International
Labour
Organization

Study on Maternity Protection Insurance in Sri Lanka

Study on Maternity Protection Insurance in Sri Lanka

ILO Country Office for Sri Lanka and the Maldives 2016

ILO Cataloguing in Publication Data

Study on maternity protection insurance in Sri Lanka / International Labour Organization, ILO Country Office for Sri Lanka and the Maldives. - Colombo: ILO, 2016.

ISBN: 9789221284918; 9789221284925 (web pdf)

International Labour Organization; ILO Country Office for Sri Lanka and the Maldives.

maternity protection / maternity benefit / role of ILO / ILO Convention / comment / Sri Lanka

13.03.1

ILO Cataloguing in Publication Data

Printed in Colombo, Sri Lanka

FOREWORD

Supporting workers with family responsibilities is one of the most important strategies within the Decent Work Agenda for achieving equality between women and men in the world of work. Governments have a leadership role to play by setting policy and creating an enabling environment conducive to dialogue and reconciliation of work and family responsibilities. The success of government strategies to promote women's equal opportunities and treatment in labour markets and to achieve gender equality are dependent on adequate and accessible maternity protection and family-friendly infrastructure and services. Providing maternity protection and supporting workers with family responsibilities also ensure healthier workers for the future.

When women are discriminated against due to their reproductive role or not provided maternity protection, and when workers with family responsibilities are not protected, societal impacts can be wide-ranging. When gender inequality is reinforced in workplaces and women's position in the labour market undermined, the gender division of labour within households is reinforced and perpetuated. Because family responsibilities mainly fall on women, many choose part-time work or settle for vulnerable and informal economic activities that allow some flexibility, and often proximity to the home. These choices diminish long-term earning potential, skills development, career opportunities, and access to social protection including an adequate pension in old-age.

This undermines the State's investment in women's education which not only impedes growth and development but sabotages national policies that aim to increase women's labour force participation. We need to provide a workplace that truly allows women to combine both tasks well, without negatively affecting their opportunity for career growth, even if it costs money. Providing necessary entitlements such as maternity and other benefits will allow women to compete with men on equal footing when entering the labour market. This will no doubt contribute to the social and economic well-being of families and communities and will help minimize risks of social unrest and maximize chances in the long run for prosperity through more inclusive economic and social development.

In 1993 Sri Lanka has ratified the Maternity Protection Convention No. 103 (Revised), 1952, despite the fact that Sri Lanka was a developing country at the time of ratification of the convention. However, the national legislation, as well as the practice, has fallen short of complying with some of the key requirements of the Convention. This study was conducted to respond to a request by the Government to provide technical assistance for bringing its legislation and practice in conformity with Convention No. 103. As the first and major step, it was agreed that an assessment of setting up a maternity insurance scheme in Sri Lanka should be undertaken, with a view to identifying a number of policy options for the design of such a scheme, in line with Convention No. 103, for considerations by tripartite stakeholders.

This report recommends that Sri Lanka establishes a maternity protection insurance scheme compliant with the ILO Convention, which could initially cover the employees of the private and government corporate sector (those covered by Employees' Trust Fund) and could then be progressively extended to cover all employed workers. It is assumed that, in parallel, the Government will engage in a process to eliminate the discrepancies identified by the ILO supervisory bodies with respect to the implementation of Convention No. 103, which are essentially linked to the fact that the current maternity protection scheme is based on employers' liability.

I would like to acknowledge the contribution of the Dr Ravi-Rannan-Eliya, Executive Director, Institute of Health Policy (IHP) and his team for their excellent work. I also acknowledge the contributions of Mr Markus Ruck, ILO Senior Social Security Specialist, DWT, New Delhi and Mr Markov Kroum, ILO International Labour Standards Department, Geneva who provided technical expertise throughout the process, and Ms Shafinaz Hassendeen(former Senior Programme Officer, ILO) and Ms Pramodini Weerasekera (ILO Colombo Office) for their input and facilitating and coordinating the whole process.

Donglin Li
ILO Country Director for Sri Lanka & Maldives

Contents

Tables and Figures

Abbreviations

AESFR	Age-Education Specific Fertility Rate
CEACR	Committee of Experts on the Application of Conventions and Recommendations
EFC	Employers' Federation of Ceylon
EII	Employment Injury Insurance
EPF	Employees' Provident Fund
ETF	Employees' Trust Fund
ILO	International Labour Organization
LFS	Labour Force Survey
MBO	Maternity Benefits Ordinance
NTUF	National Trade Union Federation
SLNSS	Sri Lanka Nidahas Sevaka Sangamaya
TFR	Total Fertility Rate

Executive Summary

1. From the ILO and long-standing international perspective, maternity benefit protection requires (i) financing of medical care for childbirth, (ii) provision of rights for women workers to take leave from employment during and after childbirth, and (iii) provision of cash benefits to mothers taking maternity leave.

2. Sri Lanka already finances from public funds medical care during childbirth for all mothers. Levels of effective coverage are high and better than most comparable countries, and action in this area is not required.

3. Sri Lanka provides the right to maternity leave and cash benefits during maternity leave only to formal sector workers, namely public sector employees, and private sector workers in formal employment contracts. These are financed by public funds in the case of those in the public sector, and by employer liability in the case of private sector employees. These arrangements cover about 45.9% women in the female labour force (2012).

4. Sri Lanka does not have any arrangements to provide maternity benefits to informal sector workers and those in domestic and home wage employment. This constitutes the largest gap in social protection in this area.

5. The rate of female labor force participation in Sri Lanka is one of the lowest in the region. As Sri Lanka's population ages and birth rates fall, the country will soon face contraction of its available labor supply, and this will constrain future economic growth, the return on invested capital and ultimately corporate profits and living standards in the country. In this context, many countries seek to increase the overall labor supply by increasing female labor force participation. Measures to improve maternity benefits generally increase recruitment and retention of women by the workforce, and such benefits will become increasingly important in Sri Lanka for sustaining economic growth.

6. Sri Lanka is one of only 24 countries that have ratified the ILO Maternity Protection Convention (Revised) No. 103. The key features of this are that it sets minimum levels of maternity benefits, and that it prohibits reliance on employer liability, requiring instead the use of public funds or social insurance.

7. Convention No. 103, which was adopted in 1952, is no longer the appropriate ILO convention for framing national standards for maternity benefit protection, since the ILO adopted the Maternity Protection Convention No. 183 in 2000. The ILO recognizes the latter convention as the most up-to-date international labor standard on maternity protection.

8. Sri Lanka can easily comply with the standards for minimum maternity benefits in Convention No. 103 by amending current legislation to provide all covered workers with a minimum of 84 working days maternity leave, and removing provisions that provide lesser benefits for mothers having their third or greater child. This would impose only modest costs on employers, and has the benefit of addressing a major source of inequality in amounts of paid maternity leave that different workers are entitled to, and which all stakeholders agree should be eliminated. We recommend that necessary action be taken to amend section 3(1) (b) of the Maternity Benefits Ordinance.

9. There are benefits to the child, family and society for fathers to engage more intensively with the rearing of children. Current awareness and support for the concept of paternity leave is limited in Sri Lanka. We recommend that the government take action to provide one week's paternity leave for all covered workers.

10. Complying with Convention No. 103's requirement to replace employer liability with social insurance or public funding presents a more complex challenge. If the country wishes to prioritize compliance, the most feasible option is to extend the ETF system to provide maternity cash benefits to covered workers, with funding by a compulsory 1% payroll levy, to be collected from employers alongside the current ETF contribution. A 1% levy would be adequate to provide the enhanced level of maternity benefits required by both ILO Convention Nos. 103 and 183, as well as three day's paternity leave for all births. This would represent a form of social insurance, but would not require establishment of a new social insurance agency with all that this would entail. There is a lack of strong consensus amongst social partners in favor of this, but this change can be significantly facilitated and made more feasible if it is done in combination with other proposed changes to extend ETF to provide employment injury compensation. Such combination would help distribute costs more evenly across firms as the firm risks of maternity leave costs and employment injury compensation are distributed differently.

11. However, we find that there is no other Asian country with a similar employment legislation context to Sri Lanka's and with a history of no social insurance that has made such a change from employer liability to social insurance financing in the area of maternity benefits financing. Relevant economies that have not made such a change include Malaysia, Hong Kong and Singapore. There are significant constraints that make it difficult for countries to make this type of change, both institutional and political. For countries with no established social insurance system, the transition costs of making this change solely for maternity benefits are high.

12. An alternative strategy for tackling the problem of complying with Convention No. 103 is to ratify the newer Convention No. 183. This was expressly introduced to make it easier for countries, such as Sri Lanka, to achieve compliance, by allowing existing employer liability arrangements to be retained, whilst setting out a more ambitious set of targets in terms of population coverage and depth of benefits. Other than resolving the issue of compliance with the prohibition against use of employer liability financing, this step would also be framing Sri Lanka's convention targets using a more up-to-date framework.

13. In event that Sri Lanka chooses to ratify Convention No. 183, the country will still need to amend existing legislation to (a) increase maternity benefits to a minimum of 14 weeks (98 calendar days) for all covered workers, and (b) notify ILO that it intends to cover other workers in a staged and progressive manner. The first of these steps are consistent with what social partners currently support. The second allows the country to expand coverage in steps as resources permit.

14. To expand maternity benefits coverage to informal sector workers in Sri Lanka, there is no alternative to using public funds. An ETF-based contributory system does create options for allowing voluntary enrolment by such workers, but global experience demonstrates that such an approach will not achieve high levels of coverage. For this reason, countries like Singapore have had to resort to public funds to expand coverage to these types of workers.

15. Although the fiscal space and political conditions do not exist to consider significant expansion of maternity benefits to informal sector workers at the current time, the Government should develop a long-term strategy for doing so in event of ratifying Convention No. 183. Improving tax collection in the country will be a necessary condition to make such expansion possible. In addition, Government should improve the Labour Force Survey or create new survey mechanisms to track employee benefits more systematically so that the national dialogue does not focus excessively on those who have some benefits at the expense of those have none.

Background

During the past six decades, Sri Lanka's socio-economic structure has undergone profound changes with a shift to a more nuclear family structure, where an increasing number of married men and women work in the formal sector. In 2011, 53% of employed females were in the employee category and 35% were in the private sector, the largest sector among the employed females. While 23.3% of the employed females were unpaid family workers, 22.6% and 17.8% of them were self-employed workers and were working in the public sector respectively (Table A1).

Sri Lanka's population was 20.3 million in 2012, with a labour force of 8.6 million of which 2.9 million are female. The participation of females aged over 15 years in the labour force is 34.4% (2012). In 2011, female workers were distributed 37.6% in agriculture, 24.3% in industry and the remaining 38.1% in the service sector. Female literacy is relatively high at 92% compared to 94% for males (2012). About 15% of all births occur to female employees in the private and government corporate sectors.

The main legislations that provide maternity protection to private sector employees are: a) the Maternity Benefits Ordinance of 1939, and b) the Shop and Office Employees Act of 1954, which impose a liability on employers to provide paid maternity leave to their employees. Government employees are provided similar or better benefits under government regulations.

Sri Lanka has ratified the ILO Maternity Protection Convention of 1952 (No. 103) in 1993. The country is yet to ratify the Convention 2000 (183). In 2010, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) identified a number of areas where the national legislation falls short of the provisions of the Convention, as part of its regular review of country compliance. It was observed that the situation in law and in practice in Sri Lanka does not give effect to ILO Convention 103. The ILO therefore, agreed to provide assistance to the government to undertake an assessment as to how legislation could be brought in to compliance by establishing a mechanism of providing maternity cash benefits to women on maternity leave in line with the prescriptions of the Convention. The Government has expressed its desire to examine the best options available to address the issue by improving the existing social protection mechanisms.

The basic principles of maternity protection according to ILO Convention 103 are:

a) The right to maternity leave
b) The provision of health care during maternity
c) The right to cash benefits during maternity leave
d) The right to job security during pregnancy and maternity leave
e) The right to nursing breaks during working hours
f) That employers should not be individually liable for the costs of maternity benefits.

The traditional justifications for employers not being individually liable for the costs of maternity benefits are: a) employer liability schemes of maternity benefit often work against the interest of women as employers' would discriminate against women who are pregnant or might become pregnant and therefore become a liability to them, b) employer liability schemes impose excessive costs on small and medium size enterprises which can lead to discrimination against women and c) enforcement of the laws on individual employers is often difficult, especially when labour law enforcement mechanisms are weak. To address these disadvantages Convention 103 requires that maternity benefits be financed either by public funds, i.e., taxation, or by social insurance.

