MATERNITY PROTECTIONIN CAMBODIA

ACTION NEEDED FOR MORE INCLUSIVE AND COMPREHENSIVE MATERNITY PROTECTION AND INCOME SECURITY FOR ALL WOMEN

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SUMMARY

Effective and gender responsive maternity protection, from pregnancy to beyond childbirth, contributes to reduction of maternal and child mortality, enhances income security of the family, allows better distribution of care among parents or other care providers, and it helps to ensure women's access to equal opportunity and treatment in the workplace.

Maternity protection also helps to better manage women's reproductive roles and employment. It contributes to gender equality and dismantles barriers which prevent women from obtaining financial and economic independence and realizing their social and political rights.

Cambodia has ratified some international laws and signed on to international conventions that establish the right to maternity protection, and it's Labour laws and Constitution guarantee the rights to maternity protection. However, the country has not ratified the ILO Maternity protection Convention, 2000 (No. 183). It's current laws do not fully meet that Convention's standards and more than **95% of women in the workforce**[1], working in the informal economy, cannot benefit from the country's maternity protection scheme.

Cambodia's workforce is characterized by high levels of informality and vulnerability with 93.1% of the total workforce being in the informal economy[2]. The proportion of women in informal employment in all sectors is larger than the proportion of men. Outside agriculture, **3 out of every 5 informal economy workers are women**, showing that men are more easily able to find paid jobs in formal employment than women[3]. Women working in the informal economy, including own account workers, employees holding informal jobs, domestic workers, casual and home workers, farm workers, women who perform care work, sex workers, are excluded from the legal provision on maternity leave, are not protected against discrimination due to pregnancy and maternity, and are at risk of high work-related hazards.

This brief presents the main findings and results of a study conducted by Oxfam on the legal and practical challenges involved in ensuring maternity protection in Cambodia through the prism of Maternity protection Convention No. 183 (2000), and Recommendation No.191 (2000). The brief aims to share insights on what can be done to ensure more inclusive maternity protection for all women, including those working in the informal economy, in line with the international standards.

CAMBODIA MATERNITY AND LABOUR STATS:

- **Fertility rate:** 2.45 (2020), (source: UN)
- **Adolescent fertility rate (births per 1,000 women ages 15-19):** 50.72 (2018), (source: World Bank)
- **Teenage mothers (% of women ages 15-19 who have had children or are currently pregnant):** 12 % (2014) (source: UNFPA)
- **Maternal mortality ratio (modelled estimate, per 100,000 live births):** 160 (2017), (source: World Bank)
- **Births attended by skilled health staff (% of total):** 89% (2014), (source: World Bank)
- **Pregnant women receiving prenatal care (%): 95.3% (2014) (source:** World Bank)
- **Physicians per 1,000 people:** 0.193 (2014), (source: World Bank)
- **Labour force participation rate:** 76.91% female (2017), 86.84% male (2017), (source: World Bank)
- **Vulnerable employment:** 93.1% of total workforce employed in informal economy, (source: ILO)
- **Time spent in unpaid care work:** 188 minutes per day by women, 18 minutes per day by men, (source: ILO)
- **Minimum monthly wage:** 192 USD for the workers in textiles and footwear industry, (source: MoLVT)
- **Women Representation in National Parliament:** 10 of the 62 seats in the Senate (16.7%) and 27 of the 125 seats in National Assembly (21.6%) were held by women in 2021, (source: IPU Parline)



1 ILO. (2018). Women and men in the informal economy - A statistical picture. Third edition. Geneva
2 Ibid.
3 ILO. (2006). Decent Work for Women and Men in the Informal Economy: Profile and Good Practices in Cambodia. Geneva



KEY FINDINGS

The maternity protection scheme in Cambodia is composed of two cash benefit components (paid by employer and social insurance), medical services, maternity leave and other measures provided to women during maternity period and covers **only those employed in the formal economy.** These components are financed by the social insurance fund and employers' liability. The Cambodian Government also provides a conditional cash transfer scheme for pregnant women and new mothers through the poverty identification and registration system (IDPoor) to benefit poor women and children and improve access to health services.

