



Maternity Protection and Childcare Systems in Bangladesh: Updated Study Report

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List of Acronyms

BGMEA	Garment Manufacturers and Exporters Association
BKMEA	Knitwear Manufacturers and Exporters Association
BLR	Bangladesh Labour Rules
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendation
CRC	Convention on the Rights of the Child
DWA	Department of Women Affairs
FYP	Five Year Plan
HCD	High Court Division
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
NSSS	National Social Security Strategy
NSIS	National social insurance system
MHVS	Maternal Health Voucher Scheme
MoLE	Ministry of Labour and Employment
MoHFW	Ministry of Health and Family Welfare
MoWCA	Ministry of Women and Children Affairs
SDG	Sustainable Development Goals
UN Women	United Nations Entity for Gender Equality and Women's Empowerment
UNICEF	United Nations Children's Fund
WHO	World Health Organization

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Executive Summary

This study provides a comprehensive review of the legal and policy framework surrounding maternity protection and childcare systems in Bangladesh. The purpose of the study is to identify legislative and practical gaps in existing protections and to propose reforms aligned with international labour standards, particularly ILO Maternity Protection Convention 2000 (No. 183) and Recommendation, 2000 (No. 191) and ILO Workers with Family Responsibilities Convention 1981 (No. 156). This study is divided into five chapters, each focusing on a distinct thematic and analytical component.

The introductory chapter focuses on the need to support women in balancing work and motherhood. The existing legal provisions in Bangladesh, mainly under the Bangladesh Labour Act 2006 (BLA) and Bangladesh Labour Rules 2015 (BLR), include maternity and childcare provisions but fall short of fully meeting C183 standards, with weak implementation and legal gaps. Although the Child Daycare Centre Act, 2021 was passed, its rules remain unformulated, limiting effective enforcement. Despite some progress, only about 34.6% of working women have access to maternity benefits, and many drop out of the workforce due to inadequate childcare support. While international instruments like ILO Conventions No. 183, 102, 103 and 156 set comprehensive standards, Bangladesh is yet to ratify them. Persistent issues such as non-payment of benefits, lack of breastfeeding and nursing facilities, and workplace discrimination continue to affect women workers. In this context, the ILO commissioned this study to assess current laws and policies, identify gaps, and suggest reforms in line with international standards.

The second chapter outlines the methodology of the study, which adopts a qualitative approach using both primary and secondary data. It describes three main methods: document analysis, expert consultation meetings, and key informant interviews (KIIs). Document analysis involved an in-depth review of national laws, policies, international conventions, and relevant academic literature on maternity protection and childcare. Three expert consultation meetings were conducted with stakeholders from NGOs, trade unions, UN agencies, employers' associations, and civil society. Additionally, 15 in-depth KIIs were carried out with representatives from government ministries, workers' organizations, and labour rights activists to identify implementation challenges and gather expert insights.

The third chapter laid down the context of the study, emphasizing maternity protection and childcare as essential human rights and key pillars of social protection and gender equality. Maternity protection ensures women's health and economic security during and after pregnancy, while childcare supports their continued workforce participation and promotes child development. In addition to the BLA, maternity benefits under the exact same terms and conditions are also provided for in the Bangladesh Export Processing Zones (EPZ) Labour Act, 2019, which applies exclusively to the workers and employers of all industries situated within the EPZs under the Bangladesh Export Processing Zones Authority. This chapter also reviews several government initiatives such as the Maternity Allowance Programme, Rural Maternity Centres, and the Mother and Child Benefit Programme (MCBP), which aim to improve maternal and child health and offer financial support to low-income families. Despite these efforts, limited coverage and weak coordination persist.

The fourth chapter provides an analysis of the national legal and policy framework, focusing on the existing gaps and challenges. It highlights that maternity protection is essential for the health and financial security of women workers and their children. While the C183 covers all employed women, including those in informal work, the legal framework of Bangladesh mainly protects women in the formal sector. Since over 96% of women workers are in informal employment, most women in Bangladesh lack access to paid maternity leave and benefits, highlighting significant gaps in coverage and protection. Pregnant and breastfeeding women require special workplace protections due to their increased vulnerability. C183 and R191 mandate risk assessments and measures such as adapting work, transferring to safer tasks, or granting paid leave when needed, and advise against night work if incompatible with pregnancy or nursing. In Bangladesh, the BLA restricts arduous and night work for women without consent but lacks detailed health and safety guidelines for pregnant or nursing workers and does not require time off for prenatal checkups. Enforcement of the law is weak due to limited labour inspections. Strengthening inspections and updating laws to meet international standards are essential to better protect pregnant and breastfeeding workers in Bangladesh.

C183 requires a minimum of 14 weeks maternity leave, including six weeks compulsory after childbirth, with Recommendation R191 encouraging 18 weeks. The BLA exceeds the leave period mandated by C183 by providing 16 weeks of maternity leave, eight weeks before and eight weeks after childbirth. However, the eligibility criteria under the BLA, such as a six-month employment requirement and disqualification if the woman has two or more children, are seen as restrictive and discriminatory compared to international standards. In practice, many women, especially in informal sectors, lack access to maternity leave or benefits, and some formal sector workers face shorter leave or unpaid leave. The fixed split of leave before and after childbirth lacks flexibility for women's choice. The law also lacks provisions for extending leave in case of illness or complications, although after 2022 amendment, the BLR offers four weeks' paid leave for miscarriage. C183 mandates maternity benefits of at least two-thirds of prior earnings for 14 weeks. Bangladesh provides 16 weeks of full paid leave under the BLA, but a 2022 amendment to the BLR new method for calculating benefits that significantly reduces the amount women receive, drawing criticism. Unlike the international standard of funding maternity benefits through social insurance or public funds, Bangladesh relies entirely on employer liability, leaving informal workers unprotected and exposing major gaps in its maternity protection system.

C111 and C183 require protection against unfair dismissal during pregnancy and maternity leave, guarantee the right to return to the same or equivalent job, and place the burden of proof on employers for dismissals related to maternity. However, the BLA lacks clear protection against dismissal during maternity and does not ensure job reinstatement or shift the burden of proof. Consequently, women continue to face forced resignation or dismissal due to pregnancy, with limited legal support. C183 also prohibits maternity-related discrimination, including pregnancy tests for job applicants. While the Constitution of Bangladesh broadly supports equality, its labour laws do not adequately address workplace discrimination, and women often face discriminatory hiring practices.

As regards breastfeeding at work, international standards such as C183 and R191 mandate that nursing breaks be treated as paid working time and require the provision of appropriate breastfeeding facilities in the workplace. In Bangladesh, labour law lacks

clear rules on nursing breaks, though the BLR requires employers to provide a separate, screened area for breastfeeding. However, these provisions are poorly implemented, and many women face challenges accessing breaks or facilities, especially in informal sectors where no regulations exist.

International labour standards recognize the need to support workers with family responsibilities by promoting childcare services and facilities to help balance work and family life. C156 mandates measures to ensure equality for workers with family duties and calls for the development of community childcare services. In Bangladesh, the BLA requires workplaces with 40 or more women employees to provide childcare rooms for children under six, but many workplaces lack proper facilities or the rooms are unused or inaccessible. In addition to workplace-based childcare under the BLA, the government operates 63 subsidized daycare centers through the Ministry of Women and Children Affairs, offering early learning, healthcare, and meals for children aged 0–6.

The fifth chapter of the study recommends key reforms to improve maternity protection and childcare in Bangladesh. It calls for amending the BLA to allow flexible maternity leave with compulsory post-childbirth leave, extend leave for medical reasons, and provide paid miscarriage leave. Employment protections against maternity discrimination and unlawful termination should be strengthened, along with guaranteed paid nursing breaks and proper breastfeeding facilities. Health protections for pregnant and nursing workers need enhancement, including rights to refuse night shifts and paid prenatal leave for medical checkups. Childcare provisions should apply regardless of workplace size, with employers required to contribute to childcare services.

The study also emphasizes shifting maternity benefit financing from employers to a national social insurance scheme, while extending support to informal workers through social assistance. It urges strengthening the Department of Factory Inspection to better enforce maternity protections and calls for a gender-responsive occupational safety and health policy specifically addressing maternity risks. Improved data collection on maternity practices, greater awareness among employers and workers, and stronger maternity protections for informal sector workers are also recommended. It stresses making the law reform process gender-inclusive and urges Bangladesh to ratify key ILO conventions on maternity protection (C183) and workers with family responsibilities (C156) to align with international standards.

I. Introduction

One of the core issues of concern for the member states of the International Labour Organization (ILO) has been to enable women to successfully combine their reproductive and productive roles and prevent unequal treatment in employment due to their reproductive role.¹ Globally employment related laws generally provide provisions for maternity protection and childcare. Provisions on maternity benefits and child welfare can also be found within the national legal and policy framework of Bangladesh; key among such documents are the Bangladesh Labour Act (BLA) 2006 and Bangladesh Labour Rules (BLR) 2015.

As per ILO data on social security 2021, about 34.6 per cent of working women in Bangladesh have access to maternity benefits. The lack of access to social protection measures is still evident for many working mothers and children in Bangladesh- causing additional challenges for women to remain in the workforce as nursing mothers and when raising small children. Also, as the burden of childcare is often shouldered by women in the absence of access to affordable, accessible, and good quality childcare, many women drop out of the workforce to tend to the well-being of the children. Therefore, ensuring women's greater participation in the workforce needs ensuring maternity protection including inclusive childcare provisions.

The ILO Maternity Protection Convention, 2000 (No. 183), and ILO Social Security (Minimum Standards) Convention, 1952 (No. 102) seek to ensure that all employed women, including women employed in typical and atypical forms of dependent work, are adequately protected during maternity through relevant social security schemes. For this purpose, it sets out the right to: maternity leave; cash benefits to ensure the mother can support herself and her child during leave; medical care; protection of the health of pregnant and breastfeeding women and their children from workplace risks including access to childcare; protection from dismissal and discrimination; and breastfeeding on return to work. Notable also is the ILO Workers with Family Responsibilities 1981 (No. 156). This Convention, as its article 1 notes, applies to men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity. Pertinently, Bangladesh has not ratified or signed these conventions; therefore, the country is not as such legally bound by these instruments. This reflects badly on the country's commitment to uphold international labour standards on maternity protection. In order to better protect rights of women and children, the country should ratify these instruments and thereby align its domestic

¹ International Labour Organization (ILO), *Maternity Protection Resource Package: From Aspiration to Reality for All*, 2012, <https://www.ilo.org/media/314681/download>.

laws based on these international standards.

Although the Labour related laws and policies including the BLA and its corresponding Rules, BLR, 2015, incorporate provisions addressing maternity protection and benefit, the provisions do not fully reflect the protection provided under C183. Similarly in terms of childcare provisions, although the BLA contains provisions for daycare facilities, there are legal inadequacies and inadequate implementation. In 2021 the Government of Bangladesh passed the Child Daycare Centre Act. However, the corresponding rules to the law are not yet formulated resulting in its current weak implementation status.

Key ILO Conventions	Ratification status
ILO subsequently adopted the Maternity Protection Convention (Revised), 1952 (No. 103)	Not ratified
ILO Social Security (Minimum Standards) Convention, 1952 (No. 102)	Not ratified
The ILO Maternity Protection Convention 2000 (No. 183) and Recommendation, 2000 (No. 191)	Not ratified
The ILO Workers with Family Responsibilities Convention 1981 (No. 156)	Not ratified

Indeed, demand for improved implementation of provisions related to maternity benefits and childcare provisions in the BLA has been emphasized in several forums over the past decades. Several studies highlighted complaints such as non-payment of maternity benefits, threat of dismissal, forced resignation on condition of joining again after giving birth, etc. against expectant workers. Lack of breastfeeding breaks, nursing facilities and antenatal medical care at workplaces has also been highlighted in several reports in the past.²

The purpose of this study is to assess the current legal and policy framework governing maternity protection and childcare in Bangladesh, with a view to identifying specific gaps and areas for reform in light of international labour standards, particularly ILO Convention No. 183 on Maternity Protection and Convention No. 156 on Workers with Family Responsibilities.

In this background, ILO Bangladesh has commissioned the present study to update the previous ILO report on 'Maternity Protection and Childcare Systems in Bangladesh', which was conducted by the ILO Decent Work Team (DWT) in 2021. The key rationale for

² Taslima Yasmin, "Changes in Labour Rules Will Actually Reduce Maternity Benefits," *The Daily Star*, November 2022, <https://www.thedailystar.net/opinion/views/news/changes-labour-rules-will-actually-reduce-maternity-benefits-3157436>.

the update of the study is to identify specific areas to align maternity and childcare benefits for workers in Bangladesh with relevant international standards particularly in context of recent legal and policy development that took place in Bangladesh to address the issues of maternity benefits and childcare.

II. Methodology

The study is primarily a qualitative analysis combining both primary and secondary data. The following methods are followed to conduct the analysis.

a. Document Analysis

The study had conducted an in-depth analysis of various statutes, policies, international conventions, study reports conducted by national/international organizations, relevant scholarly articles, books, online materials and other literature sources relevant on maternity protection and childcare systems.

b. Expert Consultation Meetings

The study held three expert consultation meetings to understand the existing challenges in accessing and implementing maternity protection and childcare provisions in Bangladesh. These consultations were held with participants representing the i) workers' trade unions, and ii) employers' associations and individual employers, iii) workers' rights-based NGOs and other CSO leaders, UN Agencies and government representatives. list of participants of the consultations is provided in Annex-B.

c. Key Informant Interviews (KII)

A total of 15 KIIs have been conducted for the study. The interviews were in-depth, based on a semi-structured questionnaire. The interviews were conducted through online meeting portals and over telephone. Guiding questionnaires were developed and shared with the respondents for the interviews reflecting on the findings of the consultation meetings. The interviewees included representatives of key government agencies including, the Ministry of Labour and Employment (MoLE), the Ministry of Women and Children Affairs (MoWCA) and the Cabinet Division, representatives of relevant UN agencies, lawyers, trade union leaders, and labour rights activists. The list of KII participants is attached in Annex- A.

