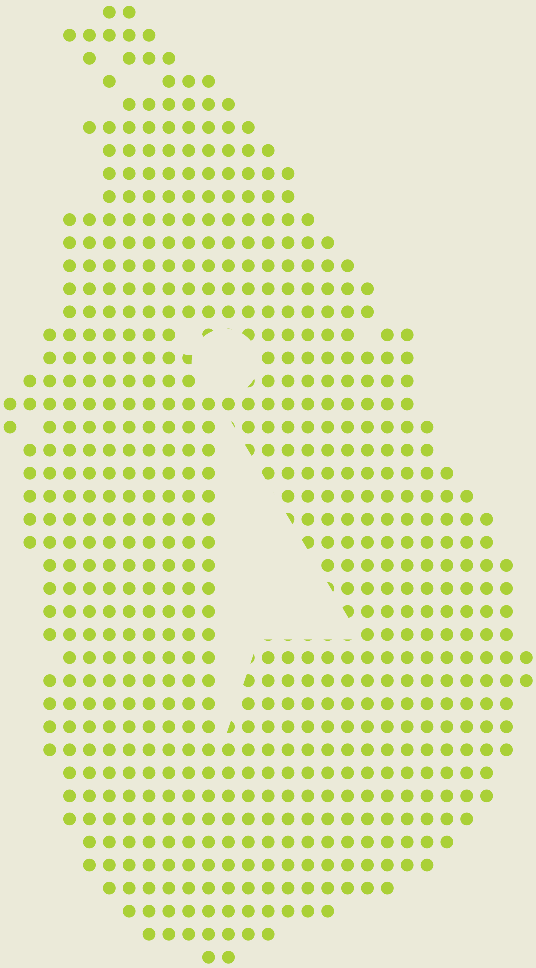
Study on the Establishment of Maternity Protection Insurance in Sri Lanka



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Contents

Tables and Figures

Acknowledgements

This report was prepared by the Institute for Health Policy (IHP) for the International Labour organization (ILO), which commissioned it to assess the feasibility of establishing a maternity protection insurance scheme compliant with the provisions of the Convention and covering all women workers protected by it. This request had the concurrence of the Ministry of Labour and Labour Relations (MoL), which had asked ILO for assistance in assessing options in dealing with the issue of compliance of ILO Convention No. 103.

We wish to express our thanks to the Social Protection (SPCPRO) and Standards (NORMES) departments of ILO for their in depth review and comments on earlier drafts of the report. In particular, Mr. Hiroshi Yamabana of the Public Finance, Actuarial and Statistics Branch of ILO, and Kroum Markov of NORMES and Andres Acuna-Ulates of SOCPRO provided substantial inputs in the form of technical estimations of the cost of a maternity benefit scheme that we have reproduced in this report. We also appreciate the support provided by Ms. Pramodini Weerasekara and Ms. Shafinaz Hassandeen of ILO, Sri Lanka in facilitating the conduct of the study.

In the conduct of the study, many persons provided valuable assistance. We wish to thank Mr. W.J.L.U. Wijayaweera (Secretary, MoL) and Mr. R.P.A. Wimalaweera, (Senior Assistant Secretary Foreign relations, MoL) for their support and valuable comments. We thank Mr. Ravi Pieris, Director General, Employers' Federation of Ceylon (EFC), Mr. Leslie Devendra, Secretary General, Sri Lanka Nidahas Sevaka Sangamaya (SLNSS), and Mr. K Velayudam, Secretary General, National Trade Union Federation (NTUF) for their generous and valuable viewpoints as employer and employee representatives.

We are thankful to Mr. Mangala Gunarathna, former Additional General Manager, Employees' Trust Fund (ETF) for his insightful and encouraging comments as to how the maternity protection insurance scheme could be implemented by the ETF.

We are thankful to the Director General of the Department of Census and Statistics for giving us access to the data set of the Labour Force Survey of 2011.

Dr. A.T.P.L. Abeykoon and Dr Ravi Rannan-Eliya prepared the report with the assistance and added inputs of Ruwani Wickremasinghe, Rehana Thowfeek, Chamara Anuranga and Indika Siriwardena.

The contributions of Dr. Prasanna Cooray in editing the report and Mr. Harees Hashim for the cover page design and layout are acknowledged.

September, 2014
Institute for Health Policy

Abbreviations

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

Executive Summary

1. As a state that has ratified ILO Maternity Protection Convention (Revised) No. 103, Sri Lanka has consented to ILO review of its compliance with the Convention. As part of that regular review, the ILO Committee of Experts has identified shortfalls in Sri Lanka's compliance with the Convention. The Government acknowledges difficulties in taking action to achieve compliance, and it requested assistance from ILO to identify options for resolving this issue of non–compliance. In response, ILO commissioned this report to assess the feasibility of introducing a maternity protection insurance scheme to achieve compliance within the framework of ILO Convention No. 103.

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

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

4. Sri Lanka provides the right to maternity leave and cash benefits during maternity leave only to formal sector workers, namely public sector employees, and private sector workers in formal employment contracts. These are financed by public funds in the case of those in the public sector, and by employer liability in the case of private sector employees. These arrangements cover about 46% of women in the labour force (2012).

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

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

7. Sri Lanka is one of only 24 countries in the world and one of only three in Asia – the others being Mongolia and Papua New Guinea – that have ratified the ILO Maternity Protection Convention (Revised) No. 103. The key features of this are that it sets minimum levels of maternity benefits, and that it prohibits reliance on employer liability, requiring instead the use of public funds or social insurance.

8. Sri Lanka can easily comply with the standards for minimum maternity benefits in Convention No. 103 by amending current legislation to provide all covered workers with a minimum of 84 working days maternity leave, and removing provisions that provide lesser benefits for mothers having their third or greater child. This would impose only modest costs

on employers, and has the benefit of addressing a major source of inequality in amounts of paid maternity leave that different workers are entitled to, and which all stakeholders agree should be eliminated. We recommend that necessary action be taken to amend section 3(1) (b) of the Maternity Benefits Ordinance.

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

10. Complying with Convention No. 103's requirement to replace employer liability with social insurance or public funding presents a more complex challenge. If the country wishes to prioritize compliance, the most feasible option is to extend the ETF system to provide maternity cash benefits to covered workers, with funding by a compulsory 1% payroll levy, to be collected from employers alongside the current ETF contribution. A 1% levy would be adequate to provide the enhanced level of maternity benefits required by ILO Convention No. 103 (and also by ILO Convention No. 183), as well as one week's paternity leave for all births. This would represent a form of social insurance and would meet the compliance requirements of Convention No. 103.

11. The alternative to the proposed extension of the existing ETF mechanism is to establish a new social insurance agency solely for the purposes of providing maternity benefit insurance. We do not recommend this option or find it feasible. There is neither consensus of social partners nor any social partner strongly in support of this option. The start–up costs will be large, the country lacks any relevant technical expertise to operate such an agency effectively, and its establishment would entail major changes from established practices and approaches in Sri Lanka. In addition and more importantly, establishment of such an agency would require the establishment of new governance arrangements, and which would be difficult to design in a way that ensures the confidence and trust of all social partners.

12. Although introducing a maternity benefit insurance scheme as an extension to the current ETF scheme is technically feasible, its political and social feasibility is uncertain, as there is no consensus amongst social partners in favor of this approach, whilst many social partners also favor and are more concerned with moving towards ratification of ILO Convention No. 183. If the government takes unilateral action without such consensus to amend the ETF legislation as required to achieve compliance with Convention No. 103, recent experience indicates that there is a real risk of significant social and political opposition, leading to disruption of social harmony. Use of the government's political capital in this way also carries a significant risk that it will make it more difficult in the medium term to improve the level of maternity benefits coverage to the levels required by Convention No. 183, as many stakeholders currently prefer.

13. The technical, institutional and political feasibility of the ETF approach would be significantly improved, if it is done in combination and simultaneously with other proposed changes to extend ETF to provide employment injury compensation. Such a combined package of reforms would require only one Act of Parliament, would achieve significant economies of scale and scope in establishing new systems at ETF, and would help distribute costs more evenly across firms as the firm risks of maternity leave costs and employment injury compensation are distributed differently.

14. The experience of other similar countries is relevant to assessing the issue of feasibility. We find that no other Asian country with a similar employment legislation context to Sri Lanka's and with a similar history of lacking any social insurance systems has made such a change from employer liability to social insurance financing in the area of maternity benefits financing. Relevant economies that have not made such a change include Malaysia, Hong Kong and Singapore. The most comparable and relevant experience is Malaysia, whose SOCSO scheme – equivalent to Sri Lanka's ETF – already provides employment injury insurance benefits. However, strong stakeholder opposition has prevented the expansion of SOCSO to provide maternity benefit insurance, although Malaysia has not ratified Convention No. 103 and therefore is under no obligation to do so. There are significant constraints that make it difficult for countries to make this type of change, both institutional and political. For countries with no established social insurance system, the evidence clearly indicates that the transition costs of making this change solely for maternity benefits are high and often an almost insuperable barrier to change.

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

16. Several social partners advised that an alternative strategy for tackling the problem of complying with Convention No. 103 is to ratify the newer Convention No. 183. Government counterparts have expressed interest in this option, and requested that we provide our observations. We note that Convention No. 183 was expressly introduced to make it easier for countries, such as Sri Lanka, to achieve compliance, by allowing existing employer liability arrangements to be retained, whilst setting out a more ambitious set of targets in terms of population coverage and depth of benefits. Other than resolving the issue of compliance with the prohibition against use of employer liability financing, this step would also frame Sri Lanka's targets using a more up–to–date framework. In event that Sri Lanka chose to ratify Convention No. 183, the country would need immediately to amend existing legislation to (a) increase maternity benefits to a minimum of 14 weeks (98 calendar days) for all covered workers, and (b) notify ILO that it intends to cover other workers in a staged and progressive manner. The first of these steps are consistent with what social partners currently support. The second allows the country to expand coverage in steps as resources permit.

Background

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

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

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

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

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

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

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

Accordingly, the terms of reference of this study as provided by ILO to the consultant was to assess the options available to Sri Lanka specifically to address the shortfalls in compliance with Convention 103, and to assess the feasibility of potential solutions to initially cover the formal sector female employees and progressively extend to all women.