According to the Cambodian Labour law, only women who have completed one year of continuous service are entitled to maternity leave and cash benefits.
Based on the Labour law, women are entitled to 90 days of maternity leave which is shorter than the minimum 14 weeks of leave set out by the Convention No. 183. Maternity leave is meant to protect the health of a woman and her child during the perinatal period.

Lack of paternity leave contributes to inequal distribution of childcare and exacerbates gender inequalities. The lack of paternity leave or parental leave provisions reinforces the traditional family structure where women are the main care giver and are solely responsible for childcare. In the absence of paid paternity leave, Cambodian fathers are compelled to take the 7 days special leave, allowed by the Labour Law for family events, as paternity leave. In order to be gender transformative, maternity protection should extend to fathers, allowing both parents to take time off to care for their child, and enable mothers to recover after delivery without worrying about their income security. This is an important tool to reduce gender inequality and sharing the responsibility of care work between men and women.

CONVENTION NO.183 AND RECOMMENDATION 191 (2000) MAIN ELEMENTS

- **14 weeks maternity leave:** the woman's right to a period of rest from work in relation to pregnancy, childbirth and the postnatal period;
- **Cash and medical benefits:** the mother's right to cash benefits during her absence for maternity and health care related to pregnancy, childbirth and postnatal care;
- **Access to free medical care:** including prenatal, childbirth and postnatal care, as well as hospitalization when necessary;
- **Health protection at the workplace:** the right of pregnant or nursing women not to perform work prejudicial to their health or to that of their child;
- **Employment protection and non-discrimination:** guarantee of the woman's employment security and the right to return after her maternity leave to the same job or an equivalent one.
- **Breastfeeding:** a minimum of one hour per day to help workers breastfeed or express milk at the workplace.

Source: ILO. (2021). Maternity protection resource package - From aspiration to reality for all, Module 1: Maternity protection at work: What is it?. Geneva

4 ibid
5 Shahra Razavi. (2016). Redistributing unpaid care and sustaining quality care services: A prerequisite for gender equality. UN Women. Policy Brief No. 5.



The lack of maternity protection for informal economy workers leaves many women unprotected during maternity. Cambodia's economy is characterized by high number of small and medium enterprises, many of which are not registered and go unregulated. When not protected by maternity protection, pregnancy can become a heavy burden on women working in the informal economy. The demands of earning an income and care for children place pressure on pregnant women to work less hours or leave the workforce, thus losing income. Additionally, without maternity protection many women are forced to go back to work too soon after childbirth, putting themselves and their babies at significant risks [4]. Most women are pushed into these situations because they need the income, thus they cannot afford to take time off or are scared to lose their jobs. This lowers their labour market attachment, and reduces the opportunities for quality jobs they can access (this is called the "motherhood penalty") .[5]



Maternity cash benefits are only available for women working in the formal working arrangements. The maternity cash benefits are the core component of the maternity protection to ensure income security during last stages of pregnancy, childbirth and recovery. The cash support should provide a minimum income security for women and their families. The Cambodian system provides two maternity cash benefits through the social insurance and employers liability financing schemes. The first component of the benefit is calculated at 50 per cent of the average wage of the employee paid during the last 12 months by the same employer. The second component of the maternity benefit, i.e., the so-called daily allowance, is paid at the rate of 70 per cent of the worker's daily average wage during the 90 days of pre-natal and post-natal leave and only to those women who contributed to the National Social Security Fund (NSSF) for at least 9 consecutive months. Convention No. 183 discourages reliance on employer liability as it may entail disincentives for employers to hire, retain and promote women workers. In addition to this scheme, women who possess IDPoor Cards can access the social assistance cash transfer scheme for mother and child. Women in the informal economy, who do not meet the minimum IDPoor requirements are however excluded from the scheme and are left particularly vulnerable to the risks of income insecurity.