III. Context

Maternity protection and childcare are not only key human rights but are also core elements of sustainable work-family policies and comprehensive social protection systems. While maternity protection is instrumental to preventing maternal mortality and morbidity, its purpose is equally interlinked with women's economic activities and

right to equal participation in work and public life: ensuring that their employment does not disproportionately impact their own and their child's health, on one hand, and ensuring that the expectations and performances of reproductive roles do not interfere with the economic security and financial stability of their families, on the other hand.

It is undeniable that for the world of work to function well, it is essential to provide women with effective means to protect their health and the economic security of their households. A set of globally recognised commitments in the form of international labour standards progressively extend and revise the range of such protective measures, from health and maternity protection to non-discrimination and effective implementation of the right to free choice of employment for workers with family responsibilities.

Bangladesh is committed to several of these standards but has yet to express its commitment to several others such as... Bangladesh also has a national policy-legal framework too, grounded in international human rights and labour standards, that addresses maternity protection and childcare.

Maternity protection refers to a set of policies, laws, and measures aimed at safeguarding the health, well-being, and employment rights of women during pregnancy, childbirth, and the postnatal period. It is a critical aspect of social security that ensures women are not disadvantaged in the workplace due to their reproductive role. Key elements of maternity protection typically include:

1. **Paid Maternity Leave:** Ensures income security for women during a specified period before and after childbirth.
2. **Health Protection:** Safeguards against workplace risks that could harm the mother or baby during pregnancy and after birth such as breastfeeding.
3. **Job Security:** Protects women from dismissal, discrimination, or negative treatment due to pregnancy or maternity leave.
4. **Breastfeeding Support:** Includes provisions such as breastfeeding breaks or such facilities in the workplace.
5. **Access to Healthcare:** Guarantees access to medical care related to pregnancy and childbirth.

Maternity protection promotes gender equality, ensures women's economic participation, and supports healthy early childhood development. It is often regulated through national labor laws and international standards, such as ILO's Maternity Protection Conventions.

Childcare

Childcare encompasses the services, support structures, and arrangements aimed at providing care and management for children, particularly during their early childhood development, when their physical, emotional, and cognitive development is most crucial. It plays a vital role in supporting families, especially working parents, by

enabling them to balance their professional and caregiving responsibilities. Key aspects of childcare include:

1. **Daycare Services:** Structured care provided by childcare centers, day care, nurseries, or preschools for children while parents are at work.
2. **Parental Leave Policies:** Includes provisions for maternity, paternity, and parental leave to allow parents to care for their children.
3. **Home-based Care:** Informal or formal caregiving arrangements provided in the home environment by family members, skilled nannies, or trained caregivers.
4. **Financial Assistance:** Subsidies or allowances to make childcare more affordable for families.
5. **Flexible Work Arrangements:** Policies such as remote work, part-time schedules, or flexible hours to help parents manage and to balance work and caregiving responsibilities.

Childcare contributes to children's development by providing a safe, nurturing, and stimulating environment. At the same time, it supports parents' participation in the workforce, promotes gender equality by reducing the caregiving burden on mothers, and enhances social and economic well-being.

Linkage Between Maternity Protection and Childcare

This paper presents that the two are intrinsically linked as part of a comprehensive social security system aimed at workers' welfare and rights. While maternity protection addresses the health and economic needs of mothers during and shortly after childbirth, childcare ensures continued support as mothers and fathers (parents) re-enter the workforce strengthening labour market participation.

Together, they:

- Enable **work-family balance**, reducing the economic burden on parents.
- Promote **gender equality**, encouraging shared caregiving responsibilities.
- Enhance **child development outcomes** through access to quality care.
- Strengthen **labour market participation**, especially for women, by reducing caregiving-related barriers.

A comprehensive approach integrating maternity protection and childcare is crucial for strong social security systems and fostering inclusive, sustainable work environments. This paper highlights the importance of such policies for a sustainable Bangladesh, guiding policymakers toward effective solutions.

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a. International framework

The International Human Rights law framework iterates steadfast commitment on protecting and promoting maternity health, children's rights, and social protection in general. The Universal Declaration of Human Rights, for instance, recognizes that "motherhood and childhood are entitled to special care and assistance."³ Other notable binding instruments in this regard are the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁴, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁵ and the Convention on the Rights of the Child (CRC).⁶ The ICESCR provides for special protection to be accorded to mothers during a reasonable period before and after childbirth, with paid leave or leave with adequate social security benefits.⁷ The CEDAW calls for introducing maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.⁸ Furthermore, it also prohibits dismissal on the grounds of pregnancy or of maternity leave.⁹ Additionally, the CRC puts obligation on the states parties to take all the appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.¹⁰

Bangladesh is party to all three of the treaties mentioned above and the relevant treaty bodies have time and again urged the country to adopt holistic maternity protection and childcare policies and to ensure their implementation. For instance, the CEDAW committee in the concluding observations to the 8th periodic report submitted by Bangladesh welcomed the Bangladesh Labour (Amendment) Act 2023 that provided for maternity leave but also expressed concern that the leave provision is not being fully implemented and that discrimination against pregnant women persists in the non-government or private sector.¹¹ In a similar vein, the CESCR Committee expressed concerns with respect to the reduced but high incidence of maternal mortality,

³ United Nations, *Universal Declaration of Human Rights (UDHR)*, 1948, art. 25.2.

⁴ United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, arts. 3, 7, 9, 10, 12, adopted December 16, 1966, entered into force January 3, 1976, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

⁵ United Nations General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, arts. 10, 11, 12, 14, adopted December 18, 1979, <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>.

⁶ United Nations General Assembly, *Convention on the Rights of the Child (CRC)*, arts. 3, 23, 24, adopted November 20, 1989, entered into force September 2, 1990, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

⁷ ICESCR, art 10(2).

⁸ CEDAW, article 11(2)(b).

⁹ Ibid., art 11(2)(a).

¹⁰ Ibid., art 18(3).

¹¹ Committee on the Elimination of Discrimination against Women, *Concluding Observations on the Eighth Periodic Report of Bangladesh*, 9.

particularly among adolescent girls, and emphasized maternity protection.¹² The CRC Committee urged the government of Bangladesh to ensure safe childcare facilities, particularly in the garment factories, to support working parents.¹³

The establishment of basic guarantees for maternity protection and childcare is also enshrined in the UN Social Protection Floor Initiative.¹⁴ The initiative includes and emphasises the access to essential prenatal, childbirth and postnatal health care for the mother and her child and income transfers to low-income women during the last weeks of pregnancy and first weeks after delivery. These are the essential minimum guarantees that progressively cover female workers in the informal economy as well as self-employed women or other vulnerable groups otherwise generally excluded from social protection programmes.

Indeed, the international instruments have viewed maternity protection as an integral part of women's right to work and equal participation in labour. Accordingly, since the foundation of ILO in 1919, maternity protection has been at its heart. Instructive here is the ILO's first Convention on Maternity Protection (No. 03). Gradually expanding the scope of maternity protection and associated entitlements, ILO subsequently adopted the Maternity Protection Convention (Revised), 1952 (No. 103) and the Social Security (Minimum Standards) Convention, 1952 (No. 102).¹⁵ Notably, in the Convention No. 102, 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.

The most up-to-date standards on maternity protection are enshrined in the ILO Maternity Protection Convention, 2000 (No. 183), accompanied by the Recommendation, 2000 (No. 191). They encompass the following key elements of maternity protection at work:

1. Health protection for pregnant and nursing women;

¹² Committee on Economic, Social and Cultural Rights, *Concluding Observations on the Initial Report of Bangladesh*, 11.

¹³ Committee on the Rights of the Child, *Concluding Observations on the Sixth Periodic Report of Bangladesh*, 6.

¹⁴ International Labour Organization, *UN Social Protection Floor Initiative*, <https://www.social-protection.org/gimi/ShowProject.action?id=2767>.

¹⁵ International Labour Organization, *Maternity Protection Convention*, 1919 (No. 3), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312148:NO.

International Labour Organization, *Maternity Protection Convention (Revised)*, 1952 (No. 103), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312248:NO.

International Labour Organization, *Maternity Protection Convention*, 2000 (No. 183), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312328:NO.

2. A minimum period of maternity leave of at least 14 weeks;
3. Leave in case of illness, complications, or risk arising from pregnancy or childbirth;
4. Provision on adequate cash and medical benefits;
5. Protection against termination and discrimination based on maternity; and
6. Arrangements at the workplace to allow women to breastfeed.

Recently, ILO Social Protection Floors Recommendation, 2012 (No. 202) calls particularly, for access to essential health care, including maternity care to be provided as part of the basic social security guarantees that comprise national social protection floors, 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.

The last generation international labour standards, as mentioned above, are built around the core aspect ensuring effective maternity protection by envisaging a minimum of 14 weeks of leave¹⁶ at a rate of at least two-thirds of previous earnings¹⁷, which is paid by social insurance or public funds.¹⁸ The ILO standards on maternity protection at work are also complemented by a range of instruments particularly relevant for a specific sector or occupation, such as agriculture, domestic work, nursing personnel, or explicitly designed to address a concrete labour issue, including social security, employment protection, working conditions, occupational safety and health, etc. Combined in a system of international labour standards, both legally binding Conventions and Protocols and Recommendations of a non-binding nature offer an all-embracing and far-reaching guidance to the member States of the ILO in the design and implementation of maternity and childcare policies.

Nonetheless, despite a worldwide commitment and recognition of the importance of maternity protection and childcare, women continue to face various forms of risks both during and after the pregnancy, including work-related risks such as hazardous conditions, unjustified dismissals, lack of breastfeeding arrangements and childcare services in addition to risks associated with social norms or prejudices in the society. In Bangladesh, these risks are coupled with precarious or non-standard work opportunities for women, in addition to a high level of informal employment, which currently stands at 94.7 per cent. This poses consequential difficulties accessing certain rights, including effective access to maternity protection and childcare.

¹⁶ Ibid., art. 4(1).

¹⁷ Ibid., art. 6(3).

¹⁸ Ibid., art. 6(8).

In order to bridge the existing country-specific gaps, Bangladesh is committed to “leaving no one behind” approach of the 2030 Agenda for Sustainable Development and its Sustainable Development Goals, prioritizing a policy framework with a focus on four key pillars: 1) moderate income inequality; 2) reduce gaps in health, nutrition and education; 3) remove social and gender exclusion and discrimination, and; 4) introduce explicit budgeting for the marginalised people and lagging behind regions. The interventions in the social protection field preview scaling up the available services, expanding health protection, and addressing gender inequalities.

b. National Context

Beyond the patchwork of international obligations undertaken by Bangladesh, the country has curated a national scheme for ensuring maternity protection and childcare with an array of laws, policies, and action plans. The evolution of the labour laws in Bangladesh related to maternity protection began with the adoption of the Maternity Benefits Act (1939). For a long time, the Maternity Benefits Act of 1939 had been a cornerstone of the maternity protection regulation in the country. It has been widely used in the manufacturing and services sectors, complemented later with the Mines Maternity Benefit Act 1941 and the Maternity Benefits (Tea Estate) Act (1950). All these Acts finally got consolidated in the **BLA**.¹⁹

The amalgamation of the earlier provisions on maternity is reflected in Chapter IV of the BLA titled “Maternity Benefits”. As per section 46 of the BLA, every woman worker shall be entitled to maternity benefits from her employer for the period of 8 (eight) weeks preceding the expected day of her delivery and 8 (eight) weeks immediately following the day of her delivery, provided she has worked under the employer for a period of not less than 6 (six) months immediately preceding the day of her delivery. Notably, current provisions for maternity leave and cash benefits are employer-funded, and there is no social insurance yet in place in the country. The right to maternity benefit is guaranteed for the first two pregnancies, while unpaid leave is provided for the third and subsequent births. Maternity benefits in exact same terms and conditions are provided for under the Bangladesh Export Processing Zone (EPZ) Labour Act 2019 as well.²⁰

The EPZ Labour Act, 2019 applies specifically to the workers and employers of all industries situated within the EPZs under the Bangladesh Export Processing Zones Authority (BEPZA). In contrast, the BLA is the general labour law applicable to most

¹⁹ *Bangladesh Labour Act, 2006 (XLII of 2006)*,
https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=76402

Bangladesh Labour (Amendment) Act, 2013 (Act No. 30 of 2013),
<https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=94286&p_country=BGD&p_court=159&p_classification=01.02&p_classcount=3>

²⁰ *Bangladesh EPZ Labour Act, 2019*, sec. 30.

workers and establishments across the country, except those specifically excluded under section 1(4), such as government offices, security printing press, ordnance factories, domestic workers, etc.

The Rules of 2015 elucidates the responsibilities of the employer towards a woman worker who is pregnant. Rule 37 mentions as such responsibilities the followings: a) Permitting no behaviour or comments so that she is physically or psychologically demoralized or insulted; (b) Not to be engaged in any dangerous works declared by the Government or which are risky to health; (c) Transferring or deputing to a position which is risk-free; (d) Prioritising in using elevator during working hours; (e) Ensuring breast-feeding facilities and environment for her child during post-natal period. Self-same provisions are part of the EPZ Labour Rules 2022.²¹

On the other hand, with respect to childcare, BLA in section 94 stipulates that all employers with more than 40 female employees are under obligation to provide childcare services for both female and male employees. Indeed, one of the main interventions reducing child poverty in upper income countries – and which combines both labour market and social security approaches – is the subsidised or free provision of childcare services for mothers of young children. By enabling mothers to remain in the labour market, family incomes can be increased significantly, among single headed families.²² The EPZ Labour Act 2019 also mentions ensuring of child corners within the workplace as a welfare measure as the employer's duty or responsibility.²³

The BLR 2015 provides useful provisions on the design, standard, and location of the children rooms. As per Rule 94, among others, milk and adequate nutritious food shall be supplied every day for all children staying in the children's room; the employees of the children's room shall be supplied with neat and clean uniforms during their time of duty in the children's room. The rule also provides that in case of appointment of employees in the children room priority shall have to be given to women.