1. Overview of Demographic, Economic and Social Context

1.1 Population Statistics

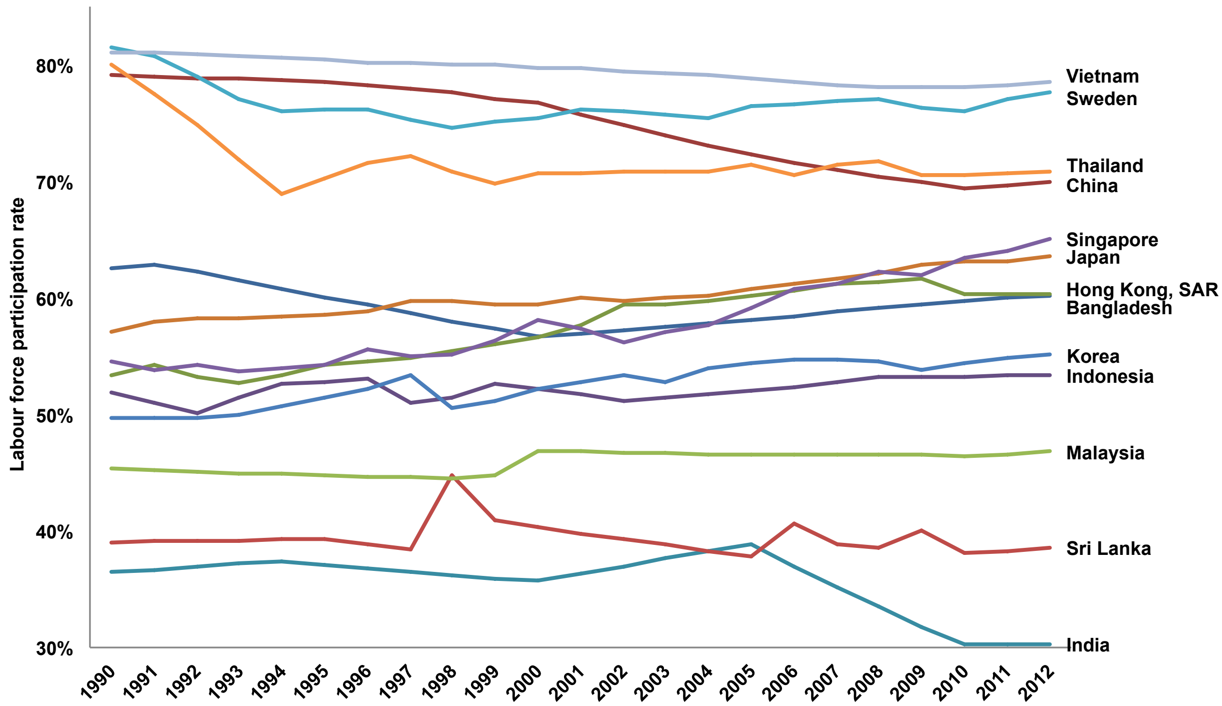
The enumerated population of Sri Lanka in the 2012 Census was 20.3 million of which 51.5% were female. The rate of growth of population in 2011 was 1.0% compared to 1.4% in 2000 (Department of Census and Statistics 2013). The Total Fertility Rate (TFR) has declined to 2.3 during 2003–2006 from a level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

1.2 Social and Economic Development Policies

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

1.3 Employed Population

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



Source: World Development Indicators, World Bank 2013

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

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

Table 1: Employed Population by Sex and Public and Private Sectors, 2005 and 2012

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

Source: Report of the Labour Force Survey (2012)

1.4 Health Service Provision

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

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

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

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

2. Maternity Benefits in Sri Lanka

2.1 ILO and Maternity Protection

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

As of January 2014, only 24 member states, including Sri Lanka, had ratified Convention No. 103, and 28 countries, not including Sri Lanka, had ratified Convention No. 183. In the Asia–Pacific region, Sri Lanka is one of only three countries that have ratified Convention No. 103, the others being Mongolia and Papua New Guinea. Ratification of Convention No. 183, which has been proposed by several social partners in Sri Lanka and is currently under consideration by the government, would automatically result in nullification of Convention No. 103.

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

2.2 Existing National Legislation on Maternity Protection

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

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

Table 2: Coverage of statutory arrangements for providing maternity benefits

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

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

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

Table 3: Rights to maternity leave under current statutory arrangements

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

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

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

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

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

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

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

2.3 Gaps between National Legislation and International Standards

ILO provides two sets of international standards that define the minimum levels of maternity benefits coverage, in the form of Conventions No. 103 and No. 183. Although Convention No. 183 is the more recent one and has superseded Convention No. 103 as the standard recommended by ILO, Convention No. 103 remains the only one applicable to Sri Lanka from the international legal perspective as Sri Lanka remains a ratifying state. Consequently, this section of the report defines the gap with international standards as being solely that with Convention No. 103.

Following Sri Lanka's ratification of Convention No. 103 in 1993, the ILO Committee of Experts on the Application of Conventions and Recommendations identified a number of important shortcomings between the national legislation and Convention No. 103:

(i) Female domestic workers, subsistence agricultural workers and women working from home are excluded from maternity benefits.
(ii) Inexistence of a compulsory post-natal leave.
(iii) In the case of female workers coming under the Shop and Office Employees' Act and the Maternity Benefits Ordinance, the number of days of maternity leave is reduced from 84 days to 42 days from the third child.
(iv) Female workers under the Maternity Benefits Ordinance are entitled to 84 calendar days while those under the Shop and Office Employees' Act and female public servants are entitled to 84 working days.
(v) There are no nursing breaks prescribed for female employees under the Shop and Office Employees' Act.
(vi) Public sector female workers are not protected against dismissal during maternity leave or for reason of pregnancy.
(vii) Cash benefits paid, subject to means testing, out of public funds to women who are covered but fail to meet the qualifying requirements.
(viii) Cash benefits for the period between the expected and actual date of childbirth.

These findings of the ILO Committee of Experts are indeed correct. The following discusses in more detail, the specific issues and relevant legislation in Sri Lanka.

(a) Maternity leave

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

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

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

(b) Health care

Health care during maternity is an important component of Convention No. 103. In Sri Lanka, public health care is free of charge to the entire population, and financed from public funds. Thus all pregnant women are provided with maternal health care during the antenatal, intra–natal and postnatal periods and this is consistent with the Convention.

(c) Cash benefits

According to ILO Convention No. 103, the cash benefits paid during maternity leave should be at least two–thirds of women's previous earnings and should be paid throughout the entire duration of maternity leave. In Sri Lanka, 100 per cent of the woman's salary at the time of taking maternity leave must be paid during the entire duration of maternity leave, for those covered by the three statutory arrangements, so this aspect can be considered compliant.

(d) Job security

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

In Sri Lanka, the Maternity Benefits Ordinance and the Shop and Office Employees' Act protects employees in the private sector from dismissal due to maternity reasons, so there is compliance in the private sector. However, female employees in the public sector do not have such protection, although no cases of dismissal on these grounds have been reported. This means that the public sector is compliant with Convention No. 103 in the *de facto* sense, but not on a *de jure* basis.

(e) Breastfeeding breaks

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

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

(f) Financing maternity cash benefits

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

Although it is not an applicable international standard for Sri Lanka, it is noted that the more recent Convention No. 183 relaxes this requirement in the case of countries like Sri Lanka, which have legislated for employer liability prior to the adoption of the Convention 183 in 2000. Specifically, to allow for its ratification by member States that do not have a social security maternity benefits branch, Convention No. 183 allows employers to assume individual liability for maternity benefits in cases where they have given their specific agreement. Convention No. 183 also authorizes employers to bear the cost of maternity benefits, where this was determined at the national level before the adoption of the Convention in 2000, or where it is agreed upon at the national level by the government and the social partners.

In June 2011, the Committee on the Application of Standards of the International Labour Conference examined the effect given to Convention No. 103 by Sri Lanka and concluded that the Government needed to do all in its powers to undertake in the very near future legislative action on all the matters requested by the Committee of Experts. Furthermore, recalling that the employer should not be individually liable for the payment of maternity cash benefits, which should be financed collectively, the Committee hoped that, notwithstanding the difficulties involved, the Government would undertake to replace progressively the direct employer liability system by a social insurance scheme and would initiate the necessary studies for this purpose, bearing in mind the need to avoid any adverse effect on the employment of women and on the enterprises with a high intensity of women workers. Finally, the Committee welcomed the decision of the Government to avail itself of the technical assistance of the ILO to achieve tangible progress in the application of the Convention and requested the Office to provide such assistance.

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

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

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

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

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

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

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

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

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

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

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

2.4 Discussions with Selected Stakeholders

Discussions on the present status of maternity benefits scheme and possible improvements were held with representatives of three stakeholders: the employers, the employees and the government to obtain their views and suggestions. The representatives were identified with the assistance of the Ministry of Labour and Labour Relations and the ILO Office in Colombo. IHP also examined some relevant documentation tabled at the National Labour Advisory Council (NLAC), which sheds additional light on stakeholder views.

2.4.1 Views of Employer Representative

Employers' Federation of Ceylon (EFC)

The EFC is the largest and most influential representative of employers in Sri Lanka. EFC representatives acknowledged that introduction of a social insurance scheme may be necessary for complying with ILO Convention No. 103, but noted that they thought the government had erred by ratifying it, and thus precipitating ILO review. In general, EFC representatives expressed concerns about a number of issues, but this did not translate into clear support for or opposition against the introduction of a social insurance mechanism to finance maternity benefits as being considered in this report.

On the general adequacy of the current employer liability arrangements, the EFC representatives expressed their opinion that Convention No. 103 removes the responsibility for paying maternity benefits from employers and that it transfers this to the state. However, this appears to be a misunderstanding of Convention No. 103, which merely states that employers should not be *individually* liable for the costs – they can remain fully liable at the collective level. Indeed, the EFC counterparts also indicated that they thought that the state should give financial assistance to employers to pay such benefits, indicating their concern is more about shifting some of the financial burden from employers to government, by increasing the government subsidy for these benefits from the current level of zero.

On the specific issues of an insurance mechanism, EFC representatives expressed a concern that currently employers who flout the law by not paying maternity benefits are the small time employers, so if a mandatory insurance scheme is established, only the major or larger employers would end up bearing the brunt of the cost of paying for the social insurance scheme.

EFC representatives were willing to give support to increasing current maternity benefits to some extent, particularly to remove inequities in the current system, but they expressed concern that such increases should not be excessive as it would affect overall labour productivity. In particular, they were willing to support improvements in leave provided to expectant mothers, but not so much as to overburden employers with paying for economically unproductive staff. They also noted that if it becomes more costly to hire a female employee due to the possible future costs of maternity benefits to the employers, there would be discrimination in hiring female employees. This would be unfair and unethical, but despite the presence of laws that prohibit employers from screening potential employees in this way, they acknowledged that the reality is such.

On the issue of equalizing benefits for the third and subsequent births, the opinion of the EFC was supportive in that the 84 days of maternity leave should be provided to all female workers irrespective of the number of births.

On the matter of cover for medical treatment, EFC representatives pointed out that at present, insurance companies' cover only the children over the age of one year under the parents' medical insurance schemes, so they proposed that negotiations should be carried out with insurers to extend the coverage from birth, since parents incur many out–of–pocket costs within the first year of life.

2.4.2 Views of Employee Representatives

National Trade Union Federation (NTUF)

The NTUF is an umbrella organization with a membership of over 400,000 affiliated with eight national unions and other associations. These include two trade unions that represent informal sector workers and an association representing the self-employed.

The major concern of the NTUF was the present situation where maternity benefits differ among different categories of workers in the private sector, and differ also with those provided in the public sector. The Federation was of the view that a uniform system of benefits should be made eligible to all female workers.

On the issue of whether an insurance scheme should be introduced to finance maternity benefits, NTUF representatives had mixed views. They stated that they would not oppose tripartite participation in a new maternity benefits insurance scheme. However, they were adamant that any such insurance scheme should not affect or eliminate the current maternity leave system, and that it should only be for the purpose of providing additional benefits. Furthermore, whilst they objected to the idea of employees contributing part of their wages for the current scheme and benefits, they indicated workers could consider contributing to a new scheme that was providing additional benefits. They opined that the government should consider supporting implementation of such an insurance scheme by contributing its own funds, but acknowledged that such a proposal would not be viable given the political situation.

On the issue of informal sector workers, they noted that these workers make a major contribution to the economy, but they have no job or social security and that the government takes no responsibility for them, so this group is very vulnerable. In reference to this, they made mention approvingly of the Central Labour Welfare Board in India, which is a completely state-funded scheme that provides various benefits to specific groups of workers, including those in the informal sector. The NTUF counterpart felt that this is a very good system in terms of the numbers and types of workers that it reaches.