The Cambodian Constitution prohibits employers from firing workers due to pregnancy (Article 46), but it does not address pregnancy based discrimination in hiring or the failure to renew a pregnant worker's contract. Similarly, while the Labour law prohibits discrimination on the grounds of sex, it does not explicitly address pregnancy-based discrimination. The lack of explicit anti-discrimination legislation on the grounds of pregnancy, leave many women vulnerable to dismissal or nonrenewal after their fixed duration contracts expire. Additionally, the legislation puts the responsibility to prove the discrimination on the workers, rather than the employer[6]. Important regulations in line with the Convention No. 183 are still missing in the Labour law legislation: including explicit prohibition of discrimination in case of pregnancy and breastfeeding and prohibition from requiring a test or certificate for pregnancy when a woman is applying for employment. For women working in the informal economy, there is limited and very little recourse against discriminatory practices linked to maternity.



Despite the impressive economic growth that the country has seen in the last decade, low income families do not have access to qual, affordable and available childcare facilities. Most daycare centres are located in urban areas, often private and expensive, while public daycare centers as rare. Low income families face many challenges in finding accessible and affordable services, either due to the long distance, transportation costs, inconvenient opening hours or availability and quality of services. As a result, many women stop working in order to care for their children or have to find alternative childcare solutions, like seeking support from relatives and family members.

The provision of affordable, accessible and quality childcare facilities by the public sector [...] has the potential to deliver what UN Women has referred to as the "triple dividend" by:

a) Facilitating women's labour force participation;

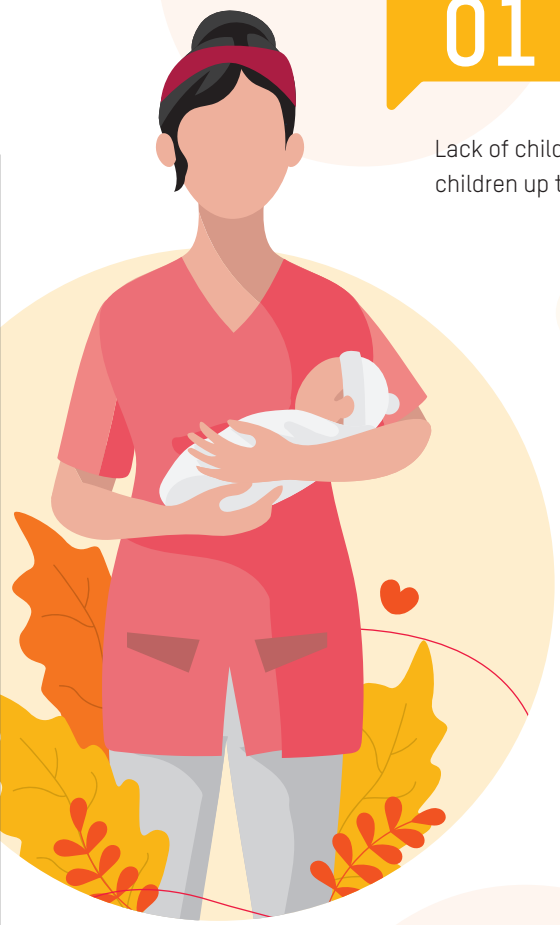
b) Enhancing children's capabilities;

c) Creating decent jobs in the care sector.

Source: UN Women. Policy Brief No. 5.

6 ILO. (2006). Decent Work for Women and Men in the Informal Economy: Profile and Good Practices in Cambodia. International Labour Organisation. Geneva.

SOME OF THE GAPS OF THE CURRENT SYSTEM INCLUDE:



01

Lack of childcare leave and childcare benefits for children up to 3 years of age.

02

Labour legislation stipulates that enterprises of more than 100 female employees must establish childcare centres at their sites or cover expenses of day care services, nonetheless, compliance is low and workers have difficulties in bringing their infants to work. This service is only available for children from 18 months of age, meaning that mothers who are entitled to merely 90 days (3 months) maternity leave would need to arrange childcare elsewhere for the remaining 15 months.

03

Small and medium enterprises (with less than 100 female employees) are exempted from the obligation to cover expenses pertaining to childcare services.

04

Informal workers do not have access to the same entitlements as formal workers.

Investing in childcare services is essential to support gender equality, women's empowerment and economic development. If the care responsibility is better distributed from family and personal matter to the state and community responsibility and from being only a women's responsibility to becoming both men and women's responsibility, it can have a significant impact in the ability for women to engage in the labour market, to earn a decent income, as well as equalizing gender relations both at home and in the public.

IMPLICATIONS AND POLICY RECOMMENDATIONS

The Cambodian Government has demonstrated a commitment to addressing the needs of workers by enacting measures to protect women workers before, during and after pregnancy, to promote child health in the workplaces, as well as balance paid employment with maternity and childcare responsibilities. While some of these policies have fallen short and gaps continue to exist, they provide insight into how policies can be improved and adapted.



Efforts must be made to ratify the Convention No. 183 and its corresponding Recommendation No.191. The ratification is indispensable to ensure that all women are protected before, during and after maternity. In line with the ILO standards, maternity protection allows all women to take time for rest and recovery, it promotes economic empowerment and income security, it protects women's health at work, and it promotes mother's and the child's health.

The Cambodian Government should increase paid maternity leave to at least 98 days (14 weeks) as recommended by the Convention N.183. Pregnancy, childbirth and the post-natal period are three phases in a woman's reproductive life in which special health risks exist and special workplace protections are needed. In every pregnancy, there is a period during which it is medically inadvisable for a pregnant or postpartum woman to work. Medical consensus suggests that for uncomplicated pregnancies, health-related maternity leave may be required two to six weeks before the estimated date of birth. The Labour Law should be amended to include a minimum of 6 weeks mandatory post-natal leave within the 98 days. Maternity leave after childbirth is crucial for both maternal and infant health. The first days after childbirth pose substantial health risks for the mother and the infant, and it's important to guarantee healthy recovery after childbirth.

Efforts should be made to introduce paternity leave that would alleviate the childcare responsibility on mothers. This should be differentiated from the current 7 days special leave, which fathers can use for family events (death, birth, marriage, etc). The duration and rules of the paternity leave should be identified in collaboration with relevant stakeholders (i.e., the government agencies, employer's organizations, Trade unions and CSOs). As a starting point, the following can be considered based on ILO recommendation: (a) mandatory 14 days paternity leave; (b) 14 days after birth, with a provision of flexible use according to the couple's needs.

With regards to employment liability, efforts must be made to move away from full employer liability systems and include maternity cash benefits under national social insurance scheme. The Cambodian system finances maternity benefits through employers' liability. This can result in hesitation to hire women, as the maternity benefits are exclusively paid by the employer. Moreover, micro and small enterprises have lower capacity to take on the cost of paying maternity benefits than large enterprises. With a social insurance scheme however, this situation can be avoided.

Efforts should be made to reduce the 9 months requirement of contributing to the National Social Security Fund (NSSF) in order to receive maternity cash benefits. This will allow a larger number of women to quality for the benefits and create a more inclusive and supporting environment for working mothers."

Any new voluntary social insurance schemes should include maternity protection provisions. The government is planning to approve a new law on voluntary social insurance for own account workers, which only includes health care and pensions. The scheme should also include maternity protection. Such contributory scheme should be adapted to the contributory capacities of workers. As the income of informal workers varies and is often unpredictable, it is recommended to finance the scheme through a fixed contribution rate and be partly subsidized by government in order to motivate people to enrol into scheme and thus ensure higher participation rates.

Extending childcare services for workers, including from the informal economy, as a component of social protection system. A comprehensive childcare framework as part of the social protection system should be considered to ensure adequate, affordable and quality childcare for workers in both formal and informal working arrangements. Providing childcare can improve short and long term income security for women, lead to recognition and redistribution of care and at the same time benefit children's cognitive growth and development. Such efforts should rely on principles of solidarity and gender equality with employers' share of contributions spread across all employers according to total workforce size/payroll, rather than on the basis of the number of only female employees.

Legal prohibitions of discrimination of women on the grounds of pregnancy at all stages of employment should be strengthened. In addition, the burden of proof in such discrimination cases should be shifted onto employers as advised in the ILOs Maternity protection Convention of 2000.

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