Up to June 2020, daycare facilities have been established in 5656 Factories across the whole country.²⁴ Also, the Department of Social Services (DSS) under the Ministry of Social Welfare has established a daycare centre at Azimpur for daytime childcaring of low-income mothers' group in Dhaka.²⁵ In pursuance of the National Women Development Policy 2011, the MoWCA currently runs a further 63 public funded child daycare centers across the country through the Department of Women Affairs (DWA)

²¹ *Bangladesh EPZ Labour Rules, 2022*, rule 33.

²² Government of Bangladesh, *National Social Security Strategy (NSSS) of Bangladesh*, 2015, and *Action Plan Phase I*, 2018, <https://www.social-protection.org/gimi/gess/ShowResource.action?id=55817>, 42.

²³ *Bangladesh EPZ Labour Act, 2019*, sec. 35(2)(j).

²⁴ *Ibid.*, 237.

²⁵ *Ibid.*, 62.

that follow a contributory model and primarily target working women. Besides such incremental developments, the provisions on maternity protection and childcare of the BLA remain largely unimplemented.

Alongside the laws, several policy documents also envisage ensuring of maternity protection and childcare policies. The National Women Development Policy 2011 notes as a plan to progressively enact and implement laws to allow mothers to enjoy a leave for six months after the delivery of the child to ensure that the newborn has right to mother's breast milk (only six months for breast milk) and to arrange for necessary maternity leave.²⁶ In a similar vein, the Policy stresses support services like childcare facilities, workplace day-care centres for the children aimed at effective participation of women in all economic activities and development process.²⁷

The 8th Five Year Plan (FYP) for instance notes that one of the activities towards scaling up nutrition is to ensure that 6-month fully paid maternity leave is implemented across all sectors.²⁸ It also regrettably notes lack of gender responsive working environment including inadequate facilities of childcare as a major issue of concern. As the FYP states, although policy measures are in place and the Government has granted women six months maternity leave on papers, often this is not followed by the private sector or the NGOs.²⁹

Besides, the FYP also notes that medical, childcare and other facilities should be improved to encourage women to join and continue work in the labour market. For instance, the FYP notes that infrastructure and logistics support should be ensured for women in the workforce including breast feeding facilities at workplace, provisions of maternity, and childcare support.³⁰

The FYP touches upon yet another significant issue, namely the national insurance and universal pension coverage for the low-income vulnerable women. For instance, the FYP highlights that access to low-cost health and maternity care insurance, among others, should be explored for women under the social insurance programmes.³¹ It further notes that national social insurance system (NSIS) enabling people to invest in their own social security, providing protection in case of maternity, among others, will be initiated on a pilot basis under the National Social Security Strategy (NSSS). A low-cost contributory insurance model should be initiated in collaboration with private sector

²⁶ Government of Bangladesh, *National Women Development Policy*, 2011, para. 34.11.

²⁷ Ibid., para 28

²⁸ Planning Commission, Government of Bangladesh, *Eighth Five Year Plan July 2020 – June 2025: Promoting Prosperity and Fostering Inclusiveness*, 602.

²⁹ Ibid., 747.

³⁰ Ibid., 752.

³¹ Ibid., 761.

by providing subsidy, if necessary, so that women can access the support at a low contribution, the FYP recommends.³²

Pertinently, the NSSS was launched in 2015 and along with the Action Plan setting its implementation agenda, it envisages the establishment of a national social insurance scheme, which would *inter alia* cover maternity protection and introduce periodic cash benefits for workers in the formal economy.³³ The Financial Institutions Division under the Ministry of Health and Family Welfare is underscored as the responsible organ to realise the insurance scheme. The NSSS specifically also suggests that the MoWCA should ensure availability of such insurance schemes in collaboration with the MoLE.³⁴

The MoWCA is also responsible to carry out other relevant programs pertaining to maternity and childcare. Accordingly, the ministry implements several Social Security Programmes in this regard. Notable among them is the *Maternity Allowance Programme for the Poor Mothers*. It belongs to the Social Allowance Cluster focusing on the Pregnancy and Early Childhood stage of the life cycle in rural areas only.³⁵ Started in the financial year 2007-08, the objective of this programme is to improve the health, nutrition, and quality of life of poor and vulnerable women at the grassroots levels. In particular, it aims to reduce maternal and child mortality, increase breastfeeding, and increase nutritional intake during pregnancy. The programme provides BDT 800 as a monthly allowance to beneficiaries and is implemented by the Department of Women Affairs (DWA). Notably, there were 7.70 lacs beneficiaries with Tk 763.27 crore budget in the 2020-2021 fiscal year for this programme.

Another such initiative is the *Allowances for Working Lactating Mothers*. Started in 2010-2011, this program is designed to support poor working lactating mothers. The objectives of the program are achieving the Sustainable Development Goals (SDGs) by 2030, reducing maternal and child mortality, ensuring mother and child health and nutrition, and improving the overall quality of life. Currently, this program is implemented in all municipalities, city corporations, and selected garments factories under the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) and the Bangladesh Knitwear Manufacturers and Exporters Association (BKMEA). This program belongs to the Social Allowance Cluster targeting the Pregnancy and Early Childhood in the life cycle approach in urban areas.³⁶

Another notable initiative is the Rural Maternity Centre, which is a state-run initiative implemented by the Department of Social Services under the Ministry of Social Welfare

³² Ibid.

³³ Government of Bangladesh, *Action Plan for Implementation of the National Social Security Strategy (NSSS) of Bangladesh, Phase II (2021–2026)*, 88.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

since 1975. The program is currently operational in 492 upazilas across all 64 districts of Bangladesh. Its primary goal is to empower disadvantaged and impoverished rural women, particularly those of reproductive age, by promoting awareness of family planning, adult education, health and nutrition, and maternal and child care. Additionally, it offers interest-free microcredit (ranging from Tk 10,000 to Tk 30,000 per member, repayable over 10 monthly installments with a 5% service charge) to support income-generating activities aimed at reducing family-based poverty. To date, the program has disbursed Tk 71.05 crores, benefiting approximately 193,000 women.³⁷

The improved version of the existing maternity allowance programme and lactating mother allowance programme is the *Mother and Child Benefit Program (MCBP)*, a state-run initiative implemented by the MoWCA in partnership with the United Nations World Food Programme (WFP). This programme is designed to improve the nutritional status and cognitive development of children from 0 to 4 years of age by introducing several reforms as envisaged in the NSSS.

Under the MCBP, the beneficiary enrolment system is kept open unlike any other social protection programmes implemented in the past in Bangladesh. Therefore, any eligible pregnant woman can apply for free to the Union Digital Centre for collecting the required information and enrolling. The application system is linked to the central database for social protection programmes management information system (MIS) following which, beneficiaries can withdraw the allowance from their preferred mobile or bank account. The programme is funded by the United Nations WFP which also provides technical assistance in planning, piloting, the establishment of the MIS units, and integrating nutrition elements into this programme. The current project duration is from July 20, 2022, to July 19, 2024.

The scheme is available for women aged 20 to 35 living in any district, upazilla, union, pourashobha, city corporation and working in factories or garments specified by the government. An eligible poor woman is entitled to receive monthly Tk 800 for 36 months for a maximum of two children in her lifetime and participate in nutrition and early childhood care sessions organized in the community.

The MCBP also encourages pregnant women to visit pre-and post-natal care and services on healthcare. Considering the high poverty rate, nutrition deficits, and hard-to-reach marginalised areas, the MoWCA has started this programme in 8 Upazilas and gradually scaled up to 66 Upazilas, 41 Municipalities, 6 garments factories, and 1 city corporation in the fiscal year 2020-21. The Ministry is responsible for further scaling up this consolidated programme gradually to the entire country by 2026. The number of children benefitted by 2026 is projected or estimated at 65 lacs.

³⁷ Department of Social Services, “Rural Maternity Centre,” Government of Bangladesh, <http://dss.raigonj.sirajganj.gov.bd/en/site/page/%E0%A6%AA%E0%A6%B2%E0%A7%8D%E0%A6%B2%E0%A7%80-%E0%A6%AE%E0%A6%BE%E0%A6%A4%E0%A7%83%E0%A6%95%E0%A7%87%E0%A6%A8%E0%A7%8D%E0%A6%A6%E0%A7%8D%E0%A6%B0>.

Furthermore, there are several small-scale grants and schemes available to support women. For instance, there is the *Maternal Health Voucher Scheme* (MHVS) that provides subsidies to target groups of women in need to enable them to buy specific healthcare services.³⁸

The overall goal of the MHVS is to reduce maternal mortality rate and neonatal mortality rate by increasing:

- (i) awareness and demand for maternal health services among poor pregnant women, and
- (ii) institutional delivery.

As per the NSSS Action Plan phase II (2021-2026), the government will build on the positive experiences of the MHVS and expand its coverage to all women who need this service, undertaking it in a phased manner. The Plan envisages the Ministry of Health and Family Welfare as the responsible ministry to prepare a detailed implementation plan along with a specific timeline and detailed programme cost. The MoHFW is to coordinate in a manner that ensures that the demand for the service financed through MHVS does not go unmet.

IV. National Legal and Policy framework: Gaps and Challenges

Maternity protection is an essential factor to guarantee health and financial safeguard of women workers and their children during the perinatal period. Lack of effective provisions for paid maternity leave and benefits would limit the capacities of women to participate in paid work as stereotypically women are conceived to be the principal caregiver of children. This crucial role of women workers is acknowledged globally as majority of countries across the world have adopted laws and policies securing paid maternity leave for women.

1. Scope and Coverage of the law

C183 includes in its scope all employed women, including women employed in informal and atypical forms of work,³⁹ who have often received no protection due to the increasingly flexible nature and segmentation of employment relations.⁴⁰

The scope of BLA is substantively narrow as it only applies to workers employed in the organized sectors whereas majority of women labour force in Bangladesh are employed

³⁸ Government of Bangladesh, *National Social Security Strategy (NSSS)*, pp. 36-37.

³⁹ Convention No. 183, article 2(1).

⁴⁰ International Labour Organization, *Maternity and Paternity at Work: Law and Practice Across the World*, 2014, 34.

in the informal sector including in domestic work. The EPZ Labour Act, 2019 applies exclusively to the workers and employers of industries operating within the EPZs under the jurisdiction of BEPZA. As such, it does not extend protection to the vast majority of female workers who are employed in the informal sector outside these designated zones.

The Bangladesh Labour Force Survey 2022 (LFS) shows that 84.9 per cent of total working population in Bangladesh, are in informal employment and out of the total employed women in Bangladesh, 96.6 per cent are in informal employment.⁴¹ As such the statutory protection for maternity benefit covers a very small percentage of working women in Bangladesh.

2. Health Protection at Work for Pregnant and Breastfeeding Women

Health protection throughout pregnancy and breastfeeding requires particular attention as women during these periods may be both more sensitive and vulnerable vis-à-vis certain workplace hazards. The nature of work itself may entail hazardous conditions, and it is necessary to consider needs at different stages of the reproductive cycle as the pregnancy progresses and immediately before and after the delivery when breastfeeding.

C183 – Health protection – Art. 3

Each Member shall, after consulting the representative organizations of employers and workers, adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child.

R191 – Health protection

(1) Members should take measures to ensure assessment of any workplace risks related to the safety and health of the pregnant or nursing woman and her child. The results of the assessment should be made available to the woman concerned.

(2) In any of the situations referred to in Article 3 of the Convention or where a significant risk has been identified under subparagraph (1) above, measures should be taken to provide, on the basis of a medical certificate as appropriate, an alternative to such work in the form of

- (a) elimination of risk;
- (b) an adaptation of her conditions of work;
- (c) a transfer to another post, without loss of pay, when such an adaptation is not feasible; or

⁴¹ United Nations, “Formalization is Key to Shared Prosperity for Workers in Bangladesh’s Informal Sector,” <https://bangladesh.un.org/en/272565-formalization-key-shared-prosperity-workers-bangladesh's-informal-sector>

(d) paid leave, in accordance with national laws, regulations or practice, when such a transfer is not feasible.

(3) Measures referred to in subparagraph (2) should in particular be taken in respect of:

(a) arduous work involving the manual lifting, carrying, pushing or pulling of loads;

(b) work involving exposure to biological, chemical or physical agents which represent a reproductive health hazard;

(c) work requiring special equilibrium;

(d) work involving physical strain due to prolonged periods of sitting or standing, to extreme temperatures, or to vibration.

(4) A pregnant or nursing woman should not be obliged to do night work if a medical certificate declares such work to be incompatible with her pregnancy or nursing.

(5) The woman should retain the right to return to her job or an equivalent job as soon as it is safe for her to do so.

(6) A woman should be allowed to leave her workplace, if necessary, after notifying her employer, for the purpose of undergoing medical examinations relating to her pregnancy.

Other international labour standards, such as the Night Work Convention, 1990 (No. 171) and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948 provide for the measures to be taken to ensure that an alternative to night work is available to women night workers before and after childbirth for a period of at least 16 weeks, and for additional periods in case necessary for the health of the mother or child.