Sri Lanka Nidahas Sevaka Sangamaya (SLNSS)

The General Secretary of SLNSS also pointed out the anomalies that exist with regard to maternity benefits under the Shop and Office Employees Act and the Maternity Benefits Ordinance and stressed the need to rectify them. It was also noted that there should be one social security scheme to cover all employees in the formal contracted private sector.

On the issue of introducing a social insurance scheme to provide maternity benefits, the SLNSS counterpart expressed his view that the country should not start insurance schemes for everything, but that there should be one social security scheme managed by the State [*sic* to cover a mix of benefits]. His other main concerns related to the governance of such a scheme. When asked about the desirability of introducing such a scheme through the ETF, he noted that when the ETF was established, the government made it mandatory that it should have a tripartite board, but as unions they were not sure that the board was looking at the problems. Nevertheless, he believed that the workers of the country would have greater trust and faith in a government run scheme than in a private insurance scheme. In that respect, the administration of the ETF would need to be improved, and that proper accountability and transparency were vital for building trust in the scheme. It was also pointed out by the General Secretary that with a marginal increase in the contribution to the ETF, it would be possible to encompass both employee injury insurance and maternity benefits and thereby lift the social protection floor.

Free Trade Zones & General Services Employees' Union (FTZ&GSEU)

In 2012, the Board of the FTZ&GSEU trade union endorsed the adoption of ILO Convention No. 183 as the solution to improving maternity benefits in SrI Lanka. This proposal was communicated to the NLAC for consideration, and apparently the idea has the support of several other unions. However, no further action was taken by NLAC to discuss this proposal, so it is not possible to assess how widely this position is supported or shared by other unions or social partners.

2.4.3 Views of Government Representatives

Ministry of Labour and Labour Relations

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

Subsequent consultations indicate that whilst the Government had intimated to the ILO that it proposed to use an insurance approach to resolve some of the current shortfalls, the decision to go for an insurance solution had not been properly investigated beforehand and that the Government is not fully committed to adopting this type of action, recognizing the difficulties of changing current arrangements. At the same time, government officials observed that adoption of Convention No. 183 would allow Sri Lanka to retain an employer liability system for the existing covered groups, but that they were not aware of this option when they initiated discussions with ILO to obtain advice on how to bring the country into compliance with Convention No. 103. These discussions suggest that the primary concern of government officials is to remove Sri Lanka from a situation of non–compliance with ILO Convention No. 103 and the associated review by ILO, and to do this they are open to alternative solutions such as adoption of Convention No. 183. These views are relevant to the broader issue of feasibility of introducing a social insurance scheme in Sri Lanka to provide maternity benefits to achieve compliance with Convention No. 103, as it implies that the Government is aware of alternatives, which will make it less willing to invest in the political effort required to implement a social insurance solution.

3. Global Overview of Maternity Protection

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

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

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

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

In the Asia–Pacific region, the most common financing approach for paying maternity cash benefits remains employer liability, although there has been a shift towards social insurance methods in several countries. The countries that rely on employer liability schemes include Sri Lanka, Afghanistan, Bangladesh, Brunei, Cambodia, Fiji, Indonesia, Malaysia, Nepal, Pakistan and Solomon Islands. China, India, Iran, Laos, Mongolia, Myanmar and Philippines rely on social insurance schemes. Australia, Hong Kong, Japan, and Singapore supplement either employer liability or social insurance schemes with public funding, whilst Korea relies on a mix of social security and employer liability financing.

3.1 Maternity Leave

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

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

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

1) Members should endeavour to extend the period of maternity leave referred to in Article 4 of the Convention to at least 18 weeks.

2) Provision should be made for an extension of the maternity leave in the event of multiple births.

3) To the extent possible, measures should be taken to ensure that the woman is entitled to choose freely the time at which she takes any non–compulsory portion of her maternity leave, before or after childbirth (ILO 2000).

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

3.2 Paternity and Parental Leave

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

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

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

3.3 Maternity Benefits

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

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

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

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

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

3.4 Financing Maternity Protection – an ILO Global Perspective

3.4.1 Introduction

As background, this section provides a global overview of country practices in the financing of maternity protection. This is a verbatim copy of a review prepared by ILO for this assessment, and made available to IHP. The subsequent section of the report focuses on experience specifically within Asia, and in countries with relevant contexts to Sri Lanka that might be considered most relevant in terms of assessing feasibility.

Since 1919, ILO Conventions on Maternity Protection emphasized 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. The principle of payment through social insurance or public funds is important for mitigating discrimination in the labour market, which is more likely where employers have to bear the full costs of maternity leave directly. The latest Convention on Maternity Protection (Convention No. 183 adopted in 2000) maintains this principle.

Access to social security is a fundamental human right and a public responsibility. It is typically provided through public institutions financed either from contributions to a social insurance scheme or from taxes or a combination of both. Social insurance is an employment-related system, which generally bases eligibility for pensions and other periodic payments on length of employment or self-employment. In the event of maternity, the level of short-term payments is usually related to the level of earnings before earnings ceased due to the pregnancy. Such programmes are contributory, being financed entirely or largely from contributions (usually a percentage of earnings) made by employers, workers or both, sometimes with a government subsidy. In most instances they are compulsory for defined categories of workers and their employers. Employers usually play a role, as they are the parties who mainly interact with the institutions in charge of the benefit administration (*i.e.,* collecting and transmitting contributions to the social insurance institution and informing it of the identity and wages of insured workers). Maternity benefits are often provided along with, or as part of, another social insurance scheme, such as sickness, health insurance, unemployment compensation, or employment injury and disease benefits.

The principle of solidarity in financing maternity benefits is inherent in earnings-related contributions. In general, a national social insurance programme aims at triple cross-subsidization: from healthy to ill individuals, from high- to low-income persons, and from single persons or small families to larger families (Cichon et al. 1999). Individual health risks (*e.g.*. pre-existing conditions, age and sex) should not influence the level of contributions, nor should they inevitably lead to exclusion from protection. Therefore, it is a principle that all workers, including men, pay contributions to finance maternity benefits, as set out in maternity protection standards (Convention No. 103 and Recommendation No. 191). Finally, the principle of solidarity in financing maternity benefits is also essential to promote non-discrimination at work, preventing employers from bearing the direct cost of maternity benefits, as is the case in employer liability schemes. Shared contributions between employers and employees jointly funding maternity benefits are the most common pattern in the vast majority of countries, both developed and developing (*e.g.*, Algeria, Belize, Cyprus, Greece, France, Lithuania, Morocco, Pakistan and Tunisia). There are some countries in which the State pays a specific percentage of the insurable wages, as a supplementary contribution. This practice aims to protect low-income employees and/or employers of small and medium-sized enterprises (SMEs). Tripartite funding of maternity insurance schemes through contributions paid by employers, employees and government are very rare but do exist in certain countries, such as Honduras and Mexico. On the other hand, tripartite administration, with the employer and workers' representatives playing key roles in the governance of social security institutions, is fundamental.

Individual employer liability schemes place liability for providing cash maternity benefits on individual employers. To ensure their fulfilment of this obligation, some governments require employers to purchase private insurance. It is important to note that employer liability schemes obliging individual employers to pay the wage or a part thereof directly during the maternity leave period do not meet the principles of solidarity in funding cash benefits schemes and pooling of risks, which are essential to allow the combination of resources to ensure a fairer and collective distribution of the costs and responsibilities of bearing children. This results in discriminatory practices against women in the labour market. According to ILO experience and available research, employer liability schemes work against the interests of women workers, as employers may be reluctant to hire, retain or promote pregnant workers or women with family responsibilities or may seek to find reasons to discharge pregnant employees in order to avoid paying the costs of wage replacement during maternity leave as well as other (potential or actual) direct and indirect costs linked to their replacement.

In many cases, this simply means not hiring women of childbearing age at all (Lewis et al., 2014). This is also the reason why ILO maternity protection instruments traditionally excluded this option. Moreover, compliance with individual employer liability schemes is often problematic, particularly in developing countries, where employers often do not pay the wage replacement and legislation is not enforced. An establishment survey of 100 companies on maternity protection conditions in Zambia show that almost 25 per cent of interviewed women would only be eligible for unpaid leave in case of maternity (Fumpa Forthcoming). Another study in Ghana argues that the limited participation of women in the formal labour market is also partly related to "discriminatory barriers erected against qualified women as firms anticipate the future cost of having too many employees claiming maternity benefits" (Hampel-Milagrosa 2011). Individual employers' liability is perceived to be excessive and to involve unsustainable costs for small enterprises in countries such as Malta where employers, including SMEs, are expected to finance the first 14 weeks of maternity leave (Lewis et al. Forthcoming). In this respect, employers' liability schemes have long been viewed as detrimental to the promotion of equal treatment of men and women in the labour market.

Supporting ILO member States in the progressive shift from employer liability systems to maternity leave benefits financed by social security systems is a priority of ILO technical assistance. This includes the following activities: information on maternity protection and social security labour standards; support to enable the ratification and effective implementation of ILO instruments; evidence-based awareness-raising among governments, parliaments, employers' and workers' organizations of the benefits of maternity protection, especially for the most vulnerable workers, and the need to create fiscal space to finance it; technical expertise in the review and drafting of the legislation; preparation of financial, actuarial and feasibility studies, based on comparative international experience and good practices; training in the administration of short-term benefits and support in the progressive implementation and extension of benefits to low-income and informal workers.

3.4.2 National Practice

While 58 per cent of the 185 countries and territories surveyed by the latest ILO study provide cash benefits through national social security schemes (107 countries), employer liability arrangements existed in 25 per cent of the total (47 countries).

In the developed economies, benefits are paid through social security systems in 88 per cent of the countries, with no countries relying solely on employers as the direct source of cash benefits. Employer liability systems are more common in Africa, in Asia and in the Middle East, where challenges in setting up maternity branches of social security systems have remained considerable. After the Middle East, Asia is the second region in which employer liability is the prevalent funding system of maternity leave benefits, with 50 per cent of the total (13 countries) financing benefits directly through employers' payments (such as Bangladesh, Indonesia, Pakistan and Sri Lanka). Just 31 per cent provide benefits through social security systems (China, India, Islamic Republic of Iran, Lao People's Democratic Republic, Mongolia, Myanmar, The Philippines and Viet Nam), and 17 per cent through mixed systems(e.g. the Republic of Korea and Thailand). In Africa, 40 per cent (21 countries, such as Cameroon, South Africa and the United Republic of Tanzania) rely on social security systems, 38 per cent (20 countries, the highest absolute number across the regions, including Botswana, Ethiopia, Kenya, Nigeria and Uganda) rely on employer liability systems and 21 per cent rely on mixed systems (such as Benin, Congo and Egypt).