Accordingly, the objectives of the study are to assess the options available to Sri Lanka to address the shortfalls in compliance with Convention 103, and to assess the feasibility of potential solutions to initially cover the formal sector female employees and progressively extend to all women.

1

Overview of Demographic, Economic and Social Context

1.1 Population Statistics

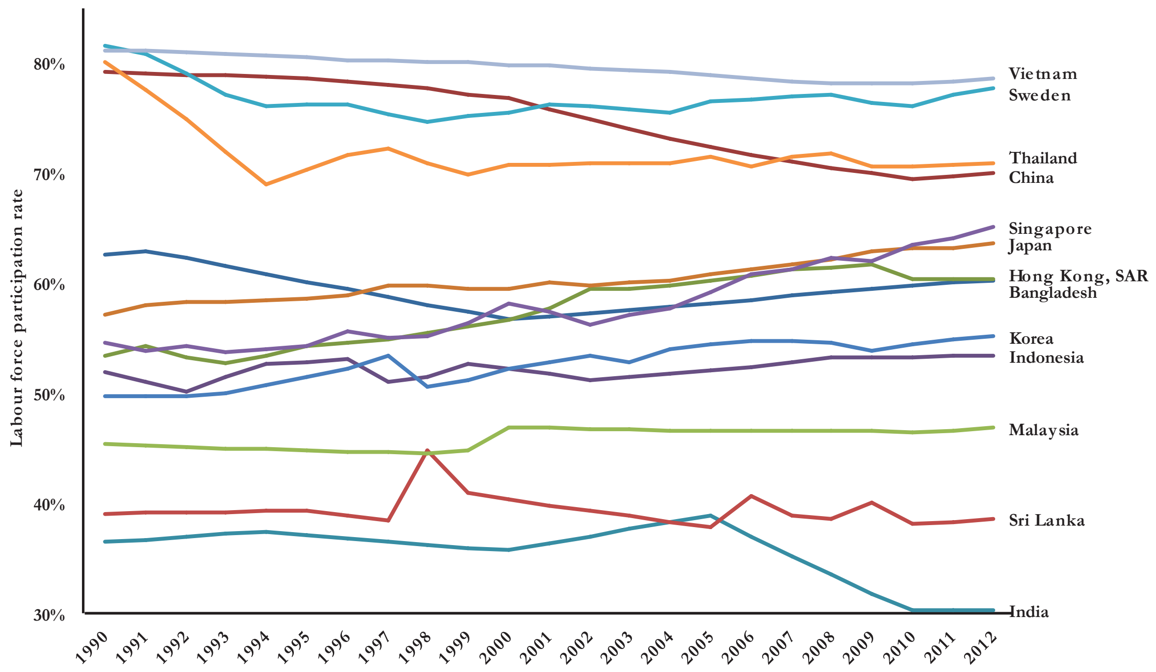
The enumerated population of Sri Lanka in the 2012 Census was 20.3 million of which 51.5% were female. The rate of growth of population in 2011 was 1.0% compared to 1.4% in 2000 (Department of Census and Statistics 2013 a). The Total Fertility Rate (TFR) has declined to 2.3 during 2003-2006 from a level of 2.8 during 1982-1987 (Department of Census and Statistics 2009). A TFR of 2.3 means that on an average a woman would bear about 2.3 children during her reproductive life span if the current age specific fertility rates prevail. The United Nations Population Division in its medium population projections has assumed a total fertility rate of 2.25 for the period 2015-2020 (United Nations 2013). Life expectancy at birth has increased from 68.1years for males and 76.6 years for females during 2000-2002 to an estimated level of 71.1 and 77.4 years for males and females respectively for 2010-2015 period. The infant mortality rate has continued to decline, and in 2008 it was 9.0 per thousand live births (Department of Census and Statistics; UN Population Division).

1.2 Social and Economic Development Policies

Sri Lanka has made remarkable progress in social development during the past six decades. In fact, social development has preceded sustained economic development. This was especially so during the first three decades after Independence where economic growth was relatively slow, but improvements in social indicators were remarkable. The trade-off between economic growth and social welfare in Sri Lanka has been much debated in the literature. When economic liberalization began in 1977, Sri Lanka was a latecomer in emulating the export-led economies of East Asia, following a half-hearted and abandoned earlier effort in the late 1960s. Moreover, the internal conflicts in the country during 1983-2009 substantially disturbed the economic management process. However, sustained economic growth with an average economic growth rate of about 6.5% since 2005,which has increased with the end of the internal conflict in 2009, has created an opportunity for the country to improve its social security policies by exploiting the increase in national resources and the expansion in the number of high quality jobs.

1.3 Employed Population

The total labour force increased from 8.1 million in 2005 to 8.6 million in 2011. The employed population increased from 7.5 million to 8.2 million during the same period, with the number of employed females increasing from 2.4 million to 2.7 million and the number of employed males from 5.1 million to 5.5 million. In 2011, male employees numbered3.1 million compared to 1.4 million females. Employment by major industrial groups in agriculture, forestry and fishery as well as those engaged in wholesale and retail trade, motor vehicle repair and personal and household goods, show an increase both among males and females. With regard to occupational groups, employment among males has increased only marginally in professional categories while there has been a decline in the proportionate share in employment of females in these categories.



Source : World Development Indicators, World Bank 2013

Figure 1: Female labour force participation rate (15-64 years), 1990-2012

The continuous decline in fertility, which commenced in the early 1960s, has brought about a decline in the growth rate of the labour force, which has also contributed to the decline in the unemployment rate. As the birth rate is slowing, the labour force will soon stop growing and will start to decline in the future. Future economic growth will partly depend on increasing the labour supply in these conditions, and the shortage of labour in future will have to be met largely by increasing the participation of females in the labour force. Currently, the female participation rate (age group 15-64) in Sri Lanka is relatively low compared to many economically expanding countries in the region (see Figure 1). It is also observed from Table 1 that while the growth of employment in the public sector during 2005 to 2012 has increased by 23 per cent, the same in the private sector has decreased by 3.0 per cent during the same time period. In the case of females, it has decreased faster than that of males (-3.2% as opposed to -2.9%). As government at present abroad discourages unskilled female migration for employment, more females will need to find employment locally. In this context, improved maternity benefits for private sector employees may help stimulate a higher participation of females in the labour force.

Table 1: Employed Population by Sex and Public and Private Sectors

Year	Male		Female		Total	
	Public	Private	Public	Private	Public	Private
2005	600,767	2,469,822	395,618	991,428	996,385	3,461,250
2012	701,067	2,398,965	527,671	959,885	1,228,738	3,358,850
% Change	16.7	-2.9	33.4	-3.2	23.3	-3.0

Source: Report of the Labour Force Survey (2012)

1.4 Health service provision

In Sri Lanka, all citizens and residents are covered by the government's health services, which provide treatment and care on a free basis. Official user fees were effectively ended in 1952, except for a period from 1971 to 1977, when they were reintroduced. In practice, there is good access to these government services, and a high degree of protection against the financial costs of treatment, with all relevant indicators for access to routine health care being substantially better than any other country in the South Asian region, and most other lowermiddle income countries.

Sri Lanka has a long history of maternal health care provided by the government. The first maternity hospital, known as De Soysa Lying–in–home, was opened in 1879. In 1887, legislation for registration of midwives was introduced, which made it mandatory for all midwives to register before practicing midwifery, a positive step towards ensuring a safer delivery by qualified individuals, thus protecting the health of both the mother and child before, during and after childbirth. In the mid-1920s, action was taken by the government to introduce a Health Unit System, which could provide domiciliary as well as clinic-based services to mothers during pregnancy and postpartum period. In the late 1920s, it was proposed to extend the franchise to all adult women expressly for the purpose of improving maternity protection in the country by increasing the voice of women, and this was implemented from 1931. Subsequent to this, substantial expansions in government provision of maternity care were implemented.

Trained assistance at delivery was initially provided at medical institutions as well as at home, but since the early 1970s the government encouraged women to give birth in a health facility. Currently, there are more than 300 Health Units covering the entire country (Family Health Bureau 2011). Maternal and child health services are provided free of charge to the entire population. About 98% of births occur in a health facility, of which 94% are in the public sector and about 99% of births in the country are delivered by a skilled provider (Department of Census and Statistics 2009).

The private sector is the second largest provider of health care in Sri Lanka, and private expenditures account for just over half of all healthcare spending. There has been increased delivery of outpatient services by private hospitals and clinics since the 1970s, but the private share of outpatient provision has fluctuated between 45–55% since the 1990s. The private sector also manages about 4% of all hospital admissions in the country, and this has not changed significantly since the 1990s. There has been increased availability of private medical insurance since the 1980s (De Alwis, Fernando, and Rannan-Eliya 2011), but private medical insurance still only accounts for 5% of total health financing, and private insurers universally in Sri Lanka exclude coverage of normal childbirth. Some private enterprises do provide medical and maternity care to their staff through private medical insurance programmes, but these typically only cover complications of childbirth. Generally, the private healthcare sector caters to higher income earners and individuals with access to medical insurance.

2

Maternity Benefits in Sri Lanka

2.1 ILO and maternity protection

Maternity protection has been a major concern of the International Labour Organization (ILO) since its foundation, when the first Maternity Protection Convention, 1919 (No. 3) was adopted. The "provision for child welfare and maternity protection" is also listed among the core aims and purposes of the ILO (Article III, Declaration of Philadelphia, 1944). Since then, the International Labour Conference (ILC) has adopted two further Conventions, supplemented by Recommendations on maternity protection, the first being the Maternity Protection Convention (Revised), 1952 (No. 103), and the most recent being the Maternity Protection Convention (No. 183), in 2000.

As of January 2014, only 24 member states, including Sri Lanka, had ratified Convention No. 103, and 28 countries, not including Sri Lanka, had ratified Convention No. 183. Ratification of Convention No. 183 automatically results in nullification of Convention No. 103, so if Sri Lanka ratifies the more recent Convention, she will no longer be bound by Convention No. 103.

In 1952, the provision of maternity leave and cash benefits in case of maternity was also officially recognized as constituting one of the nine branches of social security established by the Social Security (Minimum Standards) Convention, 1952 (No. 102). More recently, the ILO Recommendation concerning national floors of social protection, 2012 (No. 202) calls for maternity benefits to be provided as part of the basic social security guarantees that comprise national social protection floors: access to essential health care, including maternity care, and basic income security for persons in active age who are unable to earn sufficient income due, among other reasons, to maternity.

2.2 Existing National Legislation on Maternity Protection

On 1st April 1993, Sri Lanka ratified the ILO Maternity Protection Convention (Revised) 1952 (No.103), so this is the Convention that is currently relevant for assessing the situation in Sri Lanka. It is noted that Convention No. 183, which provides for a wider range of protections, has since superseded Convention No. 103. However, Sri Lanka has not ratified this more recent convention.

Sri Lanka enacted legislation on maternity benefits as far back as 1939. The Maternity Benefits Ordinance No. 32 of 1939 sets out benefits to women employed in any trade, which are in conformity with the ILO Convention No.103. The Shop and Office Employees' Act No. 19 of 1954 provides for maternity benefits to women employed in shops and offices (non-industrial occupations). The Establishment Code provides maternity benefits to women employed in Government service. The Maternity Benefits Ordinance covers women employed in agriculture, including plantations, provided the employment is not casual. However, it excludes women wage earners working from home and domestic workers in private households who are required to be covered by Convention No.103. Table 2 shows the coverage of employees under the three Acts of relevant legislation.

Table 2: Coverage of statutory arrangements for providing maternity benefits

Legislation/Regulation	Coverage
Shop and Office Employees' or **Remuneration Act**	All females employed in or related to the business of a shop office.
Maternity Benefits Ordinance	All females employed on a wage in any trade, industry, business undertaking. Occupation, profession, or calling except, a) females covered by the Shop and Office Employees' Act or b) whose employment is of casual nature, c) home workers and d) domestic workers in private households.
Establishment Code	All females employed in the public sector or in Statutory Boards or covered by provisions of the Establishment Code (Chapter XII) or Administrative Circular (No. 4/22005, February 2005).

The period of maternity leave under the Maternity Benefits Ordinance increased from 42 to 84 calendar days in 1992 even prior to the ratification of ILO's Convention No.103. However, under the Maternity Benefits Ordinance and the Shop and Office Employees' Act, this entitlement is available for the first two children only (Table 3). This lower entitlement was due to a number of family planning policies adopted by the government to slow the population growth rate. However, in the public sector, there is no such restriction. Table 4 shows the provision of other maternity benefits according to the three legislations.

In the public service a woman could obtain further extension of maternity leave. However, in the private sector, there is no such opportunity for female workers to obtain such leave, as at present the cost of salaries is born by the employer. The introduction of a social insurance scheme would facilitate the implementation of this provision (Ranaraja 2012), as would a scheme funded by government funds.