There are no specifications in the national legislation of Bangladesh regarding occupational safety and health guidance or night work for pregnant or breastfeeding women, however, Chapter IV of the BLA contains provisions prohibiting work of arduous nature, long hours of standing or the one likely to adversely affect woman's health during her pregnancy. It is to be noted, however, that these restrictive measures are outlined in the context of employing a woman during pregnancy as they are formulated:

Bangladesh Labour Act, 2006

45. Employment of women worker prohibited during certain period: (1) No employer shall knowingly employ a woman in his establishment during eight weeks immediately following the day of her delivery.

(2) No woman shall work in any establishment during the eight weeks immediately following the day of her delivery.

(3) No employer shall employ any woman for doing any work which is of an arduous nature or which involves long hours of standing or which is likely to adversely affect her health; if –

He has reason to believe or if she has informed him that she is likely to be delivered of a child within ten weeks;

She has to the knowledge of the employer been delivered of a child within the preceding ten weeks:

Provided that in case of tea plantation worker, a woman worker can undertake light work if and for so long as the medical practitioner of the concerned tea estate certifies that she is physically fit to do so; and, for the days that she does such work, she shall be paid at the prevailing rate of pay for such work, and such pay shall be paid to her in addition to the maternity benefit which she may be entitled to receive under existing this Act.

In relation to the night work, the BLA outlines that no woman is allowed to work in an establishment without her consent between the hours of 10 p.m. and 6 a.m. However, the provision does not address the specific risk associated with women night workers during pregnancy. Moreover, while this provision protects pregnant women and new mothers, it also limits the right of other women to free choice of employment, enshrined in the ILO Employment Policy Convention, 1965 (No. 122). Additionally, with regard to overtime work with potential health risks, the BLA does not provide any occupational health and safety guidance for pregnant workers.

The ILO's position on night work for women has evolved over time. Initially, the Night Work (Women) Convention, 1919 (No. 4) imposed a quasi-absolute on women's night work in industry. However, through subsequent revisions, most notably the 1990 Protocol allowing for exemptions to the prohibition contained in Convention No. 89, the ILO recognized the need for a more flexible and context-sensitive approach that balances protection with gender equality and women's autonomy in the labour market. This shift reflects contemporary thinking that women should be able to decide whether to work at night, provided that adequate occupational health and safety measures are in place, especially for pregnant and nursing women.

However, the BLA remains silent on overtime and night work risks specifically for pregnant workers, providing no tailored occupational safety guidance in such circumstances. In light of evolving international labour standards, the BLA should be amended to include specific provisions that allow pregnant or nursing workers to opt out of night shifts or overtime without losing pay or facing discrimination. At the same time, any broader restrictions on women's night work should be carefully reviewed to ensure they do not unintentionally infringe on women's employment rights, while still providing meaningful protection during pregnancy and nursing.

Bangladesh Labour Act, 2006

109. Limitation of hours of work for women: No women shall, without her consent, be allowed to work in an establishment between the hours of 10.00PM and 6.00 AM

R191 recommends allowing time off to pregnant workers for prenatal health checkups and treatments. WHO recommends a minimum of four prenatal medical visits including vaccination, treatment and screening. There is no provision in the labour laws of Bangladesh that requires employers to allow such time-off to the pregnant workers. Moreover, women in Bangladesh generally have very less access to antenatal health checkups or to any social assistance for antenatal health treatment.⁴²

The Institute for Global Labour and Human Rights collected evidence of women workers facing excessively difficult working conditions during their pregnancy, such as long working hours and various forms of bullying and abuse, which consequently resulted in health complications and in some cases termination of pregnancy.⁴³ In addition to excessive working hours and unpaid overtime, various forms of physical stress, such as long hours in awkward postures without adequate breaks, lack of supply of drinking water, exposure to hazardous substances (i.e. chemicals used in textile processing) or work with machinery with inadequate fencing have been also reported.⁴⁴

With regard to monitoring occupational safety and health standards, the ILO CEACR, when examining the implementation of Labour Inspection Convention, 1947 (No.81), raised doubts in respect of the capacities of the public authorities in Bangladesh to undertake labour inspections and monitoring the measures aimed at the protection of workers, suggesting to further strengthen the capacities of the public inspection authorities.⁴⁵

This shortfall in inspection capacity has significant implications for maternity-related workplace protections, particularly for pregnant and breastfeeding women who are entitled to specific OSH safeguards under international labour standards, including C183. Without sufficient and well-equipped labour inspectors, monitoring compliance with provisions on safe working conditions, nursing breaks, protection from hazardous work, or provision of childcare facilities becomes highly inconsistent and unreliable.

⁴² Response of the KII .

⁴³ Institute for Global Labour and Human Rights, *Gap and Old Navy in Bangladesh: Cheating the Poorest Workers in the World*, October 2013, <http://www.globallabourrights.org/reports/gap-and-old-navy-in-bangladesh-cheating-the-poorestworkersin-the-world>.

⁴⁴ Öko-Institut e.V., *Case Study on the Governance of Labour Standards in Bangladesh's Garment Industry*, Working Paper 4/2017, <https://www.oeko.de/fileadmin/oekodoc/WP-GV-Case-Study-Garment.pdf>.

GIZ, *Promotion of Social and Environmental Standards in Industry: Project Description*, 2015, <https://www.giz.de/en/worldwide/14900.html>

H. Alamgir and Lung-Chang Chien, *Impact Assessment Report: Basic Fire Safety Training Program*, 2015, <http://www.bangladeshworkersafety.org/files/ut/Alliance%20Training%20Impact%20Assessment%20Report.pdf>

S. Ahmed et al., *Health and Safety in the Textile Dyeing Industry*, <http://r4d.dfid.gov.uk/PDF/Outputs/Water/R8161-Safety.pdf>

⁴⁵ International Labour Organization , *Direct Request on Labour Inspection Convention, 1947 (No. 81) - Bangladesh*, adopted 2020, 109th ILC Session (2021), http://ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4062754:NQ.

Strengthening the inspection system, as urged by the CEACR, would directly contribute to improving the enforcement of maternity protection laws by ensuring that violations are detected, reported, and remedied in a timely manner. Therefore, expanding the number of trained inspectors, providing them with adequate resources (such as transport, equipment, and sector-specific training), and increasing inspection frequency are essential steps toward safeguarding the health and rights of pregnant and breastfeeding workers in practice, not just on paper.

3. Duration of Maternity leave

C183 mandates a minimum maternity leave period of 14 weeks,⁴⁶ which is an increase from 12 weeks in the previous maternity related Conventions. Article 4 further stipulates in clauses 4 and 5:

“4. With due regard to the protection of the health of the mother and that of the child, maternity leave shall include a period of six weeks' compulsory leave after childbirth, unless otherwise agreed at the national level by the government and the representative organizations of employers and workers.

5. The prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without reduction in any compulsory portion of postnatal leave.”

The accompanying R191 suggests that ILO member States should endeavour to extend the period of maternity leave to at least 18 weeks.⁴⁷ The BLA provides sixteen weeks of paid maternity leave of which eight weeks must be availed before the delivery and the rest of the eight weeks to be availed following the delivery.

Bangladesh Labour Act, 2006

46. Right to, and liability for, payment of maternity benefit: (1) every woman employed in an establishment shall be entitled to and her employer shall be liable for, the payment of maternity benefit in respect of the period of eight weeks preceding the expected day of her delivery and eight weeks immediately following the day of her delivery

Meanwhile, in November 2023, a new amendment to the Labour Act was passed as a Bill in the then Parliament, proposing to increase the duration of maternity leave from 112 days (16 weeks) to 120 days. However, the Bill did not receive the President's assent and, as such, was not enacted into law.

⁴⁶ Convention No. 183, art. 4(1).

⁴⁷ International Labour Organization, *Maternity Protection Recommendation, 2000 (No. 191)*, adopted 15 June 2000, art. 1.

3.1 Divergence in maternity leave period

From the consultation and interviews conducted for the present study with worker's leaders, the issue of divergence in maternity leave period allowed for public service employees compared to other employees was also highlighted. The public sector employees under the Service Rules are allowed six months maternity leave.⁴⁸ Besides, currently the private banks⁴⁹ and educational institutions' employees⁵⁰ are also entitled to six month's maternity leave. Women trade union leaders as such have been demanding to address this disparity in maternity protection and increase the maternity leave for all workers to six months.⁵¹

3.2 Eligibility requirements for maternity leave

According to C183, as well as the older ILO maternity protection standards (which are outdated, with the exception of R191), the sole prerequisite for a worker's right to maternity leave is the production of a certificate indicating the expected date of birth.⁵² However, the national standard applicable in Bangladesh for obtaining the statutory maternity benefit includes several eligibility requirements. Section 46 of the BLA provides that to be eligible to receive maternity benefit under the law, a woman must be working under the employer for at least six months immediately prior to the day of her delivery. The worker leaders consulted for the study emphasized that such criteria further limit the equal opportunities for women to join the labour force. The Committee of Experts on the Application of Conventions and Recommendation (CEACR) has also frequently pointed out that establishing this type of qualification period does not conform to the ILO maternity⁵³

Further, Section 46 of the BLA expressly disqualifies a woman from obtaining maternity benefit if at the time of her pregnancy she has two or more surviving children.

⁴⁸ Government of Bangladesh, *Gazette Notification No. 39783/53134*, https://www.dpp.gov.bd/upload_file/gazettes/39783_53134.pdf

⁴⁹ "All Banks Must Follow Similar Rule on Maternity Leaves: Bangladesh Bank," *The Business Standard*, <https://www.tbsnews.net/economy/banking/all-banks-must-follow-similar-rule-maternity-leaves-bangladesh-bank>.

⁵⁰ "Maternity Leave: Still a Far Cry for Many," *The Daily Star*, <https://www.thedailystar.net/news-detail-251947>.

⁵¹ IndustriALL Global Union, "IndustriALL Bangladesh Council (IBC) Statement on Implementation of the ILO Roadmap in Bangladesh," <https://www.industriall-union.org/industriall-global-union-statement-on-implementation-of-the-ilo-roadmap-in-bangladesh>.

⁵² Convention No. 183, article 4(1).

⁵³ The Committee, for instance, noted with satisfaction the adoption of the 2010 Labour Relations Act of Libya, which repealed the qualifying period of six consecutive months of employment previously stipulated in order to benefit from maternity leave and brought national legislation in line with Convention No. 103 (ILO CEACR, 2014); ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), *Observation on Libya*, 2014, cited in *Maternity and Paternity at Work: Law and Practice Across the World* (ILO, 2014), 43.

Bangladesh Labour Act, 2006

46. Right to, and liability for, payment of maternity benefit : (1) every woman employed in an establishment shall be entitled to and her employer shall be liable for, the payment of maternity benefit in respect of the period of eight weeks preceding the expected day of her delivery and eight weeks immediately following the day of her delivery:

Provided that a woman shall not be entitled to such maternity benefit unless she has worked under the employer, for a period of not less than six months immediately preceding the day of her delivery.

(2) No maternity benefit shall be payable to any woman if at the time of her confinement she has two or more surviving children, but in that case she shall be entitled to the leave to which she would otherwise be entitled⁵⁴.

3.3 Gaps in practice in obtaining leave

Although the duration of maternity leave under the BLA is more than the ILO minimum standard of 14 weeks period, in practice large number women in the labour force are left outside the scope of the formal maternity leave provision given under the BLA. Firstly, the scope of BLA is narrow excluding women employed in the informal sectors among other categories. Secondly, even women who are engaged in the formal sectors are often deprived of their right to receive maternity benefit. Studies show that that there is still variation in practicing maternity leave⁵⁵ from factories allowing leave for a much shorter period than the statutory requirement - to not making any payment for the leave allowed – as have been reported by women workers in several studies.⁵⁶

3.4 Fixed distribution of maternity leave period

Another major area of concern is regarding the fixed distribution of maternity leave period, *i.e.* eight weeks prior and eight weeks post the expected delivery date. Although the BLA prohibits employing any women during the eight weeks period of leave post the delivery, there is no flexibility provided to the worker in terms of the rest of the eight

⁵⁴ Bangladesh Labour Act, art. 46.

⁵⁵ Hossain, J., M. Ahmed, and J. H. Sharif, *Core Labour Standards Plus: Linking Trade and Decent Work in Global Supply Chains in Bangladesh* (Dhaka: FES Bangladesh, 2017).

⁵⁶ Bangladesh Institute of Labour Studies, “Bangladesh Labour Law: Reform Directions,” 2010, https://www.researchgate.net/publication/364799237_BANGLADESH_LABOUR_LAW_Reform_DIRECTIONS; Fair Labour Association and Awaz Foundation, *Maternity Rights and Childcare in Bangladesh: A Study of Workers in the RMG Sector*, 2019, https://awazfoundation.org/wp-content/uploads/2019/10/GenderResearchStudy_FINAL.pdf.

weeks of statutory leave. As such even if a worker has the physical capacity to work till the very end of her expected delivery date, she must compulsorily take the eight weeks prenatal leave, whereas adding that leave to the postnatal period could have been more useful for her.

Bangladesh Labour Act, 2006

45. Employment of women worker prohibited during certain period: (1) No employer shall knowingly employ a woman in his establishment during eight weeks immediately following the day of her delivery.

(2) No woman shall work in any establishment during the eight weeks immediately following the day of her delivery.