3.4.3 Trends between 1994 and 2013 in source of funding

Between 1994 and 2013, there was notable progress in improving payment levels and a gradual shift away from reliance on employers to provide maternity leave benefits. Globally, the percentage of countries which rely on employer liability systems has declined over time from 33 per cent to 26 per cent (from 48 to 37 countries in 2013). This represents around 15 per cent of the global population of employed women. There has been a positive shift away from employer liability systems towards sole reliance on social security systems for financing cash benefits, rising from 47 per cent in 1994 to 53 per cent in 2013 (from 68 to 76 countries in 2013). Furthermore, there has been a positive trend towards mixed systems in which employers and social security systems share responsibility for benefits, which saw an increase from 15 per cent in 1994 to 25 per cent in 2013. The number of countries not providing statutory cash benefits during maternity leave also dropped, from seven to two in 2013. Several countries took positive steps, shifting away from partial or complete reliance on employer liability or unpaid systems towards more collective systems of financing. These changes in financing sources differed somewhat by region. In Asia, reliance on employer liability systems decreased from 63 to 53 per cent of countries, as China, India and Mongolia moved to a social security system and the Republic of Korea and Singapore shifted to a mixed system. Similarly, in Africa, an overall shift towards social security and mixed systems occurred as four countries moved away from dependence on employer liability systems alone: Angola (social insurance), Burundi (mixed), Mozambique (social insurance in 2009) and the United Republic of Tanzania (social security in 2005). In addition, three countries introduced paid leave: Namibia started a social insurance scheme in 1995; Swaziland, which pays two weeks of leave as of 1997 and Lesotho, which has progressively introduced compulsory paid leave for an increasing number of categories of workers as of 2009. In conclusion, the vast majority of countries provide for cash benefits during maternity leave and the small minority providing leave but no payment has declined since 1994. Globally, social security systems are used as the sole source of payment in the majority (almost 60 per cent) of the countries lastly surveyed by the ILO. The number of countries in which employers are fully responsible for paying maternity benefits has declined slightly during the past 20 years, while the usage of mixed systems is increasing. The shift away from systems relying entirely on employer liability is encouraging as it reflects progress towards the principles and legal provisions called for in ILO standards. Finding viable collective ways of financing maternity benefits without placing undue financial costs on women is increasing. The shift away from systems relying entirely on employer liability is encouraging as it reflects progress towards modernizing labour markets through encouraging more female participations in the economy.

3.4.4 Shifting from employer liability to maternity insurance: Examples of ILO technical assistance

In 2011, with ILO technical assistance, Jordan moved from an employer liability system to a maternity-insurance scheme following the creation of a new social security branch within the framework of social security law reform. This new scheme covers all private sector employees, including those working in small enterprises of fewer than five employees, and provides cash benefits in the case of maternity at the level of 100 per cent of a woman's previous earnings for a period of 10 weeks. In principle, only employers pay the contributions to the social security system for maternity benefits at 0.75 per cent of payroll, although the Government covers any deficits produced by shortfalls. This benefit is expected to encourage women's participation in the labour force and remove disincentives to hiring, retaining and promoting women workers. The ILO is providing technical assistance to support the establishment of a maternity branch to fund maternity leave cash benefits by social insurance in a number of member States with employer liability systems, including Namibia, Lesotho, the Occupied Palestinian Territory, Rwanda and Zambia. The Ministry of Labour and Employment in Lesotho has begun the process of establishing a National Social Security Scheme for the private sector, covering all nine branches of social security. A primary concern for the Government is the establishment of short-term benefits, in particular sickness and maternity benefits. Maternity protection is a priority for the Government of Lesotho, given that the current legislation compels employers in a number of sectors to pay for maternity leave. Rwanda's social security policy (2009) foresees the set-up of a new maternity branch of social insurance to move away from the current employer liability system, under which 100 per cent of salary is paid for the first six weeks and 20 per cent for the remainder. In 2014, the Ministry of Public Service and Labour (MIFOTRA), with ILO technical support, commissioned a feasibility study on the introduction of a new maternity insurance scheme to ensure the payment of women workers' full salary for 12 weeks. The Government's initial proposal is to introduce a supplementary fund to cover 80 per cent of salary for the last six weeks of maternity leave in order to supplement the 20 per cent of salary already provided by the employers. In Zambia, following the adoption of a Tripartite Road Map on Maternity Protection (2013) which sets up national priorities on action to improve maternity protection in the country, the Ministry of Labour and Social Security, with ILO technical support, launched an actuarial study prior to setting up a social security branch to fund maternity leave benefits. The study also assesses the financial and operational feasibility of extending maternity benefits to low-income and vulnerable women who are pregnant or breastfeeding. The Occupied Palestinian Territory is preparing to roll out a comprehensive social security scheme to cover all private sector workers. Developed by the tripartite National Social Security Committee with ILO support, the scheme was created in consultation with workers' and employers' organizations, government officials and other stakeholders. The Committee is drafting a law to be submitted to the Council of Ministers for adoption by 2015, and setting up an independent tripartite social security institution to administer the scheme's implementation.

3.5 Maternity Benefits in Selected Asian Countries

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

This section briefly reviews the maternity benefit schemes of countries a) which have similar legal systems and legacies as Sri Lanka such as Malaysia, Hong Kong and Singapore, and b) those in the region with social insurance schemes which provide maternity benefits such as Thailand, Philippines, Viet Nam and Japan. It is evident from the review of above schemes that countries, which have commenced providing maternity benefits through employer liability schemes, have continued to do so, without switching to an insurance model. These countries also tend to be ones that do not use social insurance mechanisms to provide other social protection benefits, *e.g.,* Hong Kong, Malaysia and Singapore. It is pertinent to note that none of these latter countries have ratified Convention No. 103, and so in their case the issue of non–compliance with the convention is not relevant.

3.5.1 Singapore

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

Under the Child Development Co–Savings Act, an employee is entitled to maternity leave benefits under the following conditions: a) the child is a Singapore citizen, b) the child's parents are lawfully married, and c) the employee has served her employer for at least 90 days before the child's birth. An eligible employee is entitled to absent herself from work for 4 weeks immediately before and 12 weeks immediately after delivery, totalling of 16 weeks. Since 1st May 2013, working fathers, including those who are self–employed, are entitled to share one week out of the 16 weeks maternity leave subject to the agreement of the mother and provided a) the child is born after 1st May 2013, b) the mother qualifies for government–paid maternity leave, and c) the father is lawfully married to the child's mother (Goverment of Singapore 2013).

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

Single employees, whose child is not a Singapore citizen, or foreign workers, are entitled to 12 weeks of maternity leave, if they are covered under the Employment Act. Here, the employee will pay her for the first eight weeks if she has fewer than two living children (excluding the newborn), and she has served her employer for at least 3 months before the birth of the child.

Beyond the first eight weeks, maternity payment from the employer is voluntary, and is not entitled to any reimbursement from the government. Under the Employment Act, an employer is required to continue paying the employee her usual salary at the monthly gross rate of pay for the first eight weeks of maternity leave.

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

3.5.2 Malaysia

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

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

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

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

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

3.5.3 Hong Kong, China

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

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

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

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

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

3.5.4 Japan

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

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

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

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

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

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

3.5.5 Philippines

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

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

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

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

3.5.6 Thailand

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

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

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

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

3.5.7 Viet Nam

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

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

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

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

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

4. Financing of Maternity Cash Benefits in Sri Lanka

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.1 Potential Options for Financing Maternity Cash Benefits

(a) Using public funds

As in Singapore, Sri Lanka could extend or replace the current arrangements with public funds financed from taxation. However, given the fiscal situation of large continuing fiscal deficits, neither the public funds nor political will exist for this approach. Further, even if taxes were increased to create fiscal space, it is not apparent that the country would want in the near term to prioritize maternity cash benefits over other under–funded areas of social provision, such as education and health. There is also a significant equity issue in that there is no evident justification to use additional tax funds, which are paid by all citizens, to provide benefits only or primarily to private sector formal employees who already have such coverage, and not others. Nevertheless, in the long term extending maternity benefits to the informal sector is only likely to be feasible if financed by public funds.

(b) A new contributory social security scheme

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

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

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

(d) Contributory scheme through the ETF

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

(e) Ratification of ILO Convention No. 183

This option is not relevant to the issue of achieving compliance with Convention No. 103, which is the objective that this study is tasked with examining. However, we note that social partners at the NLAC have proposed this option and the government has expressed interest, and so some comment is necessary. Ratification of this newer 2000 convention would provide a basis for improving provision of maternity cash benefits in the country, but it would fail to do so within the framework of Convention No. 103, which remains applicable to Sri Lanka as a ratifying party. This is because ratification of Convention No. 183 would automatically nullify the country's ratification of Convention No. 103, as well as all the associated review processes. That said, ratification of Convention No. 183 would allow Sri Lanka to maintain its existing employer liability arrangements, if the country decides that replacing the existing arrangements with social insurance or public funds is not feasible or desirable. This approach would require that paid maternity leave be extended to a minimum of 14 calendar weeks for all covered workers, and that the Government find mechanisms to extend coverage of benefits to all employed women, including those in informal sector work. However, as the Convention does allow countries to adopt a strategy of phased expansion, Sri Lanka could decide to delay coverage of informal sector workers until the necessary public funds are available.

4.2 Feasibility Considerations

This study was commissioned by ILO specifically to assess the feasibility of a social insurance mechanism to provide maternity benefits. Feasibility does not depend purely on whether a technical mechanism exists. It is clear that all social partners understand that a social insurance mechanism can be designed to provide maternity benefits. However, social partners do not express significant enthusiasm for such a change and in some cases express their lack of support, which the Government acknowledges will be a challenge in implementing such a solution.

Given this context, the following issues need to be considered to make an adequate assessment of feasibility of any option:

(i) The technical or theoretical capability of the proposed mechanism to mobilize and provide adequate levels of funding to provide the needed benefits.
(ii) The cost for employers, employees, the government and the country as a whole, which has implications for the willingness of social partners to provide support.
(iii) The political support or opposition that the elected government of Sri Lanka will face in implementation.

A workable technical design of an ETF scheme is given in the following section, and the likely cost to employers and employees estimated. The political support or costs of implementation cannot be so readily assessed, but some key factors can be identified. These are discussed here.

The most important fact is that consensus amongst all social partners in favour of adopting such a new social insurance scheme is unlikely to be achieved. This implies that implementation of any such scheme will require the government to act without consensus of all social partners or unilaterally. Opposition to such action by government will arise for at least three reasons:

(i) Employers are likely to object on the basis of fears that the scheme will increase their employment costs overall, or because some employers will face significantly higher costs than now, and will oppose more strongly than support provided by those employers who face lower costs than now.
(ii) Some employee groups and unions may object because they will understand correctly that the scheme implicitly shifts ultimate costs from female to male workers.
(iii) Both unions and employers will be reluctant to trust the capacity of government to transparently and efficiently manage the funds collected, and will fear that any changes to the legislation governing either the ETF or the EPF would weaken or undermine the security of benefits currently provided by these two schemes.

The third source of opposition is potentially the most challenging. In the Sri Lankan context there is a high degree of mistrust and lack of confidence by social partners in commitments made by governments (of all political complexions). There is also lack of trust in government to manage transparently and fairly funds assigned to it for management, even though several social partners have indicated they would prefer the state rather than the private sector.

The level of this mistrust is such that reforms in this area by government without consensus of all social partners have significant potential to disrupt social harmony, and by extension political stability and national security. Here it is necessary to note the events that occurred in June 2011, when the government attempted to introduce a pension scheme for private sector workers. Whilst the scheme proposal may have been well intentioned and had potential to significantly improve social protection, it resulted in the most significant civil commotions in the country since the end of the long armed internal conflict in 2009, the first fatality as a result of action by the security forces since the end of that conflict, the resignation of the head of the national police force, and ultimately the withdrawal of all reform proposals. Whilst the risk of such social disruption can be considered irrelevant from the narrow legal perspective of ensuring that Sri Lanka achieves compliance with Convention No. 103, it would be inimical to the country’s interest in maintaining social harmony and strengthening the democratic governance that has been the basis of all social protection in the country to date. The Government of Sri Lanka is unlikely to be unaware of such issues, and so such political risks represent a key factor influencing feasibility of any approach that changes the current maternity benefit arrangements.

