



Sixty working days of maternity leave: A reality for women in Uganda?

A working paper

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Executive summary

Female employees in Uganda are legally entitled to 60 working days of maternity leave on full salary. However, data suggests that many women are not able to access their rights to maternity. The aim of this study is to provide an explanation for this gap between legislation and implementation. One major contributing factor is the size of the informal sector in the Ugandan labour market, where the majority of employees are women. In the informal sector, awareness about maternity rights is generally poor and as many women work without a written contract, they lack the means to claim their right to maternity leave. Furthermore, there seems to be a lack of political will to implement legislation on maternity leave. The responsibility for payment of maternity leave is for the individual employer. Especially for owners of Small- and Medium-sized Enterprises (SMEs) this can be challenging, because they often lack the resources to provide 60 working days of maternity leave on full pay. Challenges also exist for women who are self-employed, because leaving their business to give birth means a loss of income. Consequently, many female employees in Uganda take shorter periods of maternity leave, varying from two months to even a few days.

Several studies show that a period of maternity leave that is too short can have negative consequences for a mother and her child. Especially for the child, a lack of adequate breastfeeding can have negative effects on its long-term development. Additionally, inadequate maternity rights provisions might have a negative influence on gender equality in the workplace. Therefore, the ILO recommends a maternity leave period of 14 weeks and additional breastfeeding provisions for every female employee. For Uganda, it is very difficult if not impossible to ensure 14 weeks of maternity leave for every female employee at this moment. However, there are some measures that the government of Uganda can implement in order to improve the accessibility of maternity rights provisions. First, the government can develop additional provisions for breastfeeding. Second, the government can assist in setting up social security funds to gradually replace the employer liability system. Third, the government can raise awareness to challenge existing discriminatory social practices and gender stereotypes. Finally, the government can improve the accessibility and quality of healthcare to support women who are giving birth. By implementing these measures in cooperation with all stakeholders including employers, employees and civil society organizations, the health of mothers and their children can be improved and gender inequalities in the workplace and society can be reduced.

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List of Acronyms

ILO	International Labour Organization
OECD	Organization for Economic Co-operation and Development
EU	European Union
EAC	East-African Community
NSSF	National Social Security Fund
SME	Small- and Medium-sized Enterprises
IBFAN	International Baby Food Action Network
NOTU	National Organization of Trade Unions
NUWODU	National Union for Women with Disabilities in Uganda
SIGI	Social Institutions and Gender Index
NGO	Non-Governmental Organization

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1. Introduction

Over the years, rights on maternity have been established in both international and national laws. The most important institution in establishing international standards for maternity rights is the International Labour Organization (ILO). In 1919, the ILO adopted the first international Convention on maternity rights. For the first time, the right to paid maternity leave was incorporated in international law. The Convention has been revised in 1952 and again in 2000. None of them, however, are ratified by Uganda. The latest revision, which resulted in Convention 183, extended the right of paid maternity leave from 12 to 14 weeks.¹ Although the Convention was signed by only 29 countries, the majority of countries in the world provide some form of paid maternity leave to women. The extent to which national laws comply with international standards varies by country. According to the ILO, 53 percent of 185 countries they studied provide a maternity leave period of at least 14 weeks. Uganda is one of the few countries in the world that provides less than 12 weeks of maternity leave. The Ugandan Employment Act of 2006 states that women shall be entitled to 60 working days (10-12 weeks) of maternity leave.

However, the fact that there is some form of legislation on maternity rights does not guarantee that all female workers are able to benefit from maternity rights. According to a survey conducted by the ILO in 2014, only 28 percent of women worldwide are able to claim their rights to maternity.² In Africa this percentage is even lower at less than 15 percent. According to the ILO, workers in the informal sector are most likely to be excluded from maternity protection laws. Domestic workers are often not aware of the rights they have and if they do it can be difficult for them to claim their rights to maternity.³ In Uganda, a considerable amount of female workers is employed in the informal sector. They can be domestic workers, agricultural workers or they work for an employer that is a family member.⁴

Considering the findings of the ILO, it might be interesting to investigate the relation between Ugandan legislation on maternity rights and the realities in the workplace. In Uganda, the majority of the informal labour force consists of women. Despite the fact that Ugandan law provides rights to maternity, theory suggests that the women working in both the formal and informal sector in Uganda do not have full access to these rights. Therefore, the question that will be researched in this paper is:

¹ ILO (2000), *Convention no. 183: Convention concerning the Revision of the Maternity Protection Convention (Revised), 1952*, ILO, Geneva, 2.

² ILO (2014), *Maternity and paternity at work: Law and practice across the world*, ILO, Geneva, 37.

³ *Idem*, 36.

⁴ *Idem*, 37-38.

To what extent is the right to maternity a reality for female workers in Uganda and how does it affect their position in the labour market?

In order to answer this question, the research focuses on how Ugandan legislation relates to international and regional regulations, how legislation on maternity rights is being implemented and what cultural factors might influence the accessibility of maternity rights. According to research conducted by the Organization for Economic Co-operation and Development (OECD) in 2013, discriminatory social practices play an important role in defining gender relations in society and influence women's position on the labour market.⁵ Therefore it is interesting to take into account the gender relations in Ugandan society and determine whether there are any discriminatory practices that prevent women from having access to maternity rights.

The research that has recently been carried out by the ILO and OECD makes the issue of maternity rights a very current topic. The OECD states that most research on the effects of maternity rights legislation has focused on developed countries. O. Thévenon and A. Solaz studied the effect of parental leave policies on the labour market in OECD countries.⁶ Sakiko Tanaka studied the effects of parental leave on the health of children in OECD countries.⁷ C. Ruhm studied parental leave and child health in nine European countries.⁸ Furthermore, there are some country specific studies that focus on industrialized countries like the US (Dagher et al., 2014) and Norway (Carneiro et al., 2011). Research on maternity rights legislation in developing countries could make a valuable contribution to the scientific debate. Also, the ILO recommends developing countries to make efforts to meet the ILO standard for maternity leave. Female participation in the labour force decreases gender inequality in the workplace and in society, and contributes to economic growth.⁹ Therefore it is interesting to investigate to what extent compliance with international standards can be beneficial to Uganda, and what keeps Uganda from compliance with international Conventions at the moment.

The paper consists of a literature review to provide a theoretical framework and to make a comparison between legislation in Uganda and other countries. Furthermore, interviews were conducted to assess how Ugandan legislation on maternity rights relates to realities in the workplace, how legislation is being implemented and what are the consequences for employers and employees. These interviews were conducted with

⁵ OECD Development Centre (2013), *How do maternity leave and discriminatory social norms relate to women's employment in developing countries?* OECD, Paris, 2.

⁶ O. Thévenon and A. Solaz (2013), 'Labour Market Effects of Parental Leave Policies in OECD Countries', *OECD Social, Employment and Migration Working Papers*, No. 141, OECD, Paris.

⁷ Sakiko Tanaka (2005), 'Parental Leave and Child Health Across OECD Countries', *The Economic Journal* 115:501, F7-F28.

⁸ C. Ruhm (2000), 'Parental leave and child health', *Journal of Health Economics* 19:6, 931-960.

⁹ OECD Development Centre (2013), *How do maternity leave and discriminatory social norms relate to women's employment in developing countries?* OECD, Paris, 1.

employers, employees in the formal and informal sector, labour officers, NGOs and politicians. The study addresses differences between the formal and informal sector, between the public and private sector and between commercial enterprises and non-profit organizations. The first two chapters of the paper give an account of Ugandan legislation and international regulations, and how they relate to each other. In the third chapter the realities on the labour market are investigated. To what extent do women really have access to maternity rights and is there a difference between the formal and informal sector? Chapter four will give an explanation of possible discriminatory practices and how they affect women's position on the labour market. The paper will conclude with an account of what actions on maternity rights legislation might be taken in the future.

2. National, international and regional frameworks on maternity leave

2.1. National legislation

In order to get a clear perspective on the Ugandan legislation on maternity rights, the legislation will be outlined in this chapter. Documents that provide legislation on maternity rights and gender equality are the Ugandan Constitution, the Employment Act 2006 and the National Gender Policy 2007. Chapter four of the Constitution, the chapter on the protection and promotion of fundamental and other human rights and freedoms, states that 'the State shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.'¹⁰ Also, the Constitution contains an article that is fully dedicated to women's rights. The article includes important provisions with regard to the equality of women in society and in the workplace. It states that women shall be accorded full and equal dignity of the person with men, and that women should have equal opportunities in political, economic and social activities. In addition, it states that the 'State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement.'¹¹

It is noticeable that the government of Uganda attributes itself a substantial role in providing opportunities to improve the welfare of women. With regard to the issue of maternity, Article 33(3) of Constitution provides that 'the State shall protect women and their rights, taking into account their unique status and natural maternal functions in

¹⁰ Government of Uganda (1995), *Constitution of the Republic of Uganda*, Article 32(1).