Although C183 does not specify allocation of maternity leave before or after childbirth, R191 emphasizes to take measures 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’.⁵⁷ Globally there are several examples of labour law legislations allowing choice to the women to take the leave before or after childbirth. In Singapore, women are entitled to 16 weeks, with a compulsory period of four weeks after birth and out of the 16 weeks, seven weeks of leave may be taken during the first year after childbirth according to the preference of the women.⁵⁸

3.5 Absence of provision for leave extension in case of illness or complications

Moreover, the KII responses also highlighted the lack of any provision in the BLA for scope to extend the leave beyond the statutory period, which may be necessary in case of illness or medical complications. C183 mandates allowing such additional leave ‘in the case of illness, complications or risk of complications arising out of pregnancy or childbirth’.⁵⁹ Few countries also allow extended maternity leave without pay. For example, Zimbabwe allows unpaid extensions of the normal duration of maternity leave.⁶⁰

Under the BLA, workers on maternity leave are entitled to get maternity benefits for a period of eight weeks preceding the expected day of delivery, and eight weeks immediately following the day of delivery. The Act further provides that an employer shall not knowingly employ a woman during the eight weeks immediately following the day of her delivery. The BLR, however, added another provision stating that if any worker on maternity leave delivers her child later than the specified date in the preceding eight weeks, those additional days would be adjusted with the existing

⁵⁷ Recommendation No. 191, para 1(3).

⁵⁸ ILO, *Maternity and Paternity at Work: Law and Practice Across the World*, 2014, 14.

⁵⁹ Convention No. 183, art. 5.

⁶⁰ ILO, *Maternity and Paternity at Work: Law and Practice Across the World*, 2014, 15.

provisions for maternity leave. The provision does not clearly state the purpose or method of such adjustments, and this ambiguity may create scope for the employers to reduce the mandatory eight weeks' post-delivery maternity leave in breach of the clear provision in the Act.

Prenatal maternity leave period may also need to be extended if the birth takes place after the expected date. Similarly, if the child is born earlier than the due date the postnatal leave needs to be extended. Several national legislations provide for such extended period of leave.⁶¹

C183 also makes similar provision. It mandates, 'the prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without reduction in any compulsory portion of postnatal leave'.⁶²

Although the BLA does not provide any provision addressing such extension, the BLR has added a new provision through an amendment in 2022 addressing the issue of maternity leave period when the birth takes place later than the expected date. The new Rule states that 'if any worker on maternity leave delivers her child later than the specified date in the preceding eight weeks, those additional days will have to be adjusted within the existing rules'. The provision does not clearly state the purpose or method of such adjustments, and this ambiguity creates scope for the employers to reduce the mandatory eight weeks of postnatal maternity leave.

Special period of leave is also allowed in several national legislations for cases of miscarriage or stillbirth.⁶³ In Bangladesh however the BLA cancels maternity leave on account of miscarriage. Section 47 (4) of the Act says, 'if miscarriage is caused to any female worker before fixed date of availing maternity leave, she shall not be entitled to maternity benefits, but she can avail leave for health reason.' However, the 2022 amendment in the Bangladesh Labour Rules now allows four weeks' paid leave in the event of miscarriage, which is a positive change.

⁶¹ For instance, Austria, Cyprus, Equatorial Guinea, the Bolivarian Republic of Venezuela and Swaziland provides for both extended prenatal and postnatal leave in the case of a longer or shorter pregnancy than was anticipated. See, ILO, *Maternity and Paternity at Work: Law and Practice Across the World*, 2014, 14.

⁶² Convention No. 183, art. 4(5)

⁶³ Examples of countries providing leave on any of these grounds are Nicaragua and Panama, where paid leave is provided in accordance with the woman's needs in the case of miscarriage, stillbirth or complications arising from childbirth; See, ILO, *Maternity and paternity at work: Law and practice across the world*, 2014, 16. Additionally, R191 recommends in paragraph 1(2) that provision should be made for an extension of maternity leave in the event of multiple births.

4. Maternity Cash Benefit

C183 enshrines that the cash benefits to be paid during maternity leave should be at least two-thirds of a woman's previous earnings for a minimum of 14 weeks.⁶⁴ The key principle in deciding such amount of cash benefit is that the level of benefits should be such that the woman can 'maintain herself and her child in proper conditions of health and with a suitable standard of living'.⁶⁵ The principle of C183 also reiterates the principle endorsed in C102, that the cash benefit should be paid throughout the entire duration of maternity leave.⁶⁶ Part VIII of C102 outlines the minimum international standards for maternity benefit as part of the broader framework of social security. It establishes a state obligation to provide adequate protection to women during pregnancy, childbirth, and the postnatal period. Article 46 affirms that each Member State for which this Part is in force must secure maternity benefits in accordance with the provisions set forth in the subsequent articles. Article 47 defines the contingencies covered, which include pregnancy, confinement, and their consequences, as well as the resulting suspension of earnings. These contingencies are to be interpreted in accordance with national laws or regulations.

Article 48 defines the scope of persons protected, offering three options for states to choose from based on their administrative structure and demographic coverage. The Convention requires that maternity protection apply to at least 50 percent of women in prescribed classes of employees or at least 20 percent of the economically active female population. It also provides for coverage of wives of insured men for maternity medical benefits. This flexible design ensures a minimum threshold of inclusion while allowing states to adapt the framework to national realities.

Articles 49 and 50 lay out the core components of maternity benefits, encompassing both medical care and income support. Under Article 49, maternity medical benefits must include pre-natal, confinement, and post-natal care, provided either by qualified medical practitioners or midwives. Hospitalisation must also be covered when necessary. The provision of care is directed not only at the physical recovery of the woman but also at restoring her capacity to work and maintain personal well-being. Additionally, the Convention encourages implementing institutions or government agencies to actively promote the use of public health services by women entitled to these benefits. Article 50 mandates the provision of periodical payments to compensate for loss of earnings due to pregnancy and childbirth. The payments must be calculated in accordance with either Article 65 or 66 of the Convention, ensuring a minimum level of income security, although some variation in the amount during different stages of the contingency is permissible.

⁶⁴ Convention No.183, art 6(3).

⁶⁵ Ibid, art 6(2).

⁶⁶ Ibid, art. 52.

Articles 51 and 52 set out the eligibility criteria and the duration of benefits. Article 51 allows the imposition of a qualifying period to guard against abuse, and states that both the woman herself and the wife of an eligible insured man may receive maternity medical benefits, provided the qualifying period has been met. Article 52 states that benefits must be granted throughout the contingency, although the periodical income replacement may be limited to 12 weeks unless national legislation requires or permits a longer period, in which case the benefit must extend to that full duration of the longer period.

Overall, Part VIII of C102 establishes a foundational framework for maternity protection through a combination of healthcare and income support. While progressive for its time, its provision of only 12 weeks of paid leave is now considered inadequate when compared to more recent international labour standards such as C183, which mandates at least 14 weeks of maternity leave. Complementary instruments like R191 also go further by suggesting extensions in cases of multiple births or medical complications. Nonetheless, C102 remains a key reference point, particularly for countries in the Global South that are progressively expanding their social protection systems. Its holistic approach to maternity, addressing both health and income, reflects the essential principle of safeguarding the dignity, well-being, and economic security of working women during one of the most vulnerable periods of their lives.

Additionally, where practicable, and after consultation with the representative organizations of employers, the R191 suggest raising the cash benefit to the full amount of the woman's previous earnings.⁶⁷

Bangladesh nonetheless does provide 16 weeks of paid maternity leave at a rate of 100 per cent of the previous earnings under the existing labour law, thereby complying the standards set by R191.

Bangladesh Labour Act, 2006

48. Amount of maternity benefit.- (1) The maternity benefit which is payable under this Chapter shall be paid at the rate of daily, weekly or monthly average wages, as the case may be, calculated in the manner laid down in sub-section (2), and such payment shall be made wholly in cash.

(2) For the purpose of sub-section (1), the daily, weekly or monthly average wages shall be calculated by dividing the total wages earned by the concerned woman during 3 (three) months immediately preceding the date on which she gives notice under this Chapter by the number of days she actually worked during that period.

⁶⁷ Recommendation No. 191, para 2.

However, with regard to the method of calculation of the payment, the amendment brought to the BLR in 2022 introduced a new method of calculation.⁶⁸ When the amendment was brought the labour leaders and activists criticized it as having the effect of reducing the actual cash benefit to be received by women workers from what they were entitled to receive under the method of calculation prescribed in the BLA. In fact, several of the KII participants of the present study (e.g. trade union leaders, lawyers, labour rights activist) emphasized that due to the new method of calculation, women workers are receiving much lesser amount than what they would get under the previous rate of maternity benefit. Several employers' representatives in the consultation meeting also endorsed that majority of the factories and establishments are actually following the calculation method introduced in the BLR as opposed to the statutory calculation method given under the BLA - the obvious reason being the new method substantially reduces employers' liability to pay maternity benefit.

Under Section 48 of BLA, to determine the amount of maternity benefit, the daily average wage must be calculated by dividing the total wages earned by a worker during the preceding three months from the date on which she gives notice of pregnancy, by the number of actual days of work during that period. As such, all days of leave that a worker was entitled to get in the three-month period under the Act would be excluded from the actual days of work, while the wages paid for those days of leave would be added to the total wage count. In addition, payment for overtime in the past three months would also be added to the total wages of the previous three months. The amended Rules, however, provide that wages of only the month immediately preceding the maternity leave would be considered and that, too, would have to be divided by 26 days – not the actual days of work – to determine the average daily wage.⁶⁹

As such, under the BLR, on the one hand, in calculating the average daily wage, the days of paid leave are not counted as the total days of work are fixed at 26. Additionally, in the month immediately preceding the leave, chances of working overtime are also less as the worker is in her last trimester. Thus, applying the new method, the average daily wage becomes naturally lesser than what it is under the BLA calculation.⁷⁰ As the change was brought through amending the supplementary Rules (BLR) and not the Act itself, a writ petition was filed by several workers' rights-based organizations challenging its legality on the ground that BLR cannot be contradictory to the main Act (i.e. the BLA).⁷¹ However, the writ is currently pending for hearing.

⁶⁸ *Bangladesh Labour Rules, 2015*, as amended in 2022, rule 39A.

⁶⁹ Taslima Yasmin, "Changes in Labour Rules Will Actually Reduce Maternity Benefits," *The Daily Star*, November 1, 2022, <https://www.thedailystar.net/opinion/views/news/changes-labour-rules-will-actually-reduce-maternity-benefits-3157436>.

⁷⁰ Ibid.

⁷¹ KII response from Aawaj Foundation, which was also one of the petitioner organizations.

The proposed 2023 amendment to the BLA, although, was appreciated in the national media as ensuring improved maternity protection, the proposed bill had incorporated the new calculation method adopted in the amended rules, discarding the existing one. However, as mentioned earlier, the Bill was not as such enacted into law.

4.1 Financing of the Maternity Cash Benefit

Article 6 of C183 emphasizes that employers should not be individually liable for the cost of maternity benefits payable to women employed by them, and that benefits should be provided through compulsory social insurance or public funds, which are the pillars of social security.⁷² The underlying reason for moving away from employers' individual liability to pay maternity cash benefit is that it would mitigate the discrimination that women workers face in the labour market when employers are directly liable for the full payment of the cash benefit.

However as discussed in the foregoing sections, under the BLA, in the absence of any social insurance scheme for maternity, the employer is the sole bearer for the full amount of liability when providing maternity benefits to pregnant female workers. Although social insurance is the key element of social protection in Bangladesh and the NSSS's NSIS includes strategy for introducing maternity insurance; little progress has been made so far towards implementation of such a scheme.⁷³ To achieve effective maternity protection and equal participation of women in the labour force in Bangladesh identifying sustainable ways of collective financing of maternity benefits through social insurance and social assistance fund is crucial. However, despite formulating the NSSS and its Action Plans, the social protection framework in Bangladesh particularly for maternity protection is extremely weak. Moreover, Bangladesh does not have any mechanism for maternity benefits to be paid to the informal sector workers which constitutes the most crucial lacuna in social protection in this area.

5. Employment Protection and Non- Discrimination

Under the international labour standards, it is crucial to ensure employment protection to women during pregnancy, maternity leave and during a certain period following resuming the work. It is also equally important to ensure that maternity is not a source of discrimination in employment.

⁷² International Labour Organization, *Maternity and Paternity at Work: Law and Practice Across the World*, 2014, 20.

⁷³ GIZ and Centre for Policy Dialogue (CPD), *Implementing National Social Insurance Scheme (NSIS) in Bangladesh: Role of the Social Insurance Forum*, Policy Brief.

5.1 Employment Protection

C111 lays down the fundamental principle that all forms of discrimination, including on the basis of sex, must be eliminated from employment and occupation. The Convention obliges Member States to declare and pursue a national policy aimed at promoting equality of opportunity and treatment in employment and occupation, using methods appropriate to national conditions and practice, with the ultimate goal of eliminating all forms of discrimination in this regard.

Building on this, C183 provides targeted protection for women during pregnancy and maternity. Article 8 of C183 provides a framework for safeguarding women against unfair dismissal on the grounds of maternity. It states that:

C183 – Employment protection and non-discrimination – Art 8

1. It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer.
2. A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.

C183 thus declares it unlawful for an employer to terminate the employment of a woman on grounds related to the pregnancy or birth of the child and its consequences or nursing.⁷⁴ C183 also emphasizes on the guaranteed right of a woman to return to the same or an equivalent position paid at the same rate at the end of her maternity leave.⁷⁵ In a vast majority of countries there are laws providing for protection from unlawful termination of employment during maternity.⁷⁶ And many national laws include special provisions addressing the return to same or equivalent work by women after joining from maternity leave.⁷⁷

C183 sets another important standard by stating that the burden of proving that a termination in question was not related to maternity shall rest on the employer.⁷⁸ This is an important protection against discriminatory termination of employment against workers on grounds of maternity, as it is generally difficult for the workers to prove in any judicial dispute or administrative proceeding that a particular order of dismissal was

⁷⁴ Convention No. 183, art 8(1).