5. Estimation of the Maternity Benefit Rate for Sri Lanka

5.1 Employees' Trust Fund Option

In terms of replacing employer liability with a contributory social insurance mechanism, the most feasible option for Sri Lanka is to introduce a contributory scheme as an extension of the Employees' Trust Fund (ETF). Such a scheme would have the following features:

(i) All covered employers would be required to make a flat–rate contribution to the ETF on behalf of all covered employees. Employees would make no contribution in accordance with current practice and with Convention No. 103.

(ii) The funds would be collected by ETF, and segregated in management and accounting from the other funds collected by ETF. They would be only available to finance maternity or paternity related benefits.

(iii) With one exception, the flat–rate contribution would be set at the same rate for both men and women and for all employers to avoid increasing gender discrimination in the labour market. This rate would be sufficient to ensure that the scheme is self–financing without resort to government subsidy, and able to pay all covered workers a level of cash benefits that achieves compliance with Convention No. 103 and is no lower than what employees currently receive under the Shop and Office Employees' Remuneration Act.

(iv) For government workers, who enjoy now more generous maternity and paternity cash benefits than required for compliance with Convention No. 103, it is assumed that benefit levels would not be reduced. To ensure this, the government would either need to contribute at a higher payroll rate to the ETF for their coverage, or arrange to pay itself as now for benefits that exceed the standard ETF level of benefits.

(v) When an employee becomes eligible for paid maternity (or paternity) leave, either the employer would pay their salary as now and seek reimbursement from ETF, or the ETF would directly pay the employee. A mechanism to ensure efficient processing of such payments would be needed, and direct payment by ETF to employees would probably require that all workers have bank accounts.

The ETF was established in March 1981 under the provisions of ETF Act No.46 of 1980. The ETF Board functions under the Ministry of Finance and Planning. The provisions of the Act apply to State Corporations and Statutory Boards and the private sector. Self–employed persons and migrant workers also could contribute to the fund on their own and obtain membership. During the past three decades, the Fund has grown rapidly and achieved a total fund of about Rs. 153 billion by end of December 2012. It has 2.2 million members from about 70,000 employers. Among the members, there were 33,000 self–employed workers.

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

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

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

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

5.2 General Assumptions in Estimating Costs

This and the remaining part of this chapter presents details of the computation of contribution rates required to establish a contributory scheme implemented via the ETF. This text and the related computations were produced by ILO staff, and are reproduced here verbatim.[1]

As any other institutions in the economy, a social protection scheme is subject to the demographic and economic changes in the country. The Contribution Rate has to be decided considering the well-functioning of the scheme on a daily basis but also the opportunity to create Reserves that allow the system to continue to function even if the economic situation is not the most favourable.

It is in this regard that the contribution rate is estimated, *i.e.*, by performing projections for several years to assess the rate that not only allows the scheme to be financially sustainable in a year but also allow to set aside funds in a reserve that can be used to pay the benefits in years where the income from contributions is less than total expenditure.

The estimation of contributions and benefits need a certain set of assumptions about some key variables in terms of demography, economics, labour force, and salaries among others.

The most recent year with information about the sex structure of the Employees in Private Sector Establishments and State Corporations and Statutory Boards, which will be used for simplicity as the Target population of the ETF and referred as such in the following text (it is known that a group of independent workers are also covered, but the data available do not allow to prepare a separated model for them), is 2011. This is the reason to choose year 2011 as the departure of the simulation.

5.3 Projection of the Population Covered by the ETF

The projection of Labour Force distribution per age groups until 2020 is available in LABOURSTAT database of the ILO as it can be seen in the Table B2 of the Annex, based on the Population Projections of UN DESA (Table B1 of the Annex). It is important to notice the

[1] IHP did not have time to review these computations, owing to insufficient time.

reduced level of growth of the participation of the female in the labour force in the ILO projection, if the participation results higher than expected the scheme could be more expensive than assessed. Fortunately if a contribution rate of 1 per cent is adopted, the level of reserves for the first years is enough to protect against such a contingency.

From the Labour Force Survey, 2011 (LFS), we know the age and sex distribution of the Target population as shown in the second column of Table 12.

As the age breakdown in each of the two sets of information is different, a Sprague multiplier method was applied to transform the five years age group of LABOURSTAT projection into a group structure consistent with that of the LFS. The results per age group are presented in Table B3 of the annex.

Table 5: Distribution of Employees in Private Sector Establishments and State Corporations and Statutory Boards by age groups for 2011

Age group	Number	% of labour force	Average salary (Rs)
Male			
15–21	170,800	43.0	485.1
22–28	438,804	41.9	654.7
29–35	443,794	40.3	771.2
36–42	373,939	39.6	767.5
43–49	314,393	35.3	741.8
50+	512,644	34.0	577.6
	2,254,374	***38.3***	***678.1***
Female			
15–21	93,428	45.0	423.7
22–28	197,300	40.3	561.8
29–35	166,013	35.1	662.6
36–42	160,309	33.6	513.6
43–49	143,995	29.1	541.2
50+	182,474	27.3	577.6
	943,519	***33.6***	***577.6***
All			
15–21	264,228	43.7	463.4
22–28	636,104	41.4	625.9
29–35	609,806	38.8	741.6
36–42	534,249	37.6	691.3
43–49	458,387	33.1	678.8
50+	695,118	32.0	577.6
TOTAL*	***3,197,892***	***36.8***	***642.6***

Source: Labour Source Survey 2011
Note: *Total salary for population over 50 years of age is not broken down by sex

For the year 2011, the percentage of the Target population as part of the Labour Force per age group can be estimated (third column of Table 12). It is assumed that the same ratio will continue to hold for the age and sex groups throughout the projection period. The Target population for age group and sex is shown in Table B4 of the Annex.

For the same year, the information available about the number of active contributors for the ETF, meaning members of the scheme who contributed at least once in that year gives a figure of 1,966,536 according to the Report to the Board of the ETF. We do not have any information about the sex and age distribution of those contributors. Given this restriction in the information, the alternative solution to continue the modelling is to assume that the same coverage rate observed for the population of the Target population (61.5%) applies to all age and sex groups.

Additionally, we made an assumption of an increase in the coverage over the Labour Force of 1 percentage point per year over the projection period.

From the Labour Force Projection and the assumptions mentioned in the previous paragraph, we can estimate the covered population per age and sex for the period 2011-2020, which is presented in Table B5 of the Annex, the abstract of aggregates is in Table 6.

Table 6: Population aggregates and Coverage rates for the projection period 2011-2020 (in thousands)

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Male										
Total population	10,383	10,464	10,540	10,612	10,680	10,744	10,803	10,858	10,908	10,955
Labour force	5,886	5,931	5,972	6,009	6,043	6,081	6,112	6,140	6,168	6,198
Employees	2,254	2,269	2,283	2,295	2,305	2,318	2,327	2,336	2,345	2,355
Population covered by ETF	1,386	1,418	1,450	1,480	1,510	1,541	1,571	1,600	1,630	1,660
Female										
Total population	10,662	10,760	10,854	10,944	11,029	11,110	11,186	11,258	11,325	11,389
Labour force	2,811	2,852	2,893	2,931	2,968	3,008	3,044	3,080	3,116	3,154
Employees	944	956	967	978	989	1,000	1,011	1,021	1,032	1,043
Population covered by ETF	580	597	614	631	648	665	682	699	717	735
All										
Total population	21,045	21,224	21,394	21,556	21,709	21,853	21,989	22,116	22,234	22,344
Labour force	8,697	8,783	8,865	8,941	9,011	9,088	9,156	9,220	9,284	9,352
Employees	3,198	3,225	3,250	3,273	3,294	3,318	3,338	3,357	3,377	3,398
Population covered by ETF	1,967	2,016	2,064	2,111	2,158	2,206	2,253	2,300	2,347	2,396
Coverage rate										
Over target population	61.5%	62.5%	63.5%	64.5%	65.5%	66.5%	67.5%	68.5%	69.5%	70.5%
Over the labour force	22.6%	22.9%	23.3%	23.6%	23.9%	24.3%	24.6%	24.9%	25.3%	25.6%
>Male	23.6%	23.9%	24.3%	24.6%	25.0%	25.3%	25.7%	26.1%	26.4%	26.8%
>Female	20.6%	20.9%	21.2%	21.5%	21.8%	22.1%	22.4%	22.7%	23.0%	23.3%

Source: ILO staff calculations

5.4 Projection of Salaries and Salary Mass

The following step corresponds to the identification of the salary mass that will serve as a contributory basis for the scheme. Here, the information available from the LFC, which is presented in the fourth column of Table 5, indicates the average daily salary of the Target population (assuming 21 work days per month) for each age group available.

The Report to the Board of the ETF indicates a total sum of contributions of Rs. 11,092 billion, which means that the reported salaries are in the order of Rs. 396.7 billion. The LFS reports the total salaries on the Target population to be Rs. 517.8 billion. Hence, even if we do not consider the density of the contributions (more on this subject will follow later), it means that 61.5% of covered workers earn 71.5% of the salaries of the Target workers, therefore, the average salary for the covered workers must be higher than for the uncovered workers.

The question is to what extent is the average salary higher? The answer depends on the assumption about the density of contributions. The density factor concept arises from the fact that not all the active contributors contribute during the whole year, since some workers can move from one job to another or to unemployment (leaving some months with no contributions during the transition), or move from jobs where employers comply with the contributions to jobs where they do not comply or vice versa.

Given that we do not have data available on the number of months that the average contributor contributes, the density has to be assumed and kept constant for the projection period. The level of the density affects the ratio between the salaries of covered and uncovered workers. As an estimate, a density of 90% is assumed which corresponds to a ratio of 2.4 between the salaries of covered and uncovered workers.

The modelling of the salaries also requires assumptions about the increase of salaries over time. The usual assumption is that the salary increase tends to compensate the inflation and the increase in productivity of the Labour Force (assumed to be 1% constant over the projection period). Using the projection of inflation from the Economist Intelligence Unit, the expected average salary growth (for the whole Target population) is shown in Table 7.

Table 7: Expected average salary growth

Projected item	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Inflation	6.7%	7.6%	6.9%	5.2%	6.2%	5.6%	5.4%	5.0%	5.0%	5.0%
Salary increase	7.7%	8.6%	7.9%	6.2%	7.2%	6.6%	6.4%	6.0%	6.0%	6.0%
Interest rate	8.7%	9.6%	8.9%	7.2%	8.2%	7.6%	7.4%	7.0%	7.0%	7.0%

Source: Economist Intelligence Unit, and ILO assumptions

Applying the expected inflation and the ratio between covered and uncovered workers, the daily salary of the covered population is obtained. Multiplying the respective salary times the size of the groups of contributors and correcting by the assumed density (90%), the salary mass is obtained. The results of these calculations are shown in Table 8, which also includes the projected average salaries for the age and sex groups.

