Memorandum

To: [Redacted]
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Date: June 20, 2015

I. Introduction

Adequate and sufficient maternity leave, coupled with appropriate accommodations on return to work, are essential to women’s physical and psychological wellbeing after giving birth. Further, maternity leave is linked to improved infant health, with research indicating that paid maternity leave leads to higher rates of breastfeeding, “lower infant mortality, higher rates of immunizations and health visits for babies, and lower risk of postpartum depression.” Ensuring access to maternity leave also has knock-on benefits for society and industry, leading to greater income taxes and a stronger workforce with less absenteeism and drop out. This memorandum outlines the international and regional framework relating to maternity benefits and provides country illustrations of best practices.

II. International Framework Relating to Maternity Benefits

International treaties and guidelines promote paid maternity, paternity, and family leave, and advocate for measures to prevent discrimination against caregivers. In particular, international law affirms the global consensus that the provision of maternity leave is essential to promote gender equality and to protect women’s human rights. This section provides the overarching international framework of treaties and conventions that illustrate Sri Lanka’s binding obligation to institute adequate and sufficient paid maternity leave. The section also compiles international standards and declarations that, while not binding, provide further detailed guidance for implementing maternity and paternity leave in national policy. While the section focuses on international provisions relating to maternity leave, it is important to note that treaty body committees interpret these provisions to call for paternity, parental,

and adoption leave,\(^6\) consistent with promoting women’s participation in the labor force and the sharing of care responsibilities between women and men.

### A. International Treaties and Conventions

The foundational Universal Declaration on Human Rights\(^7\) states that “[m]otherhood and childhood are entitled to special care and assistance.”\(^8\) More specifically, the International Covenant on Economic, Social and Cultural Rights\(^9\) encourages “special protection” for mothers “during a reasonable period before and after childbirth.”\(^10\) During such time, “working mothers should be accorded paid leave or leave with adequate social security benefits.”\(^11\) The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),\(^12\) in its preamble, calls on states to recognize “the social significance of maternity” and ensure that “the role of women in procreation”\(^13\) is not a basis for discrimination. The Convention also calls on states to recognize that the “upbringing of children requires a sharing of responsibility between men and women and society as a whole.”\(^14\)

International law clearly contemplates special measures before, during, and after maternity to assure women’s fundamental human right to work\(^15\) and to be free from discrimination.\(^16\) The right to work is often linked with other fundamental rights such

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\(^6^\) Human Rights Watch, supra note 4 (citing UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), concluding observations on country reports of Denmark CEDAW/C/DEN/CO/7, ¶¶ 26–27; Japan, CEDAW/C/JPN/CO/6, ¶¶ 47–48; Switzerland, CEDAW/C/CHE/CO/3, ¶¶ 37–38; Germany, CEDAW/C/DEU/CO/6, ¶¶ 37–38), Canada, CEDAW/C/CAN/CO/7, ¶ 6; Belgium, CEDAW/C/BEL/CO/6, ¶ 13–14; the United Kingdom, CEDAW/C/GBR/CO/6, ¶¶ 286–287; Sweden, CEDAW/C/SWE/CO/7, ¶¶ 26–27; and France, CEDAW/C/FRA/CO/6, ¶¶ 26–27).


\(^8^\) Id. art. 25(2).


\(^10^\) Id. art. 10(2).

\(^11^\) Id.


\(^13^\) Id. Preamble.

\(^14^\) Id.

\(^15^\) See UDHR, art. 23, “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”; see also International Covenant on Economic, Social and Cultural Rights, art. 6(1), “The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”

\(^16^\) See, e.g., CEDAW, art. 11(1)(d) (requiring states to guarantee “the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value”).
as the rights to life, identity, privacy, and dignity, and the rights to “equality, the highest attainable standard of physical and mental health, an adequate standard of living, the right to social security and/or social assistance, freedom of movement, freedom of association, and the rights to privacy and family life.”

Coupled with this human right to work, international law also recognizes a right to be free from discrimination based on gender in securing and maintaining employment, and obligates states to ensure this right. CEDAW requires states to take all appropriate measures to eliminate discrimination against women in employment, thus ensuring “the right to work as an inalienable right of all human beings.”