¹¹ *Idem*, Article 33(2).

society.¹² Interpreting this article, one can conclude that the government of Uganda has committed itself to protecting the (maternity) rights of all women, including those working in the formal or informal sector. Additionally, the government gives employers a responsibility for the wellbeing of their female employees in Article 40(4); ‘the employer of every woman worker shall accord her protection during pregnancy and after birth, in accordance with the law.’¹³ Also, under the Workers’ Compensation Act 2009, employers are responsible for the payment of maternity rights benefits for their female employees.¹⁴ This means that maternity rights in Uganda are based on a system of employer liability. The implications of the employer liability system for the position of women on the labour market will be further elaborated in chapter three.

The right to maternity leave for female workers is further defined in the Employment Act 2006. Article 56 of the Employment Act provides that female employees who are pregnant shall have the right to 60 working days of maternity leave on full wages.¹⁵ The Act speaks of ‘working days’, which implies that employees are entitled to 10 to 12 weeks of leave, depending on the amount of days they are working per week. Also, public holidays might be excluded from this maternity leave period. In case of sickness affecting the mother or the baby, the right to return to work will be extended to a period of eight weeks after the date of childbirth or miscarriage. After maternity leave, female employees have the right to return to their job or to a reasonable suitable alternative job. The Employment Act also states that a female employee is entitled to these rights ‘if she gives not less than seven days notice in advance or a shorter period as may be reasonable in the circumstances, of her intention to return to work.’¹⁶ However, this formulation is ambiguous and the idea of what is ‘reasonable in the circumstances’ is subject to interpretation. Furthermore, the Employment Act applies to ‘all employees employed by an employer under a contract of service’, and it does not apply to ‘employers and their dependent relatives when dependent relatives are the only employees in a family undertaking, as long as the total number of dependent relatives does not exceed five’ and the ‘Ugandan People’s Defence Forces, other than their civilian employees.’¹⁷ A contract of service in this sense can be both an oral or written contract. The Employment Act does not make a specific reference to female employees who are in their probation period; it only speaks of ‘female employees who are pregnant.’ Therefore, it can be assumed that the right to maternity leave applies to all female employees, including those who are in their probation period.

The third document that could provide legislation on gender equality in the

¹² *Idem*, Article 33(3).

¹³ *Idem*, Article 40(4).

¹⁴ Government of Uganda (2000), *The Workers Compensation Act*, Article 3.

¹⁵ Government of Uganda (2006), *The Employment Act*, Article 56(1).

¹⁶ *Idem*, Article 56(4).

¹⁷ *Idem*, Article 3.

workplace is the National Gender Policy 2007. The remarkable fact is that the Gender Policy contains no provisions at all as regards to maternity rights. Nevertheless, the Gender Policy can be a valuable instrument to promote gender equality and empowerment of women, which can in turn lead to a better accessibility to maternity rights.

2.2. International conventions

The most recent ILO Maternity Protection Convention states that female employees should be entitled to a maternity leave period of at least 14 weeks.¹⁸ With regard to payment, the Convention provides that ‘cash benefits shall be provided, in accordance with national laws and regulations, or in any other manner consistent with national practice’.¹⁹ According to the Convention, the amount of cash benefits to be paid to women on maternity leave is a matter of national laws and regulation, on condition that ‘cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living’, and ‘where, under national law or practice, cash benefits paid with respect to leave (...) are based on previous earnings, the amount of such benefits shall not be less than two-thirds of the woman’s previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits.’²⁰ According to the ILO, cash benefits during maternity leave are important to sustain a woman’s economic independence and can help reduce gender inequalities in the household.²¹ With regard to breastfeeding, Convention 183 states that women should have the right to ‘one or more daily breaks or a daily reduction of hours of work to breastfeed her child.’²²

As mentioned before, not all countries meet this international standard even though most countries do have a legal provision for maternity leave. According to the OECD, only the regions of Eastern Europe and Central Asia and OECD countries provide an average maternity leave period of at least fourteen weeks. Maternity leave periods in OECD countries vary from six weeks in Australia to 52 weeks in the United Kingdom, with an average of 18 weeks.²³ A part of the OECD member states is also member of the European Union (EU). In 2010, the European Parliament agreed that female employees

¹⁸ ILO (2000), *Convention no. 183: Convention concerning the Revision of the Maternity Protection Convention (Revised)*, 1952, ILO, Geneva, Article 4(1).

¹⁹ *Idem*, Article 6(1).

²⁰ *Idem*, Article 6(3).

²¹ ILO (2014), *Maternity and paternity at work: Law and practice across the world*, ILO, Geneva, 9.

²² ILO (2000), *Convention no. 183: Convention concerning the Revision of the Maternity Protection Convention (Revised)*, 1952, ILO, Geneva, Article 10(1).

²³ O. Thévenon and A. Solaz (2013), ‘Labour Market Effects of Parental Leave Policies in OECD Countries’, *OECD Social, Employment and Migration Working Papers*, No. 141, OECD, Paris, 12.

should be entitled to a maternity leave period of at least 20 weeks.²⁴ Although not all member states comply with this standard, all member states comply with the 14 weeks standard set by the ILO. The average duration of maternity leave in the EU is 23 weeks.

A study conducted by Thévenon and Solaz in 2013 states that the provision of paid maternity leave in OECD countries has increased female employment rates with a maximum of 2 percent, and has consequently reduced the gender employment gap in these countries.²⁵ However, when the period of paid maternity leave is extended beyond two years, it has counterproductive effects on the employment rates of women. As regards the difference in payment to men and women, the gender pay gap, paid maternity leave has widened this gap in OECD countries. So although women's employment slightly increases due to maternity leave provisions, because they can return to work after giving birth, they have to pay a price in the form of reduced wages. The reason for this might be that taking maternity leave leads to slower career and earnings progression compared to men.

While Thévenon and Solaz assume that maternity leave has a negative effect on female employment when it exceeds a period of two years, many other studies mark 12 months as the point where maternity leave leads to a career break.²⁶ Until then, the benefits of paid maternity leave are increasing. Different studies also suggest that a very short period of leave might have a negative effect on female employment. Therefore, in addition to Convention 183, the ILO published Recommendation 191, which encourages states to extend their period of maternity leave to at least 18 weeks. Considering the ILO's recommendations on maternity leave and the studies conducted in OECD countries that show that a longer period of maternity leave has a positive effect on female employment rates, it is remarkable that Uganda has not yet ratified ILO Convention 183 or has made an effort to increase its maternity leave period.

2.3. Maternity leave in the East-African Community

In Africa, less than half of the countries meet the ILO standard of fourteen weeks of maternity leave. As regards the East African Community, of which Uganda is a member state, none of the five countries meets the ILO standard. In Burundi, female employers are entitled to twelve weeks of maternity leave on full payment.²⁷ In Rwanda, female employees have the right to 'twelve consecutive weeks of maternity leave, of which two are obligatory before the presumed date of delivery and six weeks obligatory after

²⁴ EP Directorate General for Internal Policies (2015), *Maternity, paternity and parental leave: Data related to duration and compensation rates in the European Union*, European Union, Brussels, 49.

²⁵ O. Thévenon and A. Solaz (2013), 'Labour Market Effects of Parental Leave Policies in OECD Countries', *OECD Social, Employment and Migration Working Papers*, No. 141, OECD, Paris, 40.

²⁶ ILO (2014), *Maternity and paternity at work: Law and practice across the world*, ILO, Geneva, 8-9.

²⁷ *Idem*, 133.

delivery.²⁸ Under the Labour Code 2001, a woman is entitled to have two thirds of her salary during maternity leave, to be paid by the employer. However, in 2009 the government of Rwanda adopted a policy that provides full pay during the first six weeks of maternity leave. After that, a woman can decide to go back to work or to stay on maternity leave and earn 20 percent of her salary.²⁹ In Kenya, the duration of maternity leave is similar to that in Rwanda, namely ‘three months maternity leave with full pay.’³⁰ In Tanzania, maternity leave is provided for a period of 84 days.³¹ However, if a woman is expecting more than one child, the maternity leave period will be extended to 100 days. The Act does not specify whether these days are working days only or any day of the week. Assuming that any day of the week is included in these 84 days, female employees in Tanzania are entitled to 12 weeks of maternity leave in case they are expecting one child. The employer is only obliged to pay for four terms of maternity leave.