Table 8: Projection of salaries per age and sex and salary mass, 2011-2020

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Male										
15–21	626	669	721	772	814	867	917	969	1,020	1,073
22–28	845	903	973	1,042	1,099	1,170	1,238	1,308	1,376	1,448
29–35	995	1,064	1,146	1,228	1,294	1,378	1,458	1,540	1,621	1,706
36–42	990	1,059	1,141	1,222	1,288	1,371	1,451	1,533	1,613	1,698
43–49	957	1,023	1,103	1,181	1,245	1,325	1,402	1,481	1,559	1,641
50+	745	797	859	920	970	1,032	1,092	1,154	1,214	1,278
	877	**938**	**1,012**	**1,085**	**1,144**	**1,219**	**1,290**	**1,363**	**1,434**	**1,509**
Female										
15–21	547	584	630	675	711	757	801	846	891	937
22–28	725	775	835	895	943	1,004	1,062	1,122	1,181	1,243
29–35	855	914	985	1,055	1,112	1,184	1,253	1,323	1,393	1,466
36–42	663	708	764	818	862	918	971	1,026	1,080	1,136
43–49	698	746	805	862	909	967	1,023	1,081	1,138	1,197
50+	745	797	859	920	970	1,032	1,092	1,154	1,214	1,278
	720	**770**	**831**	**889**	**937**	**997**	**1,055**	**1,113**	**1,170**	**1,230**
All										
15–21	598	639	688	737	777	826	874	923	972	1,022
22–28	808	863	930	996	1,049	1,116	1,181	1,247	1,312	1,381
29–35	957	1,023	1,102	1,180	1,244	1,323	1,400	1,479	1,556	1,638
36–42	892	953	1,028	1,100	1,160	1,235	1,307	1,380	1,453	1,529
43–49	876	936	1,009	1,081	1,140	1,214	1,285	1,358	1,429	1,505
50+	745	797	859	920	970	1,032	1,092	1,154	1,214	1,278
	829	**887**	**956**	**1,025**	**1,080**	**1,149**	**1,216**	**1,284**	**1,350**	**1,420**
In billions of rupees										
Salary mass (non density corrected)	411	447	491	534	572	619	664	711	759	810
Salary mass (density corrected)	370	403	442	481	515	557	598	640	683	729

Source: ILO staff calculations

5.5 Projection of Annual Births

The distribution of births by age of employed females was obtained by applying the age-specific fertility rates by educational categories computed from data of LFS 2011 (Table 10 to the corresponding female employed population by the age group). The results are presented in Table 9. The age categories of females in the reproductive age group 15-49 were regrouped to make sure that there are sufficient cases in each category.

The average salaries also are an input in the calculation of both maternity and paternity benefits once they are combined with the expected number of new-borns and the distribution per age group of the mother (or father).

Box 1– Estimation of Age Specific Fertility Rate

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

The ASFR was computed from the data set by selecting women in the reproductive age of 15–49years who contribute to the E.P.F. and children aged less than 3 years. In order to ensure sufficient cases of women by age, women were grouped into the following age groups: 15–21, 22–28, 29–35, 36–42 and 43–49.

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

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

$$\text{ASFR}=\frac{(\text{Number of children aged less than 3 years in the respective category})/3}{\text{Number of women aged 15–21 years}}$$

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

Note: The computations described in this box were prepared by IHP.

Table 9: Observed fertility ratios per age group and Total Fertility Rate, 2011

Age group	Fertility rate
15–21	0.03
22–28	0.12
29–35	0.13
36–42	0.04
43–49	0.00
Total	**2.25**

Source: Computations from Labour Force Survey 2011.

Normally, the probability of delivering during the year and the Total Fertility Rate tend to decrease over time, in the sake of conservative estimates the model will assume that the observed probabilities apply to all the period. Applying these probabilities to the covered population, we obtain the expected number of new-borns from the female workers and the expected number of new-borns from the spouses of the male workers (assuming that the couples belong to the same age group and, in order to be conservative, that all the male workers have a spouse).

The expected number of new-borns distributed by the age of the mother or father is shown in the Table 10.

Table 10: Projected number of new–born from the population covered by the ETF, 2011-2020 (in thousands)

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Expected new–borns from covered female workers										
15–21	1.8	1.8	1.9	1.9	2.0	2.0	2.1	2.2	2.2	2.3
22–28	14.5	14.6	14.7	14.8	14.9	15.0	15.2	15.4	15.7	16.0
29–35	13.2	13.7	14.1	14.5	14.8	15.0	15.1	15.1	15.1	15.1
36–42	3.8	3.9	4.0	4.2	4.3	4.4	4.6	4.8	4.9	5.0
43–49	0.2	0.2	0.2	0.2	0.2	0.3	0.3	0.3	0.3	0.3
	33.6	**34.3**	**35.0**	**35.6**	**36.2**	**36.7**	**37.2**	**37.7**	**38.1**	**38.6**
Expected new–borns from spouses of covered male workers										
15–21	3.3	3.3	3.4	3.4	3.5	3.5	3.6	3.7	3.8	3.9
22–28	32.3	32.2	32.0	31.9	31.8	31.8	31.9	32.1	32.3	32.5
29–35	35.3	36.4	37.3	38.0	38.3	38.6	38.6	38.4	38.0	37.8
36–42	8.9	9.1	9.4	9.7	10.0	10.3	10.7	11.1	11.4	11.7
43–49	0.5	0.5	0.5	0.5	0.5	0.6	0.6	0.6	0.6	0.6
	80.3	**81.6**	**82.6**	**83.5**	**84.1**	**84.9**	**85.4**	**85.8**	**86.1**	**86.5**

Source: ILO staff calculation

5.6 Projection of Maternity and Paternity Benefits

By multiplying the expected number of newborns times the days of benefit (84 in the case of female, 3 or 7 in the case of male) times the average salary of the respective age group, the expected amount of the benefits is estimated.

Table 11: Projected expenditure in Maternity and Paternity benefits and PAYG rates, 2011-2020

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Maternity benefit										
In Rs billion	2.14	2.34	2.58	2.81	3.01	3.25	3.48	3.72	3.95	4.21
PAYG rate (%)	0.58	0.58	0.58	0.57	0.57	0.57	0.56	0.56	0.55	0.55
Paternity benefit for 3 days										
In Rs billion	0.22	0.24	0.26	0.28	0.30	0.33	0.35	0.37	0.39	0.41
PAYG rate (%)	0.06	0.06	0.06	0.06	0.06	0.06	0.06	0.06	0.05	0.05
Paternity benefit for 7 days										
In Rs billion	0.52	0.56	0.61	0.66	0.71	0.76	0.81	0.86	0.90	0.96
PAYG rate (%)	0.14	0.14	0.14	0.14	0.13	0.13	0.13	0.13	0.13	0.12

Source: ILO staff calculations

The values of the benefits as shown in

Table 11 only include the direct payment but the running of a Maternity/Paternity Insurance requires administrative efforts in the form of collection of contributions, investment, process of claims, payment of claims, accounting, and record keeping among others. A conservative estimate of the administrative costs reaches 10% of the benefit expenditure (especially in the first years when the installation and acquisition of knowledge could result in bigger expenditure). The ratio between the cost (now including administration) and the salary mass previously estimated gives the PAYG rate (the percentage of the salary needed to run the scheme without gain or loss in a specific year).

It can be observed that if the option of three or seven days for the paternity benefit accompanying the maternity benefit is chosen, Contribution Rates of 0.7% and 0.8% of the salary will allow the scheme to function without keeping Reserves. Those levels of contribution have the disadvantage that in any year that the demographic and economic conditions of the country are not completely favorable, the scheme will not be solvent and the payment of benefits will be impossible (system failure).

5.6 Projection of Reserves

The building of the Reserves is a process governed by the accumulation of gains and the interest earned through investment of those gains. We use an assumption of 2% real interest rate (on top of the inflation) for the simulation of the Reserve. The assumed interest rates are presented in Table 7.

Table 12 shows simulations of the cash flow (in millions) of the scheme with paternity benefit of seven days assuming a 1% Contribution Rate. The last line of the scenario shows the reserve ratio (the ratio of the reserve with respect to the expenditure). This ratio is a synthetic measure of the robustness of the scheme in case of surprises in the macroeconomic and demographic environment. A very small reserve ratio means that the scheme could easily fail in adverse conditions. A very large reserve ratio means the scheme is ready to affront those conditions. Unfortunately, to have a large reserve ratio means to allocate resources that could be used elsewhere to the preparation for contingencies that will probably never materialize.

Although there is no agreed level of reserves for the scheme, the level of reserves n the scenario is good enough for the financial stability of the scheme. Nonetheless, it is important to remember that the simulations were performed based on data retrieved from an initial set of information with significant gaps (the list of the assumptions used in the model are in Box 2). This issue must be resolved once the scheme is running to provide a more technically sound basis for choosing the Contribution Rate. The recommended level of 1% for the Contribution Rate enables the scheme to run in the first years without risk of default.

Table 12: Simulation of the cash flow (in millions) with paternity benefit of seven days assuming 1% of Contribution Rate, 2011-2020

	2011	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**
Income	**3,697**	**4,133**	**4,621**	**5,096**	**5,486**	**6,062**	**6,567**	**7,113**	**7,654**	**8,278**
Contribution income	3,697	4,027	4,418	4,810	5,148	5,567	5,977	6,400	6,826	7,285
Interest income	33	106	204	286	338	495	590	714	827	993
Expenditure	**2,924**	**3,194**	**3,508**	**3,819**	**4,083**	**4,408**	**4,718**	**5,032**	**5,346**	**5,684**
Maternity benefit	2,142	2,342	2,576	2,808	3,005	3,248	3,482	3,718	3,955	4,211
Paternity benefit	517	561	614	664	706	759	808	857	905	956
Administration costs	266	290	319	347	371	401	429	458	486	517
Net income	**773**	**939**	**1,113**	**1,277**	**1,403**	**1,654**	**1,848**	**2,081**	**2,308**	**2,594**
Reserve	**773**	**1,712**	**2,825**	**4,101**	**5,505**	**7,158**	**9,007**	**11,088**	**13,396**	**15,990**
Reserve ratio (%)	0.26	0.54	0.81	1.07	1.35	1.62	1.91	2.20	2.51	2.81

Source: ILO staff calculations

It should be emphasized that the model makes the best use of the available information, but that same information could be largely improved, especially if the scheme is installed. The breakdown per sex and age of active and inactive members of the ETF is a must, as it is to keep records of the level of salary reported (it will be the basis for estimation of benefits). The support in the installation of the scheme has to extend to the technical support for better record keeping which will be helpful in fine-tuning the results of this model, helping to develop a technically responsible management of the insurance.

Box 2: Main assumptions in the above modeling done by the ILO

- ILO projected Labour Force per age and sex 2011-2020
- The proportion of the Labour Force belonging to the Employees in Private Sector Establishments and State Corporations and Statutory Boards is constant for the projection period per each age and sex group
- The coverage of ETF for all the groups is the same every year and is growing from the initial 61.5% to 70.5% at a linear rate
- The density of contribution is 90% for all the period, and for all age and sex groups
- The ratio between salaries among the groups is constant, as it is the ratio between salaries of covered workers and uncovered
- The salaries of the Employees in Private Sector Establishments and State Corporations and Statutory Boards have a real increase of 1% each year, in all age and sex groups.
- Observed fertility ratios are kept constant over the projection period
- All males have a couple on the same age group as them
- Real interest rate of 2% for the scheme
- Inflation follows the projection of the Economist Intelligence Unit

6. Findings and Recommendations

6.1 Findings

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

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

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

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

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

1.4 From the perspective of raising standards of maternity benefits protection in Sri Lanka to international norms, the newer Convention No. 183 may be more relevant from a wider social perspective, but it is Convention No. 103 that applies to Sri Lanka, since Sri Lanka has chosen to ratify it and it remains in force.

1.5 Whilst social partners have proposed that Sri Lanka ratifies Convention No. 183, which would automatically nullify Convention No. 103, this has not happened, and so Convention No. 183 is irrelevant from a compliance perspective.