Table 3: Rights to maternity leave under current statutory arrangements

Legislation/Regulation	Provisions
Shop and Office Employees' Remuneration Act	84 working days (which could be taken as maximum 14 days prenatal and 70 days postnatal) for the first two children and thereafter from the third child it is reduced to 42 days.
Maternity Benefits Ordinance	84 calendar days (which could be taken as maximum 14 days prenatal and 70 days postnatal) for the first two children and thereafter from the third child it is reduced to 42 days.
Establishment Code	84 working days (which could be taken as 14 days prenatal and 70 days postnatal) and 84 calendar days half pay and another 84 calendar days no pay leave. This benefit is available for all births.

Convention No.103 states that maternity cash benefits must be provided either by means of compulsory social insurance or by means of public funds. In Sri Lanka, there is no system of social insurance or government-funded programme to pay for maternity cash benefits. However, there is a public funded income transfer programme to alleviate poverty, which provides support to pregnant mothers of low-income families. This programme covers about 35% of the population, but its levels of cash benefit are in most cases less than stipulated by Convention No. 103.

Table 4: Provision of cash benefits and nursing intervals under current statutory arrangements

Legislation/Regulation	Provisions
Shop and Office Employees' Remuneration Act	Payment of salary based on full pay. No nursing intervals provided.
Maternity Benefits Ordinance	Six-seventh of weekly wage to be paid. If crèche is provided, two intervals of breastfeeding of 30 minutes each are provided. If crèche is not provided, 60 minutes each of two intervals are provided.
Establishment Code	Payment of salary is based on full pay. 60 minutes nursing breaks are provided until the infant is 6 months old.

Public health care including maternity care is provided free of charge to all women. Thus, prenatal and postnatal care including institutional delivery is available to all women whether employed or not, and financed by public funds. In addition, mothers may make use of private health care institutions for maternity care, if they so wish.

The Shop and Office Employees' Act and the Maternity Benefit Ordinance conforms to the ILO Convention of No.103 in that no employee can be terminated from employment only on the basis of pregnancy, childbirth or consequent illness. However, public service workers do not enjoy this protection against dismissal.

In 2006, the Government introduced paternity leave (3 days) to all male public servants to be taken within one month of the birth of their child. The Free Trade Zone Workers' and General Workers' Union which represents workers in export processing zones has in its proposals submitted to the Ministry of Labour included paternity leave of three days.

2.3 Compliance of Maternity Benefits with ILO Convention 103

(a) Maternity leave

The duration of paid maternity leave mandated under Convention 103 is 12 weeks. Although twelve weeks of maternity leave is granted to all employees in the private and public sectors, for employees in the private sector coming under the Shop and Office Employees' Act and the Maternity Benefits Ordinance, the number of days of maternity leave is reduced from 84 days to 42 days from the third child. This reduction in rights is not compliant with Article 3.2 of Convention 103.

Whilst both groups of workers are entitled to the minimum level of maternity leave stipulated by Convention 103, there is a long-standing inequity between workers in that female workers under the Maternity Benefits Ordinance are entitled to 84 calendar days while those under the Shop and Office Employees' Act and female public servants are entitled to of 84 working days. It is also noted that domestic workers and agricultural workers outside the large plantations are not covered by above Ordinance.

It is to be noted that the ILO Convention 183, which Sri Lanka has not ratified, mandates a minimum of 14 weeks and its accompanying Recommendation No.191 goes further and suggests member States to increase it to at least 18 weeks.

(b) Health care

Health care during maternity is an important component of Convention 103. In Sri Lanka, public health care is free of charge to the entire population, and financed from public funds. Thus all pregnant women are provided with maternal health care during the antenatal, intra-natal and postnatal periods and this is consistent with the Convention.

(c) Cash benefits

According to ILO Convention 103, the cash benefits paid during maternity leave should be at least two-thirds of women's previous earnings and should be paid throughout the entire duration of maternity leave.

In Sri Lanka, 100 per cent of the woman's salary at the time of taking maternity leave must be paid during the entire duration of maternity leave, for those covered by the three statutory arrangements.

(d) Job security

The ILO standards on maternity protection provides for (a) protection during maternity leave and during a given period following return to work and (b) measures to ensure that maternity is not a source of discrimination in employment. According to Convention No. 183 dismissal is permitted for reasons not linked to maternity, while Convention No.103 calls for an absolute prohibition of maternity related dismissal.

In Sri Lanka, the Maternity Benefits Ordinance and the Shop and Office Employees' Act protects employees in the private sector from dismissal due to maternity reasons. However, female employees in the public sector do not have such protection, although no cases of dismissal on these grounds have been reported.

(e) Breastfeeding breaks

The first Convention on maternity protection (No.3) stipulated two 30-minute breaks a day during working hours. Convention No.103 (and also 183) however, leave it to national laws and regulations to decide the number and duration of nursing breaks, provided that at least one break is provided.

The Shop and Office Employees' Act does not stipulate nursing intervals for female workers who are covered, although in practice such provisions are made.

(f) Financing maternity cash benefits

ILO Convention No.'s 3 and 103 emphasize that employers should not be individually liable for the cost of maternity benefits payable to women employed by them and that should be paid through compulsory social insurance or public funds. In Sri Lanka, maternity benefit payments are financed through employer liability for those covered, which is not compliant with Convention 103. Convention 103 imposes an obligation on Sri Lanka to replace employer liability financing of maternity cash benefits with either a scheme financed by public funds and/or a social insurance scheme.

The more recent Convention 183 relaxes this requirement in the case of countries like Sri Lanka, which have legislated for employer liability prior to the adoption of the Convention 183 in 2000. Specifically, to allow for its ratification by member States that do not have a social security maternity benefits branch, Convention 183 allows employers to assume individual liability for maternity benefits in cases where they have given their specific agreement. Convention No. 183 also authorizes employers to bear the cost of maternity benefits, where this was determined at the national level before the adoption of the Convention in 2000, or where it is agreed upon at the national level by the government and the social partners. However, Sri Lanka has only ratified Convention 103, so until it ratifies Convention 183, the relevant reference for determining obligations for compliance is the older Convention. The Maternity Benefit Ordinance (originally legislated in 1939), which yet serves as the binding legislation, only identifies the employed workers as its beneficiaries and not the self-employed and other informal sector workers.

In view of the above deficiencies in the application of Convention No. 103, in June 2011 a ministerial sub-committee convened by the Secretary to the Ministry of Labour and Labour Relations made the following recommendations on specific conclusions on application of Convention No. 103 by the CEACR:

a) With regard to extending maternity benefits to domestic workers and agricultural workers who are not covered by the Maternity Benefits Ordinance, it was noted that it would be difficult to do so unless a policy decision was taken to recognize an employer-employee relationship in these arrangements.

b) The extension of cash benefits to domestic workers and agricultural workers through an income-transfer scheme, such as the current poverty alleviation programme (known as the "Samurdhi" programme), was suggested.

c) Maternity leave should be similar for the birth of any child, and the reduction for the third or subsequent child should be removed.

d) The practical difficulty in providing post-natal maternity leave of at least six weeks would not arise if the 12-weeks' maternity leave is mandatory by law for every childbirth.

e) With regard to providing cash benefits through social insurance, the Committee called on the Government to seek ILO technical assistance for this purpose.

f) It was recommended that nursing intervals be provided for female workers covered by the Shop and Office Employees' Act, which did not provide for such intervals.

g) It was also recommended that public sector workers be protected against dismissal during maternity leave or for reason of pregnancy.

h) Supplementary maternity leave should be granted only for a period of three weeks if certified by a medical practitioner, and the employer should continue to pay maternity benefits during such extended period.

i) The Committee recommended that the provisions in the Maternity Benefits Ordinance for alternative maternity benefits should be repealed.

It is to be noted that most of the above recommendations do not involve any additional costs. In the case of rectifying the anomalies in maternity leave; the costs would be marginal at around 0.1 per cent of the total cost of current wages.

2.4 Discussions with Selected Stakeholders

Discussions on the present status of maternity benefits scheme and possible improvements were held with representatives of three stakeholders: the employers, the employees and the government to obtain their views and suggestions. The representatives were identified with the assistance of the Ministry of Labour and Labour Relations and the ILO Office in Colombo.

2.4.1 Views of Employer Representative

Employers' Federation of Ceylon (EFC)

The EFC, the main representative of employers, noted that employers do not want to be overburdened by paying out additional benefits to their employees. The employers who flout the current law in not paying maternity benefits are the small time employers. Thus, if a mandatory scheme is established, only the major/larger employers will end up bearing the brunt of the cost of paying for a social insurance programme. This situation can be countered by an effective monitoring mechanism. If a maternity benefits scheme is to be implemented, it is necessary that a tripartite representation be in place to oversee the management of the scheme funds. It was noted that EFC does not agree to an increase in maternity leave from the current level, as it would affect overall worker productivity. Also it would result in the discrimination of hiring female employees and aggravate the present gender gap. It is the opinion of the Federation that the 84 days of maternity leave should be provided to all female workers irrespective of the number of births. It was also pointed out that at present, insurance companies' cover only the children over the age of one year under the parents' medical insurance schemes. Therefore, negotiations should be carried out with insurers to extend the coverage from birth, since parents incur many out-of-pocket costs within the first year of life.

2.4.2 Views of Employee Representatives

National Trade Union Federation (NTUF)

The NTUF is an umbrella organization with a membership of over 400,000 affiliated with eight national unions and other associations. These include two trade unions that represent informal sector workers and an association representing the self-employed. The major concern of the NTUF is the present situation where maternity benefits differ among different categories of workers in the private sector. The Federation is of the view that a uniform system of benefits should be made eligible to all female workers. It was stated that the government should make a contribution if the present scheme of maternity benefits is to be changed to a social insurance scheme.

Sri Lanka Nidahas Sevaka Sangamaya (SLNSS)

The General Secretary of SLNSS also pointed out the anomalies that exist with regard to maternity benefits under the Shop and Office Employees Act and the Maternity Benefits Ordinance and stressed the need to rectify them. It was also noted that there should be one social security scheme to cover all employees in the formal contracted private sector. In Sri Lanka, the best choice to establish such a scheme is through the well-established Employees Trust Fund (ETF), as employees will have a greater trust in the ETF than in a privately run scheme. As some companies have already set aside funds for maternity benefits, the increased payment by the employers to the ETF for maternity benefits could be taken from those funds. It was observed however, that the administration of the ETF should be improved. It was pointed out by the General Secretary that with a marginal increase in the contribution to the ETF, it would be possible to encompass both employee injury insurance and maternity benefits and thereby lift the social protection floor.

2.4.3 Views of Government Representatives

Ministry of Labour and Labour Relations

Discussion with the Consultant to the Ministry of Labour and former Secretary of Labour revealed that efforts have already being made to rectify the disparities that exist with regard to maternity benefits under the Shop and Office Employees Act and the Maternity Benefits Ordinance. It was noted that the problem was brought up at the International Labour Conference in Geneva. Following the conference, a ministerial committee was set up to examine the existing disparities and how best the current legislation can be amended. Following the discussions, a report was prepared which stipulates amendments and recommendations and presented to the National Labour Advisory Council. The Consultant opined that the Ministry is expected to come to a final consensus soon on the amendments that were recommended in the report.

Subsequent consultations indicated that whilst the Government had intimated to the ILO that it proposed to use an insurance approach to resolve some of the current shortfalls, the decision to go for an insurance solution had not been properly investigated beforehand and that the Government is not fully committed to adopting this type of action, recognizing the difficulties of changing current arrangements. At the same time, adoption of Convention 183 would allow Sri Lanka to retain an employer liability system for the existing covered groups, but it is not clear to what extent government (and employer and employee) counterparts appreciate this.

3

Global Overview of Maternity Protection

Maternity protection for female workers has a long history with the adoption of the Maternity Protection Convention in 1919. The core concerns have been to ensure that women's work does not pose risks to the health of the mother and child and to ensure that women's reproductive roles do not compromise their economic and employment security. Thus, maternity protection contributes to the health and well being of mothers and their babies and the achievement of Millennium Development Goals 4 and 5, which seek to reduce child mortality and improve the health of mothers. By safeguarding women's employment and income security during and after pregnancy, maternity protection also ensures women's access to equality of opportunities and treatment at workplace thus achieving the 3rd Millennium Development Goal consisting gender equality and empowerment of women over the past two decades. There have been noticeable improvements in maternity protection legislation, with a shift towards longer rest periods at the time of childbirth, and a shift away from employer liability systems of financing maternity leave to social insurance and government tax-financed schemes. By 2013, out of 185 countries and territories, only about 25% relied on employer liability schemes (ILO 2010).

From worldwide experience, employer liabilities work against the women workers' interest as employers will not want to hire pregnant women, women susceptible to bearing children or may seek to find reasons to discharge pregnant employees in order to avoid paying the costs of wage replacement during the maternity leave period. Thus, measures safeguarding the employment of pregnant working women and combating discrimination based on maternity are an integral part of maternity protection. Furthermore, compliance with individual employer liability schemes is often problematic, particularly in developing countries, where employers often do not pay the wage replacement and legislation is not enforced. Thus, a shift of maternity protection from employer liability to schemes relying on social insurance or public funds improves social protection for pregnant women employed in the formal sector and mitigates against discrimination in the labour market. However, contributory social insurance schemes suffer from a general weakness that they cannot provide cash benefits to workers in informal sector employment or mothers who are not in paid employment. In these cases, solutions ultimately depend on use of public funds, i.e., taxation.

Maternity protection has been a key part of ILO's agenda since the first Maternity Protection Convention (Convention No.3) adopted in 1919. Subsequently, additional conventions have been adopted with the same objective of enabling women to successfully combine their reproductive and working roles and prevent unequal treatment in employment due to their reproductive role. The ILO is also concerned in promoting protective measures for pregnant women who give birth. The prevention of exposure to health and safety hazards during and after pregnancy; entitlement to paid maternity leave; entitlement to breastfeeding breaks; protection against discrimination and dismissal; and guaranteed right to return to their employment after maternity leave are the main areas of concern ensuring effective protection of female workers and equal employment opportunity between male and female workers

The ILO has adopted three conventions on maternity protection: The Maternity Protection Convention, 1919 (No.3), The Maternity Protection Convention (Revised), 1952 (No. 103) and the Maternity Protection Convention, 2000 (No. 183). These Conventions, together with their corresponding Recommendations (No. 95, 1952; No. 191, 2000) have progressively expanded the scope and entitlements of maternity protection at work to address the main concerns regarding unequal treatment in employment and to enable women to successfully combine reproductive and productive roles. The Maternity Protection Recommendation, 2000 (No.191) states that "any contribution due under compulsory social insurance providing maternity benefits and any tax based upon payrolls which is raised for the purpose of providing such benefits, whether paid by both the employer and the employees or by the employer, should be paid in respect of the total number of men and women employed, without distinction of sex"(ILO 2000).

In the Asia-Pacific region, the most common financing approach for paying maternity cash benefits is employer liability, although there has been a shift towards social insurance methods in several countries.

The countries that rely on employer liability schemes include Sri Lanka, Afghanistan, Bangladesh, Brunei, Cambodia, Fiji, Indonesia, Malaysia, Nepal, Pakistan and Solomon Islands. China, India, Iran, Laos, Mongolia, Myanmar and Philippines rely on social insurance schemes.

Australia, Hong Kong, Japan, and Singapore supplement either employer liability or social insurance schemes with public funding, whilst Korea relies on a mix of social security and employer liability financing.

3.1 Maternity Leave

The protection of the employment of pregnant women on maternity leave has been addressed in all ILO maternity protection standards to ensure the health of mother and child and increase productivity of women workers. The minimum standards set out in ILO Conventions are 12 weeks (Conventions Nos. 102 and 103), 14 weeks (C183) and 18 weeks under R 191.

The Maternity Protection Convention (revised) 1952 (No.103), which Sri Lanka ratified in 1993, stipulates that 'the period of maternity leave shall be at least twelve weeks, and shall include a period of compulsory leave after confinement. The period of compulsory leave after confinement shall be prescribed by national laws or regulations, but shall in no case be less than six weeks".

The Maternity Protection Recommendation, 2000 (No.191) notes the following:

1) Members should endeavour to extend the period of maternity leave referred to in Article 4 of the Convention to at least 18 weeks.
2) Provision should be made for an extension of the maternity leave in the event of multiple births.
3) To the extent possible, measures should be taken to ensure that the woman is entitled to choose freely the time at which she takes any non-compulsory portion of her maternity leave, before or after childbirth (ILO 2000).

Globally, about one third of countries, including Sri Lanka, provide 12 to 13 weeks of maternity leave consistent with the ILO Conventions No.3 and 103. Over 50% of the countries grant maternity leave extending over 14 weeks. Only 14% of countries provide less than 12 weeks of maternity leave. In the Asia and the Pacific region, 65% of 23 countries studied (ILO 2010) provide 12 to 13 weeks of maternity leave. The length of leave has increased in several countries in the region during the period 1994 to 2009. In Bangladesh it has increased from 12 to 16 weeks, in Mongolia from 101 to 120 days, in the Republic of Korea from 60 to 90 days and in Singapore from 8 to 16 weeks.

3.2 Paternity and Parental Leave

In addition to maternity leave, ILO also recommends paternity and parental and adoption leave, as they are important to enhance family life. While paternity leave is related to male workers, parental and adoption leave applies to both male and female employees.

The length of paternity leave varies from country to country. Paternity leave provisions are becoming increasingly common indicating the growing importance attached to the father at the time of birth of his child.

Parental leave refers to a relatively long-term leave available to either parent to take care of their newly born child over a period of time usually following the maternity and paternity leave period. Parental leave is common in the European Union and other industrialized economies but is rare in developing countries.

3.3 Maternity Benefits

Since the first Maternity Protection Convention No.3 of 1919, the scope and coverage has been broadened to cover all employed women, including those in atypical forms of dependant work with the adoption of the Convention No.183 of 2000 in order to ensure the health and well-being of all working women and their children. According to Convention No.183, the only requirement for a worker to be entitled to maternity leave is the production of a certificate indicating the expected date of birth. However, in national legislations, the right to take maternity leave is often linked to various eligibility requirements.

The ILO Conventions No. 3 and No.103 state that employers should not be individually liable for the cost of maternity benefits to women employed by them. It emphasizes the need to provide maternity benefits through social insurance or public funds. This is important for mitigating discrimination in the labour market. Convention No.183, introduces an exception to this rule by allowing employers to be individually liable for maternity cash benefits in cases where they have given their specific agreement or where it is agreed upon at the national level by the government and the social partners Countries typically adopt one of the following approaches towards financing cash benefits for maternity: social security, employer liability or mixed systems. More than half (53%) of the 167 countries surveyed by the ILO provide for cash benefits through national social security schemes. In 26% of countries, benefits are paid solely by the employer. In 17% of countries, the employees and social security systems share the cost of cash maternity benefits (ILO 2010).

According to Convention No. 183, cash benefits paid during maternity leave should be at least two-thirds of a woman's previous earnings or a comparable amount for a period of 14 weeks (Article 6(4); 4(1)). The Convention, however, does not define 'previous earnings' and countries have defined such earnings in different ways.

It is seen that out of 152 countries, 42% provide cash benefits of at least two-thirds of earnings for at least 14 weeks conforming to the Convention No.183. About 34% of countries go beyond by providing 100% of previous earnings for at least 14 weeks. When all three dimensions, a) duration of leave, b) level of payment, and c) source of payment are taken into consideration, the highest levels of conformity on all three standards are seen in the developed economies and European Union countries(ILO 2010).

With the adoption of Convention No.183, the right to health protection for pregnant or nursing women has been recognized. Since the first Convention in 1919, nursing breaks during working hours have been part of the international standards on maternity protection. Both Conventions No.103, 1952 and Convention No.183, 2000 leave it to national laws and regulations to decide on the number and duration of nursing breaks, as long as at least one break is provided. The Convention 183 has also introduced the possibility of transferring daily breaks into a daily reduction of hours of work.

3.4 Maternity Benefits in Selected Asian Countries

Generally there are only two main national approaches to financing maternity cash benefits: i) employer liability schemes, and ii) social insurance. In addition, a few countries also use public funds to cover some or all the eligible mothers.

This section briefly reviews the maternity benefit schemes of countries a) which have similar legal systems and legacies as Sri Lanka such as Malaysia, Hong Kong and Singapore, and b) those in the region with social insurance schemes which provide maternity benefits such as Thailand, Philippines, Viet Nam and Japan. It is evident from the review of above schemes that countries, which have commenced providing maternity benefits through employer liability schemes, have continued to do so, without switching to an insurance model. These countries also tend to be ones that do not use social insurance mechanisms to provide other social protection benefits, e.g., Hong Kong, Malaysia and Singapore.

3.4.1 Singapore

In Singapore, there are two approaches namely, the employer liability and government funded schemes. These cover different groups and provide different levels of benefits. According to these schemes, if the employee qualifies for Government-paid Maternity Leave under the Child Development Co-Savings Act, she will be paid by the employer during the entire 16 weeks of maternity leave, regardless of the birth order of the child. The employer may later claim reimbursement from the Government for the last eight weeks for the first and second confinements and all 16 weeks for the third or subsequent confinements.

Under the Child Development Co-Savings Act, an employee is entitled to maternity leave benefits under the following conditions: a) the child is a Singapore citizen, b) the child's parents are lawfully married, and c) the employee has served her employer for at least 90 days before the child's birth. An eligible employee is entitled to absent herself from work for 4 weeks immediately before and

12 weeks immediately after delivery, totalling of 16 weeks. Since 1st May 2013, working fathers, including those who are self-employed, are entitled to share one week out of the 16 weeks maternity leave subject to the agreement of the mother and provided a) the child is born after 1st May 2013, b) the mother qualifies for government-paid maternity leave, and c) the father is lawfully married to the child's mother (Goverment of Singapore 2013).

An employee who is covered under the Employment Act, but not covered under the Child Development Co-Savings Act is entitled to 12 weeks of maternity leave. She will be paid by her employer for the first eight weeks of maternity leave if she has less than two living children (excluding the new born) and she has served the employer at least 90 days before the birth of the child.

Single employees, whose child is not a Singapore citizen, or foreign workers, are entitled to 12 weeks of maternity leave, if they are covered under the Employment Act. Here, the employee will pay her for the first eight weeks if she has fewer than two living children (excluding the newborn), and she has served her employer for at least 3 months before the birth of the child. Beyond the first eight weeks, maternity payment from the employer is voluntary, and is not entitled to any reimbursement from the government. Under the Employment Act, an employer is required to continue paying the employee her usual salary at the monthly gross rate of pay for the first eight weeks of maternity leave.

Under the Employment Act, employers cannot dismiss an employee who is on maternity leave. From 1 May 2013, maternity protection for retrenchment and for dismissal without sufficient cause will cover the full pregnancy period. In the case of employees, when an employee leaves employment, her maternity benefits will cease. An employee cannot work for another employer during the period of her maternity leave (Goverment of Singapore 2013).

3.4.2 Malaysia

In Malaysia, a female employee is entitled to maternity leave for a period of not less than the eligible period of 60 consecutive days and maternity allowance in respect of the eligible period. Maternity leave period may commence anytime within 30 days before her confinement but should not be later than the day immediately following her confinement.

A female employee is qualified for maternity allowance if she fulfils certain conditions. She shall have less than 5 surviving children and has been employed for at least 90 days in the 4 months immediately before her confinement. Where a female employee is employed on a monthly pay rate, the maternity allowance is based on her monthly wages. Otherwise the maternity allowance is the ordinary rate of pay for one day or 6 Malaysian Ringgit (MYR) per day whichever is higher for 60 consecutive days.

Maternity allowance shall be paid in the same manner as if such allowance is wage and is payable not later than the 7th day after the last day of any wage period. A female employee is not entitled to rest day and paid sick leave benefits during maternity leave.

Maternity cash benefits are the employer's responsibility. Thus, the scope of the labour code applies for both maternity leave and maternity cash. Maternity leave under the Employment Act covers all female employees (unionized and non-unionized) in the private sector. In the mid 2000s, the Government of Malaysia and the ILO discussed changing the employment liability to social insurance. However, it was abandoned owing to stakeholder opposition.

Any employer who terminates the service of a female employee during the period she is entitled to maternity leave commits an offence. There are no legal provisions for breastfeeding breaks or on breastfeeding or nursing facilities.

3.4.3 Hong Kong, China

In Hong Kong, the Employment Ordinance governs the working conditions of employees. All employees covered by this Ordinance, irrespective of their hours of work, are entitled to basic protection under the Ordinance including payment of wages, restrictions on wages deductions and the granting of statutory holidays and maternity benefits.

According to Hong Kong law, a pregnant woman is entitled to maternity benefits from her employer provided she is employed under 'continuous contract', which requires employment of over 18 hours per week. The maternity benefits include 10 weeks leave and up to 4 weeks of additional leave in the event of illness or disability related to the birth or pregnancy. The 10 weeks leave would commence 4 weeks before the expected date of birth. The maternity cash benefit is 80%of employee's normal earnings.

If the employee has been employed for over 40 weeks and has given the employer a certificate of pregnancy and the expected due date, she is entitled to maternity pay. This is payable for the 10 weeks at a rate of 4/5 of the employee's usual wage.

Unless the employee is dismissed for gross misconduct, the employer is barred from terminating the employment of an employee who has given notice of her pregnancy. If the employer terminates the employment in breach of this law, then the employer must pay the employee all of her wages and maternity pay up to the date on which the maternity leave would have ended. In addition, the employer commits a criminal offence.

Many of the rights under the Employment Ordinance are dependent upon the employee qualifying for those rights by having a "continuous contract". In effect this requires employees to work over 18 hours every week, as already mentioned above. Many mothers returning to work may wish to change their working hours and work part time or on some other schedule, such as alternate weeks or some other "job-share" arrangement. The employee must ensure that she meets the requirement of 18 hours every week in order to qualify for many of the protections under the Employment Ordinance. If she does not, she will often fail to qualify as being employed under a continuous contract and will lose much of the protection under the Employment Ordinance, including the benefits such as sickness leave and sick pay; statutory paid leave; employment protection; and long service pay.

3.4.4 Japan

In Japan, maternity leave entitlements of the Labour Standards Act apply to all female workers employed in an enterprise or office and receive wages therefrom, regardless of the type of occupation in which the woman is employed. Normally, women may take up to 14 weeks of leave, commencing up to 6 weeks prior to the anticipated date of birth and terminating 8 weeks after childbirth. A mother may be entitled to apply for an extended period of absence following a period of maternity under the childcare leave entitlements in the Act. This Act entitles mothers or fathers to take child care leave until the child requiring care reaches the age of 1 year or, in prescribed circumstances, until the child reaches the age of one and half years. A father may apply for childcare leave for any single period during the first year of his child's life under certain criteria.

Maternity leave benefits are payable to women workers who are insured under either the Employment Insurance Act or the National Health Insurance Law. The childcare leave allowance payable under the Employment Insurance Act is to be paid for the duration of the childcare leave period taken in accordance with the Act.

The amount of the maternity care benefits payable under the National Insurance Act is approximately two thirds of the average daily basic wage for a period of 42 days before birth and 56 days after the expected date of birth. In addition the scheme provides a lump-sum birth and nursing grant of 350,000 Yen (as of 2009).

The national treasury finances one eighth of the cost of childcare leave benefits. The remainder is financed by worker and employer payments to the Employment Insurance Fund.

Women raising infants under one year are entitled to two 30-minute nursing breaks a day in addition to the statutory rest periods. The employers should secure the necessary time off so that women workers may receive the health guidance and medical examinations in the Maternal and Child Health Act. The employer shall not assign pregnant women or women within one year after childbirth to any work injurious to pregnancy, childbirth, nursing and the like.

Dismissal of women workers who are pregnant or in the first year after childbirth shall be void, unless the employer can prove that the dismissal was for reasons other than that of pregnancy or childbirth.

3.4.5 Philippines

In the Philippines, the entitlement to maternity leave under the Labour Code applies to employees in all establishments and undertakings whether for profit or not. Employees covered by the maternity leave entitlements in the labour code must have rendered an aggregate service of at least 6 months for the last 12 months to qualify for maternity leave. Kasambahay (domestic helpers) must have rendered at least 6 months service to qualify for maternity leave. No qualifying conditions apply to government employees.

Employees whose entitlement to maternity leave comes under the Labour Code or the Kasambahay Act are entitled to maternity leave of at least 2 weeks prior to the expected date of delivery and another 4 weeks after normal delivery or miscarriage. Government employees are entitled to 60 days maternity leave. Those coming under the labour Code or the Kasambahay Act may extend the period of maternity leave in the event of illness medically certified to arise out of pregnancy, delivery miscarriage which renders the woman unfit for work. Paternity leave of 7 days is entitled to all married men employed either in the public or private sector.

Cash benefit entitlement under the Labour Code and the Kasambahay Act is full pay based on her regular or average weekly wage. The entitlement under the Social Security Act is expressed as an entitlement of 100% of the member's average salary credit for 60 days or 78 in case of caesarean delivery.

Where an employee is entitled to maternity benefits under the Social Security Act, the benefits are financed by the Social Security Scheme, which consists of employee, employer and government contributions.

3.4.6 Thailand

In Thailand, there are two sources of maternity related cash benefits for covered workers, one provided under the Labour Protection Act and the other arising under the Social Security Act. No qualifying conditions apply for the cash benefits payable in relation to maternity leave under the Labour Protection Act. Under the Social Security Act, the employee must be insured under the Act and must have paid contributions for not less than 7 months during the period of 15 months before the date of receiving the benefits. The benefits are limited to not more than 2 deliveries.

Under the Labour Protection Act, the employer is required to pay employees full pay for up to 45 days of maternity leave. Under the Social Security Act, an insured worker is entitled to payment of a work-leave allowance (50% of pay) for 90 days.

An insured person, or the wife or the de facto partner of the insured, is entitled to medical benefits under the Social Security Act as follows: a) medical examinations and child bearing expenses b) medical treatment expense c) medicine and medical supplies expenses d) confinement expenses e) lodging, meals and treatment expenses in hospital f) new-born baby nursing and treatment expenses and g) cost of ambulance or transportation for patients and other necessary expenses.

Employers are not allowed to employ a female employee who is pregnant to work between 22:00 hours and 6:00 hours. A pregnant employee cannot be employed on a holiday. An employer cannot terminate the employment of a female employee on the grounds of her pregnancy. Employers are also prohibited from employing pregnant workers in specified types of work such as arduous work, work involving exposure to biological, chemical or physical agents, and work involving physical strain.

3.4.7 Viet Nam

In Viet Nam, all female workers hired on the basis of contract of employment in any sector of the economy, regardless of the form of ownership, apprentices and domestic servants are covered under the Labour Code for maternity leave. The duration of maternity leave entitlement varies from 4 to 6 months, depending on the nature and conditions of the employee's work. There is prescribed compulsory leave of at least two months after the birth of the child. After giving birth, the female employee is entitled to maternity benefit as follows: a) four months for those who work in normal conditions, b) five months for those who work in hazardous occupations or on heavy duty job, c) six months for the disabled employees and d) in the case of twin or multiple births, additional leave of 30 days are allowed.

Female employees are entitled to maternity leave cash benefits in accordance with the law on social Insurance. The following workers are entitled to cash benefits during maternity leave: a) Vietnamese employees who work under labour contract with definite term and of three months or more, b) government officials and civil servants c) employees of the national Defence and employees of the Public Security and d) wage-paid military officers, career military personnel, professional non-commissioned officers and professionals. Employees are entitled to maternity benefits not only when giving birth, but also when adopting children who are less than four months old, provided that they have made social insurance contributions for six months and within twelve months before childbirth or adoption.

Maternity allowance paid each month is equal to 100%of the average of salary/wages in the six months preceding the leave. In addition, employees are entitled to a lump-sum allowance equivalent to two months of standard minimum salary for each child upon giving birth or adopting a child of under four months old.

The maternity leave cash benefits are paid from the social insurance funds. The insurance funds come from the following sources: a) the employer contribution of 18% b) employee contribution of 8% c) state contributions to ensure the implementation of the fund d) profits generated from the fund.

Female employees are entitled to receive a payment either from the social insurance system or their employer during leave to attend pregnancy for examination for pre-natal, childbirth and postnatal care. There is provision of 60 minutes of rest on every working day for breastfeeding children less than 12 months of age. An employer must not allow a female employee who is seven months or more pregnant or currently raising a child under 12 months old to work at night or to do overtime work. An employer cannot dismiss female workers or unilaterally terminate the employment contract because of pregnancy, maternity leave or breastfeeding a child under 12 months of age except in case where the enterprise ceases its activities.

4

Financing of Maternity Cash Benefits in Sri Lanka

The reliance on employer liability in Sri Lanka to finance maternity cash benefits results in noncompliance with ILO Convention No. 103, which Sri Lanka has ratified, although ratification of Convention No. 183 would negate such non-compliance in practice. At the same time, it must be acknowledged that the general principle that ILO tradition and Convention No. 103 reflects which is that employers should not be individual liable has merits, primarily because it protects women against labour market discrimination, and also because it provides a more secure funding basis for those women in formal sector employment covered by a contributory scheme, or those in or out of formal employment who are covered by public funds.

Nevertheless, the shift away from employer liability has been slow in Asia, with this remaining the predominant approach in the region. Of particular relevance to Sri Lanka is that the countries with legacies of labour law and labour protections closest to that of Sri Lanka, such as Malaysia, Hong Kong and Singapore have not moved to adopt social insurance mechanisms, and when they have taken action to expand protections, as in Hong Kong and Singapore, they have turned to public funding.

We attempted to identify experiences of regional countries that have made the switch from employer liability to social insurance financing in recent times, but such experience remains quite limited. The closest we could find was Jordan. In 2011, the country moved from an employer liability system to a maternity insurance scheme. The new scheme covers all private sector employees including those who work in enterprises of less than five employees. The scheme provides cash benefits at a level of full payment of a woman's previous earnings for a period of 10 weeks. The employers pay the contributions to the social security system for maternity benefits at 0.75 per cent of payroll, but the government covers any deficits due to shortfalls. However, Jordan's experience is not strictly comparable to Sri Lanka's, since Jordan has had a social insurance system since at least 1978, and the reform only involved extending this existing social insurance scheme to cover maternity cash benefits. Further, it should be noted that Jordan does not provide a good example of high levels of protection since only 57% of the employed population were covered by this social insurance system in 2010 after three decades of social insurance development.

As noted earlier, at the International Labour Conference in 2011, it was the understanding of social partners that the Government of Sri Lanka would also undertake to progressively replace the direct employer liability system by a social insurance scheme. Subsequently, the Government indicated that it would be difficult to provide cash benefits by means of public funds or Government sponsored social insurance scheme. The Committee of Experts on the Application of Conventions and Recommendation has however, pointed out that the difficulties indicated by the Government would be largely offset by the social and economic advantages brought by the establishment of a social insurance mechanism to cover maternity benefits.

Therefore, the present study examines the feasibility of implementing such a scheme. Such a scheme would have the following benefits:

(i) It would relieve the employers from payment of maternity benefits to be shared by a larger group.

(ii) The scheme would encourage more females to participate in the labour force

(iii) Any reluctance on the part of employers to employ females owing to concerns about the costs of maternity benefits would ease.

(iv) It would induce employers particularly those in small and medium size enterprises who currently flout the law, to comply, as maternity benefits no longer would become an employer liability.

(v) Companies that set aside some funds to cover maternity benefits would replace these costs with the payments to the maternity social insurance fund.

(vi) The social insurance scheme would raise the social protection floor.

However, we note that changing the method of financing through a contributory scheme would only provide better maternity benefit provisions to private sector formal workers. It would still leave unaddressed the issue of non-coverage of home and domestic wage earners, which is another area of non-compliance with Convention No. 103. These workers cannot be adequately covered via voluntary contributions, nor is compulsory coverage feasible. The only realistic option to extend coverage to these workers would be to use public funds, as Singapore, Hong Kong and Australia have done. Consequently is a strong argument that simply replacing the current employer liability arrangement with a social insurance mechanism would not as a result address the major shortfall in compliance. It also raises major questions about social equity – should the country focus on improving social protection for those have some benefits, or those who have none.

However, we note that if Sri Lanka ratified ILO Convention 183, the issue of non-compliance over the reliance on employer liability for financing cash benefits issue would be automatically eliminated. However, this would also require moving to higher levels of maternity benefit provision, including extending maternity leave periods.

Given this scenario, several options exist for Sri Lanka in the area of financing of maternity cash benefits, as sketched out in the next section.

4.1 Potential Options for Financing Maternity Cash Benefits

(a) Using public funds

As in Singapore, Sri Lanka could extend or replace the current arrangements with public funds financed from taxation. However, given the fiscal situation of large continuing fiscal deficits, neither the public funds nor political will exist for this approach. Further, even if taxes were increased to create fiscal space, it is not apparent that the country would want in the near term to prioritize maternity cash benefits over other under-funded areas of social provision, such as education and health. There is also a significant equity issue in that it is not clear why scarce tax funds should be used to provide benefits only to one group of workers if coverage continues to apply to private sector formal employees, and not others. Nevertheless, in the long term extending maternity benefits to the informal sector is only likely to be feasible if financed by public funds.

(b) A new contributory social security scheme

This may not be feasible at the present time, as it would require considerable capital and administrative costs to operate a start up scheme particularly at a time where the government would not be in a position to fund such a scheme. We note that no country in Asia with a similar situation to that of Sri Lanka (employer liability covering formal sector, and no social insurance system in place) has made such a change to our knowledge.

(c) Contributory scheme through the Employees' Provident Fund (EPF)

This would involve using the existing EPF mechanism to collect mandatory payroll contributions from employers, and using the collective funds to finance maternity cash benefits for covered workers. The EPF does not provide non-contributory benefits to its members and as such the employees as well as the employers would not be supportive of such a scheme through the EPF. This option is unlikely to obtain adequate political support from relevant stakeholders.

(d) Contributory scheme through the ETF

At the present time the most suitable option for a contributory, collective scheme for financing maternity benefits would be to use the ETF mechanism, as this already has a fund collection mechanism in place and since it already provides a number of collective benefits to members. In practice, it is the only alternative option to a full social insurance scheme. This type of solution has been proposed previously in Malaysia for improving compliance with ILO Convention No. 103, and would become quite feasible if separate recent recommendations to introduce employment injury insurance coverage expansion of ETF were adopted.

(e) Ratification of ILO Convention No. 183

Ratification of this newer 2000 convention, which would automatically nullify Convention No. 103, would allow Sri Lanka to maintain its existing employer liability arrangements, if the country decides that replacing the existing arrangements with social insurance or public funds is not feasible or desirable. Implementation would require that paid maternity leave be extended to a minimum of 14 calendar weeks for all covered workers, and that the Government find mechanisms to extend coverage of benefits to all employed women, including those in informal sector work. However, the Convention does allow countries to adopt a strategy of phased expansion, so Sri Lanka could decide to delay coverage of informal sector workers until the necessary public funds are available.

5

Estimation of the Maternity Benefit Rate for Sri Lanka

5.1 Employees' Trust Fund Option

In terms of replacing employer liability, the most feasible option for Sri Lanka is to introduce a contributory scheme as an extension of the Employees' Trust Fund (ETF). The ETF was established in March 1981 under the provisions of ETF Act No.46 of 1980. The ETF Board functions under the Ministry of Finance and Planning. The provisions of the Act apply to State Corporations and Statutory Boards and the private sector. Self-employed persons and migrant workers also could contribute to the fund on their own and obtain membership. During the past three decades, the Fund has grown rapidly and achieved a total fund of about Rs. 153 billion by end of December 2012. It has 2.2 million members from about 70,000 employers. Among the members, there were 33,000 self-employed workers.

The main activities of the Board which manages the Fund are: a) collection of contributions from employers b) prudent investment of such funds c) providing a range of social and welfare benefits to members and paying out claims d) enforcement and legal activities including tracking of non-paying employers and collecting of surcharge income e) maintaining member accounts and issuing of annual member statements f) declaration of dividend to members annually based on profits earned by the Fund and g) enrolling self-employed persons as members to the Fund(Employees' Trust Fund Board 2013).

The main objective of establishing the Fund is to provide non-contributory welfare benefits to its members. Currently, the following schemes are in operation: a) death benefits b) permanent disablement c) eye lens implant d) heart surgery assistance e) kidney transplant assistance f) hospitalization scheme g) year-5 scholarship for school children and h) housing loan scheme.

At present, there is no maternity benefit scheme under the ETF. However, the management of ETF, upon discussions regarding the feasibility of introducing such a scheme, were positive about the mechanics and administrative feasibility.

Over 90% of ETF investments are placed in government securities yielding a guaranteed return in the prevailing market conditions. The investment income has almost doubled from Rs. 7,176 million in 2007 to Rs. 13,371 million in 2011.

In order to assess the likely costs for employers and employees of a maternity benefit scheme implemented through the ETF mechanism, we used available data to estimate the likely contribution rates.

The following computations were undertaken to estimate the additional contribution that the employers need to make to the ETF. It was assumed that those who contribute to the EPF also contribute to the ETF as the data of the labour force surveys conducted in Sri Lanka have information only whether the employee contributes to the EPF.

$$\text{Maternity benefit rate} = \frac{\Sigma \, b \times w \times d}{\Sigma[(a + c) \times 12]} \times 100$$

Where a = monthly wages of female employees contributing to EPF
c = monthly wages of male employees contributing to EPF
b = number of births to female employees paying EPF in a year
w = daily wage of female employees paying EPF
d = number of days of maternity leave

Assuming that all males will avail themselves of paternity leave, the above formula was used to calculate the paternity leave. However, in the case of males, b = births in the household related to the male who is contributing to the EPF.

Input data sources:

1. Labour Force Survey, 2011, Department of Census and Statistics
2. Estimated mid-year population and total births for 2011, Department of the Registrar General.

The labour force survey data set in addition to providing information on those employed in the private sector and Government Corporations and Statutory Boards, also provides information on whether the employee contributes to the Employees Provident Fund (EPF). The number contributing to EPF according the labour force survey data was 2.1 million (Table 5) compared to 2.25 million who actually pay to the EPF according to EPF records in 2011. Therefore, it seems that the survey estimates are reasonably reliable. It is also observed from the administrative records that the numbers contributing to EPF and ETF closely correspond. The ETF had 2.20 million members, while the number of EPF members was slightly more, 2.25 million. Therefore, with a fair degree of confidence we can assume that the EPF profile of employees closely correspond to that of ETF.

Table 5: Number of Employees in Private Sector Establishments and State Corporations and Statutory Boards paying EPF in 2011

	Number of employees
Male	1,230,979
Female	884,457
Total	**2,115,436**

Source: Analysis of LFS 2011 data by IHP Staff

The total wages of all employees in the private and the semi-government sector for 12 months in 2011 obtained from the 2011 LFS is **Rs. 478,770,322,023**.

Box 1– Estimation of Age Specific Fertility Rate

The Age Specific Fertility Rate (ASFR) was computed using the Labour Force Survey (LFS) data of 2011. The LFS is a nationally representative survey comprising a sample of 17,620 households. The survey records information on each person in the household and his or her relationship to the head of the household (spouse, child, other family relatives etc.).

The ASFR was computed from the data set by selecting women in the reproductive age of 15-49years who contribute to the E.P.F. and children aged less than 3 years. In order to ensure sufficient cases of women by age, women were grouped into the following age groups: 15-21, 22-28, 29-35, 36-42 and 4349.

In households where there was only one eligible woman, the relationship to the children under age 3 years was straightforward. However, there were 628 households where there was more than one eligible woman with children under 3 years of age. In such cases the children were assigned to the women by examining the age of the women. In cases where such assignments were difficult, the weighted proportions based on the age specific fertility pattern was applied. So, the number of children were assigned to women in each age category and was divided by 3 to average it to one year. The total average number thus obtained was adjusted to conform to the total births registered in 2011. Similarly, the female population aged 15-49 years was also inflated to conform to the estimated female population in 2011.

The ASFR was computed for each age category as shown in the following example:

$$\text{ASFR} = \frac{\text{(Number of children aged less than 3 years in the respective category)/3}}{\text{Number of women aged 15 1 years}}$$

As the labour force survey data provide information only whether the employee contributes to the EPF, we have assumed that those who contribute to the EPF closely correspond to those who contribute to the ETF.

The distribution of births by age of employed females was obtained by applying the age-specific fertility rates computed from data of LFS 2011 (Table 6) to the corresponding female employed population by age. The age categories of females in the reproductive age group 15-49 were regrouped to make sure that there are sufficient cases in each category.

Table 6: Age-Specific Fertility Rate of All Women and those Paying EPF, 2011

Age category	All women	Women paying EPF
15-21	0.22	0.24
22-28	0.84	0.53
29-35	0.91	0.76
36-42	0.27	0.28
43-49	0.02	0.01
TFR	**2.25**	**1.82**

Source: Analysis of LFS 2011 by IHP staff

5.2 Estimation of Maternity Benefit Rate

The maternity benefit rate was estimated firstly by obtaining the maternity payouts by age by applying the births to the daily wages of employees by age and that multiplied by 84 days of maternity leave. The results are presented in Table 7.

The compliance with ETF is assumed to remain as at present. Maternity benefits will be paid only to those who contribute to the ETF. If an employer does not comply with ETF contribution, such an employer would be subject to the existing law and would be liable to pay maternity leave to female employees. There are about 33,000 self-employed workers registered under the ETF. For such workers to be eligible for maternity benefits, it is recommended that they must have paid contributions for not less than 7 months during the period of 15 months before the date of receiving the benefits. The benefits to the self-employed will be linked to the contributions they make.

Table 7: Estimated maternity payments by age category of worker (Rupees), 2011

Age Category	Based on EPF Age specific Fertility
15-21	79,468,450
22-28	800,727,018
29-35	1,502,748,184
36-42	448,687,931
43-49	22,158,911
Total	**2,853,790,493**

Note: Number of births x daily wage of females x 84 of days of maternity leave Source: Analysis of LFS 2011 by IHP staff

The maternity benefit rate was thus computed by dividing the estimated total payouts for maternity benefits for 2011 by the total wages of employees in that year as shown below:

$$\textbf{Maternity benefit rate for 2011} = \frac{2{,}853{,}790{,}493}{478{,}770{,}322{,}023} = 0.00596 = 0.60\%$$

This contribution rate of 0.60% is comparable to levels seen in other countries.

5.3 Estimation of Paternity Benefit Rate

Given the advantages for children when fathers spend more time with them the benefits of paternity leave are undeniable and something every father should be encouraged to take advantage of not only for his child, but also for his own sense of fulfillment and to maintain a healthy relationship with his partner.

There are no existing ILO standards concerning paternity leave. However, paternity leave provisions are becoming increasingly common indicating the growing importance attached to the father at the birth of his child. In recent years, some countries in the Asian region too have introduced paternity leave (see Table A6). In Sri Lanka, the government introduced 3 days of paternity leave to all State employees (permanent, temporary and casual) in 2006. This leave could be taken any time before the child is three months old. In estimating the paternity benefit costs, we have taken3 working days of paternity leave. The paternity rate was estimated by multiplying the estimated annual births to households where there were males paying EPF by the corresponding average daily wage of males and by 3 days of paternity leave.

The total payouts for paternity benefits are: **Rs. 210,843,440**

The additional percentage to be paid by employers to the ETF to cover paternity leave of 3 working days is as follows:

$$\frac{\mathbf{210,843,440}}{\mathbf{4478,770,322,023}} \mathbf{=0.00044 = 0.044\%}$$

Administrative Costs

There would be no collection costs involved as the ETF currently has a mechanism to collect 3% of employee wages from the employers. There will however, be additional work with regard to payments. The administrative costs are estimated at about 0.5 per cent of payouts. Thus, the additional costs involved to pay maternity and paternity benefits are Rs.14.3 million and 1.1 million respectively. These additional costs will not materially change the maternity and paternity benefit rates.

Assumptions

- The total number of days of maternity leave will be 84 working days for all employees.
- There will not be any restriction to the number of days of maternity leave based on number of children.
- Paternity leave will be granted to all private and corporation sector employees and all will avail themselves of this opportunity.
- In estimating the births for 2011 using the LFS household schedules, it is assumed that recall lapse in reporting the number of children under 3 years of age is minimal
- Under 3 years of age mortality in Sri Lanka being low, it was assumed that it would not have a significant effect on the fertility rate.
- It is assumed that the current level of fertility may not change significantly in the short term.

6

Findings and Recommendations

6.1 Findings

Part of the current challenge for stakeholders in Sri Lanka in responding to concerns raised in dialogue with the ILO is to distinguish between issues that arise from ratification of specific ILO conventions and the overall broader challenges of improving maternity benefits in the country. Failure to do this previously has framed national discussions in ways that may not be helpful in terms of finding solutions that advance social protection in Sri Lanka. The following lists our key findings, and in doing so takes care to make this distinction.

1. The role of ILO Conventions in improving maternity benefits protection in Sri Lanka

1.1 ILO's goal of improving maternity benefits protection in countries is expressed in two ILO Conventions, Nos. 103 (adopted in 1952) and 183 (adopted in 2000).

1.2 A key feature of Convention No. 103 is that it disallows employer liability as the method for financing maternity cash benefits. This has a strong rationale in that global evidence indicates that employer individual liability results in discrimination against mothers and women in the labor market, and results in shortfalls in effective coverage. The convention requires instead that financing be by public funds or social insurance.

1.3 Countries have faced difficulties in transitioning away from employer liability arrangements, and in order to facilitate ratification, Convention No. 183 was introduced and replaces Convention No. 103. The key feature of Convention No. 183 is that it provides greater flexibility to countries, and specifically allows countries to maintain existing employer liability arrangements.

1.4 From the perspective of raising standards of maternity benefits protection in Sri Lanka to international norms, the newer Convention No. 183 is more relevant than Convention No. 103, and is the ILO recommended standard.

1.5 It is not clear that Government and national stakeholders have given adequate consideration to the possibility of ratifying Convention No. 183, which would automatically make Convention No. 103 irrelevant.

2. Ratification of Convention No. 103 and compliance issues arising

2.1 Sri Lanka is in a small minority of countries (24) that have chosen to ratify ILO Convention No. 103, which obligates the country to take actions to improve compliance with that convention. It has not ratified Convention No. 183.

2.2 In terms of compliance with Convention No. 103, the major shortfalls in current statutory arrangements in Sri Lanka are (i) that the Maternity Benefits Ordinance excludes domestic and home wage earners from coverage, and (ii) that private sector formal workers are provided cash benefits through employer liability, which is specifically not allowed by the convention. The first deficiency is primarily a failure in social protection, and the second is primarily a compliance failure.

2.3 The other minor shortfall in compliance in current statutory arrangements is reduction of maternity cash benefits for covered private sector workers for the third and subsequent births.

2.4 To address the compliance and social protection failure arising from non-coverage of domestic and home wage earners, global experience indicates any solution will need to rely on public funds. Solutions that depend on contributory social insurance or employer liability will not be effective or feasible.

2.5 To address the compliance failure arising from reliance on employer liability, the prescribed solutions are either to introduce a scheme financed from public funds, or to introduce a scheme financed through social insurance.

3. Views of social partners

3.1 There is consensus amongst social partners that current inequities in maternity cash benefit provision between workers covered by the Maternity Benefits Ordinance and workers covered by the Shop and Office Employees' Remuneration Act should be eliminated. This requires increasing paid maternity leave for all covered workers to a minimum of 84 working days.

3.2 There is no consensus amongst social partners to introduce a new social insurance system to provide maternity cash benefits, but there is some willingness to consider an arrangement that involves expanding ETF benefits on a contributory basis.

3.3 There is no consensus amongst social partners to use public funds to replace the current employer liability arrangements. This is also not realistic given the current fiscal situation in the country, nor would it be equitable unless public funds are used to extend maternity cash benefits to informal sector workers.

3.4 There is little declared support for the possibility of extending maternity benefits to include paternity leave, paid or unpaid. This appears to reflect limited discussion of the issue to date in the country. This is an area where there is a case for government taking a proactive approach to stimulate changes social attitudes.

4. Addressing shortfalls in compliance with respect to maternity leave benefit levels

4.1 The shortfalls in current arrangements with regards to length of paid maternity leave can be addressed by amendments to the Maternity Benefits Ordinance and the Shop and Office Employees' Remuneration Act. This would impose minimal additional costs for employers.

4.2 There does not appear to be any feasible or realistic option for extending maternity benefits substantially to groups of workers not currently covered, in the absence of willingness to use public funds.

5. Addressing shortfalls in compliance with respect to employer liability financing

5.1 We could find no example of an Asian country with a similar institutional history and context to that of Sri Lanka – no tradition of social insurance financing in social protection and established system of employer liability – which has replaced employer liability financing with either social insurance or public funds. The factors that have constrained these other countries also apply in Sri Lanka, and consist of technical, fiscal and political barriers.

5.2 The only feasible option for achieving compliance and shifting away from individual employer liability would be to extend the ETF scheme to provide maternity cash benefits financed by a payroll levy of 0.7%–1.0%. This option is administratively and technically feasible, and would impose no net costs on the average employer.

5.3 A shift to a contributory scheme implemented through the ETF would have a number of benefits. It involves the least additional transition costs, would protect small employers against the risks involved in providing maternity benefits, and would reduce pressures to discriminate in employment against women of childbearing age. In the longer term, it might increase incentives for women to work. This will become of increasing importance as Sri Lanka's labor force growth declines and eventually reverses, which in turn will increase the need for improving female labor force participation, which is very low in Sri Lanka currently.

5.4 Although there are significant advantages in an ETF-based approach to financing maternity cash benefits, there is likely to be significant political barriers to implementation. These include resistance from social partners to changing longestablished arrangements, and fears about potential negative outcomes. A contributory scheme will also result in a redistribution of costs from employers with a predominantly female workforce to those with a predominantly male workforce.

5.5 Given the transition costs in changing current arrangements, there is a significant risk that it will not be feasible to adopt an ETF-based approach. Such risks and the financial costs of making changes would be minimized if such a scheme were linked to other proposals to introduce an employment injury compensation scheme financed by enhanced ETF contributions.

6. Alternative option to seeking compliance with Convention No. 103

6.1 If social partners do not wish to do away with the current employer liability arrangements, the compliance issue can be overcome by the country ratifying Convention No. 183, which provides for greater flexibility.

6.2 Convention No. 183 would allow the existing employer liability arrangements to be retained, and would present only modest new costs for employers. The critical gap that would have to be met would be extending maternity benefits to 14 weeks (94 calendar days or around 84 working days) for all workers.

6.3 In the longer term, Convention No. 183 provides a better framework for extending maternity benefits protection in Sri Lanka, as it expressly allows for expansion of benefits in a progressive manner to more workers, and explicitly sets out a more ambitious goal of eventually covering all workers in both formal and informal employment.

6.2 Recommendations

The Government and social partners are faced with a number of competing goals. The main issue is whether the priority is improving maternity benefits coverage or increasing compliance with ILO Conventions that Sri Lanka has ratified. These are not the same goals. Options for action depend on which are prioritized, and the strategy that the country adopts with respect to ILO Conventions Nos. 103 and 183, specifically whether Sri Lanka chooses to ratify ILO Convention No. 183.

Our key findings about compliance with ILO conventions, the potential implications of ratifying ILO Convention No. 183, and our main recommendations are summarized in Table 8.

We make the following recommendations:

1. Rectify the existing anomalies and shortfalls in current statutory arrangements by making appropriate amendments to current legislation –
   - (i) Grant all covered private sector employees 84 working days of maternity leave, by amending section 3(1) (b) of the Maternity Benefits Ordinance.
   - (ii) Remove discrimination against mothers with a third or higher birth by make maternity benefits in the Maternity Benefits Ordinance and in the Shop and Office Employees' Act uniform for all mothers, irrespective of the number of births.
   - (iii) Make appropriate amendments to the Establishment Code to ensure conformity with Article 6 of Convention No. 103, by protecting public service employees against termination of employment on the basis of pregnancy, childbirth and consequent illness.
   - (iv) Amend the Shop and Office Employees' Act to provide nursing intervals for female workers, which it currently does not provide.
   - (v) Incorporate the effect of the above changes in any replacement legislation in event the government changes the current system of employer liability.

2. Extend the Employees Trust Fund (ETF) system to provide maternity cash benefits for covered workers, with financing by a compulsory 1% levy on wages to be paid by employers. In event of this scheme being adopted, the current employer liability for maternity pay would be eliminated.

3. That extension of the ETF system, as proposed, should be implemented only in combination with the proposed employment injury compensation scheme in order to reduce transition costs and to improve overall burden sharing between the two schemes.

4. To make provision in the proposed ETF maternity benefits scheme for self-employed and other informal sector workers to enrol on a voluntary, contributory basis. For such workers to be eligible for maternity benefits, it is recommended that they must have paid contributions for not less than 7 months during the period of 15 months before the date of receiving the benefits, with the level of benefits based on their contribution history.

5. Government should give consideration in the long term to expand the proposed scheme to cover other workers with the government making a subsidy contribution from general

revenue taxation. Alternatively, the government would need to consider establishing a separate scheme financed from public funds, as in Singapore.

6. In event that the Government decides not to proceed with a contributory ETF maternity benefits scheme to replace the current employer liability arrangements, the government should give serious consideration to ratifying ILO Convention No. 183, which would provide a more flexible and forward looking framework for improving maternity benefits protection than Convention No. 103, whilst removing the need to eliminate employer liability to ensure compliance.

7. In event of the Government choosing to ratify Convention No. 183 and retain employer liability, it should take actions to amend the existing legislation to increase paid maternity leave benefits to 14 weeks for all covered workers. This should be supplemented by a national strategy to progressively expand coverage of maternity benefits to all workers, with the introduction of public funds to cover informal sector workers.

8. To establish the principle of paid paternity leave for all formal sector workers by amending relevant legislation or incorporating into the rules of the proposed ETF maternity benefit scheme to allow for a minimum of one week of paternity leave for each birth.

9. The ETF system should be computerized to provide access to member accounts so that employees could check whether the employer is ETF compliant.

Table 8 : Summary of key findings on coverage by types of worker, ILO convention Compliance and recommendations

	ILO minimum standards		Sri Lanka compliance			Recommendations for compliance	
	C103	C183	Provision	C103	C183	Option A: Stay with C103	Option B: Ratify C183
Paid maternity leave (first two births)							
Public Sector	12 weeks	14 weeks	84 working days	✔	✔		
Formal sector - Shops and offices			84 working days	✔	✔		
Formal sector - Other			84 calendar days	✔	✖		Amend MBO
Home and domestic wage earners			Not covered	✖	✖	Amend MBO to expandscope, but feasible only with public funds	Notify ILO that will exclude from intial coverage, include later with public funds.
Other informal sector workers	Not Covered		Not covered		✖		Notify ILO that will exclude from intial coverage, include later with public funds.
Paid maternity leave (third and subsequent births)							
Public Sector	12 weeks	14 weeks	84 working days	✔	✔		
Formal sector - Shops and offices			42 working days	✖	✖	Amend SOERA	Amend SOERA
Formal sector - Other			42 calendar days	✖	✖	Amend MBO	Amend MBO
Home and domestic wage earners			Not covered	✖	✖	Amend MBO to expandscope, but feasible only with public funds	Notify ILO that will exclude from intial coverage, include later with public funds.
Other informal sector workers	Not Covered		Not covered		✖		Notify ILO that will exclude from intial coverage, include later with public funds.
Financing of maternity cash benefits							
Public Sector	Public funds or social insurance	Public funds or social insurance or employer liability	Public funds	✔	✔		
Formal sector - Shops and offices			Employer liability	✖	✔	Extend ETF to provide mandatory coverage via contributions	Extend ETF to provide mandatory coverage via contributions
Formal sector - Other			Employer liability	✖	✔	Extend ETF to provide mandatory coverage via contributions	
Home and domestic wage earners		Public funds or social insurance	Not covered	✖	✖	Use public funds to cover	Use public funds to cover
Other informal sector workers	Not Covered		Not covered		✖		Use public funds to cover

Notes :

(a) MBO - Maternity Benefits Ordiance, SOERA - Shop and Office Employees' Remuneration Act

(b) With an ETF-based scheme, coverage can be extended to home and domestic wage earners and the self-employed on the basis of voluntary contributions, but this will not result in high levels of coverage.

Annex

Table A1: Percentage Distribution (%) of Employed Population by Employment Status and Sex, 2000, 2005 and 2011

Employment Status	2000	2005	2011
Total (number)	**6,310,144**	**7,518,006**	**8,196,927**
Employer	2.3	3.1	2.9
Employee	56.3	59.3	54.9
Public	13.4	13.3	14.4
Private	42.9	46	40.5
Self-employed worker	28.4	29.7	31.5
Unpaid family worker	13.0	7.9	10.8
Male Total (number)	**4,241,477**	**5,134,765**	**5,460,328**
Employer	3.1	4.1	3.8
Employee	56.6	59.9	55.8
Public	12.6	11.8	12.7
Private	44.0	48.1	43.1
Self- employed worker	33.8	32.9	35.9
Unpaid family worker	6.5	3.2	4.5
Female Total (number)	**2,068,667**	**2,383,241**	**2,736,599**
Employer	0.8	0.9	0.9
Employee	55.5	58.3	53.2
Public	15.0	16.6	17.8
Private	40.5	41.7	35.4
Self-employed worker	17.2	22.7	22.6
Unpaid family worker	26.5	18.2	23.3

Source: Report of the Labour Force Survey 2011.

Table A2: Employed Male Population by Industry Group, 2005 and 2011

Industry	2005	%	2011	%
Agriculture, Forestry and				
Fishery	1,482,610	28.9	1,678,656	30.7
Manufacturing	749,993	14.6	745,948	13.7
Construction, Mining &				
Quarrying, Electricity, etc.				
Wholesale and Retail	519,197	10.1	566,671	10.4
Trade, Household goods etc.	702,048	13.7	796,195	14.6
Real Estate, Financial				
Intermediation etc.	171,330	3.3	200,919	3.7
Public Administration,				
Defense etc.	376,877	7.3	420,942	7.7
Education				
Other (health and social	83,551	1.6	105,667	1.9
work, transport, storage etc.)	1,049,159	20.5	945,331	17.3
Total	**5,134,765**	**100**	**5,460,328**	**100**

Source: Report of the Labour Force Survey, 2011.