⁷⁵ Ibid., art 8(2).

⁷⁶ *Labour Law of Indonesia*, 2003, art. 153 (prohibiting dismissal on grounds of maternity or nursing).

⁷⁷ See for instance the employment laws of Mexico, Costa Rica, New Zealand and Australia amongst others.

⁷⁸ Convention No. 183, art. 8(1).

in fact based on ground of maternity. Again, there are many examples of domestic laws where such employment protection is ensured.⁷⁹ The Maternity Benefit Ordinance of Sri Lanka for example provides that the 'burden of proving that the employment of the women worker was terminated by reason of some fact other than her pregnancy or confinement or any illness consequent on her pregnancy or confinement shall be upon the employer'.⁸⁰

The BLA lacks provision in terms of ensuring employment protection as per the international labour standards. It does not explicitly protect women against dismissal during maternity but rather emphasizes workers' entitlement to the maternity benefits even if the dismissal occurred.

Bangladesh Labour Act, 2006

50. Restriction on termination of employment of a woman in certain cases: If any notice or order of discharge, dismissal, removal or termination of employment is given by an employer to a woman within a period of six months before and eight weeks after her delivery and such notice or order is given without sufficient cause, she will not be deprived of any maternity benefit to which she would have become entitled under this chapter.

Thus, the right of a female worker to maintain her job during pregnancy or maternity leave is not guaranteed in an ample manner. There is also no provision that specifically ensures right of workers to return to the same or equivalent post on return from maternity leave. Likewise, there is no mention of shifting the burden of proof to the employers if the termination order of a worker during maternity leave or nursing period, is challenged in any judicial proceeding for being discriminatory.

The study findings from the consultation meetings indicated that in many instances, the workers are either forced to resign from work due to pregnancy or are terminated by the employers during pregnancy. One interviewee specially insisted on the hardships that the pregnant workers usually face when they decide to challenge such decisions in the labour court as the process is generally lengthy and costly. Previous studies also reveal similar findings indicating that often women are either discouraged from pregnancies or are offered special arrangements to temporarily terminate employment relationships for the period of maternity.⁸¹ ILO's baseline study on working conditions in the ready-made garment sector identified cases where women workers were not

⁷⁹ e.g., South Africa, Belgium.

⁸⁰ *Maternity Benefits Ordinance*, 1941 (Sri Lanka), art. 10A.

⁸¹ Karmojibi Nari, *Watch Report: Rights Implementation Status of Women Workers in Bangladesh's Ready-Made Garment Industries*, 2021, <https://www.karmojibinari.org/wp-content/uploads/2021/11/Watch-Report-on-Rights-Implementation-Status-of-Women-Workers-in-Bangladeshs-Ready-Made-Garment-Industries.pdf>.

dismissed but asked to resign from their jobs when becoming pregnant in return for an assurance that they would be able to come back to their posts after the childbirth.⁸²

5.2 Non-Discrimination

Multiple international treaties, including ILO Conventions, prohibit all forms of discrimination against women. The key provisions related to the non-discrimination measures throughout maternity ensure that women are not treated less favourably due to their reproductive role. C183 expressly declares member states to adopt measures against maternity-based-discrimination in employment, including access to employment.

C183 – Employment protection and non-discrimination – Art 9

1. Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including - notwithstanding Article 2, paragraph 1 - access to employment.
2. Measures referred to in the preceding paragraph shall include a prohibition from requiring a test for pregnancy or a certificate of such a test when a woman is applying for employment, except where required by national laws or regulations in respect of work that is:
 - (a) prohibited or restricted for pregnant or nursing women under national laws or regulations; or
 - (b) where there is a recognized or significant risk to the health of the woman and child.

Currently, the labour law of Bangladesh does not contain comprehensive provisions prohibiting direct and indirect discrimination with respect to all aspects of employment and occupation covering all workers. The BLA contains a general prohibition against non-discrimination on the grounds of sex and disability only in relations to payment of wages.⁸³ However, Bangladesh has ratified the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) which mandates ILO member states to remove all forms of discrimination in employment. Although maternity is not specified in the Convention as a ground of discrimination, the ILO CEACR considers maternity as included within sex-based discrimination.⁸⁴ As such Bangladesh is mandated to ensure non-discrimination measures especially regarding discrimination based on sex in employment or occupation.

⁸² International Labour Organization (ILO), *Baseline Study: Improving Working Conditions in the Ready-Made Garment Sector Programme*.

⁸³ Bangladesh Labour Act, 2006, sec. 345.

⁸⁴ *Maternity and Paternity at Work: Law and Practice Across the World*, 82

The key non-discrimination provisions are embedded in the Constitution and focus predominantly on public life.⁸⁵ As noted by the CEACR, the Constitution of Bangladesh provides for non-discrimination by the State but does not address the situation of the private sector and does not prohibit all the grounds of discrimination enumerated in Article 1(1)(a) of the No. 111.⁸⁶ The general nature of equality and non-discrimination provisions in the Constitution leads to being weak and often insufficient to address specific cases of discrimination in employment and occupation. The Committee also noted that during the adoption of the Bangladesh Labour (Amendment) Act of 2013 (Act No. 30 of 2013) and of the BLR, the anti-discrimination provisions of international standards, covering all aspects of employment and occupation and covering all workers,⁸⁷ have not been fully reflected in the national legislation.

In this regard, the Committee urged the Government to take concrete steps without delay to ensure that the BLA 2006 is amended, or that other anti-discrimination legislation is adopted, to:

- (i) prohibit both direct and indirect discrimination on at least all the grounds enumerated in Article 1(1)(a) of Convention No. 111; and
- (ii) extend protection to all categories of workers, including those in the formal and informal economy, as well as domestic workers, who are currently excluded from the scope of the Labour Act.

⁸⁵ *Constitution of the People's Republic of Bangladesh*, art. 19 and 28.

“Equality of opportunity.

- 19. (1) The State shall endeavour to ensure equality of opportunity to all citizens.
- (2) The State shall adopt effective measures to remove social and economic inequality between man and man and to ensure the equitable distribution of wealth among citizens, and of opportunities in order to attain a uniform level of economic development throughout the Republic.
- (3) The State Shall endeavour to ensure equality of opportunity and participation of women in all spheres of national life.

Discrimination on grounds of religion, etc.

- 28. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.
- (2) Women shall have equal rights with men in all spheres of the State and of public life.
- (3) No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution.
- (4) Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens.”

⁸⁶ International Labour Organization (CEACR), *Observation on Bangladesh under Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*, adopted 2019, published 109th ILC Session (2021), http://ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4022893:NO.

⁸⁷ International Labour Organization, *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312256.

The Committee also requested the Government to provide information on progress made in this regard and to share a copy of any new legislation once adopted. In addition, the Committee emphasized that the Government must ensure effective protection in practice for both men and women workers against discrimination in employment and occupation, particularly among vulnerable worker groups excluded from the current legal framework.

As a measure of non-discrimination, C183 specially prohibits employers to require women to go through pregnancy tests when they apply for employment.⁸⁸ Several countries set out such prohibitions against requirement of pregnancy test including Brazil, Colombia, Uruguay, France and Mongolia.⁸⁹ In the labour law of Bangladesh, there is no such provision. However, studies suggest that women are asked about their marital status and plans for pregnancy at the recruitment stage⁹⁰. Similar findings were reflected at the consultation meetings conducted for the present study where few employers admitted having required the women workers to go through pregnancy tests at some stage of employment and the workers also shared their experiences regarding facing questions about family plans during job interviews. Several interviewees of the study highlighted this concerning trend of women workers not deliberately being hired for permanent posts as the employers tend to avoid liability for payment of the maternity benefit costs.

The data gathered in the ILO baseline study demonstrated that 53 per cent of factories covered under the study did not have women workers who became pregnant and expressed concern that these factories might be discriminating against women workers who are expecting or planning to conceive a child.⁹¹ The evidence about such discriminatory practices aligns with the considerations of the gaps in availability and access to maternity benefits outlined above as well as of the high degree of women participation in certain sectors of the economic activity, such as a ready-made garment.

Substantially, information on the degree of maternity-related discrimination is not widely available and requires effective monitoring systems to prevent and address discriminatory practices. Alongside the weak legal frameworks, the interviewees of the study also highlighted the lack of effectiveness of enforcement mechanisms and awareness of employers and workers on the rights and implementation of provisions related to maternity and childcare.

6. Breastfeeding Arrangements at Work

⁸⁸ Convention No. 183, art. 9(2).

⁸⁹ *Maternity and Paternity at Work: Law and Practice Across the World*, 2014, 85.

⁹⁰ Karmojibi Nari, *Watch Report: Rights Implementation Status of Women Workers in Bangladesh's Ready-Made Garment Industries*, 2021, <https://www.karmojibinari.org/wp-content/uploads/2021/11/Watch-Report-on-Rights-Implementation-Status-of-Women-Workers-in-Bangladeshs-Ready-Made-Garment-Industries.pdf>.

⁹¹ Ibid.

Breastfeeding arrangements at work became a norm for mothers in paid work in line with the international standards and reflected in the national legislation of most countries around the world. Being an integral part of the reproductive process, breastfeeding is equally important for the health of mothers and infants. The WHO and UNICEF established a global public health recommendation for infants to be exclusively⁹² breastfed for the first six months to ensure their healthy growth and development.⁹³ At the same time, the main reason for women to stop breastfeeding before the internationally recommended duration of a minimum of six months (or continued breastfeeding until the child reaches two years or more) is the return to paid work. In this regard, provisions of the international labour standards can help to improve the breastfeeding rates through the adoption of workplace measures, such as breastfeeding facilities, family-friendly policies and breastfeeding breaks (or reduction of working time).

C183 – Breastfeeding mothers – Art 10

1. A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.
2. The period during which nursing breaks or the reduction of daily hours of work are allowed, their number, the duration of nursing breaks and the procedures for the reduction of daily hours of work shall be determined by national law and practice. These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly.

R191 – Breastfeeding mothers – Paras 7-9

7. On production of a medical certificate or other appropriate certification as determined by national law and practice, the frequency and length of nursing breaks should be adapted to particular needs.
8. Where practicable and with the agreement of the employer and the woman concerned, it should be possible to combine the time allotted for daily nursing breaks to allow a reduction of hours of work at the beginning or at the end of the working day.
9. Where practicable, provision should be made for the establishment of facilities for nursing under adequate hygienic conditions at or near the workplace.

In compliance with this provision, many countries provide provisions for nursing facilities in the domestic legislations. For mothers returning from maternity leave the nursing/breastfeeding breaks or a daily reduction of working time is an important measure to keep fulfilling work-related duties, ensuring at the same time a healthy

⁹² Meaning no other foods or liquids, including water, are to be provided during the first six months of breastfeeding

⁹³ World Health Organization (WHO), “Health Topics: Breastfeeding – Recommendations,” *World Health Organization*, https://www.who.int/health-topics/breastfeeding#tab=tab_2.

development of the child. It is equally important to remember that international labour standards, such as both ILO C103 and C183 set out that work interruptions to breastfeed are to be counted as working time and remunerated accordingly.

In Bangladesh, the provisions addressing breastfeeding facilities during work is inadequate. The BLA does not provide any specific provision for number or duration of nursing breaks. Section 94 of the BLR however places employers with an obligation to provide a separate and screen covered area for the breastfeeding mothers in the rooms dedicated for childcare facilities. The BLR further mentions that it will be a responsibility for the employers to 'make opportunity for breastfeeding and to ensure the congenial atmosphere for this'.

The Bangladesh Labour Rules, 2015

37. Responsibilities of the owner and other workers to the pregnant workers: The owner and other workers should have the following responsibilities to a pregnant worker, such as:

- (a) Such behavior or comment should not be made so that she gets insulted or humiliated;
- (b) Not engage her in hazardous work declared by the government or any work hazardous for her health.
- (c) To transfer or post her to any work where there is no hazard.
- (d) To give priority to use the lift during the work.
- (e) After the delivery, to make opportunity for breastfeeding and ensure the congenial atmosphere for this.

94. Children's Room:

2) A separate and screen covered area must be kept preserved for the breastfeeding mothers so that they can lactate their babies maintaining secrecy and modesty⁹⁴.

However, as the provision relating to childcare facilities itself is vastly unimplemented across different employment sectors, mere mention of a separate space to be preserved in the childcare room does not help the nursing mothers, nor does it serve as a childcare. Also there are no specific guidelines to be followed for operating the childcare facility which makes the operations of these childcare rooms, unavailable (due to limited capacity), underutilised and unreliable for working parents. A specific space for breastfeeding is not always a reality, some women workers report not being given an opportunity or sufficient time to breastfeed, others complain about the behaviour of co-workers or supervisors towards pregnant women and breastfeeding mothers.⁹⁵ Participants at the CSO consultation conducted for the present study also pointed out

⁹⁴ Bangladesh Labour Rules, 2015.

⁹⁵ ILO, *Baseline Study: Improving Working Conditions in the Ready-Made Garment Sector Programme*, pp. 47-48; UNICEF, *Better Business for Children: Understanding Children's Rights and the Ready-Made Garment Sector in Bangladesh*, 2018, <https://www.unicef.org/bangladesh/media/301/file/BB4C%20Report.pdf>.

the inadequacy of the time allocated for nursing break. More so, for informal sectors where BLA does not apply, provisions for breastfeeding facilities or breaks are almost non-existent due to lack of any regulation or monitoring mechanism.

Breastfeeding arrangements are generally low-cost interventions for an employer and have multiple benefits for an enterprise, such as higher retention rates, lower absenteeism rates or improved company image. Breastfeeding breaks have also proven to involve minimal disruption to the workplace and tend to increase employees' morale and consequently productivity. Without workplace support, women in paid employment are often facing a difficult choice between maintaining their jobs and income support, on one hand, or continuing nursing and caring for their children in case the breastfeeding is incompatible with the work arrangements, on another.

At the same time, workplace arrangements alone cannot be enough and are the most efficient when supported by wider public policies for work-family measures, including the efforts to improve the availability, quality and affordability of childcare facilities.⁹⁶

In this regard, C156 explicitly calls for the development of such supportive frameworks. Article 4 of the Convention urges States to take all compatible measures to ensure that workers with family responsibilities can exercise their right to free choice of employment and that their needs are addressed in employment conditions and social security provisions. Article 5 further calls for measures to take account of these needs in community planning and to promote childcare and family services, whether public or private. These provisions highlight the State's duty to create an enabling environment for shared care responsibilities, ensuring that both employers and public institutions support workers, particularly women, in balancing paid work and caregiving roles.

7. Childcare

The international labour standards take into consideration the needs of workers with family responsibilities in terms and conditions of employment, social security needs and community planning. One of the key measures to resolve the potential conflict between employment and family responsibilities suggested by international standards is the development and promotion of child-care and family services and facilities.

The ILO Workers with Family Responsibilities Convention, 1981 (No. 156), and the Workers with Family Responsibilities Recommendation, 1981 (No. 165) thus address the issue of reconciliation of work and family responsibilities. One of the key principles embedded in standards is the respect of equality of opportunity and treatment in employment and occupation between men and women with or without family responsibilities. All workers with family responsibilities thus have to be able to exercise their free choice in employment and shall not be dismissed on the grounds of family

⁹⁶ *Maternity and paternity at work: law and practice across the world*, 2014.

responsibilities. C156 mandates member states to take all measures ‘to develop or promote community services, public or private, such as child-care and family services and facilities’.⁹⁷

C156 – Arts 4, 5 and 8

Article 4

With a view to creating effective equality of opportunity and treatment for men and women workers, all measures compatible with national conditions and possibilities shall be taken--

- (a) to enable workers with family responsibilities to exercise their right to free choice of employment; and
- (b) to take account of their needs in terms and conditions of employment and in social security.

Article 5

All measures compatible with national conditions and possibilities shall further be taken--

- (a) to take account of the needs of workers with family responsibilities in community planning; and
- (b) to develop or promote community services, public or private, such as child-care and family services and facilities.

Article 8

Family responsibilities shall not, as such, constitute a valid reason for termination of employment.

Challenges related to work-family reconciliation deserve particular attention and are interlinked with the promotion of gender equality as well as the division of paid and unpaid work. It is hence crucial to address various aspects surrounding the family responsibilities of workers, in particular care responsibilities towards children, to complement and sustain the effectiveness of maternity protection measures.

Globally, childcare services and facilities have been recognized among the most gender-responsive and cost-effective measures supporting work-family reconciliation.⁹⁸ In Bangladesh, these solutions are promoted through the establishment of Children's Rooms at workplaces as per the BLA and its corresponding Rules. The BLA provision

⁹⁷ Convention No. 156, Art. 5.

⁹⁸ ILO, *Work and Family: The Way to Care Is to Share!*, February 13, 2009, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_101758.pdf.

regarding Children's Room concerns establishments of 40 or more women employees and is deemed to be made available for children up to the age of 6 years old. Surveys at such establishments, however, demonstrate that often such types of facilities are unavailable. According to the ILO study in the ready-made garment sector, out of a total of 29 factories, at least 50% of workers reported that rooms for children were not available.⁹⁹ In some instances, it is reported that children's rooms, where available, are either inconvenient for mothers' locations, such as the top floor of the building or exist only to be shown to buyers.¹⁰⁰ Several respondents of the study highlighted that often designated childcare rooms in establishments remain locked, unused or are used as storerooms.

In addition to workplace-based childcare under the BLA, the government also provides affordable childcare services through 63 daycare centers operated by the DWA under the MoWCA. Since the early 1990s, these centers have offered early learning opportunities, basic healthcare, and nutritious meals for children aged 0–6 years at a subsidized cost of up to BDT 500 per month.

It is important to note that MoWCA's childcare initiatives are separately designed and run, and are not directly part of the BLA's implementation framework. However, better harmonisation and coordination between the MoLE and MoWCA would be ideal to expand access and improve the quality of childcare support for working parents, particularly women.

The Bangladesh Labour Rules, 2015

94) **Children's Room:** 1) The layout, quality and position of the Children's Room or the separate Children Building or the adapted building must be approved by the Inspector General or the Inspector authorized by him/her.

2) A separate and screen covered area must be kept preserved for the breastfeeding mothers so that they can lactate their babies maintaining secrecy and modesty.

3) The floor of the Children's Room and the internal walls thereof with a height of 1.22 meters must be made smooth and impervious.

4) 0.25 liters of milk for each child and nutritious foods must be supplied for the children staying in Children's Room¹⁰¹.

⁹⁹ ILO, *Baseline Study: Improving Working Conditions in the Ready-made Garment Sector Programme*, 47-48.

¹⁰⁰ Ibid.

¹⁰¹ Bangladesh Labour Rules, 2015.

The Bangladesh Labour Act, 2006

94. Rooms for children: (1) In every establishment, wherein forty or more workers are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.

(2) Such rooms shall provide adequate accommodation, adequately lighted and ventilated and maintained in a clean and sanitary condition and shall be under the charge of woman trained or experienced in the care of children and infants.

(3) Such rooms shall be conveniently accessible to the mothers of the children accommodated therein and so far as is reasonably practicable they shall not be situated in close proximity to any part of the establishment where obnoxious fumes, dust or odors are given off or in which excessively noisy processes are carried on.

(4) Such rooms shall be solidly constructed and all the walls and roof shall be of suitable heat resisting materials and shall be waterproof.

(5) The height of such rooms shall not be less than 360cm from the floor to the lowest part of the roof and there shall be not less than 600sq. cm of floor area for each child to be accommodated.

(6) Effective and suitable provisions shall be made in every part of such room for securing and maintaining adequate ventilation by the circulation of fresh air.

(7) Such rooms shall be adequately furnished and equipped and in particular there shall be one suitable cot or cradle with necessary bedding for each child, at least one chair or equivalent seating accommodation for the use of each mother while she is feeding or attending to her child and a sufficient supply of suitable toys for the older children.

(8) A suitable fenced and shady open air play-ground shall be provided for the older children;

Provided that the chief Inspector may, by order in writing, exempt any establishment from compliance with this sub-rule if he is satisfied that there is not sufficient space available for the provision of such a playground.

In addition to the mandatory childcare rooms related provisions given in the BLA, there has been a recent legislative development in the childcare systems in Bangladesh. In 2021 the Child Daycare Centre Act was enacted with the purpose that childcare needs can be shared with public and private day care centers, outlining guidelines on the quality standards that would support proper care, learning and development for children.¹⁰² The Act contemplates to establish day care centres at the government, semi-government, autonomous and private organizations for children from 4 months to 6

¹⁰² “Bangladesh Holds Dialogue to Chart Way Forward on the Childcare Economy,” ILO, <https://www.ilo.org/resource/news/bangladesh-holds-dialogue-chart-way-forward-childcare-economy>.

years old aiming to improve standards of service. The Act requires registration to set up such facilities and proposes to form a separate authority to handle registration.

The 2021 law includes all factories and establishments that fall within the scope of the BLA. As such, together with the 2021 law, the requirement of BLA to establish a children's room with nursing facilities as discussed above, would also apply to these establishments. The 2021 law contemplates MoWCA to be the concerned ministry to implement the law whereas, the BLA's implementation rests on MoLE. The 2021 Act also contemplates establishing a separate registration authority as well as separate inspectors to inspect compliance of the day-care centres with the legal provisions. Nevertheless, the 2021 Act remains silent on the potential overlapping of duties and authorities between the MoLE labour inspectors and the inspectors under the 2021 Act, as well as between MoWCA and MoLE.

Additionally, the 2021 Act's implementation largely depends on formulating a corresponding Rules to supplement its provisions. However, although a draft version of the BLR was made public in 2022, it is yet to be adopted. As such, the law at present has no application as the licensing authority as well as the inspectors as contemplated by the law, are non-existent. Crucially, as reflected in the KIIs and the consultation meetings, most key stakeholders - including the employers' and workers associations' representatives appear to be not well-conversant of the 2021 law. In the consultation meetings held for the current study, other than the participants from the MoWCA, only few had shown some level of awareness regarding the presence of the Child Daycare Act of 2021.

V. Recommendations

Based on the analysis the present study proposes the following key recommendations:

1. Reforming the Labour Law

Based on the discussion on maternity protection related provisions and relevant international labour standards, the following key changes can be proposed in the existing BLA and its Rules:

Regarding maternity leave and benefit-

- Amend the maternity leave provision to allow flexibility in choosing the period of leave before or after childbirth, while ensuring a minimum of six weeks' compulsory leave is taken after childbirth, unless otherwise agreed by the Government and the representative organizations of employers and workers. The 2023 amendment Bill had in fact included such a provision, which can be adopted for current reform proposal.

- Incorporate provisions allowing for extension of statutory period of maternity leave on grounds such as, illness or medical complications, provided that a medical certificate is produced.
- Add clear provisions for extension of leave in case of childbirth that takes place earlier or later than the expected date of delivery.
- Amend the BLA provision regarding miscarriage to make it analogous to the BLR as amended in 2022, which allows for four weeks' paid leave.
- Review the existing calculation method under the BLA, through effective tripartite social dialogue to understand the viability and necessity of amending the existing method.
- Review the current eligibility criteria that disqualifies workers from obtaining maternity benefit to ensure maternity benefits to all workers and through effective tripartite consultation amend the provision to promote equal participation of women in the labour force.

Regarding employment protection and non-discrimination-

- Incorporate clear provision in the BLA, prohibiting all forms of discrimination on grounds enumerated in C111 and include maternity as a specific ground.
- Incorporate provisions in the BLA that explicitly protect women against unlawful termination during pregnancy, maternity leave and during a certain period of nursing when the worker returns to work from maternity leave.
- Include a provision in the BLA specifically shifting the burden of proof on the employers where an order or termination or resignation is challenged as being a maternity-based-discrimination in a judicial or administrative proceeding.
- Specifically prohibit employers, through incorporating provisions in the BLA, from requiring women to go through any pregnancy test or enquiring about their reproductive role or family plans during recruitment.
- Include specific provisions in the BLR mandating employers to develop gender-sensitive protocols to be followed during recruitment of women workers and during any employer-facilitated medical examinations required for OSH purpose, so that women workers do not have to face maternity-based-discrimination.

Regarding Breastfeeding-

- Incorporate specific provisions in the BLA regarding employers' liability to allocate time for paid nursing breaks for breastfeeding, requiring employers to allow at least three breaks of 15 minutes per day for breastfeeding or milk expression, up to six months after childbirth.
- Include specific provision in the BLA requiring employers to provide an accessible, hygienic, private and convenient space for breastfeeding for nursing mothers. This space should not be a toilet and should include a chair, table, running water, and proper ventilation. At present this is only mentioned in the BLR which is an executive order to supplement the principal law. Including such provision in the main law would substantiate the legal obligation of employers to provide a nursing facility accessible to the workers.

Regarding health-

- Include specific provision for occupational safety and health guidance on night work for pregnant or nursing workers, allowing them the right to refuse night shifts or overtime without penalty. Additionally, employers should be required to offer day shifts or alternate duties upon notification of pregnancy or nursing.
- Include specific provision in the BLA allowing paid leave for a recommended minimum of four days to pregnant workers for prenatal medical checkups and treatments, in addition to their regular maternity leave.
- Include employers' obligation in the BLA to conduct risk assessment in relation to the work of the pregnant or nursing workers upon notification of pregnancy, evaluating potential hazards such as exposure to chemicals, heavy lifting, prolonged standing, or night work. The law should also specify the obligations of the employers to take protective measures (for example, reassignment, job modifications or leave) when work involves risks and provide an alternative to the work.

Regarding childcare-

- Amend the child-care related provision in the BLA making it obligatory for all employers to contribute towards child-care entitlements (for childcare off-site, such as contribution to community childcare centers or third-party providers) or provide childcare facilities on-site.
- Section 94 of the BLA provides that in every establishment where forty or more female workers are ordinarily employed, one or more suitable rooms shall be provided and maintained for the use of their children under the age of six years. This provision of the BLA should be amended by updating/removing the

minimum requirement of 40 or more women employees. Amendment should include provision of childcare (on-site or off-site) irrespective of the total number of women working at the factory/workplace.

2. Financing Maternity Benefits through Social Protection

- To effectively move away from an employer-liability system to a maternity-insurance scheme under the NSIS, it is essential to initiate a contextual analysis on the current maternity protection provisions followed by a feasibility study on maternity- insurance scheme.¹⁰³
- The NSSS Action Plan 2016-2021, contemplated to formulate a separate law for the National Social Insurance Scheme.¹⁰⁴ However, no progress has been made so far in that regard. Absence of concrete legal framework and planning exacerbates the implementation challenges of the NSIS.¹⁰⁵ As such, an in-depth legal review followed by actuarial study is required to propose outlines of an effective legal framework for establishing social insurance scheme particularly for maternity benefit.
- Effective policy measures need to be adopted to provide maternity cash benefits, such as birth grant to informal workers through non-contributory social assistance programs financed by public funds.¹⁰⁶ Relevant Ministries and government agencies including, MoWCA and MoLE should initiate efforts to design and develop programs that can entitle women employed in different informal sectors to maternity cash benefit.

3. Strengthening the Capacity of DIFE to Identify and Report Violations of Provisions Relating to Maternity Protection

The Department of Factory Inspection (DIFE) under the MoLE is authorized under the BLA to ensure implementation of the BLA and the BLR to secure better work

¹⁰³ A. T. P. L. Abeykoon et al., *Study on the Establishment of Maternity Protection Insurance in Sri Lanka* (Colombo: Institute for Health Policy, 2014).

¹⁰⁴ Cabinet Division and General Economics Division (GED), *A Review of the National Social Insurance Scheme (NSIS) Framework and Towards a Feasible Model for Bangladesh*, Bangladesh Planning Commission, 2022, 72

¹⁰⁵ GIZ and Centre for Policy Dialogue (CPD), *Implementing National Social Insurance Scheme (NSIS) in Bangladesh: Role of the Social Insurance Forum*, Policy Brief.

¹⁰⁶ *Maternity and paternity at work: Law and practice across the world*, 2014,34.

environment for workers.¹⁰⁷ As such, monitoring any violations of maternity protection related provisions falls within the responsibilities of DIFE. However, till now DIFE is severely under-staffed, compared to the massive scale of factories and establishments in Bangladesh.¹⁰⁸ Some of the responses of the interviewees also noted that inspection by the DIFE is generally infrequent and incomplete.¹⁰⁹

To ensure that the employers comply with the maternity protection related regulations at their workplaces, it is crucial to strengthen the capacity and authority of the DIFE inspectors. MoLE should consider developing training modules, a specific maternity protection related checklist, and other guidelines and resources for inspection on maternity protection including anti-discrimination measures at the workplace.

With the support from development partners and other key government agencies and stakeholders, MoLE should consider whether a special unit of inspectors could be formed with specialized skills trainings to address gender-based discrimination at workplaces during inspection, which would encompass the provisions for employment protection and non-discrimination for pregnant and nursing mothers.

4. Adopting Gender Responsive Approach to OSH Policy Focusing on Maternity Issues

Although the National Occupational Health and Safety Policy was adopted in 2013, the policy does not specifically address health hazards of pregnant and nursing mothers. The stated purpose of the Policy is to improve the occupational health and safety measures for all persons employed in formal or informal sectors so that ‘death, injury and occupational disease caused during employment can be gradually reduced’. Thus, the general understanding of OSH policy and practices in Bangladesh is predominantly confined to workers’ deaths, occupational injuries or occupational diseases.¹¹⁰

However, Article 3 of the C183 explicitly provides that measures should be taken to assess workplace risks to the health of pregnant or nursing women and ensure their protection. Article 3 reads as follows:

“Each Member shall, after consulting the representative organizations of employers and workers, adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent

¹⁰⁷ Department of Inspection for Factories and Establishments (DIFE), “Childcare Centres,” <http://dife.gov.bd/site/page/c6339314-9ba9-4118-81b4-896a86e39732/->.

¹⁰⁸ Highlighted by KII responses from DIFE and workers representatives.

¹⁰⁹ Bangladesh Institute of Labour Studies (BILS), *Workers’ Rights and Gender-Based Violence in the RMG Sector and TU Capacity to Deal with These*, 2018, <http://bilsbd.org/wp-content/uploads/2018/01/Workers-Rights-Gender-Based-Violence-in-the-RMG-and-TU-Capacity-to-Deal-with-These-Final-Draft.pdf>.

¹¹⁰ Taslima Yasmin, *Overview of Laws, Policies and Practices on Gender-Based Violence and Harassment in the World of Work in Bangladesh*, International Labour Organization, 2020.

authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child." Issues with gendered dimensions including, maternity protection are generally not prioritized in the policy initiatives in improving OSH at workplaces. It is crucial to adopt a gender-responsive approach to OSH policies, programs and risk-assessment that acknowledges gender-based discrimination at work and tackles further risks faced by women workers in situations of vulnerability.¹¹¹

The OSH policy of 2013 gives a general reference to health situation of pregnant female workers while mentioning obligations of government, employers and workers to ensure occupational health and safety of women at workplaces. However, for ensuring safety and health protection of pregnant or nursing workers it is crucial to include detail provisions in the OSH policy addressing the specific health risks related to pregnancy and maternity.

5. Collect Data on Maternity Related Practices

To effectively monitor systems to prevent and address discriminatory practices, information on the degree of maternity-related discrimination is crucial. As such it is important to collect national level data on maternity and childcare related practices. This can be achieved through a combination of methods:

- Nationally representative surveys (e.g., labour force surveys, demographic and health surveys) incorporating questions specific to maternity and childcare-related workplace experiences;
- Workplace audits and compliance inspections, including both scheduled and unannounced (surprise) visits, particularly in sectors with a high proportion of women workers;
- Administrative data collection from government agencies and employers, including records on maternity leave usage, complaints, and enforcement actions;
- Qualitative research, such as interviews or focus group discussions with working women to capture context-specific experiences of discrimination.

Such data should be the basis to inform relevant legal and policy reforms, design interventions and advocacy initiatives. Improved data collection would be essential to effectively measure level of discrimination, status of implementation of the laws, and policy outcome.

¹¹¹ UN Women, "Occupational Safety and Health," <https://www.endvawnow.org/fr/articles/1973-occupational-safety-and-health.html>.

6. Create Awareness regarding Maternity Protection and Childcare Provisions

Alongside the necessary government action to strengthen legal frameworks and to ensure the effectiveness of enforcement mechanisms, awareness of employers and workers on the rights and implementation of provisions related to maternity and childcare is equally important. Several of the respondents of the study emphasized on the need of comprehensive awareness programs especially for women employees on maternity protection related laws and policies.

ILO in partnership with the MoLE can initiate regular awareness and training programs with the employers and workers on maternity protection and childcare related provisions. MoLE can engage and support employers' associations and workers' trade unions or workers' rights organizations of different sectors, in such awareness initiatives.

7. Strengthening Regulations for Maternity Protection in the Informal Sectors

Tripartite national level dialogues are essential to formulate a roadmap towards developing an effective maternity protection framework for women employed in the informal economy, particularly for women employed as domestic workers. Bangladesh has adopted a Domestic Workers Protection and Welfare Policy in 2015; however, the policy remains ineffective for lack of any legal enforcement.¹¹² It is necessary to update the policy and formulate action plans to implement it.¹¹³

8. Strengthening Childcare Systems

As reflected in the study findings, the current childcare related provisions in the BLA and the BLR remain largely unimplemented. MoLE should initiate robust monitoring through labour inspection mechanism to oversee the enforcement of the provisions that mandate employers to maintain a children's rooms with specific service standards. Separate inspection reports should be published and reviewed on the status and standards of childcare rooms in the factories and establishments inspected by DIFE.

However, to ensure effective childcare provisions it is crucial to increase public funding and establish greater number of government-run daycares especially in the areas with

¹¹² "The Everyday Plight of Domestic Workers," *The Daily Star*, <https://www.thedailystar.net/law-our-rights/news/the-everyday-plight-domestic-workers-3623366>.

¹¹³ Women in Informal Employment: Globalizing and Organizing (WIEGO), *The Costs of Insecurity: Domestic Workers' Access to Social Protection and Services in Dhaka, Bangladesh*, Policy Brief, https://www.wiego.org/wp-content/uploads/2020/11/WIEGO_PolicyBrief_N19_Bangladesh%20for%20Web.pdf.

high labour density. Currently only 63 of such government-run daycare centres are operational which are managed by the DWA.¹¹⁴

Moreover, it is crucial to operationalise the Child Daycare Act of 2021 by establishing licencing authority and appointing inspectors under the law. However, for the law to effectively function, the clear roles of labour inspector and inspectors suggested under the 2021 law, need to be determined.

The two concerned ministries- MoLE and MoWCA should initiate effective collaboration to assess the functioning of childcare systems contemplated under both the BLA and the Child Daycare Act and review the laws to identify potential overlapping between the two.

Larger consultations should be held with all key stakeholders including employers and workers of both formal and informal sectors to determine the scope of a standardised childcare system and inspection mechanism.

9. Ensuring Gender Inclusivity in the Legal Review Process

Although the BLA and the BLR have been amended several times since their enactment, the official law review committees formed by the MoLE were usually not gender inclusive as participation by women trade union leaders was generally absent. Similar findings were also reflected in the consultation meetings with the labour leaders and interviews with the women trade union leaders. Issues like maternity protection and maternity based discrimination are very much gender-specific and as such changes proposed to such provisions must include voices from women workers. It is imperative for the government to review the process of labour law reform and ensure a transparent and inclusive process of selection of tripartite representation in the review committees. In addition, changes to laws and policies should also consider larger scale tripartite consultations to avoid proposing changes in laws that may prejudice any groups' interests or entitlements.

10. Ratification of the ILO Conventions

One of the key responsibilities of the Government is to formulate laws and policies on maternity protection and childcare in consultation with other stakeholders, as well as to develop mechanism for effectively implementing and monitoring those laws. International labour standards provide invaluable guidance in this process. Therefore, the government should carefully consider ratifying the following Conventions as a first step:

¹¹⁴ Ministry of Women and Children Affairs (MoWCA), “শিশু দিবাযাত্র কেন্দ্র সুবিধা,” <https://mowca.gov.bd/site/page/f32cd2cd-2bfc-4ced-bc08-4aba7eac8609/শিশু-দিবাযাত্র-কেন্দ্র-সুবিধা>.



- The most advanced and comprehensive international labour standard on maternity protection - Maternity Protection Convention, 2000 (No. 183)
- The ILO Convention that promotes balance between family and work responsibilities, and promotes childcare and family services - Workers with Family Responsibilities Convention, 1981 (No. 156)

Combinedly these two Conventions would provide a framework to Bangladesh for the design of policy strategy to extend the maternity protection coverage, improve the level of protection and ensure that no discriminatory practices prevent any worker from combining their family and work responsibilities.

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1. Saad Gilani, ILO Bangladesh
2. Mamunur Rashid, WFP Bangladesh
3. Bablur Rahman, Fair Wear foundation
4. Advocate Nazrul Islam, Lawyer and Labour rights activist
5. Nazma Yesmin, Bangladesh Institute of Labour Studies
6. Nazma Akter, Awaj Foundation
7. Nahida Anjum Kona, Lawyer and labour rights activist
8. China Rahman, IndustriALL Bangladesh Council
9. Jafrul Hasan Sharif, Lawyer and Labor law expert
10. Ishrat Jahan, Better Work Bangladesh, ILO
11. Flora Yasmin, Department of Women Affairs
12. Julia Jesmin, Department of Inspection for Factories and Establishments , MOLE
13. Khaled Hassan, Cabinet Division, Bangladesh
14. Nurunnesa Reba, Department of Women Affairs
15. Sultana Zakia, Bangladesh Centre for Workers Solidarity

Annex –B: List of participants of the Consultation meetings

Consultation 1 (Trade Union leaders)

Anwar Hossain, Bangladesh Jatyatabadi Sramik Dal
 Shamim Ara – BJSF
 AAM Fayez Hossain , Bangladesh Sromik Federation
 Badal Khan, NCCWE
 Jaysmin Akter, NCCWE
 Shahida Parveen, Bangladesh Trade Union Centre
 Hamida Khatun, Bangladesh Jatyatabadi Sramik Dal
 Shana Ferdousi, JSF
 Shahin akhter, JSJB
 Promila Poddar, JSL
 Naimul Ahsan Jewel, JSJB and NCCWE
 Shah Newaz Khandaker, Bangladesh Free Trade Union Congress
 Hosne Ara Beauty, BJS
 Saleh Ahmed, Jatiya Sromik Jot
 Amirul Hoque, Jatiya Sromik Federation
 Fahmina Mishu, Jatiya Sromik Jot
 Saifuzzaman Badsha, Jatiya Sromik Jot
 Shakil Akhter, Bangladesh Labour Federation
 Anne Drong, ILO
 Khadija Khondker, ILO

Consultation 2 (Employers' representatives)

Syeda Sumaiya, Bangladesh Marine Fisheries Association
 Md. Naheed Tanveer, Metlife Bangladesh
 Aditya Majumder, Bangladesh Employers' Federation
 Md. Moslem Uddin, Bangladesh Employers' Federation

Ashik Mahmud, Bangladesh Employers' Federation
Farzana Rahman, UCEP Bangladesh
Mahbuba Akhter, Fakir Fashion Ltd.
Nazmin Nahar, Fair Fasion Ltd.
Shafquat Haider, ICT ISC
Dr. Rubina Hussain, BFWF
Khairul Bashar, MIDAS
Saif islam, ILO
BirendraNath Adhikary, ICT Industry Skills Council
Delowar Hossain, Banglalink Digital Communications Ltd.
Md. Bulbul Islam, Banglalink Digital Communications Ltd.
Md. Jahirul Islam, Square Pharmaceuticals PLC
Muhammad Munir-Uz-Zaman, NASCIB
Md. Anisuzzaman, ILO
Md. Saidul, Bangladesh Employers' Federation
Md. Tanvir Anam, DBL Group
Lubaba Rahman, DBL Group
Md. Nazmul Islam, BAPA
Mohammad Hossain, Agro Food ISC
Saumitra, BSRM Group
Shariful Islam, Rani Food Ltd.
Khadija Khondker, ILO
Tanjilut Tasnuba, ILO
Shohel, ILO

Consultation 3 (government representatives, CSOs and UN)

Shahanara Begum – Cabinet Division
Tasnim Zeen – MOWCA
Kaniz Tazim – DWA
Mitu Basak- BKMEA
Rowshon Ara- Naripokkho
Ishrat Jahan – ILO
Humaira binte Faruque – UN Women
Munir Hussain Khan, MOLE
Md. Gausul Azam, MOLE
Mst Julia Jesmin, DIFE
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Shahida Parveen, NCCWE Woemn Committee
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Md. Abdul Aziz, Informal Sector, ISC
Aminul Arifeen, UNDP
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