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

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

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

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

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

2.5 To address the compliance failure arising from reliance on employer liability, the prescribed solutions are either to introduce a scheme financed from public funds, or to introduce a scheme financed through social insurance. Although Convention No. 103 allows both options, the terms of reference for this study specifically restricted its assessment to feasibility of the second option, following the Government of Sri Lanka's own intimation to ILO that it would seek a solution based on social insurance.

3. **Views of social partners**

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

3.2 There is no consensus amongst social partners to introduce a new social insurance system to provide maternity cash benefits, but there is some willingness to consider an arrangement that involves expanding ETF benefits on a contributory basis, although some social partners indicated they would only support this for providing benefits additional to the current benefits and arrangements.

3.3 Several social partners on all sides expressed interest in the idea that the government should use public funds to wholly or partly replace the current funding of maternity benefits. This is not realistic or feasible given the current fiscal situation in the country, nor would it be equitable unless public funds are used to extend maternity cash benefits to informal sector workers.

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

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

4.1 The shortfalls in current arrangements with regards to length of paid maternity leave can be addressed by amendments to the Maternity Benefits Ordinance and the Shop and Office Employees' Remuneration Act. This would impose minimal additional costs for employers, on average probably less than 10% of their current costs on funding maternity benefits.

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

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

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

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

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

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

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

6.2 Recommendations

The Government and social partners are faced with a number of competing goals. The main ones relate to how to improve maternity benefits coverage and how to increase compliance with ILO Convention No. 103 that Sri Lanka has ratified. These are not the same goals, and failure to make this distinction has caused confusion on how to improve compliance with Convention No.

103. The important fact to note here is that since Sri Lanka has ratified Convention No. 103, it remains applicable to the country, and so any discussion about ILO convention compliance must be in relation to the provisions of this convention.

With respect to how the country can achieve compliance with Convention No. 103, which is the question that ILO tasked us with, we make the following recommendations:

1. Rectify the existing anomalies and shortfalls in current statutory arrangements by making appropriate amendments to current legislation –

   (i) Grant all covered private sector employees 84 working days of maternity leave, by amending section 3(1) (b) of the Maternity Benefits Ordinance.

   (ii) Remove discrimination against mothers with a third or higher birth by make maternity benefits in the Maternity Benefits Ordinance and in the Shop and Office Employees' Act uniform for all mothers, irrespective of the number of births.

   (iii) Make appropriate amendments to the Establishment Code to ensure conformity with Article 6 of Convention No. 103, by protecting public service employees against termination of employment on the basis of pregnancy, childbirth and consequent illness.

   (iv) Amend the Shop and Office Employees' Act to provide nursing intervals for female workers, which it currently does not provide.

   (v) Incorporate the effect of the above changes in any replacement legislation in event the government changes the current system of employer liability.

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

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

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

5. Government should give consideration in the long term to expand the proposed scheme to cover other workers with the government making a subsidy contribution from general revenue taxation. Alternatively, the government would need to consider establishing a separate scheme financed from public funds, as in Singapore.

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

7. Computerise the ETF system to provide access to member accounts so that employees could check whether the employer is ETF compliant.

With respect to the primary question of the feasibility of introducing a social insurance mechanism, we assess that it will be difficult for the Government of Sri Lanka to introduce a standalone ETF–based scheme – the most feasible option that exists, and that relevant international experience indicates that the political barriers may be almost insuperable. In particular, there is lack of consensus of social partners in favour of such a change in the current arrangements. To the extent that both employers and unions might support such a change, we find that much of this support is based on the expectation that this would shift part of the cost from employers and workers to the state. This expectation is neither realistic in the current context, nor compatible with political and social concerns about equity.

In our assessment, feasibility would be significantly enhanced by combining introduction of such a scheme with introduction of an employment injury insurance scheme, which has been separately proposed. This would improve feasibility by reducing the political and legislative costs, and by making the maternity insurance scheme a secondary benefit to a reform (of employer injury insurance) that has a much more salient political and economic rationale. However, an important caveat is that recent Malaysian experience suggests that even this combination of reforms may be difficult, without strong political leadership.

In the course of this study, social partners brought to our attention that some have expressed the view to the NLAC that an alternative strategy for the country to address the issues of non–compliance is to ratify Convention No. 183. Government counterparts have indicated their interest in Convention No. 183 as a way forward, and have requested our observations in this report on such an option. Although this goes beyond our terms of reference, in deference to these queries, we make the following observations:

(i) Ratification of Convention No. 183 is not relevant to finding a solution for compliance with Convention No. 103, which is the issue that the country faces consequent to its ratification of Convention No. 103.

(ii) However, if social partners do not wish to do away with the current employer liability arrangements, the compliance issue could be rendered moot by the country ratifying Convention No. 183, which provides for greater flexibility and which would nullify the application of Convention No. 103.

(iii) Convention No. 183 would allow the existing employer liability arrangements to be retained, and would present only modest new costs for employers. The critical gap that would have to be met would be extending maternity benefits to 14 weeks (94 calendar days or around 84 working days) for all workers. Table 8 summarizes the requirements that Convention No. 183 would entail, and compares them with those required to achieve compliance with Convention No. 103.

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

(v) Since Convention No. 183 also permits adoption of social insurance mechanisms to provide maternity cash benefits, its ratification does not imply that the ETF scheme proposed above could not still form the basis for financing these benefits in future.

Table 12: Summary of key findings on coverage by types of worker, ILO convention compliance and recommendations

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

Notes:

(a) MBO – Maternity Benefits Ordinance, SOERA – Shop and Office Employees' Remuneration Act

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

Annex

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

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

Source: Report of the Labour Force Survey 2011.

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

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

Source: Report of the Labour Force Survey, 2011.

Table A3: Employed Female Population by Industry Group, 2005 and 2011

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

Source: Report of the Labour Force Survey, 2011.

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

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

Source: Report of the Labour Force Survey, 2011.

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

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

Source: Report of the Labour Force Survey, 2011.

Table A6: Maternity Protection in Selected Countries

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

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

			Government.		
Country	**Maternity Leave**	**Paternity Leave**	**Maternity Benefits**	**Other Benefits**	**Qualifying Conditions**
Thailand	Under the Labour Protection Act, an employer is required to pay an employee up to 45 days of maternity leave. Under the social Security Act, an insured worker is entitled to payment of a work–leave allowance for 90 days.	No paternal leave	Maternity pay under the Labour protection act 100% of wages is paid. Under the Social Security Fund, 505 of wages are paid.	An insured person, or the wife or the de facto partner of the insured, is entitled to medical benefits under the social Security Act as follows: a) medical examinations and child bearing expenses, b) medical treatment expense, c) medicine and medical supplies expenses, d) confinement expenses e) lodging, meals and treatment expenses in hospital f) new–born baby nursing and treatment expenses, g) cost of ambulance or transportation for patients and other necessary expenses.	Under the social Security Act, the mother must be insured and must have paid contributions for not less than 7 months during the period of 15 months before the date of receiving the benefit allowance.
Country	**Maternity Leave**	**Paternity Leave**	**Maternity Benefits**	**Other Benefits**	**Qualifying Conditions**
Philippines	Employees whose entitlement to maternity arises under the Labour Code or the Batas	Paternal leave of 7 days applies only to Solo parents as defined. Solo	Where an employee is entitled to maternity benefits under the Social Security Act, the	No right to nursing breaks or daily reduction of hours of work	Employees covered by the maternity leave entitlements in the Labour code must have rendered

	Kasambahay Act are entitled to maternity leave of at least 2 weeks prior to the expected date of delivery and another 4 weeks after normal delivery. Government employees are entitled to 60 days of maternity leave.	parents must have rendered at least one year's service to qualify.	benefits are financed by the social Security Scheme that consists of employee, employer and government contributions. Where employees are entitled to maternity cash benefits under the labour code, Batas Kasambahay Act or Administrative Code, the cash benefits are financed by the employer.	Identified. However, the Secretary of labour shall in appropriate cases by regulation, require any employer to establish a nursery in a workplace or benefit of women employees therein.	an aggregate service of at least 6 months for the last 12 months to qualify for maternity leave. Kasambahay (domestic helpers) must have rendered at least 6 months service to qualify for maternity leave.
Country	**Maternity Leave**	**Paternity Leave**	**Maternity Benefits**	**Other Benefits**	**Qualifying Conditions**
Japan	Normally a woman may take up to 14 weeks leave commencing up to 6 weeks prior to the anticipated date of birth and finishing 8 weeks after childbirth.	Paternity leave provided.	National Treasury finances one eighth of the cost of childcare leave benefits. The reminder is financed by worker and employer payments to the Employment Insurance Fund.	A woman raising an infant under age one is entitled to two 30 minutes nursing breaks. Basic child care leave allowance of 350,000 yen is paid for the duration of the child care leave period.	To qualify for child care leave allowance, a mother must be insured under the Employment Insurance Act for a total period of 12 months or more within the two year period preceding the day on which the family care leave commenced.
Country	**Maternity Leave**	**Paternity Leave**	**Maternity Benefits**	**Other Benefits**	**Qualifying Conditions**
Sri Lanka	Maternity benefits are made under three conditions 1) Shop and Office Employees' Remuneration Act.	3 days of paternity leave for only Government employees to be taken within 30 days of the birth of the child.	Full pay during maternity leave for workers coming under the Shop and Office Employees' Act, However, the Maternity Benefits Ordinance states 6/7 of the salary	If a woman worker entitled to benefits under the Maternity Benefits Ordinance dies during the period in which she is entitled to claim benefits then the employer must pay the	84 days of maternity leave are granted only for the first two children for employees governed by the Shop and Office Employees' Remuneration Act and those under the maternity

	84 working days (which could be taken as a maximum of 14 days pre–natal and 70 days post–natal leave), working days. <u>2) Maternity Benefits Ordinance</u> Twelve weeks (84 days) which could be taken as a maximum of 14 days prenatal and 70 days postnatal leave calendar days. Maternity leave under Shop and Office Employees Act entitles women to avail maternity benefits of full pay on the following basis; 84 working days leave in respect of the first two live births. 42 working days leave in respect of the third and subsequent births for confinements <u>3) Establishment code</u> 1. Eighty–four working days (which could be taken as 14 days pre–natal leave and 70 days post–natal		to be paid, but in practice the entire salary is paid.	financial benefits due to her to her nominee and if there is no such nominee then to her heir–at–law. Public sector employees are entitled to breastfeeding periods of 60 minutes per day until the child is six months old. The MBO provides for two such periods of 30 minutes In workplaces with facilities provided by the employer, or two–60 minute intervals in other workplaces. The nature and type of breastfeeding facilities are not specified in the MBO or regulations made under the statute. The Shop and Office Employees' Act does not provide for any such periods, and although many employers do provide time for these it is entirely discretionary.	Benefits ordinance. Only 42 days of maternity leave are provided for the third and subsequent births.

	leave). Poya holidays and declared public holidays are added. 2. Further 84 days on half–pay, including intervening holidays. 3. A further 84 days without pay, including intervening holidays.				

Table B1: Projection of Population distribution per age groups, 2011-2020

Age group	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Male										
0–4	961	952	938	922	906	882	866	854	844	832
5–9	906	924	938	947	953	954	948	934	914	895
10–14	798	814	836	858	879	898	915	930	940	945
15–19	810	796	783	777	779	786	802	822	845	867
20–24	824	814	808	801	793	782	768	755	748	750
25–29	868	852	832	811	794	783	775	768	761	751
30–34	821	834	843	845	841	833	818	797	777	760
35–39	715	730	749	768	783	798	810	819	822	819
40–44	698	693	687	685	688	699	714	733	751	767
45–49	660	668	677	682	684	683	678	673	671	675
50–54	609	617	623	628	635	642	650	658	664	667
55–59	494	513	535	555	571	583	590	956	601	609
60–64	415	421	425	433	445	450	478	498	517	533
65+	804	835	867	899	930	962	992	1,021	1,053	1,088
	10,383	**10,464**	**10,540**	**10,612**	**10,680**	**10,744**	**10,803**	**10,858**	**10,908**	**10,955**
Female										
0–4	925	916	903	889	873	850	834	823	813	801
5–9	875	892	905	914	918	920	913	900	881	863
10–14	772	787	808	829	849	868	884	898	907	911
15–19	785	771	759	753	754	762	777	797	819	839
20–24	804	795	789	783	775	764	750	738	731	732
25–29	863	846	825	804	787	775	767	761	754	744
30–34	835	846	853	854	848	839	823	801	780	763
35–39	742	757	776	793	807	821	831	838	740	835
40–44	732	728	723	721	724	734	750	767	785	799
45–49	698	707	717	724	727	727	723	718	716	720
50–54	654	663	670	676	683	692	701	710	717	721
55–59	544	566	590	611	629	642	651	657	664	671
60–64	466	475	483	494	508	525	547	570	591	609
65+	967	1,010	1,055	1,101	1,147	1,192	1,236	1,281	1,329	1,382
	10,662	**10,760**	**10,854**	**10,944**	**11,029**	**11,110**	**11,186**	**11,258**	**11,325**	**11,389**
All										
0–4	1,886	1,868	1,841	1,811	1,780	1,732	1,700	1,677	1,657	1,632
5–9	1,782	1,816	1,842	1,861	1,871	1,874	1,861	1,833	1,796	1,758
10–14	1,570	1,602	1,643	1,687	1,727	1,765	1,799	1,828	1,848	1,856
15–19	1,594	1,567	1,542	1,529	1,533	1,548	1,579	1,620	1,664	1,707
20–24	1,628	1,609	1,597	1,584	1,568	1,545	1,518	1,492	1,478	1,483
25–29	1,731	1,698	1,656	1,615	1,580	1,558	1,542	1,529	1,514	1,495
30–34	1,656	1,680	1,695	1,699	1,689	1,672	1,640	1,598	1,557	1,522
35–39	1,457	1,488	1,525	1,561	1,591	1,619	1,642	1,657	1,662	1,653
40–44	1,430	1,421	1,410	1,406	1,412	1,433	1,464	1,500	1,536	1,566
45–49	1,358	1,376	1,394	1,406	1,411	1,410	1,401	1,390	1,386	1,394
50–54	1,263	1,280	1,292	1,304	1,318	1,333	1,351	1,368	1,381	1,388
55–59	1,038	1,079	1,125	1,166	1,200	1,225	1,241	1,253	1,265	1,280
60–64	882	896	908	926	953	985	1,025	1,068	1,109	1,142
65+	1,771	1,845	1,922	2,000	2,077	2,154	2,228	2,302	2,382	2,469
	21,045	**21,224**	**21,394**	**21,556**	**21,709**	**21,853**	**21,989**	**22,116**	**22,234**	**22,344**

Source: ILO staff calculations

Table B2: Projection of Labour Force distribution per age groups, 2011-2020

Age group	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Male										
15–19	188	186	183	182	184	186	190	196	202	208
20–24	616	609	605	600	594	586	576	567	562	564
25–29	806	792	773	754	738	728	721	715	708	699
30–34	790	802	810	812	808	800	785	765	745	728
35–39	688	703	721	739	753	767	779	787	789	786
40–44	664	660	654	652	655	665	680	697	715	730
45–49	628	635	643	648	649	648	643	638	635	639
50–54	560	567	573	578	584	590	598	605	611	614
55–59	403	420	439	456	470	481	488	494	500	507
60–64	276	280	283	288	297	307	319	333	346	357
65+	267	278	289	300	311	322	333	343	354	367
	5,886	**5,931**	**5,972**	**6,009**	**6,043**	**6,081**	**6,112**	**6,140**	**6,168**	**6,198**
Female										
15–19	90	90	90	90	92	94	97	101	105	109
20–24	326	327	328	329	330	329	327	325	325	330
25–29	350	347	341	336	331	329	329	329	329	327
30–34	337	344	350	354	354	353	349	343	337	332
35–39	335	343	352	361	369	377	383	387	389	388
40–44	352	350	347	346	348	353	360	368	377	384
45–49	352	355	358	360	359	357	353	348	346	345
50–54	285	290	293	297	301	305	310	315	319	321
55–59	199	209	221	232	242	250	257	263	269	275
60–64	105	111	117	124	131	140	150	161	172	182
65+	80	87	95	103	112	121	130	139	149	160
	2,811	**2,852**	**2,893**	**2,931**	**2,968**	**3,008**	**3,044**	**3,080**	**3,116**	**3,154**
All										
15–19	278	275	273	273	275	280	287	297	307	317
20–24	942	935	932	929	924	915	902	891	887	894
25–29	1,156	1,138	1,114	1,089	1,069	1,057	1,050	1,044	1,037	1,026
30–34	1,127	1,146	1,160	1,166	1,162	1,154	1,134	1,108	1,082	1,060
35–39	1,023	1,046	1,074	1,100	1,122	1,144	1,162	1,174	1,179	1,174
40–44	1,016	1,009	1,001	998	1,003	1,018	1,040	1,066	1,092	1,113
45–49	980	991	1,001	1,008	1,008	1,005	996	986	981	984
50–54	845	857	866	874	885	896	908	920	930	935
55–59	601	629	660	688	713	731	745	757	769	782
60–64	381	391	400	412	428	447	470	494	518	539
65+	347	365	384	404	423	443	462	482	504	527
	8,697	**8,783**	**8,865**	**8,941**	**9,011**	**9,088**	**9,156**	**9,219**	**9,284**	**9,352**

Source: ILO staff calculations

Table B3: Projection of Labour Force distribution per LFS age groups, 2011-2020

Age group	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Male										
15–21	397	393	392	391	391	391	392	394	398	406
22–28	1,048	1,029	1,008	987	969	955	944	935	928	922
29–35	1,101	1,115	1,124	1,127	1,121	1,113	1,096	1,072	1,048	1,027
36–42	944	953	964	978	993	1,013	1,036	1,057	1,073	1,080
43–49	891	896	901	905	907	908	907	907	910	920
50+	1,506	1,545	1,583	1,622	1,662	1,700	1,738	1,776	1,811	1,844
	5,886	**5,931**	**5,972**	**6,009**	**6,043**	**6,081**	**6,112**	**6,140**	**6,168**	**6,198**
Female										
15–21	208	208	210	212	214	216	218	221	226	232
22–28	489	485	480	475	471	469	468	467	468	469
29–35	473	482	489	494	495	495	491	484	476	470
36–42	477	482	489	496	504	514	525	536	544	548
43–49	495	497	499	499	499	498	495	493	493	495
50+	669	697	726	756	786	816	847	878	909	939
	2,811	**2,852**	**2,893**	**2,931**	**2,968**	**3,008**	**3,044**	**3,080**	**3,116**	**3,154**
All										
15–21	605	602	601	603	605	607	610	615	624	638
22–28	1,537	1,514	1,488	1,462	1,440	1,424	1,412	1,402	1,395	1,391
29–35	1,573	1,597	1,614	1,621	1,616	1,608	1,586	1,556	1,525	1,497
36–42	1,422	1,435	1,453	1,473	1,497	1,528	1,561	1,593	1,617	1,628
43–49	1,386	1,393	1,400	1,404	1,405	1,406	1,403	1,400	1,403	1,415
50+	2,175	2,242	2,310	2,378	2,448	2,516	2,585	2,654	2,720	2,783
	8,697	**8,784**	**8,865**	**8,941**	**9,011**	**9,088**	**9,156**	**9,220**	**9,284**	**9,352**

Source: ILO staff calculations

Table B4: Projection of Employees in Private Sector Establishments and State Corporations and Statutory Boards per age groups, 2011-2020

Age group	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Male										
15–21	171	169	168	168	168	168	168	169	171	175
22–28	439	431	422	413	406	400	395	392	389	386
29–35	444	450	453	454	452	449	442	432	423	414
36–42	374	377	382	387	393	401	410	418	425	428
43–49	314	316	318	319	320	321	320	320	321	325
50+	513	526	539	552	566	579	592	604	617	628
	2,254	**2,269**	**2,283**	**2,295**	**2,305**	**2,318**	**2,327**	**2,336**	**2,345**	**2,355**
Female										
15–21	93	94	94	95	96	97	98	100	102	104
22–28	197	196	194	192	190	189	189	188	189	189
29–35	166	169	172	174	174	174	172	170	167	165
36–42	160	162	164	167	169	173	177	180	183	184
43–49	144	145	145	145	145	145	144	143	143	144
50+	183	190	198	206	215	223	231	240	248	256
	944	**956**	**967**	**978**	**989**	**1,000**	**1,011**	**1,021**	**1,032**	**1,043**
All										
15–21	264	263	263	263	265	265	267	269	273	279
22–28	636	627	616	605	596	589	584	580	577	575
29–35	610	619	625	628	626	623	614	602	590	579
36–42	534	539	546	554	563	574	587	599	608	612
43–49	458	461	463	465	465	465	464	464	465	469
50+	695	716	737	759	780	801	823	844	865	884
	3,198	**3,225**	**3,250**	**3,273**	**3,294**	**3,318**	**3,338**	**3,357**	**3,377**	**3,398**

Source: ILO staff calculations

Table B5: Projection of Population Covered by ETF per age groups, 2011-2020

Age group	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Male										
15–21	397	393	392	391	391	391	392	394	398	406
22–28	1,048	1,029	1,008	987	969	955	944	935	928	922
29–35	1,101	1,115	1,124	1,127	1,121	1,113	1,096	1,072	1,048	1,027
36–42	944	953	964	978	993	1,013	1,036	1,057	1,073	1,080
43–49	891	896	901	905	907	908	907	907	910	920
50+	1,506	1,545	1,583	1,622	1,662	1,700	1,738	1,776	1,811	1,844
	5,886	**5,931**	**5,972**	**6,009**	**6,043**	**6,081**	**6,112**	**6,140**	**6,168**	**6,198**
Female										
15–21	208	208	210	212	214	216	218	221	226	232
22–28	489	485	480	475	471	469	468	468	468	469
29–35	473	482	489	494	495	495	491	484	476	470
36–42	477	482	489	496	504	514	425	536	544	584
43–49	495	497	499	499	499	498	495	493	493	495
50+	669	697	726	756	786	816	847	878	909	939
	2,811	**2,852**	**2,893**	**2,931**	**2,968**	**3,008**	**3,044**	**3,080**	**3,116**	**3,154**
All										
15–21	605	602	601	603	605	607	610	615	624	638
22–28	1,537	1,514	1,488	1,462	1,440	1,424	1,412	1,402	1,395	1,391
29–35	1,573	1,597	1,614	1,621	1,616	1,608	1,586	1,556	1,525	1,497
36–42	1,422	1,435	1,453	1,473	1,498	1,528	1,561	1,593	1,617	1,628
43–49	1,386	1,393	1,400	1,404	1,405	1,406	1,403	1,400	1,403	1,415
50+	2,175	2,242	2,310	2,378	2,448	2,516	2,585	2,654	2,720	2,783
	8,697	**8,784**	**8,865**	**8,941**	**9,011**	**9,088**	**9,156**	**9,220**	**9,284**	**9,352**

Source: ILO staff calculations

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