Table A3: Employed Female Populati on by Industry Gr oup, 2005 and 2011

Industry	2005	%	2011	%
Agriculture, Forestry and Fishery	823,429	34.5	1,029,364	37.7
Manufacturing	635,382	26.7	641,484	23.5
Construction, Mining & Quarrying, Electricity etc.	23,442	1.0	22,961	0.8
Wholesale and Retail Trade, Household goods etc.	201,959	8.5	294,162	10.7
Real Estate, Financial Intermediation etc.	62,405	2.6	85,487	3.1
Public Administration, Defense etc.	135,942	5.7	154,241	5.6
Education	213,886	9.0	234,793	8.6
Other (health and social work, transport, storage etc.)	286,796	12.0	274,107	10.0
Total	**2,383,241**	**100**	**2,736,599**	**100**

Source: Report of the Labour Force Survey, 2011.

Table A4: Employed Male Population by Occupation Group, 2005 and 2011

Occupation	2005	%	2011	%
Senior Officials and Managers	87,788	1.7	103,472	1.9
Professionals	187,002	3.6	201,104	3.7
Technical and Associate Professionals	266,866	5.2	275,758	5.1
Clerks	159,566	3.1	186,794	3.4
Proprietors and Managers of Enterprises	406,137	7.9	426,309	7.8
Sales and Service workers	418,628	8.1	477,910	8.7
Skilled Agricultural and Fishery workers	1,013,877	19.7	1,195,878	21.9
Craft and related workers	801,448	15.5	864,946	15.8
Plant and Machine Operators and Assemblers	484,351	9.4	518,445	9.5
Elementary occupations	1,249,168	24.2	1,141,458	20.9
Unidentified	59,935	1.6	68,256	1.3
Total	**5,134,765**	**100**	**5,460,328**	**100**

Source: Report of the Labour Force Survey, 2011 .

Table A5: Employed Female Population by Occupation Group, 2005 and 2011

Occupation	2005	%	2011	%
Senior Officials and Managers	32,702	1.4	35,320	1.3
Professionals	284,198	11.9	304,956	11.1
Technical and Associate Professionals	137,038	5.8	134,282	4.9
Clerks	140,756	5.9	152,692	5.6
Proprietors and Managers of Enterprises	109,772	4.6	125,702	4.6
Sales and Service workers	155,788	6.5	232,960	8.5
Skilled Agricultural and Fishery workers	548,007	23.0	693,557	25.4
Craft and related workers	414,776	17.4	435,331	15.9
Plant and Machine Operators and Assemblers	47,088	2.0	68,081	2.5
Elementary occupations	511,167	21.4	550,460	20.1
Unidentified	1,949	0.1	3,256	0.1
Total	**2,383,241**	**100**	**2736599**	**100**

Source: Report of the Labour Force Survey, 2011.

Table A6: Maternity Protection in Selected Countries

Country	Maternity Leave	Paternity Leave	Maternity Benefits	Other Benefits	Qualifying Conditions
South Korea	Compulsory leave of 45 days postnatal; total of 90 days to be distributed before and after child birth. For one year or less a reduction to 15 hours minimum up to 30 hours maximum per week. (The worker qualifies for leave if she has offered continuous services in the business for more than a year prior to the date of child care leave; worker's spouse is not on childcare leave for the same infant.	5 days (3 days paid leave and 2 days unpaid leave upon request of the worker), before expiry of 30 days after childbirth. Fund finances childcare leave benefit.	The Employment Insurance Act is applicable to all businesses or workplaces that hire workers. Thus, The Employment Insurance do so in order to meet the expenses for childbirth. To receive maternity leave benefit, the total insured period before the last day of the maternity leave shall be 180 days or more. The employment Insurance Fund finances the childcare leave benefit.	An employer shall advance partial payments of wages corresponding to work offered even prior to the payday, if the worker requests the employer to A female worker who has an infant less than 12 months shall be allowed to take twice a day a nursing break of at least 30 minutes. Breastfeeding breaks are paid.	To receive maternity leave benefit, the total insured period before that last day of the maternity leave shall be 180 days or more. The application shall be made in general within one month after the first day of leave or 12 months after the last day of leave.
Country	Maternity Leave	Paternity Leave	Maternity Benefits	Other Benefits	Qualifying Conditions
Malaysia	Not less than 60 consecutive days in respect of each confinement. There are no qualifying conditions for a female worker to be entitled to maternity leave.	3 days allowed	Maternity cash benefits are the employer's responsibility. A female employee will not be entitled to any maternity allowance if at the time of her confinement she has 5 or more surviving children.	There are no identified lega provisions neither on breastfeeding breaks nor on breastfeeding or nursing facilities.	A female worker is entitled to commence her maternity leave at any time during the 30 days immediately preceding her confinement.

Country	Maternity Leave	Paternity Leave	Maternity Benefits	Other Benefits	Qualifying Conditions
Singapore	An eligible employee is entitled to absent herself from work four weeks immediately before and 12 weeks immediately after delivery, totaling 16 weeks. Compulsory leave four weeks after confinement (to be eligible, the female should serve the company at least 90 days immediately preceding her delivery date etc.). An employee can take a shorter period of preconfinement leave (i.e. less than four weeks) so that she can have a longer period of postconfinement leave, if there is mutual agreement between the employee and the employer. The total period of maternity leave is still subject to a maximum of 16 weeks.	From May 2013, working fathers will be entitled to share 1 week out of the 16 weeks' maternity leave.	Female employees covered by the Employment Act are entitled to maternity leave paid by the employer for a maximum of two children. The Child development Co-Savings Act entitles all married working women to be paid maternity leave for the third child and above even selfemployed. The employer pays the maternity benefits for the first eight weeks and the government pays for the second eight weeks for the first two confinements. In respect of the third or subsequent confinement amount paid to the employee for the whole period of her absence is paid completely by the government. 100% gross pay. The employer can get reimbursement of the Government.	There are no legal provisions on breastfeeding breaks or facilities	Under Section 81 of the 1st May 2013, working fathers, including those who are self-employed, are entitled to share one week out of the 16 weeks maternity leave subject to the agreement of the mother and provided a) the child is born after 1st May 2013, b) the mother qualifies for government paid maternity leave, and c) the father is lawfully married to the child's mother

Country	Maternity Leave	Paternity Leave	Maternity Benefits	Other Benefits	Qualifying Conditions
Thailand	Under the Labour Protection Act, an employer is required to pay an employee up to 45 days of maternity leave. Under the social Security Act, an insured worker is entitled to payment of a work-leave allowance for 90 days.	No paternal leave	Maternity pay under the Labour protection act 100% of wages is paid. Under the Social Security Fund, 505 of wages are paid.	An insured person, or the wife or the de facto partner of the insured, is entitled to medical benefits under the social Security Act as follows: a) medical examinations and child bearing expenses, b) medical treatment expense, c) medicine and medical supplies expenses, d) confinement expenses e) lodging, meals and treatment expenses in hospital f) new-born baby nursing and treatment expenses, g) cost of ambulance or transportation for patients and other necessary expenses.	Under the social Security Act, the mother must be insured and must have paid contributions for not less than 7 months during the period of 15 months before the date of receiving the benefit allowance.
Country	**Maternity Leave**	**Paternity Leave**	**Maternity Benefits**	**Other Benefits**	**Qualifying Conditions**
Philippines	Employees whose entitlement to maternity arises under the Labour Code or the Batas Kasambahay Act are entitled to maternity leave of at least 2 weeks prior to the expected date of delivery and another 4 weeks after normal delivery.	Paternal leave of 7 days applies only to Solo parents as defined. Solo parents must have rendered at least one year's service to qualify.	Where an employee is entitled to maternity benefits under the Social Security Act, the benefits are financed by the social Security Scheme that consists of employee, employer and government contributions.	No right to nursing breaks or daily reduction of hours of work Identified. However, the Secretary of labour shall in appropriate cases by regulation, require any employer to establish a nursery in a workplace or benefit of women employees therein.	Employees covered by the maternity leave entitlements in the Labour code must have rendered an aggregate service of at least 6 months for the last 12 months to qualify for maternity leave. Kasambahay (domestic helpers must have rendered) at least 6 months service to qualify for maternity leave.

Country	Maternity Leave	Paternity Leave	Maternity Benefits	Other Benefits	Qualifying Conditions
Japan	Normally a woman may take up to 14 weeks leave commencing up to 6 weeks prior to the anticipated date of birth and finishing 8 weeks after childbirth.	Paternity leave provided.	National Treasury finances one eighth of the cost of childcare leave benefits. The reminder is financed by worker and employer to the Employment Insurance Fund.	A woman raising an infant under age one is entitled to two 30 minutes nursing breaks.Basic child care leave allowance of 350,000 yen is paid for the duration of the child care leave period.	To qualify for child care leave allowance, a mother must be insured under the Employment Insurance Act for a total period of 12 months or more within the two year period preceding the day on which the family care leave commenced.
Country	**Maternity Leave**	**Paternity Leave**	**Maternity Benefits**	**Other Benefits**	**Qualifying Conditions**
Sri Lanka	Maternity benefits are made under three conditions 1) Shop and Office Employees' Remuneration Act. 84 working days (which could be taken as a maximum of 14 days pre-natal and 70 days post-natal leave), working days. 2) Maternity Benefits Ordinance Twelve weeks (84 days) which could be taken as a maximum of 14 days prenatal and 70 days postnatal leave calendar days.	3 days of paternity leave for only Government employees to be taken within 30 days of the birth of the child.	Full pay during maternity leave for workers coming under the Shop and Office Employees' Act, However, the Maternity Benefits Ordinance states 6/7 of the salary to be paid, but in practice the entire salary is paid.	If a woman worker entitled to benefits under the Maternity Benefits Ordinance dies during the period in which she is entitled to claim benefits then the employer must pay the financial benefits due to her to her nominee and if there is no such nominee then to her heir-at-law. Public sector employees are entitled to breastfeeding periods of 60 minutes per day until the child is six months old. The MBO provides for two such periods of 30 minutes	84 days of maternity leave are granted only for the first two children for employees governed by the Shop and Office Employees' Remuneration Act and those under the maternity Benefits ordinance. Only 42 days of maternity leave are provided for the third and subsequent births.

	Maternity leave under Shop and Office Employees Act entitles women to avail maternity benefits of full pay on the following basis; 84 working days leave in respect of the first two live births. 42 working days leave in respect of the third and subsequent births for confinements <u>3) Establishment code</u> 1. Eighty-four working days (which could be taken as 14 days prenatal leave and 70 days post-natal leave). Poya holidays and declared public holidays are added. 2. Further 84 days on half-pay, including intervening holidays. 3. A further 84 days without pay, including intervening holidays.			In workplaces with facilities provided by the employer, or two-60 minute intervals in other workplaces. The nature and type of breastfeeding facilities are not specified in the MBO or regulations made under the statute. The Shop and Office Employees' Act does not provide for any such periods, and although many employers do provide time for these it is entirely time for these it is entirely discretionary.	

References

De Alwis, S.S , T Fernando, and R.P. Rannan-Eliya. 2011. Sri Lanka Health Accounts: National Health Expenditure 1990-2008. In Health Expenditure Series No. 2. Colombo, Sri Lanka: Institute for Health Policy.

Department of Census and Statistics. 2009. Sri Lanka Demographic and Health Survey 200607. Colombo, Sri Lanka Department of Census and Statistics.

Department of Census and Statistics. 2013a. Census of Population and Housing 2012: Provisional results based on 5% sample.

Department of Census and Statistics. 2013b. Sri Lanka Labour Force Survey Complete Dataset (July). Colombo, Sri Lanka: Department of Census and Statistics.

Employees' Trust Fund Board. 2013.

Family Health Bureau. 2011. Maternity Care Package: A Guide to Field Healthcare Workers. Sri Lanka: Ministry of Health

Goverment of Singapore, Ministry of Manpower. 2013. "Maternity leave." Accessed 29 May. http://www.heybaby.sg/worklife/maternity_leave.html.

ILO. 2000. Maternity Protection Recommendation, 2000(No.191). 88th ILC Session, Geneva.

ILO. 2010. Maternity at Work: A Review of National Legislation: Findings from the ILO database of Conditions of Work and Emerging Laws, Second Edition. International Labour Organization.

ILO. 2013. "Social Protection: Building Social Protection Floors." ILO Accessed 30 May.

United Nations. 2013. World Population Prospects: The 2012 Revision. New York: Population Division

ILO Country Office for Sri Lanka and the Maldives
202 & 204 Bauddhaloka Mawatha
Colombo 7, Sri Lanka.

ISBN 9789221284918; 9789221284925