To safeguard these rights to work and to be free from discrimination, states have a positive obligation to provide sufficient maternity leave and benefits. CEDAW explicitly links maternity leave with women’s right to work and right to be free from discrimination and requires Sri Lanka to provide “special measures . . . aimed at protecting maternity” that “shall not be considered discriminatory.” To prevent discrimination and to protect women’s right to work, CEDAW obligates Sri Lanka to take appropriate measures to prohibit women’s dismissal on the grounds of pregnancy and to introduce “maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.” To address the problem of non-compliance, the Convention recommends enforcement through sanctions.

The International Labor Organization’s (ILO) International Maternity Convention 1952 covers women employed in industrial undertakings and non-industrial and agricultural occupations, including “domestic work for wages in private households.” It provides for 12 weeks of maternity leave inclusive of six compulsory weeks post-birth, extended for any illness resulting from pregnancy. It calls for benefits “sufficient for the full and healthy maintenance” of the mother and children “in accordance with a suitable standard of living.” The Convention further calls for adequate pre- and post-natal care for all women from social insurance or social assistance. The Convention also outlines women’s entitlement to interrupt work for nursing without affecting pay upon their return to employment.

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18 Id. at 42 n.6 (quoting The Michigan Guidelines on the Right to Work).
19 CEDAW, art. 11.
20 Id. art. 4.
21 Id. art. 11(2).
22 Id.
24 C103 Maternity Protection Convention (Revised), 1952 (No. 103), art. 1.
25 Id. art. 3.
26 Id. art. 4.
27 Id. art. 4.
28 Id. art. 5.
protection to maternity leave-taking, the Convention prohibits dismissal during maternity leave or when notice would expire during the leave.\footnote{Id. art. 6.}

**B. International Standards and Guidelines**

Further to the above binding standards, Sri Lanka may look to non-binding international standards and guidelines.

1. **Beijing Declaration and Platform for Action**

The Beijing Declaration and Platform for Action\footnote{United Nations, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, Sep. 15, 1995, A/CONF.177/20.} aim to address customs and attitudes causing and perpetuating women’s inequality. Paragraph 181 calls on governments to ensure maternity leave for women and support the sharing of family responsibilities between parents through “legislation, incentives and/or encouragement.” The paragraph also calls on states to facilitate breastfeeding for working mothers.\footnote{Id. para. 181.}

2. **World Health Organization**

The World Health Assembly calls on states to implement maternity protection legislation consistent with the ILO’s Maternity Protection Conventions and has produced several resolutions relating to the responsibility of states to legislate for maternity leave and to provide accommodations for breastfeeding mothers.\footnote{INTERNATIONAL RIGHTS AND GUIDANCE ON MATERNITY PROTECTION AT WORK, supra note 5 at 5.} The World Health Organization and UNICEF’s Global Strategy on Infant and Young Child Feeding provides specific ways that employers can support new mothers: “paid maternity leave, part-time work arrangements, on-site crèches, facilities for expressing and storing breast-milk and breastfeeding breaks.”\footnote{WORLD HEALTH ORGANIZATION AND UNICEF, GLOBAL STRATEGY FOR INFANT AND YOUNG CHILD FEEDING para. 12 (2003), available at http://apps.who.int/iris/bitstream/10665/42590/1/9241562218.pdf?ua=1&ua=1.}

**III. Regional Standards Relating to Maternity Benefits**

This section outlines European, African, and Inter-American regional standards relating to maternity and paternity leave and benefits.

**A. European Union**

The European Union has identified work-life balance for women and men as a priority area,\footnote{Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC, 2010 O.J. L.68/1.} and EU provisions are the most detailed of the regional standards relating to
paid maternity, paternity, and parental benefits. Article 33(2) of the European Union Charter of Fundamental Rights asks states to “reconcile family and professional life” by providing that “everyone shall have the right to protection from dismissal for a reason connected with maternity, and the right to paid maternity leave and to parental leave following the birth or adoption of a child.”

Directives and judicial decisions provide various maternity benefits to expecting and new mothers in the European Union. EU law mandates fourteen weeks of leave (of which two weeks are mandatory). Additionally, pregnant workers enjoy protection from discriminatory dismissal—which extends to the non-extension of fixed term contracts—and have the right to attend antenatal screenings during work hours without loss of pay. Pregnant mothers must not be disciplined or fired for absence due to sickness. In addition, pregnant workers and workers who have recently given birth are protected from the obligation to work night shifts. Pregnant and breastfeeding workers cannot be obliged to work in conditions which involve exposure to chemical and biological agents and processes which may harm the health of the mother or child.

Council Directive 2010/18/EU entitles female and male workers to at least four months of parental leave with job protections. The European Union has acknowledged that merely encouraging men to share equally in family life and responsibilities has led to insufficient results. In pursuit of “more effective measures” to promote equality between women and men, at least one of the four parental leave months is non-transferable between parents. Additionally, the Statutory Social Security Directive

37 Id. For a discussion of fixed term contract extension, see Webb v EMO Air Cargo, 1994 E.C.R I-3567 ¶ 26.
38 Id.
39 Id. See also Brown v Rentokil Ltd, 1998 E.C.R. I-04185.
40 Id.
41 Id.
prohibits discrimination in pension and retirement benefit schemes on the basis of family status. 43

B. Organization of American States

The Inter-American system enshrines the rights to work and to social security. In defining the right to work, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights 44 asks states to “implement and strengthen programs that help to ensure suitable family care, so that women may enjoy a real opportunity to exercise the right to work.” 45 Article 9 states that women have the right to social security in the form of “... paid maternity leave before and after childbirth.” 46 Further, Article VII of the American Declaration of the Rights and Duties of Man requires that “all women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.” 47

C. African Union

The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa 48 requires states to “adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement and other economic opportunities.” 49 To ensure women’s human right to work, the protocol compels states to “guarantee adequate and paid pre and postnatal maternity leave in both the private and public sectors.” 50

IV. Examples of Best Country Practices

This section outlines best practices from a sample of countries. The countries selected illustrate best practices in their region rather than overall best practice, which would over-represent west Europe. Rather, the countries chosen exemplify best practices taking into account resource, policy, and political differences that impact the ability or interest of a country to provide maternity leave. Where information is available, the examples discuss how the country policies are working in practice.

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45 Id. art. 6.
46 Id.
49 Id. art. 13.
50 Id.
A. Sweden

Benefits Overview: Paid parental leave in Sweden totals 480 days. Of that time, 60 days are reserved specifically for the father and are not transferrable. To further encourage both parents to share the leave, the Swedish government awards additional monetary incentives to parents that more equally share the time off. Parents are paid at a rate of eighty percent of their wage for 390 of the 480 days and then offered a fixed monetary amount for the remaining ninety days. This compensation scheme is financed by the Swedish social security insurance system. The paid parental leave remains accessible until the child turns eight years old. Additionally, parents are permitted to take off from work for the first eighteen months of their child’s life regardless of whether they are receiving the paid leave benefits. Furthermore, there is a great deal of flexibility afforded to parents such that eligible parents may use their paid benefit days to reduce their working hours by three-quarters, one-half, one-quarter or one-eighth relative to their normal schedule. These parents can also reduce their working hours (without paid benefit) by up to a quarter until the child reaches age 8.

Eligibility: In order to receive the financial benefits, a parent must have been working as an insured employee for a minimum of 240 days prior to their child’s birth. Individuals who fail to meet the necessary requirements for insurance coverage are offered a flat rate for 480 days.

Policy in Practice: In practice, ninety percent of all Swedish fathers use at least a portion of the paid time off available to them. In 2012, fathers used twenty-four percent of the total paid time off used by Swedish parents. As fathers have taken on

52 Id. at 165 n.10.
55 MATERNITY AND PATERNITY AT WORK: WORK AND PRACTICES ACROSS THE WORLD, supra note 51 at 158.
57 MATERNITY AND PATERNITY AT WORK: WORK AND PRACTICES ACROSS THE WORLD, supra note 51 at 70.
58 Id. at 71 n.34.
59 Id.
60 Id.
greater responsibility during the child’s infancy, mothers in Sweden have reported increases in income and net happiness.63

B. Croatia

Benefits Overview: Bearing in mind the potential negative repercussions that mandatory extended leave might have for women’s equality in workplace, in Croatia, compulsory leave begins 28 days before a mother’s due date and lasts until the child is six months old. 70 days after childbirth, the mother and father can decide whether and how to split the additional compulsory leave until the child reaches six months.64 The mother and father receive benefits amounting to 100% of their prior income.65 Paid parental leave can be extended by two months if the father takes at least three months of the six months’ parental leave.66 Upon return to work, new mothers are entitled to two paid half-hour breastfeeding breaks a day for a year after the child’s birth.67 The Croatian system provides leave time of up to three years for a second or third child,68 with a guarantee of a similarly favorable post upon return to work.69

Eligibility: Benefits are offered to both employed and unemployed women with employed mothers receiving compensation based on their income and unemployed women receiving a flat rate for the entirety of the maternity leave period.70

C. Chile

Benefits Overview: In Chile, benefits cover 18 weeks of paid maternity leave,71 which is offered through social security at 100% of the parent’s prior income (up to a ceiling).72 New fathers may share in the maternity leave provided to the mother, although six of the 18 weeks are exclusively reserved for the mother.73 New fathers are also granted five days of compulsory paternity leave.74 While the 18 weeks of paid maternity leave is paid by the government, the five days of compulsory paternity leave is paid by the employer.75

63 Why Swedish Men Take So Much Paternity Leave, supra note 61.
66 Id.
67 MATERNITY AND PATERNITY AT WORK: WORK AND PRACTICES ACROSS THE WORLD, supra note 51 at 187.
68 Id.
69 Id. at 81.
70 Id.
71 Id. at 12.
72 MATERNITY AND PATERNITY AT WORK: WORK AND PRACTICES ACROSS THE WORLD, supra note 51 at 65.
73 Id. at 64.
74 Id. at 56.
If the mother passes away during maternity leave, the father may assume the remainder of the leave period and may take an additional unpaid year off without being terminated from employment.  

Chilean law also seeks to protect women from potentially dangerous work environments through policies including a prohibition on pregnant women working overnight. Furthermore, Chile requires that all work sites with twenty or more women employees offer women an independent space to breastfeed their child (up to age two). Women are permitted two one-hour breaks each day to breastfeed and allocated additional time if travel is necessary.

_Eligibility:_ The Chilean system provides benefits broadly such that women with long term employment are eligible but so are independent workers and welfare recipients. Unemployed women receive maternity benefits of up to 36 weeks provided that they have been enrolled in the welfare system for a minimum of 12 months prior to the pregnancy or were working and contributing to the social security system for at least eight months during the 24 months prior to the pregnancy.

_Policy in Practice:_ While the Chilean policies have been designed to encourage women to participate in the workforce, the additional cost imposed on employers to provide space and time for breastfeeding has seemingly produced a reduction in starting wages for some newly hired women.

**D. South Africa**

_Benefits Overview:_ Women receive four months of paid maternity benefits. The benefits amount is calculated based on various factors involving the woman’s prior employment with the ultimate pay-out ranging between 31-59% of the woman’s salary level. These benefits are financed through social security. In addition, three days of family leave are accessible to the male parent and are paid for by the employer. Employers are required to assess health risks in the work environment when they are aware of pregnant or nursing employees and must maintain regular review of the safety conditions.

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76 _Id._ at 77.
77 _Id._ at 91.
78 _Id._ at 144.
80 MATERNITY AND PATERNITY AT WORK: WORK AND PRACTICES ACROSS THE WORLD, supra note 51 at 65.
81 _Id._ at 44.
83 HUMAN RIGHTS WATCH, supra note 4 at 88.
84 _Id._
85 WORLD BANK GROUP, supra note 76.
86 _Id._
87 _Id._ at 96.
Eligibility: Both employed and unemployed women are eligible to receive benefits provided they are not already receiving a monthly state pension or any other type of disability or unemployment benefit.  

E. Vietnam

Benefits Overview: Social security funds 100% of maternity benefits in Vietnam. Pregnant employees are entitled to take up to five days off for prenatal check-ups, and new mothers are entitled to six months of maternity leave at 100% of average salary of the six months preceding the leave. For a multiple pregnancy the mother is entitled to a further 30 days off per additional child. Upon birth or adoption of a child under four months, the employee is entitled to a lump-sum equivalent to two months of minimum wage. After returning to employment, a mother of a child under 12 months is entitled to an hour break per day for activities relating to the care of her baby. Employees are also eligible for benefits and time off in the event of a miscarriage, abortion or stillbirth. Vietnam is planning to introduce five-day paid paternity leave in 2016.

Eligibility: Women employed in the private and public sector with contracts of over three months, household workers, and agricultural workers are covered.

V. Conclusion

International and regional conventions, standards, and guidelines outline Sri Lanka’s duty to provide adequate and sufficient paid parental leave. Drawing from these standards and the country illustrations above, it is clear that best practice for maternity leave takes into account women’s needs before, during, and after pregnancy and return to work. Best practice for maternity leave includes women in non-traditional employment, part-time workers, and unemployed women. Best practice also acknowledges the practical and symbolic significance in providing and encouraging men to take paternity leave.

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90 Id.
93 Id.