Legislation on maternity leave in Uganda is similar to legislation in the other member states of the East-African Community (EAC). However, only Uganda provides maternity leave in terms of working days. This means that the duration of maternity leave depends on the amount of working days in one week. Furthermore, Burundi, Rwanda and Tanzania provide nursing breaks for breastfeeding at the workplace.³² In Burundi, women are entitled to one paid 60 minute nursing break per day for a period of six months. In Rwanda, women are entitled to 60 minutes per day on full pay for a period of 12 months. In Tanzania, women are entitled to a 120 minute break or reduction of working time per day on full pay. Kenya and Uganda are the only EAC member states that do not have provisions for breastfeeding.

As regards the payment of maternity leave, both Uganda and Kenya rely on the system of employer liability, where the individual employer is responsible for the payment of maternity leave for their female employees. Since 2005, Tanzania relies on a system of social security. Participation in the National Social Security Fund (NSSF) is obligatory for all employers in public, private and non-governmental sectors. Employees in these sectors contribute 20 percent of their salaries to the NSSF. Also, self-employed entrepreneurs in the private sector are registered in the fund.³³ The fund provides two types of maternity benefits, namely the cash benefit of full wages during twelve weeks of maternity leave and medical care during the pre-natal period. These benefits are

²⁸ The Transitional National Assembly (2001), *Labour Code of the Republic of Rwanda*, Article 68.

²⁹ ‘N° 13/2009 of 27/05/2009 Law regulating labour in Rwanda’, *Official Gazette of the Republic of Rwanda* (2009), Article 66.

³⁰ Parliament of Kenya (2007), *The Employment Act*, Article 29.

³¹ The United Republic of Tanzania (2004), *Employment and Labour Relations Act*, Article 33.

³² ILO (2014), *Maternity and paternity at work: Law and practice across the world*, ILO, Geneva, 182-184.

³³ The United Republic of Tanzania (1997), *The National Social Security Fund Act*, Government Printer, Dar es Salaam, Article 6(2).

provided only when the employee ‘has made at least thirty six monthly contributions of which twelve contributions are made in the thirty six months prior to date of confinement.’³⁴ Burundi, also a member of the EAC, uses a mixed system. Here, contributions are split equally between social security and employers.³⁵ Its neighbor Rwanda has a system of employer liability, but the ILO provides the country assistance to establish a social insurance system. The labour law adopted by the Rwandan government in 2009 provides for the set-up of a maternity branch of social insurance to move away from the employer liability system.³⁶

Supporting member states in shifting from employer liability to social security systems is a priority of ILO technical assistance.³⁷ The ILO prefers social security systems over employer liability systems, because in these systems the cost of maternity leave will be shared by employers, employees (both male and female) and sometimes the government. According to the ILO, this creates more gender equality in the workplace. The effects of employer liability on gender equality in the Ugandan labour market will be further investigated in the next chapter.

3. Implementation of maternity rights provisions and realities on the labour market

According to the ILO, there are three major reasons why women are excluded from maternity protection rights, even if there is a legal framework that provides such rights.³⁸ Firstly, many female workers are excluded from the scope of national labour legislation. These workers include domestic workers, casual or temporary workers, agricultural workers, workers in the armed forces or police, workers in Small and Medium-sized Enterprises (SMEs), home workers and self-employed workers. Secondly, there are female workers who do not meet the qualifying conditions that have been set for obtaining maternity leave. Thirdly, the ILO speaks of the ‘implementation gap’.³⁹ The implementation gap means that there is an inconsistency between legislation and the actual implementation of legislation. The reasons for this can be an ambiguity in legal protection, lack in communication or awareness about rights, lack of political will or resources for implementation, or lack of access to social security schemes. Data suggests

³⁴ Idem, Article 44.

³⁵ ILO (2014), *Maternity and paternity at work: Law and practice across the world*, ILO, Geneva, 27.

³⁶ Idem, 23.

³⁷ Idem, 24.

³⁸ ILO (2012), *Maternity Protection Resource Package: From Aspiration to Reality for All*, ILO, Geneva, 19.

³⁹ Ibidem.

that all three aspects play a role in access to legal provisions for maternity leave in Uganda. The study conducted by the ILO and its applicability to the Ugandan labour market will be discussed later in this chapter. First, an assessment will be made of the realities on the Ugandan labour market.

3.1. Employer liability

Uganda has a system of employer liability, which means that the individual employer is liable for risks that employees face at work.⁴⁰ This also implies that employers are responsible for paying their female employees on maternity leave. According to the ILO, employer liability works against gender equality in the labour market because employers may be reluctant to hire female workers who are in their reproductive years.⁴¹ Also, they might find different reasons to discharge a pregnant female employee. This is especially the case in developing countries where legislation on maternity leave is not sufficiently enforced. Even if employers were willing to pay for maternity leave, they are not always able to do so. This is especially the case for owners of Small and Medium-sized Enterprises (SMEs), for whom the costs of paid maternity leave for female employees can become unsustainable.

The majority of workers in SMEs are vulnerable workers, including migrant workers, ethnic minorities, younger and older workers and women.⁴² This makes the issue of labour and maternity rights especially important to the SME sector. However, owners of SMEs are often resistant to maternity rights provisions, because they assume that it will disadvantage their position in the market. Under the employer liability system, owners of SMEs encounter specific challenges with regard to maternity leave because they have a limited amount of resources and a limited labour force.⁴³ According to the ILO however, costs of maternity leave benefits are often less high than employers assume, especially when the costs are funded by social security systems.⁴⁴ SMEs might even benefit from proper maternity benefit provisions, because SME employees who regard their employer as being supportive of maternity and parenthood tend to be more motivated and show more loyalty to their employer. Furthermore, maternity protection in SMEs on a wider scale can contribute to poverty reduction, reproductive health, gender equality and economic development.⁴⁵ These wider societal benefits might indirectly benefit owners of SMEs.

Developing and implementing social security provisions might help SMEs in providing paid maternity leave to female workers. A social security system could help

⁴⁰ Government of Uganda (2000), *The Workers Compensation Act*, Article 3.

⁴¹ ILO (2014), *Maternity and paternity at work: Law and practice across the world*, ILO, Geneva, 22.

⁴² Susan Lewis et al. (2014), *Maternity Protection in SMEs: An International Review*, ILO, Geneva, 1.

⁴³ Mungoma Jude, Coordinator at SME Association Uganda, personal statement, Kampala, 01/06/2015 (via e-mail).

⁴⁴ Susan Lewis et al. (2014), *Maternity Protection in SMEs: An International Review*, ILO, Geneva, 2.

⁴⁵ *Idem*, 3.

employers to finance the maternity leaves of their female employees. However, according to Coordinator of the SME Association Uganda Jude Mungoma, a social security system in Uganda is not an option at the moment because it is very difficult to organize a fund that includes all small businesses in Uganda.⁴⁶ ‘Maybe the government can start by providing financial support to big companies and government institutions. If that works well you can extend support to medium and smaller businesses. For now, we have to rely on the employer liability system for providing maternity leave to female employees.’

Member of Parliament (MP) and Chairperson of the Uganda Women Parliamentary Association Betty Amongi expresses similar views about the employer liability system.⁴⁷ She explains: ‘the employer liability system is our way of ensuring that every female employee actually receives paid maternity leave. Without this obligation for employers, women would not get paid at all when they are on maternity leave.’ Amongi also states that a social security system would not work well in Uganda, because people rely on their family rather than on public funds. She believes that a private fund might work, but not a publicly funded system because in public social security funds there is a lot of corruption. She refers to the recent scandal about a public pension fund where all the money in the fund had been taken by a small group of government officials. Furthermore, she says, for a social security system you would need to have a minimum wage so people can contribute a percentage of their income. A minimum wage currently does not exist in Uganda.

Employers and employees in different sectors are generally positive about the fact that employers are responsible for the payment of the maternity leave of their female employees.⁴⁸ Eight out of eleven interviewed employers think that the employer liability system is fair, and eleven out of fifteen interviewed employees think the system is fair. The argument that is most frequently heard is that employers have a social responsibility to look after their employees. However, when asked about a possible social security system to ensure maternity leave, the majority of employees are positive about that as well. Only two out of the fifteen interviewed employees say that they would not want to contribute a part of their income to a social security system. From the sequence of the questions one can assume that employers and employees have not thought of a social security system before. In the first instance, the employees are positive about employer liability, but when asked about a social security system they state that it is a good and maybe even better alternative.

Reflecting on the employer liability system in Uganda, one can conclude that

⁴⁶ Mungoma Jude, Coordinator at SME Association Uganda, personal statement, Kampala, 01/06/2015 (via e-mail).

⁴⁷ Amongi Betty, Chairperson of Uganda Women Parliamentary Association, personal statement, Kampala, 10/06/2015.

⁴⁸ Employers and employees in the formal and informal sector, survey, Kampala, Lira and Iganga.

social security would be a more favourable way of financing maternity rights provisions. The employer liability system has specific challenges for owners of SME's and might have a negative influence on gender equality in the labour market. However, at the moment it is not feasible for Uganda to replace employer liability by a system that relies completely on social security funds. A possible alternative is to find the middle way between employer liability and a social security system. The ILO speaks of a system of shared contributions, which is the most common pattern in the majority of countries around the world.⁴⁹ In this system, maternity benefits are financed by both employers and employees. In case of tripartite funding, the government also pays a contribution with the aim of protecting low-income employees and employers of SME's. Applying these patterns of shared contributions to different sectors could lead to an increase in social security. This process is already going on in different countries including Namibia, Lesotho, Zambia and Rwanda where the ILO provides technical assistance. Perhaps it could also work for Uganda.

3.2. Maternity leave in different sectors

This paragraph will describe the realities on the labour market in the informal and formal sector, the public and private sector and the commercial and non-profit sector. Data suggests that the accessibility of maternity rights provisions in Uganda differs from sector to sector. According to the ILO, there is a common perception that rights to maternity leave only apply to women working in the formal sector. The ILO does not agree on this, as the organization expresses in Convention 183: 'This Convention applies to all employed women, including those in atypical forms of dependent work.'⁵⁰ Atypical forms of dependent work include non-standard work like part-time, temporary, casual and seasonal work, in contrast to 'typical' work which is full-time, legally protected employment with a single employer and with a guaranteed regular income.⁵¹ As pointed out before, a majority of female workers in Uganda is employed in the informal sector. For them, it is particularly hard to access their rights to maternity leave. This is illustrated by a small case study in Kamwokya Market in Kampala, where the majority of female vendors is self-employed. A woman working in Kamwokya Market explains: 'the period of maternity leave one can take depends on whether there are people who can look after your businesses, like colleagues or family members. If you are lucky and there is a family member who can support you, you can take a longer period of maternity leave.'⁵²

Women in the informal sector take short periods of maternity leave, usually less

⁴⁹ ILO (2014), *Maternity and paternity at work: Law and practice across the world*, ILO, Geneva, 21.

⁵⁰ ILO (2000), *Convention no. 183: Convention concerning the Revision of the Maternity Protection Convention (Revised), 1952*, ILO, Geneva, Article 2(1).

⁵¹ ILO (2012), *Maternity Protection Resource Package: From Aspiration to Reality for All*, ILO, Geneva, 18.

⁵² Market vendor in Kamwokya Market, personal statement (freely translated from Luganda), Kampala, 18/05/2015.

than three weeks. According to MP Betty Amongi, women in the informal sector are very good at balancing between their work and their families.⁵³ She states that this is especially the case for women who are self-employed, as they are not restricted by an employer. They can set their own rules and take their babies to the workplace, so when they are at work they can take care of their babies. If we force them to take a longer period of maternity leave, the existing balance between work and private will be destroyed and women will lose their income. Therefore, according to Amongi, we should leave it to the women to decide on the duration of their maternity leaves.

Out of these statements by Amongi, the question arises if the self-employed women working in marketplaces are really good at balancing between work and family, or is it a harsh necessity that they have to return to their workplace shortly after delivery because they cannot afford to lose income? Some of the women interviewed in Kamwokya Market stated that they wanted to take a longer period of maternity leave, but they simply could not do this because then no one would take care of their business.⁵⁴ Furthermore, eight out of fifteen interviewed women working in both the formal and informal sector state that a maternity leave of 60 working days is not enough.⁵⁵ From these findings one can conclude that for a considerable amount of women in both the formal and informal sector, there is a need for longer periods of maternity leave.

As regards awareness of the rights to maternity of female employees, there also seems to be a gap between the formal and informal sector. Tom Okello, labour officer in the district of Lira, explains that there is a certain amount of awareness in the public sector, but in the private and informal sector awareness is significantly lower.⁵⁶ Women who are aware of their maternity rights do not always ask for maternity leave because they are afraid that they might lose their job. Thereby, according to the labour officer, some employers remain silent about maternity rights in their terms and conditions and provide a shorter period of leave. Also labour officer in the district of Amolatar Catherine Awor notices a difference between the formal and informal sector with regard to the awareness about maternity rights of female employees.⁵⁷ Furthermore, both labour officers notice a difference between the provision of maternity leave in the public and private sector. They both state that employers in the public sector, or the government sector, tend to be more compliant with legislation than employers in the private sector. Okello explains: 'private employers are not well certified and the

⁵³ Amongi Betty, Chairperson of Uganda Women Parliamentary Association, personal statement, Kampala, 10/06/2015.

⁵⁴ Market vendors in Kamwokya Market, personal statement (freely translated from Luganda), Kampala, 18/05/2015.

⁵⁵ Employers and employees in the formal and informal sector, survey, Kampala, Lira and Iganga.

⁵⁶ Okello Tom, Labour Officer in Lira District, personal statement, Lira, 22/06/2015.

⁵⁷ Awor Catherine, Labour Officer in Amolatar District, personal statement, Amolatar, 30/05/2015 (via e-mail).

compliance with national laws varies from one institution to the other.’

The results of the interviews with employers and employees correspond to some extent to the statements of the labour officers. In the private sector, eight out of eleven interviewed female employees receive 60 working days of maternity leave, and six out of eight interviewed employers provide 60 working days of maternity leave. From this can be concluded that some companies do, and some companies do not provide 60 working days of maternity leave. According to Wilson Owere, chairperson of the National Organization of Trade Unions (NOTU), not only private companies but also some government institutions fail to provide 60 working days of maternity leave.⁵⁸ Furthermore, all civil society organizations that were interviewed for this study provide 60 days or longer periods of maternity leave. The International Baby Food Action Network (IBFAN) Uganda for example, provides three months of maternity leave and on top of that they have breastfeeding provisions. A female employee can take her baby to the workplace for a period of six months to breastfeed.⁵⁹

In summary, compliance with national legislation on maternity rights depends on the abilities and goodwill of the employer. These findings are in accordance with the logic of employer liability. Businesses in the informal sector generally dispose of lower amounts of money, and therefore chances that they cannot afford to pay for maternity leave are higher. This principle also applies to SME’s in the formal sector. Furthermore, an important factor that determines whether female employees will receive their maternity benefits depends on the goodwill of the employer. Employers in the commercial sector might not be willing to provide paid maternity leave because it affects their competitiveness in the market. Civil society organizations on the other hand, have an interest in human rights rather than making profits so they are more likely to provide longer periods of maternity leave. Without implementation of maternity rights legislation, it is likely that these differences in attitudes of employers will remain.

3.3. Exclusion from maternity rights provisions

This paragraph addresses the theoretical framework set forth by the ILO, in which three major reasons for the inaccessibility of maternity rights provisions are given. The first reason is that some women are beyond the scope of national legislation. In laws and policies, these women are not defined as the target beneficiaries of certain provisions. As pointed out in chapter one, the Ugandan 2006 Employment Act states that the Act applies to all employees who are employed by an employer under a contract of service. This makes workers who work without a contract inherently a vulnerable group of

⁵⁸ ‘Six-month maternity leave unjustifiable – worker’s MP’, *The Daily Monitor* 15/08/2014, <http://www.monitor.co.ug/Magazines/Jobs-Career/Six-month-maternity-leave-unjustifiable---Workers--MP/-/689848/2419006/-/hrnwbtz/-/index.html>.

⁵⁹ International Baby Food Action Network (IBFAN) Uganda, personal statement, Kampala, 17/06/2015.

workers, as they are not subject to the provisions in the Employment Act that are meant to protect their rights. This is also the case for employees who work in family undertakings and are relatives to their employers. The groups of workers mentioned here are principally part of the informal sector. This explains why women in the informal sector are less likely to be able to claim their rights to maternity.

Apart from the Employment Act being restricted to employees who are employed under a contract, there are certain conditions that a female employee has to meet in order to be entitled to maternity rights provisions. The Employment Act states that female employees who are pregnant or giving birth should notify their employer and produce a certificate as to her medical condition from a qualified medical practitioner or midwife. The extent to which these conditions influence the right to maternity is subject to discussion.

The third reason why women might be excluded from maternity protection rights according to the ILO, is the gap that can exist between legislation and implementation, the so called 'implementation gap'. This implementation gap can exist because of an ambiguity in legal protection, a lack of political will or resources for implementation, and/or a lack of access to social security schemes. The first aspect, ambiguity in legal protection, does not apply to the Ugandan legislation on maternity leave because the Employment act is quite clear about the provisions, about who is entitled to them and under what circumstances. The second factor, however, does apply to the matter of maternity rights in Uganda. From the data that is used for this study, one can derive that in Uganda there is a lack in both communication and awareness about maternity rights. Four out of twenty workers who were interviewed for this study claim that they were not aware of any legislation on maternity rights. Labour officers Okello and Awor state that the level of awareness is especially low in the informal sector.⁶⁰ Also, according to Acen (NUWODU), there is a lack in communication towards women with a hearing impairment.

The third factor that contributes to the implementation gap, according to the ILO, is a lack of political will or resources for implementation. With regard to this, MP Amongi states that it is up to the female employees themselves to decide on the period of maternity leave they want to take. She finds that most women are good at balancing between family and work and the government should not interrupt that balance. Also, introducing a social security system that would ensure maternity rights benefits for all female employees is not an option according to Amongi, because there would be too much corruption involved. Coordinator of the SME Association Mungoma states that there are too many small businesses in Uganda to cover all female employees under a social security system. Drawing from this, one can conclude that there is both a lack of

⁶⁰ Awor Catherine, Labour Officer in Amolatar District, personal statement, Amolatar, 30/05/2015 (via e-mail) and Okello Tom, Labour Officer in Lira District, personal statement, Lira, 22/06/2015.

political will (corruption), and a lack of resources for implementation relative to the size of the SME sector. This is why the fourth factor mentioned by the ILO, a lack of access to social security schemes, also applies to the Ugandan labour market.

4. Discriminatory social practices and maternity rights

In the previous chapters, Ugandan legislation on maternity rights and its influence on the labour market were discussed. This chapter addresses cultural factors that might influence the accessibility of maternity rights provisions. According to OECD research, discriminatory institutions in a society can have a negative influence on women's employment. The OECD defines institutions as 'formal and informal laws, social norms and practices that shape or restrict the decisions, choices and behaviours of groups, communities and individuals.'⁶¹ Discriminatory institutions are social norms and practices that hinder female participation in the labour force. Within the family sphere, for example, these practices can include early marriage or parental authority that discourages women from finding work outside the house. Also, the OECD states that women's inheritance rights have an impact on female employment because equal inheritance rights lead to greater economic independence for women.⁶² Discriminatory institutions like unequal inheritance rights do not necessarily influence female employment rates, or the amount of women that is employed, but it does influence the type and quality of their employment. This suggests that in countries where there is a significant influence of discriminatory practices, women are more likely to work in vulnerable and informal sectors.

The OECD also states that countries who have very strong gender stereotypes about the role of women and men in the household, governments are less likely to financially support policies (like maternity leave policies) that encourage women's participation in the labour market.⁶³ This leads to a 'double disadvantage' for women to participate in the labour market. They experience a disadvantage due to discriminatory social practices, and in addition they do not receive enough support from the government to improve their position on the labour market. Ironically, the OECD finds that there is a lack of government support in balancing gender inequalities in the labour market in those countries where this support by the government is needed most. Cash benefits during maternity leave provided by the government will have the most effect in

⁶¹ OECD Development Centre (2013), *How do maternity leave and discriminatory social norms relate to women's employment in developing countries?* OECD, Paris, 2.

⁶² *Idem*, 3.

⁶³ *Idem*, 7.

countries where the degree of gender inequality is highest. To measure the influence of discriminatory social institutions and gender stereotypes on female participation in the labour market is not easy. However, the OECD Development Centre developed an index that measures the level of discriminatory practices and gender stereotypes in relation to other countries: the Social Institutions and Gender Index (SIGI). Using data from the SIGI, this study attempts to identify the cultural factors that influence the accessibility of maternity rights benefits in Uganda.

In 2012, Uganda was ranked 73 out of 86 countries in the SIGI, which included only non-OECD and non-EU countries.⁶⁴ In the SIGI of 2014, Uganda obtained a medium position (out of 108 countries), but with high scores on the categories of discriminatory family code, restricted physical integrity, son bias and restricted resources and assets.⁶⁵ Under customary law in Uganda, women have a limited or no right to inherit a deceased husband's property, even though civil law provides that women are entitled to inherit 15 percent. Consequently, only 20 percent of women in Uganda own land, despite the fact that the majority of women are employed in the agricultural sector. Also, under customary law, men are entitled to sole parental authority and they are regarded as head of the household.⁶⁶ With regard to education in rural areas, male family members are prioritized over female family members.⁶⁷

Without education or control over land and resources, young women are forced to leave the villages to do low-paid or unpaid work in the informal sector. Here, as explained in the previous chapter, they have difficulties claiming their rights to maternity.

5. The effects of maternity leave on the health of mother and child

Several studies conducted in western countries show that a longer period of maternity leave can have a significant positive influence on the health of a mother and her newborn child. A study conducted in the US by Rada Dagher et al., shows that women who take less than six months of maternity leave face a higher risk of postpartum depressive symptoms.⁶⁸ Also, Dagher et al. found that a longer period of maternity leave has a significant effect on the mother's physical health especially during the first twelve

⁶⁴ OECD Development Centre (2012), *2012 Social Institutions and Gender Index: Understanding the Drivers of Gender Inequality*, OECD, Paris, 13.

⁶⁵ OECD Development Centre (2014), *Social Institutions and Gender Index: Uganda*, <http://genderindex.org/country/uganda>.

⁶⁶ Ibidem.

⁶⁷ Kathryn E. Wilson (2010), *From Silence to Affirmation: Domestic Workers in Uganda from Fieldwork to Empirical Agenda: An intersection of Class, Gender and Ethnicity*, Lund University, 30.

⁶⁸ Rada K. Dagher et al. (2014), 'Maternity Leave Duration and Postpartum Mental and Physical Health: Implications for Leave Policies', *Journal of Health Politics, Policy and Law* 39:2, 411.

weeks after childbirth.⁶⁹ Furthermore, several studies show that a longer period of paid maternity leave has a positive effect on child health and decreases infant mortality rates.⁷⁰ Other studies show that maternity leave has a positive long-term influence on the development of children. According to a study conducted in Norway, a change from twelve weeks of unpaid maternity leave before 1977 to a paid maternity leave period of 4 months after 1977 led to an increase in the amount of children finishing high school, with 2,7 percent for children with high educated mothers up to 5,2 percent for children with lower educated mothers.⁷¹ The increase in earnings for children born before 1977 and those born after 1977 is between 5 and 8 percent when they reach the age of 30 years.

IBFAN Uganda, which is part of an international umbrella organization, states that in Uganda there is still a big gap between legislation and implementation of maternity rights provisions.⁷² Most institutions and companies provide two to four weeks of maternity leave. According to IBFAN, that is not enough because it has negative effects on the baby's nutrition, which in turn could have negative effects on the development of the brain. IBFAN advocates for a maternity leave period of six months, so that a mother can exclusively breastfeed her baby. Also the National Union for Women with Disabilities in Uganda (NUWODU) pledges for a maternity leave period longer than 60 working days.⁷³ NUWODU's Executive Secretary Jolly Acen states that a maternity leave period of four months would be better, especially because under the current legislation there are no additional provisions for maternity, for example for breastfeeding. However, she acknowledges that a period of four months is difficult to realize because it would affect the employer and the organization since the woman who is on leave needs to be replaced during that time.

It is remarkable that international and national NGO's advocate for a longer period of maternity leave, while a gynecologist at Mulago Hospital in Kampala, Dr. Ssebaduka, states that a maternity leave period of 60 working days is sufficient. He explains: 'as a gynecologist I recommend to take at least six weeks of maternity leave. However, this depends on personal circumstances, like the type of work that the woman does and the type of delivery. The length of maternity leave might eventually affect the child more than it affects the mother. Usually a mother feeds her baby for two years;

⁶⁹ Idem, 406.

⁷⁰ C. Ruhm (2000), 'Parental leave and child health', *Journal of Health Economics* 19:6, 931-960, and Sakiko Tanaka (2005), 'Parental Leave and Child Health Across OECD Countries', *The Economic Journal* 115:501, F7-F28.

⁷¹ Pedro Carneiro et al. (2011), *A flying start? Maternity leave benefits and long term outcomes of children*, IZA Discussion Paper No. 5793, IZA, 32.

⁷² International Baby Food Action Network (IBFAN) Uganda, personal statement, Kampala, 17/06/2015.

⁷³ Acen Jolly, Executive Secretary at National Union for Women with Disabilities in Uganda (NUWODU), personal statement, Kampala, 25/05/2015.

therefore a longer leave would be beneficial. A baby needs time with the mother.’⁷⁴ Also MP Betty Amongi states that a period of 60 working days is more than enough, because a longer period of maternity leave reduces women’s income and affects their position in the labour market.⁷⁵ She adds that a long period of maternity leave might even have a negative influence on the health of a mother and her baby, because when the mother loses her income, she cannot spend money on food or healthcare for the baby. Therefore, Amongi would like to see more breastfeeding provisions for working mothers. ‘In parliament, there already is a room where women can breastfeed and take their children for daycare. This provision needs to be extended to private companies.’

Different organizations and stakeholders have different views on the length of the maternity leave period that female employees should be entitled to. All of them, however, emphasize the importance of adequate maternity provisions for the short- and long-term health and development of the child. In this respect, breastfeeding is considered essential. This could be a starting point for future actions and policymaking on maternity rights.

6. Recommendations for future action

This chapter addresses the final issue of this study on maternity rights in Uganda. The gap between legislation and the realities on the labour market are discussed in previous chapters, as well as the reasons for the existence of this gap. This chapter discusses possible strategies that might be adopted in order to improve the accessibility of maternity rights. Different stakeholders have different opinions on what actions to take with regard to maternity rights provisions in Uganda. According to the ILO, the period of maternity leave should be extended to 14 weeks. However, the reality is that female employees do not even receive the 60 working days of maternity leave that they are currently entitled to under Ugandan law. Extending the period of maternity leave will have no effect when it is not accompanied with measures to implement the legislation and actually ensure compliance by employers. Therefore, alternative strategies are needed.

The first strategy could be the development of additional maternity rights provisions, like provisions for breastfeeding, daycare or flexible working hours. Data suggests that adequate breastfeeding has both short- and long-term health effects for children. Therefore, IBFAN Uganda states that the government should develop policies on breastfeeding and encourage employers to provide a breastfeeding corner for their

⁷⁴ Ssebaduka Peter, Gynecologist at Mulago Hospital, personal statement, Kampala, 02/06/2015.

⁷⁵ Amongi Betty, Chairperson of Uganda Women Parliamentary Association, personal statement, Kampala, 10/06/2015.

female employees.⁷⁶ According to Lewis et al., provisions like these are easier to realize for small- and medium-sized companies because the costs are lower compared to the costs of full paid maternity leave.⁷⁷ As coordinator of the Ugandan SME Association Mungoma explained, it is hard for SMEs to comply with the current legislation because these companies do not have the means to provide 60 working days of maternity leave on full pay. However, when more SMEs are able to comply with alternative breastfeeding provisions, the accessibility of maternity rights could be increased. Developing legislation on breastfeeding is also a logical step for the government, because facilities for breastfeeding and daycare are already provided in government offices. According to MP Amongi, these provisions should be extended to the whole public and private sector.⁷⁸

The second strategy involves the transition from an employer liability system to a system of social security. Accessibility of maternity rights provisions is highest in countries with social insurance. Therefore, both the ILO and OECD promote the transition to a social security system in all countries that rely on employer liability. Although the transition to a social security system in Uganda is difficult due to different factors - such as the size SME and informal sector, corruption and unwillingness to participate in social security schemes - there are a few things that can be done to support individual employers in providing maternity rights benefits. First, the government can provide financial support to female employees who are on maternity leave or to employers who are providing maternity rights benefits to female employees.⁷⁹ When government funding of maternity leave is difficult to realize, support can also be given in the form of subsidies or tax advantages. Second, the government can help setting up funds for different sectors or groups of employers, like self-employed women. Funds for self-employed women can protect women in vulnerable types of work and promotes female entrepreneurship.⁸⁰ Through these funds, the costs of maternity leave are shared between employers, employees and possibly the government. According to the ILO, employers' and employees' representatives are fundamental in administering these social security funds.⁸¹ The involvement of all stakeholders in administration reduces the chance of corruption.

According to the OECD, implementation of maternity rights provisions should be

⁷⁶ International Baby Food Action Network (IBFAN) Uganda, personal statement, Kampala, 17/06/2015.

⁷⁷ Susan Lewis et al. (2014), *Maternity Protection in SMEs: An International Review*, ILO, Geneva, 65.

⁷⁸ Amongi Betty, Chairperson of Uganda Women Parliamentary Association, personal statement, Kampala, 10/06/2015.

⁷⁹ OECD Development Centre (2013), *How do maternity leave and discriminatory social norms relate to women's employment in developing countries?* OECD, Paris, 11

⁸⁰ Susan Lewis et al. (2014), *Maternity Protection in SMEs: An International Review*, ILO, Geneva, 66.

⁸¹ ILO (2014), *Maternity and paternity at work: Law and practice across the world*, ILO, Geneva, 21.

extended to the whole labour force, including the informal sector.⁸² However, implementation of the current legislation is difficult because of the size of the informal sector and the inability of many employers to provide 60 working days of maternity leave. Owners of small- and medium-sized businesses often have limited resources and a limited labour force. This makes it also difficult to organize social security funds for businesses in the informal sector. Therefore, according to Mungoma, the government should start with implementation in big companies and government institutions.⁸³ In the meantime, a different approach could be adopted towards the informal sector. As implementation and organization of security schemes here is difficult, the alternative could be awareness raising. This means educating employers on the benefits of providing adequate maternity leave to their female employees, and educating female employees on the maternity rights benefits they are entitled to.⁸⁴

Furthermore, stereotypical attitudes towards pregnancy and breastfeeding need to be challenged not only in the workplace, but also in society as a whole. Lewis et al. state that ‘the lack of breastfeeding support at work in many developing country contexts illustrates the fact that obstacles are not only economic but can stem from deep-rooted cultural beliefs about the role of women in society.’⁸⁵ This relates to the discriminatory social practices that are discussed in the previous chapter. In order to improve women’s position on the labour market, the government should commit itself to addressing these discriminatory institutions. According to a study on women’s property rights in rural Tanzania by Amber Peterman, legal provisions have little effect if they are not accompanied by a change in customary law and by a change in the way a community perceives gender roles.⁸⁶ Therefore, not only additional policies are needed, but also awareness-raising through education programmes. Additionally, NGO’s, employers’ and workers’ organizations could work together to create space for discussion about women’s empowerment and provide information concerning maternity protection issues.⁸⁷ This gives women the opportunity to break away from their subordinated position in both society and the labour market.

Lastly, the government can make efforts to improve the accessibility and quality of healthcare for pregnant women. A poor quality of healthcare limits the maternity rights of women. According to Acen, Executive Secretary of NUWODU, special consideration should be given to women with disabilities. Women with physical disabilities have

⁸² OECD Development Centre (2013), *How do maternity leave and discriminatory social norms relate to women’s employment in developing countries?* OECD, Paris, 11.

⁸³ Mungoma Jude, Coordinator at SME Association Uganda, personal statement, Kampala, 01/06/2015 (via e-mail).

⁸⁴ Susan Lewis et al. (2014), *Maternity Protection in SMEs: An International Review*, ILO, Geneva, 65-66.

⁸⁵ *Idem*, 68.

⁸⁶ Amber Peterman (2011), ‘Women’s Property Rights and Gendered Policies: Implications for women’s Long-term Welfare in Rural Tanzania’, *The Journal of Development Studies* 47:1, 24.

⁸⁷ Susan Lewis et al. (2014), *Maternity Protection in SMEs: An International Review*, ILO, Geneva, 69.

problems reaching the hospital so often they give birth at home.⁸⁸ Also, communication towards women with a visual or hearing impairment should be improved. According to gynecologist Ssebaduka, there is a need for trained and skilled providers that are motivated for the work they do.⁸⁹ Furthermore, he states that there is a need for adequate resources. Stakeholders like electricity companies, water companies and engineers should play their part.

7. Conclusion

The question that is addressed in this research is to what extent the right to maternity a reality is for female workers in Uganda and how it affects their position in the labour market. In Uganda, the right to maternity leave is laid down in the 2006 Employment Act. Under this Act, female employees are entitled to 60 working days (10-12 weeks) of maternity leave on full pay. However, this right can only be claimed under certain conditions. The employee should notify the employer at least 7 days before her intention to return to work and she should be able to provide the employer a certificate of her medical condition if the employer requests so. Ugandan legislation on maternity leave does currently not comply with the international standard of 14 weeks set by the ILO. Also, compared to other countries in the world the maternity leave period in Uganda is relatively short. EU member states provide the longest periods of maternity leave with an average of 23 weeks, followed by the OECD member states with an average of 18 weeks. The period of maternity leave in Uganda is similar to that in other East-African countries; Burundi, Rwanda, Kenya and Tanzania all provide 12 weeks of maternity leave.

Although female employees in Uganda are entitled to 60 working days of maternity leave, many of them do not take 60 working days of leave. An important factor that contributes to this gap in legislation and reality is the employer liability system. Under Ugandan law, the individual employer is responsible for the payment of maternity leave of his female employees. However, many employers do not take this responsibility because they might not have the resources or the will to do so or they might be unaware of these provisions. This is especially the case for employers in the informal sector. Furthermore, because the government considers the provision of maternity leave as a task for the employer, there is no incentive to actually enforce the existing legislation on maternity leave.

Another factor that contributes to the inaccessibility of maternity rights provisions in Uganda are discriminatory social practices and the way Ugandan society perceives

⁸⁸ Acen Jolly, Executive Secretary at National Union for Women with Disabilities in Uganda (NUWODU), personal statement, Kampala, 25/05/2015.

⁸⁹ Ssebaduka Peter, Gynecologist at Mulago Hospital, personal statement, Kampala, 02/06/2015.

gender roles. In rural areas a bias against women exists and male family members are prioritized over female family members with regard to education and inheritance rights. Without education or control over profitable land, women are forced to move to the city where they often do low-paid or unpaid work. Working in the informal sector, they have limited access to maternity rights provisions.

In summary, one can conclude that access to maternity rights for female employees is limited, especially in the informal sector where women are a majority in the labour force. Because of gender inequalities in Ugandan society, women more often do unskilled and low-paid work in sectors where awareness about maternity rights is lower. Also, employers in these sectors often do not have the resources to provide maternity leave to their female employees. This situation is sustained by the employer liability system that places every responsibility on the employer. As these employees cannot afford to lose their jobs because their livelihoods depend on it, they decide to take relatively short periods of maternity leave. Also, some employers are reluctant to hire women who are in their reproductive years. This affects women's position in the labour market and leads to more gender inequality.

In order to protect women from taking maternity leave that is too short, the ILO presses for compliance with the international standard of 14 weeks by all countries. However, a change in legislation on maternity leave in Uganda will not change the realities in the Ugandan labour market. Additional measures will be needed to enable female employees to claim their rights to maternity and encourage employers to provide maternity rights benefits. First, the government could work on maternity rights provisions that are easier to realize for employers, like breastfeeding provisions and flexible working hours. Second, the government could help setting up social security funds that enable employers to provide the 60 working days of maternity leave that female employees are entitled to now. This strategy might work for the formal sector, but is probably more difficult to realize for the informal sector. Therefore, raising awareness about maternity rights among employers and employees is an important third strategy. Through education and information campaigns, stereotypical views about pregnancy, breastfeeding and women's roles in society can be challenged. Employers need to be aware that providing adequate maternity rights benefits might actually increase the productivity of their female employees. Lastly, the government could improve the accessibility and quality of healthcare to support women who are pregnant or giving birth.

Although the recommendations by the ILO and OECD to provide 14 weeks of maternity leave that is sustained by a social security system might be difficult to achieve for Uganda, progress can be made if the government, civil society organizations and employers' and employees' representatives work together to implement these strategies.

References

Literature and internet sources

- Carneiro, Pedro, Katrine V. Løken & Kjell G. Salvanes (2011), *A flying start? Maternity leave benefits and long term outcomes of children*, IZA Discussion Paper No. 5793, IZA.
- Dagher, Rada K., Patricia M. McGovern & Bryan E. Dowd (2014), 'Maternity Leave Duration and Postpartum Mental and Physical Health: Implications for Leave Policies', *Journal of Health Politics, Policy and Law* 39:2, 369-416.
- EP Directorate General for Internal Policies (2015), *Maternity, paternity and parental leave: Data related to duration and compensation rates in the European Union*, European Union, Brussels.
- Government of Uganda (1995), *Constitution of the Republic of Uganda*.
- Government of Uganda (2006), *The Employment Act*.
- Government of Uganda (2000), *The Workers Compensation Act*.
- ILO (2000), *Convention no. 183: Convention concerning the Revision of the Maternity Protection Convention (Revised), 1952*, ILO, Geneva.
- ILO (2014), *Maternity and paternity at work: Law and practice across the world*, ILO, Geneva.
- ILO (2012), *Maternity Protection Resource Package: From Aspiration to Reality for All*, ILO, Geneva.
- Lewis, Susan, Bianca Stumbitz, Lilian Miles & Julia Rouse (2014), *Maternity Protection in SMEs: An International Review*, ILO, Geneva.
- 'N° 13/2009 of 27/05/2009 Law regulating labour in Rwanda', *Official Gazette of the Republic of Rwanda* (2009).
- OECD Development Centre (2013), *How do maternity leave and discriminatory social norms relate to women's employment in developing countries?* OECD, Paris.
- OECD Development Centre (2014), *Social Institutions and Gender Index: Uganda*, <http://genderindex.org/country/uganda>.
- OECD Development Centre (2012), *2012 Social Institutions and Gender Index: Understanding the Drivers of Gender Inequality*, OECD, Paris.
- Parliament of Kenya (2007), *The Employment Act*.
- Peterman, Amber (2011), 'Women's Property Rights and Gendered Policies: Implications for women's Long-term Welfare in Rural Tanzania', *The Journal of Development Studies* 47:1, 1-30.

Ruhm, C. (2000), 'Parental leave and child health', *Journal of Health Economics* 19:6, 931-960.

'Six-month maternity leave unjustifiable – worker's MP', *The Daily Monitor* 15/08/2014,
<http://www.monitor.co.ug/Magazines/Jobs-Career/Six-month-maternity-leave-unjustifiable---Workers--MP/-/689848/2419006/-/hrnwbztz/-/index.html>.

Tanaka, Sakiko (2005), 'Parental Leave and Child Health Across OECD Countries', *The Economic Journal* 115:501, F7-F28.

The Transitional National Assembly (2001), *Labour Code of the Republic of Rwanda*.

The United Republic of Tanzania (2004), *Employment and Labour Relations Act*.

The United Republic of Tanzania (1997), *The National Social Security Fund Act*, Government Printer, Dar es Salaam.

Thévenon, O. and A. Solaz (2013), "Labour Market Effects of Parental Leave Policies in OECD Countries", *OECD Social, Employment and Migration Working Papers*, No. 141, OECD, Paris.

Wilson, Kathryn E. (2010), *From Silence to Affirmation: Domestic Workers in Uganda from Fieldwork to Empirical Agenda: An intersection of Class, Gender and Ethnicity*, Lund University.

Interviews

Acen Jolly, Executive Secretary at National Union for Women with Disabilities in Uganda (NUWODU), Kampala, 25/05/2015.

Amongi Betty, MP and Chairperson of the Uganda Women Parliamentary Association, Kampala, 10/06/2015.

Awor Catherine, Labour Officer in Amolatar District, Amolatar, 30/05/2015 (via e-mail).

Employers and employees in the formal and informal sector, Kampala, Lira and Iganga.

International Baby Food Action Network (IBFAN) Uganda, Kampala, 17/06/2015.

Self-employed market vendors in Kamwokya Market, Kampala, 18/05/2015.

Mungoma Jude, Coordinator at SME Association Uganda, Kampala, 01/06/2015 (via e-mail).

Okello Tom, Labour Officer in Lira District, Lira, 22/06/2015.

Ssebaduka Peter, Gynecologist at Mulago Hospital, Kampala, 02/06/2015.

Appendix 1: Questionnaire for interview with Acen Jolly, Executive Secretary at National Union for Women with Disabilities in Uganda (NUWODU), Kampala, 25/05/2015.

1. Is NUWODU involved in maternity rights issues?
2. How many female employees do you have in your organization?
3. What are some of the factors that you consider in employing a female or male employee?
4. Is maternity leave a factor that affects your decision?
5. Does your organization policy include maternity rights?
6. How many days of maternity leave do you provide your female employees?
7. Do you pay female employees while they are on maternity leave?
8. Under Ugandan law, women are entitled to 60 working days of maternity leave. What is your opinion about that? Would it be feasible for your organization?
9. At the moment, employers are responsible for the payment of maternity leave for their employees. What is your opinion on that? What could be an alternative? (social security maybe)
10. Do you think that special legal provisions are needed to protect the rights of women with disabilities?
11. Are there specific challenges that women with disabilities face with regard to pregnancy and giving birth?
12. And with regard to employment?
13. Currently, under Ugandan law women have the right to 60 working days of maternity leave. What is your opinion about that? Is it enough for women with disabilities?
14. Do you think that a longer period of maternity leave will affect employment rates of women with disabilities?
15. Do you think that the Ugandan government should make efforts to enable women (with disabilities) to access their right to maternity?
16. What should the government do?

Appendix 2: Questionnaire for interview with Amongi Betty, MP and Chairperson of the Uganda Women Parliamentary Association, Kampala, 10/06/2015.

1. Under current Ugandan law, women are entitled to sixty working days of maternity leave. What is your opinion about that?
2. Uganda has not ratified ILO Convention 183 which states that female employees should be entitled to 14 weeks of paid maternity leave. Can you explain why Uganda does not meet the international standard and what is your opinion about that?
3. As stated in the Ugandan Constitution, the GOU acknowledges the rights of women to maternity and commits itself to promote gender equality. How does the GOU translate this principle into action?
4. Are there any consequences for employers who do not comply with national legislation on maternity rights?
5. Uganda has a system of employer liability. Individual employers are responsible for the funding of paid maternity leaves for their female employees. Can you explain why the government does not financially support employers in funding maternity rights provisions?
6. Studies show that social security systems can help smaller businesses to fund maternity rights provisions, reduce gender inequality in the workplace and stimulate economic development. Do you think the government should make efforts to create a social security system and provide financial support?
7. Owners of small businesses and self-employed entrepreneurs find it particularly difficult to provide or claim access to maternity rights provisions. Do you think special legislation is needed to support these types of entrepreneurs?
8. Many female employees in Uganda work in the informal sector as domestic workers, which makes it very difficult for them to claim their rights to maternity. Ugandan law does not formally acknowledge domestic workers as employees. The OECD Development Centre therefore recommends that all countries make sure that maternity leave legislation applies to the whole labour force, including domestic workers. What is your opinion about that?
9. Do you think it will be feasible to extend maternity rights legislation and implementation to the whole labour force? What can the government do to make sure that women in the informal sector actually have access to maternity rights provisions?
10. In your opinion, what other policies/strategies are needed with regard to maternity rights in Uganda?

Appendix 3: Questionnaire for interview with employers and employees in the formal and informal sector, Kampala, Lira and Iganga.

Employers:

Name

Function

Company

1. How many female employees do you have in your company?
2. What are some of the factors that you consider in employing a female or male employee?
3. Is maternity leave a factor that affects your decision?
4. Does your company policy include maternity rights?
5. How many days of maternity leave do you provide you female employees?
6. Do you pay female employees while they are on maternity leave?
7. Under Ugandan law, female employees are entitled to 60 working days of maternity leave with full pay. What is your opinion on this? Is it feasible for your company?
8. Does it enable women to stay in employment? If no, what do you suggest to enable female employees to balance between work, family and their health?
9. At the moment, employers are responsible for the payment of maternity leave for their employees. What is your opinion on that? What could be an alternative? (social security maybe)
10. According to you, what should be the role of the government in this?

Employees:

Name

Function

Company

1. Do you have a contract?
2. Does your contract include the right to maternity leave? How many days (on full pay)?
3. Have you ever tried to claim your right to maternity leave? Was it successful? (If yes, q7)
4. What was the reason the employer told you for not willing to provide you paid maternity leave?
5. What is your opinion on that?

6. Do other people support your claim to paid maternity leave and the right to return to your job?
(husband, family)
7. Are you aware of the fact that under Ugandan law, women have the right to 60 working days of maternity leave on full pay?
8. Do you think that 60 working days would be enough?
9. According to Ugandan law, the employer is responsible for the payment of maternity leave for female employees. What is your opinion on that?
10. Many employers find it difficult to bear these costs. Would you be willing to contribute to a social insurance, financed by both employers and employees, so that every female employee can actually access maternity leave rights?
11. According to you, what should be the role of the government in this?

**Appendix 4: Questionnaire for interview with International Baby Food Action Network (IBFAN)
Uganda, Kampala, 17/06/2015.**

1. How many female employees do you have in your organization?
2. What are some of the factors that you consider in employing a female or male employee?
3. Is maternity leave a factor that affects your decision?
4. Does your organizational policy include maternity rights?
5. How many days of maternity leave do you provide your female employees?
6. Do you pay female employees while they are on maternity leave?
7. Under Ugandan law, female employees are entitled to 60 working days of maternity leave with full pay. What is your opinion on this? Is it feasible for your organization?
8. At the moment, employers are responsible for the payment of maternity leave for their employees. What is your opinion on that? What could be an alternative? (social security maybe)
9. Legislation on maternity leave in Uganda does not comply with the international standard of 14 weeks. Do you think the Ugandan government should make efforts to meet the international standard of 14 weeks?
10. According to IBFAN, what would be the ideal period for paid maternity leave? Why?
11. Do you think that a longer period of maternity leave might have a negative influence on gender equality?
12. As regards maternity rights provisions, do you think there is a gap between legislation and implementation in Uganda?
13. IBFAN works in the entire African region. Can you tell something about the differences between rights to maternity in Uganda and rights to maternity in other (East-) African countries?
14. Most female employees in Uganda work in the informal sector, which makes it very difficult for them to actually claim their rights to maternity. Do you think it will be feasible to provide maternity leave to every female worker in Uganda?
What strategies should be adopted?
15. What other provisions concerning maternity rights would you recommend?

Appendix 5: Questionnaire for interview with labour officers.

1. Have you handled cases on maternity leave?
2. What were the cases about? (denial, non-payment, half payment?)
3. As a labour officer, what can you do to help female employees claim their rights to maternity?
4. What do you think of the current Ugandan legislation on maternity leave? (60 working days)
How do you enforce this right?
5. When you talk to employers, are they often reluctant to provide paid maternity leave? Why (not)?
6. Do you think you have the capacity to help every woman that needs your help in claiming her rights to maternity?
7. How would you categorize employers by compliance with this right? (public/private, foreign/local)
8. Do you report to the Minister of Labour about the actual situation concerning accessibility to maternity rights provisions? Do you feel that you are properly heard when you report to the Minister?
9. Is there a gap between legislation and implementation of maternity rights provisions?
10. From your experience as a labour officer, do you find that many female employees are aware of their rights to maternity?
11. Are employers aware of this obligation?
12. Do you think there is a difference between the formal and informal sector as regards awareness of and access to maternity rights?
13. Do you think the government should make efforts to improve the situation? If so, what strategies should be adopted?

Appendix 6: Questionnaire for interview with self-employed market vendors in Kamwokya Market, Kampala, 18/05/2015.

Name

Age

1. Do you have children?

If yes, who took care of your business while you were giving birth?

If no, who will take care of your company in case you would fall sick or become pregnant?

2. Are you aware of the fact that under Ugandan law, female employees have the right to 60 working days of maternity leave?

3. Would it be feasible for you to leave your work for 60 days?

4. Do you think that a maternity leave period of 60 days is enough?

5. Would you be able and willing to financially contribute to a social insurance that provides financial support for paid maternity leaves of employees and self-employed entrepreneurs?

6. What do you think the government can do to make sure that all female employees and self-employed entrepreneurs have access to maternity rights provisions?

7. Do you think that the government should provide financial support to employers and self-employed entrepreneurs to enable them to provide or receive paid maternity leave?

**Appendix 7: Questionnaire for interview with Mungoma Jude, Coordinator at SME Association
Uganda, