

# **IBFAN Statement**

## ***Maternity Protection at Work***

*IBFAN believes that breastfeeding is a collective right of women and children. IBFAN calls upon governments to make maternity protection legislation effective by extending it to all women and ensuring services, including paid leave and adequate number of nursing breaks.*

International Baby Food Action Network (IBFAN), established in 1979, consists of more than 250 public interest groups working around the world to reduce infant and young child morbidity. IBFAN aims to improve the health and well-being of babies and young children, their mothers and their families through protection, promotion and support of breastfeeding and optimal infant feeding practices. IBFAN works for universal and full implementation of the International Code and Resolutions. IBFAN is the recipient of the 1998 Right Livelihood Award.

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## IBFAN Statement: Maternity Protection at Work

IBFAN believes that all women have the right to enjoy a safe and healthy maternity and to make informed decisions about their infants' and young children's feeding – including full support to exclusively breastfeed for the first 6 months and to continue breastfeeding until their child is 2 years or more<sup>1</sup>. While maternity and breastfeeding are natural processes, they are particularly threatened by afflicting circumstances such as poverty and gender-based discrimination, as well as by work situations. The world over, women face institutional and societal discrimination that often result in fear or coercion – impacting directly upon their health, nutritional and educational status, their reproductive rights to decide freely and responsibly of the number and spacing of their children, as well as the means and ways of feeding them. This is particularly manifest among poor women who are, in general, the most vulnerable of all women.

Breastfeeding is a collective right of both women and children; it falls within the framework of women's "reproductive rights" developed at the United Nations International Conference on Human Rights (1968) and re-endorsed over the years in several other international instruments<sup>2</sup>. From a human rights perspective, this means that the State – the primary duty bearer – is under the obligation of enabling all women to enjoy their reproductive rights to safe maternity and optimal breastfeeding. The State thus bears the responsibility to ensure that **all women**, whatever their economic or educational status, their age or marital status, have adequate and affordable access to information concerning reproduction and contraception, to quality nutrition, to health care services during pregnancy and lactation, to safe birthing practices, as well as to infant feeding counselling and assistance.

IBFAN adheres entirely to this reproductive rights perspective. However, IBFAN also recognizes that **working women** face specific challenges – and even more so if they are breastfeeding –, and that maternity protection at work also needs to be translated at national level into strong protective labour-specific legislation. Indeed, since the 1990s, IBFAN's work on maternity protection has centred almost exclusively on the protection of working women. Thus from a human rights perspective, maternity protection at work has meant so far for IBFAN, securing the rights of all working women (the *rights holders*), through the obligations of the State (the *duty bearer*) to respect, protect, and fulfill these workers' rights. At the same time, employers too have the responsibility to respect their

workers' rights by complying with national legislation or other regulations and agreements.

Concretely, this means that the State must make sure that working women enjoy, over and beyond the reproductive rights mentioned above, a period of rest before and after birth (maternity leave), income security and the guarantee of reintegrating their job after the period of leave, protection from all forms of discrimination related to their reproductive role, sound breastfeeding counselling for breastfeeding initiation and continuation, a supportive environment enabling to follow World Health Assembly (WHA) recommendations regarding optimal infant and young child feeding practices, as well as flexible working time.

This position paper discusses IBFAN's conception on what we mean today by "maternity protection at work". It also presents how we view our way forward.

### WHY PROTECT WORKING WOMEN SPECIFICALLY DURING MATERNITY?

Women are generally defined by and hold a double role, that of *reproducing society* (maternity), and of *producing for society* (work)<sup>3</sup>. For IBFAN these two roles are, together, the means of women's empowerment and emancipation. However they often stretch women's capacity by pulling them in two opposite demanding directions that too frequently lead to exhaustion, ill health and stress – with negative outcomes for all concerned.

Women's reproductive role includes pregnancy, giving birth, caring for and nurturing their newborn, including through breastfeeding, for periods of several months to several years. During much of this time, women need additional support such as medical follow-up and care, adequate foods, assistance and counselling, support to reduce stress and rest to replenish energy.

Women have also always participated in producing goods and in caring for the group they belong to – cooking, gathering and growing foodstuffs, weaving material, and, in more recent times, working, often outside of the home, for pay. The 20<sup>th</sup> century has finally made visible the worldwide phenomenon of women's double workday. Statistics show that overwhelming proportions of women hold two jobs, the unpaid domestic work that is generally not even acknowledged or valued as work, and the "real" paid work at a "workplace" often other than the household.

Today, the numbers of women working for pay outside of their homes are higher than ever. Moreover, globally, the children of working mothers are significantly younger than in previous decades.

<sup>1</sup> 54<sup>th</sup> World health Assembly: WHA54.2, Resolution on Infant and young child nutrition

<sup>2</sup> To name but a few: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979), the Convention on the Rights of the Child (CRC, 1989), the ILO conventions on Maternity Protection (No. 183, 2000), on Social Protection (2012) ([http://www.ilo.org/wcmsp5/groups/public/@dgreports/@gender/documents/genericdocument/wcms\\_114221.pdf](http://www.ilo.org/wcmsp5/groups/public/@dgreports/@gender/documents/genericdocument/wcms_114221.pdf)).

<sup>3</sup> Some women with access to family planning methods opt not to take up their reproductive role.

In order for women to accomplish their two main roles with relative ease, they need maternity protection at work and are entitled to it.

### WHAT DO WE MEAN BY “MATERNITY PROTECTION AT WORK”?

Maternity protection measures at work promote gender equality and contribute to dismantling barriers which prevent women from obtaining economic autonomy on an equal footing with men. It means defending women’s rights to work, to choose their job and to keep it. It also means that women are entitled to work in dignity, and to benefit from decent work conditions that bar out discrimination and discriminatory practices based on their sex and their reproductive role. It signifies fair salaries that meet their basic needs as well as those of their family – including when they are temporarily not producing goods or services because they are procreating children and caring for them.

Maternity protection also means that mothers – and their babies – are entitled to safety at work and to healthy surroundings at the workplace. It stands for allowing new mothers to take an adequately paid maternity leave from work that is long enough to ensure their own health and rest and the healthy beginnings of their child – at least enough time to bond with him or her, to establish a sound breastfeeding routine and to follow WHA recommendations concerning 6 months of exclusive breastfeeding. Women also have the right to work in an environment that facilitates breastfeeding when they return to work and thus are entitled to breastfeeding breaks and to breastfeeding facilities at the place of work.

### WHICH INSTRUMENTS FAVOUR MATERNITY PROTECTION AT WORK?

In a society that upholds human rights, implementing maternity protection measures is the State’s obligation. In other words, the collectivity ensures that maternity protection measures are adopted and enacted, and that women duly benefit from them. Legislative measures are those most commonly in use to ensure this. It follows that the citizens, including the employers and the workers, also have to perform their specific duties and obligations concerning the legislation in place.

Since the 1880s, the vast majority of States worldwide have taken measures to safeguard maternity, and today practically all countries of the world have legislated to protect at least some categories of their working women. Only a few countries still leave maternity protection entirely in the hands of the individual parents. **National legislation** is therefore the first and basic means of protecting working women and their families. For this reason, it is necessary for maternity protection advocates to know their laws and to engage in strengthening them.

In parallel, several **global instruments** establish the obligation of States to protect mothers and parents in their maternity and parenting roles and have provided minimum global standards for national laws. In 1919, the first **ILO maternity protection convention** (C3, 1919) was adopted by the tripartite ILO conference, and since then two more conventions on the same issue (C103, 1952; and C183, 2000), as well as two recommendations (R95, 1952; and R191, 2000) have been adopted. Each of them entitles women workers to a larger range of rights than its predecessor; and the recommendations show the way towards even stronger protective measures. Countries that have ratified an ILO convention have the obligation to adapt and implement their national legislation to meet at least the ILO standards defined in that convention; and all other Member states are expected to improve their legislation over the years so as to be in a position to ratify the convention in due time. **Other ILO conventions** (and recommendations) also relate to specific elements pertaining to maternity protection – for example, social security (C102, 1952; C118, 1962; C157, 1982; R202, 2012), domestic workers (C189, 2011), non-discrimination (C111, 1958), health at the workplace (approximately 40 conventions) – and should also be taken into account.

Amongst the human rights instruments, **CEDAW** in 1979 adopted several measures aiming for the protection of maternity and specifically of maternity protection for working women (Art.11.1.f & 11.2.a-d). And in 1989, the **CRC** stipulated the right of the child to adequate nutritious food (Art.24.2.c), the right of the mother to pre- and post-natal care (Art.24.2.d), and the rights of parents to measures assisting them in their work and parental responsibilities (Art.18.2) and to material assistance and support (Art 27.3). Almost all countries of the world have ratified these two conventions and are therefore obliged to comply by them.

**Other global documents**, which focus more specifically on breastfeeding, also advocate for maternity protection at work. The two *Innocenti Declarations* (1990, 2005) elaborate on four operational targets to promote, protect and support breastfeeding, the fourth of which urges States to enact imaginative maternity protection legislation protecting the breastfeeding rights of working women. In 1995, the *Beijing Platform for Action* underlined the numerous areas where women at work need protection, as well as the specific actions to be led by government and other actors to meet these needs. In 2002, the WHO *Global Strategy on Infant and Young Child Feeding* insisted in several paragraphs on the importance of strong protective maternity legislation for working women, enabling them to balance their work and family responsibilities. As for the *Millennium Development Goals*, Goal 1 (eradicate extreme poverty), Goal 3 (promote gender equality), Goal 4 (reduce infant mortality), and Goal 5 (improve maternal health) are

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all relevant to maternity protection in general, as well as to maternity protection at work.

Within a given country, **collective bargaining agreements** are signed between concerned parties (employers, trade unions) of a branch of activity, or a group of enterprises, or a firm. These agreements have to meet, at the minimum, the provisions of national legislation; but they can be stronger. At this level too, maternity protection regulations can be included.

### WHO BENEFITS FROM MATERNITY PROTECTION AT WORK?

Everyone benefits from measures protecting maternity at the workplace. The mother and her baby are healthier and happier, more rested, less stressed and more focused on each other. The entire family manages more smoothly the arrival of the newborn, accepting it more wholly and often learning to take on new roles. Employers too find various advantages: their financial input is compensated by a contented workforce, by increased production, less turnover, less absenteeism and increased loyalty. As for the State, the added value includes lower health costs, a decrease in morbidity and mortality rates, an overall healthier population, increased social and economic peace and welfare and a more egalitarian attitude towards gender relations. By protecting its female workers and fulfilling their maternity rights, the State contributes to developing its own wealth and the wellbeing of its people.

### THE BASIC ELEMENTS OF MATERNITY PROTECTION THAT IBFAN STANDS FOR

IBFAN adheres to all of the following provisions and advocates for them, **as a whole**, in national legislation and other instruments:

#### Maternity protection measures concerning all women:

- *Maternity protection provisions should cover all women, including both non-working and working women; amongst working women, maternity protection should include those working in both the formal and the informal economy.*

Worldwide, an overwhelming majority of women are not included in maternity protection legislation. This is clearly the case of non-working women. Amongst working women too, large numbers are excluded because of their category of work (domestic work, agriculture), or because they are not declared officially (informal workers), or because they work part-time, or because they are independent, or because they have not worked for the same employer long enough. Steps need to be taken *everywhere* to extend protection to all categories of women, with special attention to the most vulnerable of all, those living below the poverty line, and those in the informal economy, in domestic service and in agriculture.

- *Maternity protection should cover affordable access to adequate nutrition based on food diversity and to quality health care services, including nutrition and breastfeeding counselling. Such services should be provided through the development of innovative schemes such as, for example, food or cash transfers, local health care insurances and mutual, counselling as part of public health care, etc.*

#### Maternity protection measures specific to working women:

- *Maternity leave (and adoption leave) should be of at least 26 weeks, including a period of compulsory leave of 6 weeks after birth; added to these, there should also be 4 weeks compulsory leave before birth, making the total leave at least 30 weeks long (the remaining non-compulsory period should be taken at the mother's convenience). Such a leave allows mothers to follow WHA recommendations regarding 6 months of exclusive breastfeeding, as well as to rest before giving birth, and after birth, to rest and bond with their infant.*
- *Paid paternity leave of at least 5 days should be given to fathers at the time of birth so as to fully support their partner and bond immediately with the newborn.*
- *Both parents should be entitled to a period of paid parental leave of several months – with the guarantee of returning to their original post. Such leave should be shared by both parents in order to encourage fathers' involvement in family life, care and responsibilities.*
- *Maternity leave should be paid for the full duration of the leave at the rate of 100% of the worker's average salary over the past year. It should be paid by the State (social security, social insurance) rather than by the employer, to avoid discrimination against female workers of reproductive age. Parental leave should be supported with sufficient income benefits to allow for decent living conditions.*
- *Medical expenses related to maternity should be covered by national insurance: pre- and post-natal visits, professional assistance/hospitalization at birth, breastfeeding counselling, medication, transportation.*
- *All work that is potentially dangerous to the health of the mother, the foetus or the baby should be forbidden for pregnant and breastfeeding workers. Workers should be transferred to another post in case of danger, or stop working temporarily (with pay) if a transfer is not feasible. Moreover, all work that exposes the male or female worker of reproductive age to substances or particles potentially harmful to their reproductive functions, should be forbidden or modified so that such exposure ceases.*
- *At the end of her maternity leave, the worker should have the guarantee that she will return to the same or*

*an equivalent post, without loss of pay or of other benefits (seniority, etc.).*

- *She should not be dismissed during her pregnancy, her maternity leave and for a determined period after the end of her leave (and at least while she is still breastfeeding).*
- *In the case of dismissal, the employer carries the burden of proof concerning the reason of dismissal.*
- *A female worker in age of reproduction should not be discriminated against because she is or may be, pregnant or breastfeeding. An employer should not request a pregnancy test or proof of sterility, either before or during employment except in very specific cases where the job itself may jeopardise the health of the worker and/or of her foetus or breastfeeding baby.*
- *Breastfeeding workers should be entitled to daily paid breastfeeding breaks of at least 2x30-minutes (or to a shorter workday) for the whole duration of breastfeeding. This time should be considered work-time and thus be paid by the employer.*
- *Breastfeeding facilities should be set up at the workplace or the crèche of the enterprise.*
- *The State should ensure that employers develop, in consultation with their female workers, family-/baby-/child-friendly policies that enable workers, both female and male, to balance their work and family responsibilities: written policies, information sharing, flexible schedules, home work, in-house crèches and children's rooms, job sharing, daytime scheduling of meetings, longer breastfeeding breaks, etc.*

***These elements are all part of a whole and should be considered in their entirety, not separately.***

## CONCLUSIONS

IBFAN supports the global human rights statements and instruments at the basis of just and equitable protective labour legislation everywhere, and it commits to defending the full rights of working mothers at all levels of society and in all societies. It thus works actively to support

governments, communities, workplaces as well as individuals and families towards implementing and enjoying **maternity protection measures for all working women.**

Though maternity protection legislation for working women differs from one country to the other, it still needs to be improved everywhere. In numerous countries scope is much too narrow and qualification criteria too strict, thus excluding large groups of workers; in many others, legislated maternity leave is too short or not adequately remunerated, or not for the full period of leave; in still others, breastfeeding breaks simply do not exist... In advocating for improved maternity protection as a working woman's right, the various specific goals have to be prioritized, based on the national or local urgency or feasibility with which they can be met. Analysing the situation will help IBFANers and their allies decide how best to protect working women during maternity and breastfeeding.

However, IBFAN's mission goes far beyond improving the maternity protection measures of female workers alone. The network has come to the point where it needs to widen its purview in this field, to reflect upon and defend the **reproductive rights of all women** during maternity and lactation. All women, be they working women or not, be they accounted for or not as part of the active population, be their work officially considered of value or not by the State, be they married or single, be they rich or be they poor, have maternity rights and the right to their enjoyment. This is the direction that IBFAN will take in future: from now on, we will be making the obvious step forward – from advocating for “maternity protection at work” to advocating even more urgently for “maternity protection for all women”.

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