qualifications for workers established by the employer ought to take into account family responsibilities of the workers, including breaks during working hours due to maternity leave and the upbringing of children.³⁸ Detailed provisions of rights and guarantees with regard to maternity protection are set by the Labour Code of the Republic of Tajikistan. First of all, it does so by setting the scope of application of its provisions to workers employed under the labour contract with enterprises, institutions and organisations of all forms of property, with individuals and shareholders of the enterprises.³⁹ The Labour Code, however, provides exceptions to this rule noting that the conditions of employment of certain workers may be different when taking into account the nature and conditions of work, natural and climate conditions or other objective factors. Nevertheless, it is prohibited to establish a lower level of labour rights and guarantees established by the Labour Code.⁴⁰ In March 2011, the Labour Code was

³⁶ Tax Code, articles 307–308.

³⁷ SSA (2009), Situation in the Labour Market in the Republic of Tajikistan: Results of the Labour Force Survey for the period of June-July 2009, pp. 188, 190

³⁸ The Law of the Republic of Tajikistan on State Guarantees of Equal Rights of Women and Men and Opportunities of Their Exercise, article 7, paragraph 2.

³⁹ The Labour Code of the Republic of Tajikistan, article 1.

⁴⁰ Ibid, Article 6.

amended in order to ensure the extension of its provisions to workers employed by individuals and employees working from home. The type of work that is taken on by this category of workers should be established by the Government of Tajikistan.⁴¹ Thus, provisions of the Labour Code governing maternity protection are applicable to all workers employed both by legal entities and individuals working in legal entities and from home.

Maternity Leave

The approach of the Labour Code towards maternity leave is two-fold. The Labour Code's general regulations that establish guarantees of the right to work contain several guarantees on maternity leave. The special chapter (12) establishes additional guarantees for working women as well as persons with family obligations. Amongst the general guarantees, the Labour Code establishes that termination of a contract with pregnant women and women having children below 3 years of age is illegal.⁴² Besides, pregnant women are prohibited to hold more than one working position (when working part-time).⁴³ Pregnant women are entitled to taking maternity leave which have be granted to them even within the first year of work.⁴⁴ This leave is included in the group of social leave that could be taken by workers regardless of the length, place and type of work, organisational and legal status of the institution.⁴⁵ Pregnancy has to be confirmed by means of a medical certificate (a certificate confirming a temporary inability to work) which also serves as a basis for receiving social insurance.

Additional guarantees for women and persons with family obligations are stipulated in Chapter 12 of the Labour Code, featuring a provision of general guarantees. Not only is it prohibited to refuse the hiring of a pregnant woman, but also to decrease her salary due to her pregnancy. Any refusal towards a pregnant woman should be given in writing so that it could be possible to take the matter to court and to challenge the lawfulness of this refusal.⁴⁶ Pregnant women should not be allowed to work at night, extra hours, during weekends and official holidays. Furthermore, it is also not allowed to send pregnant women on business trips.⁴⁷ Due to medical reasons, pregnant women are entitled to a reduction of norms of production and services or they can be transferred to lighter areas of work in order to reduce the impact of unfavourable working conditions. Once transferred and having reduced the norms, the average monthly salary paid for the previous job/position must be preserved. If a pregnant woman can't be transferred immediately to a lighter area of work, she will be suspended from work along with the payment of an average monthly salary during the period of suspension.⁴⁸ Women are entitled to maternity leave of 70 calendar days before and 70 calendar days after giving birth. In case of complicated deliveries, women are entitled to 86 calendar days after giving birth. In case of giving birth to 2 or more children, women are entitled to 110 calendar days. Maternity leave can be taken in full regardless of the number of days taken before giving birth.⁴⁹ During and after maternity leave, women are paid a social insurance benefit

⁴¹ The Labour Code of the Republic of Tajikistan, article 6.

⁴² Ibid, article 29.

⁴³ A part-time job implies the performance by the employee during working hours and during the time that is free from main duties (position) of any other permanent paid job or the performance of any other permanent paid job upon the conclusion of the employment contract (The Labour Code, article 29.1); This prohibition in addition to the Labour Code is established by the Resolution of the Government of Tajikistan "On Conditions of Part-Time Jobs and Remuneration of the Hourly Work of Workers of the Enterprises of the Republic of Tajikistan", 1998 with amendments adopted in 2009, #122., para. 2.

⁴⁴ Labour Code, article 92.

⁴⁵ Ibid, article 98.

⁴⁶ Ibid, article 159.

⁴⁷ Ibid, article 160.

⁴⁸ Ibid, article 163.

⁴⁹ Ibid, article 164.

(family benefit).

The Law on State Social Insurance establishes the following benefits for women: 1) maternity benefit to be paid to women during maternity leave regardless of the number of days of maternity leave taken before and after giving birth; 2) monthly child care benefit to be paid to women during child care leave to which she is entitled upon the completion of maternity leave; 3) lump-sum benefit to be paid after the delivery of the child. This payment is non-recurrent and paid only once.⁵⁰

A female individual entrepreneur (officially registered) has the right to receive all mentioned benefits upon her application for these benefits to bodies of social protection and submission of relevant documents. In order to receive maternity benefit during maternity leave, a female-entrepreneur should submit an application, a statement proving the actual level of contributions to social insurance (this statement should be issued by the State Agency of Social Insurance and Pensions), a copy of the certificate or patent, a copy of her passport certifying the place of residence, a medical certificate confirming temporary inability to work, together with a statement confirming the number of family members.⁵¹ Other benefits should be received upon submission of the following documents: an application, a copy of the birth certificate, a copy of the certificate or patent and a copy of her passport.⁵²

Maternity benefits that are paid to women during maternity leave are equal to their full salary. Once having given birth, women are paid a lump-sum benefit in the following way: (i) upon delivery of the first child, this benefit is equal to the sum of three determinants; (ii) upon delivery of the second child, this benefit amounts to the sum of two determinants; (iii) upon delivery of the third child or more, this benefit equals the sum of one determinant. This determinant was introduced in 2008 by the Law on Determinant and is used for calculating a fixed amount of taxes, penalties, benefits and other payments. The amount of the determinant is established on an annual basis in accordance with the Law on National Budget of the Republic of Tajikistan.⁵³ The Law on National Budget states that as of 2011 the determinant used for calculating social benefits would amount to 40 Tajik Somoni (1 USD = 4.76 Tajik Somoni⁵⁴), which is the equivalent of USD 9.⁵⁵

Persons/guardians who adopt new-born children are entitled to maternity leave from the date of the adoption/establishment of the guardianship. The duration of maternity leave is 70 calendar days. When adopting two babies, the leave can be extended to 110 days. Parents and guardians are entitled to a payment of maternity benefit, which is to be paid during maternity leave.⁵⁶

Women are entitled to nursing breaks until children reach 1.5 years of age. These breaks are granted every three hours and may last not less than 30 minutes. They can be extended for up to one hour if a woman has two or more children. These breaks are included in the working hours. Upon the wish of a woman, these breaks can be added to her lunch and rest breaks or moved to the beginning or the end of the working hours. In this respect, the number of working hours can be reduced by the numbers of hours required for nursing breaks.⁵⁷ Besides, if the working conditions or work performed by a

⁵⁰ The Law on State Social Insurance, articles 13–14.

⁵¹ Rules on the Assignment and Payment of Social Benefits to Individual Employers adopted by the Resolution of the Government of the Republic of Tajikistan #117 on 3 March 2011, para 23.

⁵² *Ibid*, para 26.

⁵³ The Law of the Republic of Tajikistan on Determinants used for Calculation, art. 1.

⁵⁴ www.nbt.tj [last accessed September 9, 2011].

⁵⁵ The Law of the Republic of Tajikistan on National Budget in 2011, article 31.

⁵⁶ Labour Code, article 166.

⁵⁷ *Ibid*, article 167.

woman hamper the nursing regime of a child or inflict danger to a breastfeeding mother, the woman should be transferred to a different job until the child reaches 1.5 years of age. During this period, the woman's salary from her previous job shall be retained.⁵⁸

Other employment benefits for pregnant women include the possibility to establish shorter working hours during the day and a shorter working week;⁵⁹ flexibility in providing annual leave to pregnant women (before or after giving birth, maternity leave, child care leave) regardless of the length of their employment;⁶⁰ if an enterprise, an organisation or an institution of an employer is liquidated, the employer is prohibited to terminate the contract with a pregnant woman.⁶¹ The termination of the employment contract in this case is allowed on the condition that another job is found for the woman. Another job shall be provided to the woman by the successor of the liquidated employer. If there is no possibility, the state employment agency shall aid the woman in finding job. The benefits package, which the pregnant woman is entitled to, shall be maintained during the period of finding a new job. In case the employment contract has expired, the employer is obliged to provide the woman with a mandatory job placement. Whilst searching for a job placement, the woman is entitled to a three-month salary once the contract has expired.⁶²

Parental (child care) leave

After maternity leave, female workers are entitled to taking child care leave until the child reaches 1.5 years of age. During this period, social insurance benefit shall be paid to women. The social benefit in this case constitutes a monthly payment equal to one determinant used for calculating the social benefit (40 Tajik Somoni). If required by women, they can be granted additional leave until the child reaches 3 years of age. During this additional leave, women are not paid any benefits or salary. However, employers are obliged to keep their working positions during the period of child care leave and additional leave. This same leave can also be taken either in full or partially by the father of the child, grandmother, grandfather or other relatives or guardians if they are virtually take care of the child. During this parental leave, workers are entitled to work part-time or work from home. This guarantee however doesn't entail the termination of the payment of the social insurance benefit. Nonetheless, this parental leave ought to be included in the general labour record.⁶³ The same additional leave can be granted to parents/guardians who have adopted children.⁶⁴ Women/guardians with children below 14 years of age, disabled children below 18 years of age or persons responsible for caring for sick family members (upon submission of a medical certificate) are entitled to reduced working hours and reduced working weeks.⁶⁵ Moreover, one of the parents (or guardians) taking care of disabled children below 18 years of age is entitled to one additional day off per month without a salary deduction. The salary during this day ought to be covered by the social insurance fund.⁶⁶ Women with two or more children below 14 years of age or disabled children below 18 years of age as well as single mothers with children below 14 years of age are entitled to annual leave during the summer time or during any

⁵⁸ Labour Code, article 163.

⁵⁹ Ibid, article 168.

⁶⁰ Ibid, paragraph 1 of the article 170.

⁶¹ Ibid, article 172.

⁶² Ibid.

⁶³ Ibid, article 165.

⁶⁴ Ibid, article 166.

⁶⁵ Ibid, article 168.

⁶⁶ Ibid, article 169.

⁶⁷ Ibid, article 170, paragraph 2.

other time which is convenient for them.⁶⁷ However, men are not entitled to this kind of leave. In addition to annual leave, women with two or more children or disabled children below 18 years of age are entitled to unpaid annual leave of 14 calendar days that can be either added to paid annual leave or taken separately during the period agreed with the employer.⁶⁸ The guarantee given to pregnant women with regard to the termination of the contract is also extended under the same conditions to women with children below 3 years of age and single mothers with disabled children below 18 years of age.⁶⁹ These types of parental leave can be taken by women within the first year of work.⁷⁰ Furthermore, women with children can work overtime or be sent on business trips, though only upon their consent.⁷¹

Paternity leave

There is no definition of “paternity leave” in the Labour Code. Moreover, it doesn’t state the possibility for fathers to take paternity leave as a guarantee. There are several stipulations regarding fathers and their rights in the Labour Code. For instance, article 94 states that working men have the right to take annual leave during the period of maternity leave of women. Men can also take unpaid leave. While Article 99 doesn’t mention about the male workers, it declares that any worker is entitled to unpaid leave due to family or other reasons. When a child is born, any worker can take up to 7 calendar days of unpaid leave.⁷² Under the same terms, male workers are entitled to take up to 14 calendar days of unpaid leave if in need of taking care of sick family members (upon submission of a medical certificate). Article 162 of the Labour Code, which was amended in 2011, affirms that persons with family responsibilities of taking care of children could be asked to work overtime or be sent on business trips upon their consent.⁷³ Paternity leave doesn’t entail payment of any benefits. However, if fathers are taking care of children without a mother (due to maternal deaths, forfeiture of parental rights, lengthy treatment in health care facilities or in other cases when mothers don’t have the capacity of taking care of children), all guarantees and privileges provided to women in relation to maternity are fully extended to fathers as well as guardians.⁷⁴

Child care facilities

The problems regarding child care facilities in Tajikistan are the most serious in the educational sector. Activities of child care facilities in Tajikistan, which fall under the level of preschool education, are covered by the Law on Education in the Republic of Tajikistan. The Law on Education defines mandatory nature of Pre-School Education (PSE) in Tajikistan. One of the purposes of the PSE is to provide support to families and others, including a favourable environment for the development of a child.⁷⁵ It can be undertaken either in the family or in the Pre-School Educational Institution (PSEI). The latter can be private or state. The state shall ensure accessibility of pre-school services to children from low income families by means of providing financial support to pre-school institutions.⁷⁶ The types of PSEI identified by the Regulations on Pre-school Institutions are as follows:

⁶⁸ Ibid, article 171.

⁶⁹ Ibid, article 172.

⁷⁰ Ibid, article 84.

⁷¹ Ibid, article 162, paragraph 3.

⁷² Ibid, article 99, paragraph 4.

⁷³ Ibid, paragraph 3 of the article 162.

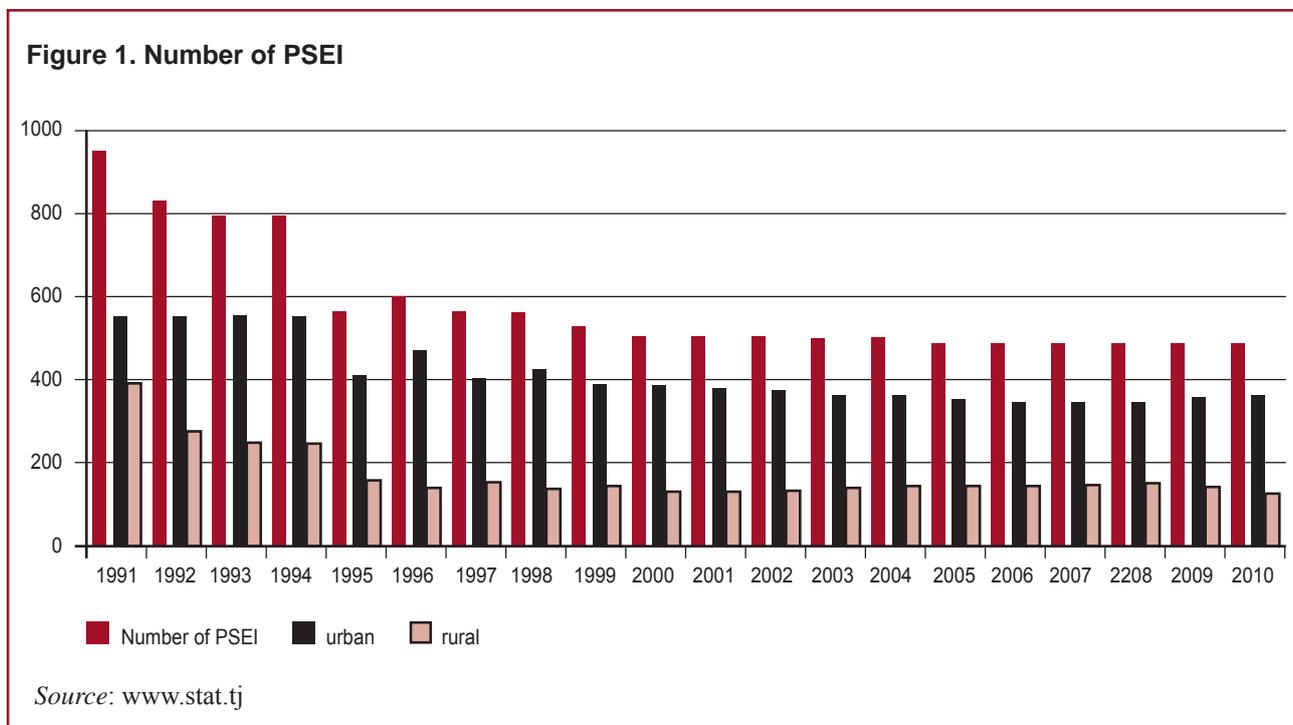
⁷⁴ Ibid, article 173.

⁷⁵ Law of the Republic of Tajikistan on Education, article 16.

⁷⁶ Ibid.

- Day nursery – education and training of children from 2 months – 2 years of age;
- Day nursery – kindergarten (a complex PSEI: from 1 year – 6 years of age);
- Kindergarten – education and training of children from 3 – 6 years of age;
- Kindergarten – school (from 3 years – 10 years of age);
- Private PSEI;
- Kindergartens of family type (different age groups);
- Specialised kindergartens focusing on the physical and mental development of pupils, suffering from disabilities/disorders.⁷⁷

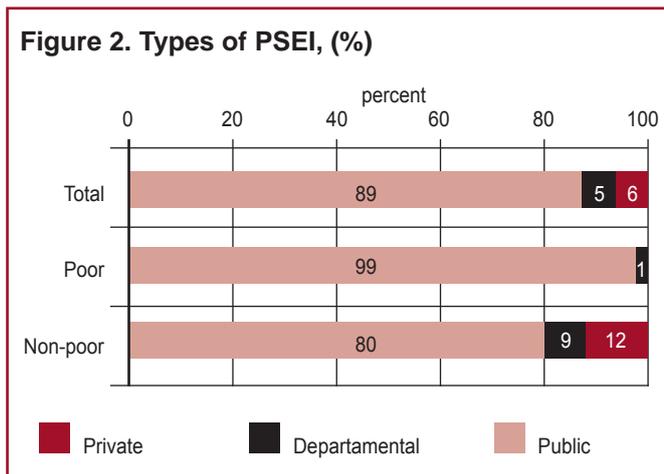
In Tajikistan, children aged 2 months to 6 years have a right to preschool education, either in a day nursery (2 months to 2 years) or in a kindergarten (3–6 years). It is important to note that the network of preschools was not as extensive in Tajikistan as elsewhere in the Soviet Union. In 1989, it was estimated that only 16% of 3–6 year olds were enrolled in kindergartens compared to 31% in the Kyrgyz Republic, 37% in Uzbekistan and 53% in Kazakhstan.⁷⁸ Due to the collapse of the socialist system and damages caused during the civil war in Tajikistan, the number of pre-school institutions decreased significantly. From 1991–2005, the number of PSEIs decreased 1.6 times and in rural areas it declined thrice. As demonstrated in Figure 1, from 1991 to 2009 the total number of PSEIs fell from 944 in 1991 to 467 in 2009 with a considerable difference in the availability of PSEIs in urban and rural areas. In 2009, the number of PSEIs in urban areas was 350 compared to 137 in rural areas. The dynamics of the activity of PSEIs in rural areas is particularly worrying. Since 2004, there has been a certain increase in the number of PSEIs in rural areas, amounting to 146 PSEIs in 2008. However, only 137 (the same number as in 2003) PSEIs were operational in rural areas in 2009.⁷⁹



⁷⁷ UNESCO International Bureau of Education (2006), Tajikistan Early Childhood Care and Education Programs, Country Profile prepared for the Education for All Global Monitoring Report 2007.

⁷⁸ Baschieri A., Falkingham J., (2007), Child Poverty in Tajikistan, p. 50

⁷⁹ www.stat.tj



Apparently, this alerting trend led to a slimming down of possibilities to close down state-run PSEIs. The Law on Education in 2011 was amended in order to require consent of the respective body of the local self-government to close state-run PSEIs in rural areas, but only at the end of the academic year.⁸⁰ The majority of PSEIs are state-run. Till 2005 there was no special legal and regulatory framework for opening private PSEIs in Tajikistan. In 2005 since adopting the Regulation on licensing certain types of activities, only a few private PSEI were opened. Though national statistics do not provide an estimated number of private PSEIs,

the figure 2⁸¹ suggests that there are several private PSEIs that children from non-poor backgrounds attend. Although the Law on Education states that PSE shall be provided to families as an alternative to attending a PSEI, national statistics do not capture any data in this regard. No data is available regarding the quality of this education and the coverage of children by in-family PSE.

It is obvious that available PSEIs are not able to cover the needs of children in PSE. Thus, their unavailability, especially in rural areas, directly affects the employment status of women. Besides, it is more prevalent now to keep children at home.⁸² There are several reasons for this pattern. There is a tradition when older children or other relatives of extended families (cousins, grandmothers, etc.) take care of younger ones. Another reason could relate to the low quality of child care services provided by PSEIs, which could prevent parents from enrolling their children in these institutions. The number of children who can get access to PSE is insignificant. Only 9% of children of 3–5 years of age attended PSEIs in 2007.⁸³ In rural areas, the number of children provided with PSEIs is very low. The situation regarding families with disabled children is even more worrisome. Children with disabilities attend special PSEIs. According to the Ministry of Education (MOE), 11 special PSEIs existed in Tajikistan in 2004. They supported 1,308 children. Approximately 46.1% of the total number of children were girls. In several normal PSEIs, special groups for children with disabilities were set up. Out of all the children attending PSEIs, children with disabilities account for approximately 2.2%.⁸⁴

This situation regarding the availability of child care facilities together with the number of children who have access to early childhood education affects the ability of women to participate in economic activities especially in rural areas. According to TLSS data, women spend on average about 8 hours per week on child care (whilst urban women spend 4.3 hours more on child care compared to rural women who are more focused on working on their own plot of land, caring for their animals, fetching water, etc.).⁸⁵ The role of the state is limited to declaring material and financial support to PSEIs, establishing a regulatory framework for the development of private PSEIs. As shown by these statistics above, the measures taken are not properly put into practice and thus do not comply with one of the main purposes of the PSE, i. e. to provide support to families. This conclusion is also supported by the

⁸⁰ The Law on Education, article 11, paragraph 6.

⁸¹ Reproduced from TLSS, 2007, p. 69.

⁸² SSA, UNICEF (2007), TLSS, p. 68.

⁸³ It was not possible to obtain data on the age group 0–2 which means that relevant child care facilities do not exist.

⁸⁴ The Government of the Republic of Tajikistan, National Program on Development of Pre-school Education in Tajikistan for 2006–2010.

⁸⁵ SSA (2010), Women and Men in Tajikistan: Compendium of Statistics, p. 91.

level of state financing of preschool education. The general ratio of the GDP expenditure on education amounts to 3.4% while for preschool education it equals 0.1%. Given that the current priority for reforming the educational sector is at the level of general education,⁸⁶ it is unlikely that government expenditure on preschool education will be increasing in the near future. In this situation, the government should take measures in order to encourage non-governmental organisations (NGOs), private entities, community-based, family-run day care and preschool education facilities and limit its role of establishing and monitoring quality standards.⁸⁷

2.3. National policy/programme framework to facilitate the implementation of legal measures

This legal framework is poorly supported by programmatic measures and policies. Relevant national policies and programmes in Tajikistan hardly make any special reference to maternity protection. Neither have they addressed the labour market situation, social security measures, nor reforms of salaries from the work/family reconciliation perspective. For instance, Concept Paper on Establishment and Retaining of Jobs in the Republic of Tajikistan for 2008–2015 (2008), Programme on Reform of the System of Social Service Provision in the Republic of Tajikistan (1997), Concept Paper on Social Protection of Population (2006), Concept Note on Reform of Payment System in the Republic of Tajikistan (2008) do not differentiate genders. They do not provide gender analysis of the situation in the respective sectors and neither address the specific situation of women nor men. Thus, there is no gender difference in the measures proposed. From this perspective, there is a high probability that the implementation of these measures will be counterproductive for women and will therefore further exacerbate their situation in the formal employment sphere that gives social protection and secures work.⁸⁸

Economic reforms aimed at developing small and medium businesses and entrepreneurial activities do not address gender issues and do not consider the problems women face whilst registering their activities, having the possibility to pay social tax and finally having access to social benefits. Some of the problems are attributed to a lack of funds, knowledge and networks required for starting businesses, high taxes *vis-à-vis* the role of women in less profitable businesses, the role of women in entrepreneurial activities and not officially registering themselves as entrepreneurs in order to escape taxation, etc. Registration documents for opening businesses and individual entrepreneurial activities do not give an indication of the person opening the business. Thus, it is not possible to find gender-disaggregated statistics regarding the number of women and men working in small and medium businesses and exercising individual entrepreneurial activities. Moreover, statistics concerning the level of employed women in these sectors is not available.⁸⁹ Statistics with regard to social protection do not give any estimation on the number of women in need of social benefits and those actually receiving these benefits. Thus, it is not possible to assess how many women and men, including gender-aggregated single-parent households, actually receive available social benefits.

National level statistics on the number of women taking maternity leave, receiving maternity benefits and the number of workers receiving family benefits are not available. Furthermore, maternity protection measures established in the national legislation are a potential source of further discrimination of

⁸⁶ For instance, the current Poverty Reduction Strategy Paper for 2010–2012 is focused on reforming the general education system and has no mention of the problems related to preschool education.

⁸⁷ WB (2009), The Republic of Tajikistan: Poverty Assessment, p. 77.

⁸⁸ Khegai, M (2010), Gender Analysis of the Programme on Improvement of Entrepreneurship “200 days of reform”, p. 39.

⁸⁹ Ibid, p. 21.

women in the labour market.⁹⁰ Several observers note that although these protectionist measures are fully in compliance with the international standards in the area, they negatively affect women in fertile age due to the fact that contributions to benefits and additional costs associated with the absence of women from work are not profitable for employers and may demotivate them to hire women.⁹¹ In this respect, women tend to accept jobs in informal sectors and lower salaries.⁹²

Among policies and programmes, only two policy documents require particular attention. The first relates to the National Programme on Advancement of Role of Women in the Republic of Tajikistan. Adopted in 2011, the Programme provided a solid analysis of the problems of women in the labour market, family obligations and the unavailability of child care facilities as a hindrance towards the economic activity of women. In the areas of employment for women, it is planned to establish a system ensuring an achievement of gender equality with regard to promotion and to establish conditions in order to combine a successful career development, together with household duties and child care. Besides, the focus of the employment sector is on female and male commitment to child care with a greater emphasis on encouraging men to get involved in child care. In addition, in the area of strengthening a family, the Programme stresses poor quality of child care facilities and a low percentage of children provided with child care facilities. This Programme includes relatively well developed monitoring mechanisms. It has established a set of indicators for each area of the Programme. Those which are important for maternity protection are the following: the number of men and women generating GDP; the number of working places provided to men and women in rural and urban areas; the number of women employed in paid jobs not related to agriculture; the number of men and women receiving social payments (pensions, benefits, rates); the number of single-headed households disaggregated by sex; the number of women owning land; the number of registered businesses where women are owners; the number of self-employed women; the increase of income-generating activities of women in the formal labour market; the number of men and women employed in the agriculture production; the number of child care facilities; the number of recipients of child allowances. While it is early to comment on the progress of the implementation of this Programme and its results, it did take into account the issues related to maternity protection and included special measures aimed at resolving work/family conflicts and having a greater commitment of men to child care. Proper monitoring of this Programme should provide necessary data on the practical implementation of maternity protection measures.

Another programme that addresses work/family balance is the National Strategy of Development of Labour Market in the Republic of Tajikistan till 2020. It was adopted in 2011 and includes a wide range of measures aimed at improving the current situation in the labour market. This Strategy is based on gender-disaggregated data of LFS – 2009 and includes a plan for implementing, results framework, the framework on monitoring and evaluation of the strategy and planning of financial allocations. The Strategy mentions that the employment and labour market measures ought to be integrated into social and economic reforms taking into account age and gender differences. The Strategy includes activities aimed at establishing a fairer social protection system that will link contributions with payments and will ensure a provision of maternity and child care benefits to those who did not pay social tax and did not have a labour record. Several activities are aimed at reducing administrative barriers in order to register businesses including *dekhkan* farms, establish taxes especially social taxes in order to motivate employers to enter into formal relations with employees through written

⁹⁰ De Silva De Alwis, R (2010), Examining Gender Stereotypes in New Work/Family Reconciliation Policies: The Creation of a New Paradigm for Egalitarian Legislation, p. 17.

⁹¹ De Silva De Alwis R. (2009), Advancing Equal Rights for Women and Girls: The Status of CEDAW Legislative Compliance in Eastern Europe and Central Asia, p. 21; Khagai, M (2010), Gender Analysis of the Programme on Improvement of Entrepreneurship “200 days of reform”.

⁹² Khagai, M (2010), Gender Analysis of the Programme on Improvement of Entrepreneurship “200 days of reform”, p. 10.

contracts. One direction of the Strategy is focused on furthering opportunities for women, who can find a work/family balance. Under this Programme, it is planned to develop a network of child care facilities and to establish opportunities for additional education of children and to put into place longer schooling hours for children in primary schools. These positive steps are nevertheless based on the traditional perception of women as the main care givers. These measures fail to improve on the one hand the participation of men in child care and on the other hand to share responsibilities in domestic work. Besides, this Programme is not linked to the National Programme on Advancement of Role of Women in the Republic of Tajikistan that established similar measures to improve work and family reconciliation.

In general, the policy and programmatic framework poorly addresses work and family balance. However, if it does address the latter, it is still based on the traditional perception of women being the main care givers. Men are barely considered in the activities of these policies. Proposed measures are very general and appear to be descriptive. They are not specific enough to encourage employers to recruit women (for instance, through the provision of tax preferences for employers providing jobs to women or reducing social taxes).

3. Discussion of selected facts and data regarding the implementation of existing maternity protection legislation and policies

The current social, demographic and economic situation in Tajikistan has put women in a disadvantaged position in the labour market with regard to maternity protection. Women, especially those employed informally, are the most vulnerable in terms of maternity protection due to their employment not being confirmed in the employment contract and the employer not being responsible for the contributions to social insurance. Even those women who are employed in the formal sector face difficulties in combining work and family responsibilities in view of several reasons. The difficulty which affects women the most is the need to establish special regimes for pregnant women and women with family responsibilities. These requirements are generally in compliance with the international standards acceded by Tajikistan and may lead to employers being less encouraged to hire women. In this respect, either some protective measures (like paid parental leave, paid paternity leave, etc.) should be rendered to men and/or employers who hire women should be offered some tax preferences.

Traditional stereotypes regarding the role of women in Tajikistan assume that women are the main care givers in families. The same pattern is reflected in the national labour legislation that follows a protectionist approach in work and family reconciliation and perceives women as the main care-givers despite some attempts to encourage men to assume more responsibility for families (parental leave and paternity leave).

Access to child care facilities, especially at the very early age after birth, is almost non-existent due to unavailability of child care facilities, poverty and preferences to keep children at home. Taking into account high birth rates and the population growth of Tajikistan, one can predict that the demand for PSE will remain high. Besides, a shortage of child care facilities in rural areas limits the economic mobility of rural women. Urgent measures should be undertaken in order to considerably improve the provision of PSE, to increase the number of child care facilities together with the quality of services in PSEIs in rural and urban areas and to link reforms of the PSE system with regard to maternity protection.

Established maternity protection measures are in compliance with the international standards; however, they may negatively affect women by deepening discrimination of female workers in the labour market. Since the majority of women are employed in the poorly developed agricultural sector, employers are reluctant to take on women using written contracts as they would be obliged to pay social tax and bear losses due to maternity and child care leave of women.

The Labour Code does not establish a definition of paternity leave for male workers. Male workers may benefit from unpaid leave given to workers in case of births or a combination of annual leave together with maternity leave of a woman. However, men are, just like women, fully entitled to child care leave. Though there is no clear restriction as regards men accessing child care benefits, the law refers to women only when mentioning family benefits. The legislation does not take into consideration male single-headed households.

The need to take care of children and sick family members may potentially discriminate women in the labour market due to a considerable number of hours per day dedicated to child and family care. The additional guarantees, such as taking care of children and sick family members, should also be extended to men in order to pursue an egalitarian approach.

While the legislation stipulates that members of *dekhkan* farms enjoy the same level of social insurance as those employed in accordance with the requirements of the Labour Code (under the employment contract), female members of *dekhkan* farms are less likely to receive paid maternity leave in view of an uncertainty of the legislation on this matter. The tax legislation mentions that members of *dekhkan* farms shall pay contributions to social insurance in the amounts specified by the by-laws. However, these by-laws were not identified in the review. Furthermore, it is not specified in the legislation how members of *dekhkan* farms get access to maternity leave, maternity and family benefits and which documents are to be submitted as shown in the example of rules established for individual entrepreneurs. General rules that are applicable to all workers upon receipt of benefits related to a temporary inability to work are established by the Regulation on the procedure of the provision of social insurance benefits adopted by the Head of Fund of Social Protection, the Minister of Health, the Minister of Labour and Social Protection of Population and the Head of Federation of Trade Unions. This Regulation was adopted in 2003 and has not been updated since then despite several developments in the labour legislation and the legislation governing activities of *dekhkan* farms.

Social tax rates used for calculating the employer's contributions to social insurance are very high when taking into account the economic development of the country and the rates of social benefits paid to the employee. As shown in this review, the amount of social insurance benefits related to maternity protection, specifically the lump-sum benefit once a child has been born and monthly child care benefits, are very low. In this respect, mothers and their children are hardly provided with basic needs and therefore it does not correspond to the level of contribution (as mentioned above) by employers or individual entrepreneurs.

National statistics do not provide reliable data on the use of maternity protection measures by women and men. In this respect, in the framework of this study, it is problematic to comment on how these measures are implemented in practice. However, due to a high rate of informal employment of women, as well as in the agricultural sector, it is assumed that mainly women employed in the formal economic sector, working as public servants, workers of enterprises, organisations and institutions who sign labour contracts with employers, are able to benefit from maternity protection measures.

The Labour Code was amended in 2011 in order to extend its protection to women engaged in housework. There is currently no clear understanding of how this positive development will be put into practice. One of the obvious weaknesses concerning the definition of housework is the need to sign employment contracts. While this requirement is a guarantee of employment for women engaged in housework and thus ensuring access to social benefits, this segment of employment might move to the informal sector due to high rates of social tax that the employer will be obliged to pay, resulting in an increase of the value of the products. This definition and respective rules should be developed in compliance with the new ILO Convention 189 on Domestic Workers, adopted in 2011.

Relevant national policies that were subject to this review do not differentiate genders and barely address work and family conflicts. Respectively, proposed practical measures may potentially worsen the situation of women in the labour market. Nevertheless, there are two exceptions regarding this issue. Firstly, the National Strategy on the Advancement of the Role of Women till 2020 includes relevant complications related to work and family conflicts, introduces measures aimed at work and family reconciliation and considers the involvement of men in child care. Secondly, the National Strategy on the Labour Market Development till 2020 does introduce the dimension of giving opportunities to workers in order to find a work and family balance. The downside of these strategies is due to it being based on the traditional perception of a woman as the main care giver.

It should also be mentioned that several measures aimed at increasing efficiency in the agricultural sector have been included in the Poverty Reduction Strategy Paper (PRSP) for 2010–2012 (2010). The paper plans to draft and implement several policies, such as the Programme on the Social Development of the Rural Areas for 2010–2020, the National Programme for the Study on Labour Safety in the Agricultural Sector, the Programme for the Study of Rights and Obligations of *Dekhkan* Farms in accordance with the Labour Code and the Law on Occupational Safety and Health, the Project for Creating Accounting and Financial Centres for *Dekhkan* Farms. It also specifically mentions that during the period of implementing the PRSP policies, measures will be undertaken in order to strengthen the capacities of *dekhkan* farms led by women.⁹³

⁹³ PRSP for 2010–2012, p. 30.

4. Policy implications

Work and family responsibilities as a policy area fall under the mandate of several governmental bodies. The key body responsible for setting policies, their implementation, monitoring the compliance in the sphere of labour, including maternity protection, is the Ministry of Labour and the Social Protection of the Republic of Tajikistan (the Ministry). Under the Ministry, two bodies are particularly responsible for monitoring the compliance with labour standards and social insurance requirements. These two bodies are the following: the State Service on Oversight in the field of Labour, Employment and Social Protection of Population under the Ministry of Labour and Social Protection of the Republic of Tajikistan (the Service) and the State Agency on Social Insurance and Pensions (the Agency). With regard to maternity protection, the Service is responsible for overseeing and monitoring the implementation of labour rights of workers, the correct payment of social benefits being paid on time, the compliance with requirements of provisions of leave especially provided to women and youths etc. Public control of the labour legislation is undertaken by the labour inspections of trade unions. They also have the right to assess how labour rights are respected, including maternity protection in all working places regardless of the legal status of a company. The Agency is primarily responsible for managing contributions to social insurance (taxes are collected by tax bodies and the contributions to social insurance are transferred to the accounts of the Agency) and checking medical certificates, which confirm a temporary inability to work and the payment of social benefits.

Apart from these bodies, Committee on Women's and Family Affairs under the Government of Tajikistan according to the Law of the Republic of Tajikistan on State Guarantees of Equal Rights of Men and Women and Equal Opportunities for their Exercise (2005) is responsible for monitoring the compliance with guarantees of equal rights of men and women and equal opportunities for their role in the social and economic sphere. It is specified that this monitoring is aimed at ensuring a systematic analysis of the situation with regard to the provision of equal rights and equal opportunities of women and men in the social and working sphere, forecasting changes in the situation and developing, if need be, measures in order to prevent and eliminate gender discrimination and also to develop proposals on state social programmes.⁹⁴

As mentioned above, two national policies have been developed, which are aimed among others at changing the situation with regard to maternity protection in Tajikistan. The National Strategy of Development of the Labour Market in the Republic of Tajikistan till 2020 states that the Governing Council will be established to implement the Strategy. This Council is chaired by the Coordinator, implementing and monitoring the strategy – the Minister of Labour and Social Protection. Other members of the Council are representatives of the Executive Office of the President of Tajikistan, Deputy Ministers of Finance, Economy and Trade, Agriculture, Deputy Heads of the Migration Service, Tax Committee, Statistics Agency, Representatives of the Federation of Trade Unions and the Association of Employers, National Association of Small and Medium Businesses and other bodies and organisations. The already mentioned ministries, agencies and organisations represented in the Council are responsible for implementing certain activities of the Strategy. Despite the fact that several activities of this Strategy (see section 2.3 of this study) are directly aimed at furthering work and family reconciliation measures, the Committee on Women's and Family Affairs (Women's Committee) is neither explicitly part of the Governing Council nor is it a responsible body for these activities of the Strategy. In addition to the measures mentioned in this Strategy, social partners should consider proposing other measures aimed at improving the situation of working women, especially those employed by individual entrepreneurs and members of *dekhkan* farms. Measures, such as the introduction of tax

⁹⁴ The Law of the Republic of Tajikistan on State Guarantees of Equal Rights of Men and Women and Equal Opportunities for their Exercise, article 17.

preferences for employers hiring women and the reduction of taxes that will affect the contributions to social insurance, which are currently high *vis-à-vis* the amount of family benefits, should be put forward for discussion. The reduction of taxes, especially for individual entrepreneurs in retail and service sectors and in *dekhkan* farms where women predominantly work, will facilitate the formal employment sector and increase tax collection rates. These measures will also boost female workers' enjoyment of maternity protection measures. Moreover, the National Programme on Advancement of the Role of Women in the Republic of Tajikistan includes measures aimed at fathers having a greater role in child care. In this respect, the Women's Committee should actively engage in implementing these measures. Furthermore, the Ministry of Labour and Social Protection and social partners should amend the labour legislation in order to explicitly grant fathers with paid parental and paternity leaves and adjust relevant by-laws to eliminate the existing assumption of a woman as a the main care-giver. In the framework of both Strategy and Programme, efforts should be undertaken in order to improve national statistics that will allow to monitor the situation with access to social insurance related to maternity protection and the use of maternity leave.

Responsibility for child care facilities lies with the Ministry of Education of the Republic of Tajikistan. There is no clear understanding where it stands with regard to the reform of child care facilities. There was one national level programme on the reform of PSE; however, it expired in 2010. In this respect, the Ministry of Labour and Social Protection, representatives of workers and employers as well as the Women's Committee ought to actively engage in policy development together with the Ministry of Education of PSE as a family friendly measure. As previously mentioned, the National Programme on the Advancement of the Role of Women in the Republic of Tajikistan introduced several activities on how to improve the number and quality of child care services in cooperation with the MOE; however, this cooperation is not sufficient. Taking into consideration the number of hours women spend on child care, the improvement of PSE should be explicitly addressed as a family-friendly measure with the inclusion of the Ministry of Labour and social partners in order to reform this process. In this respect, there should be a clear coherence of the implementation of measures in labour, gender equality and education policies to ensure the compliance with the obligations under maternity protection and to move towards an egalitarian labour legislation.

One of the biggest areas of concerns with regard to maternity protection is the situation of women informally employed and women engaged in the agricultural sector (as employees and members of *dekhkan* farms). Some promising measures have been included in the PRSP for 2010–2012. In this respect, social partners, the Ministry of Labour and Social Protection, the Women's Committee, the Ministry of Agriculture shall foster reforms foreseen in the PRSP and conduct relevant gender analysis of the sector in order to propose gender-sensitive measures aimed at social security of women working in this sector, respecting their labour rights and enjoying maternity protection measures. Besides, efforts ought to be undertaken in order to assess prospects of the ratification of the ILO Convention 189 on Domestic Workers to bring national legislation in compliance and to extend guarantees to female-domestic workers.

5. Concluding remarks

The Tajik legislation on maternity protection needs to progress from a protectionist approach to an egalitarian approach. Some of the steps that need to be undertaken in this direction include: (1) amend the legislation, especially outdated by-laws taking into account recent developments of the labour legislation and the legislation on *dekhkan* farms; (2) extend maternity protection measures such as paid paternity leave, additional leave for taking care of children, sick family members to male workers; (3) review the national legislation and introduce special incentives, such as tax preferences for employers hiring women and a general reduction of social tax contributions of the employer that will result in formal employment opportunities for women, attracting them to get better paid jobs; (4) improve inter-ministerial cooperation between bodies responsible for implementing measures of labour strategy, gender equality and education focusing on work/family balance; (5) foster the reform of preschool education for children from 0–2 years of age and older in order to increase women's economic activities; (6) develop new regulations extending effective social security measures including maternity leave to female-members of *dekhkan* farms; (7) improve national statistics on maternity protection that will facilitate the assessment of the practical implementation of legal guarantees and public spending on benefits related to maternity protection; (8) undertake a campaign in order to encourage men to take parental leave and take care of children; (9) ratify the ILO Convention 183 on Maternity Protection (2000); (10) assess prospects of the ratification of the ILO Convention 189 on Domestic Workers (2011).

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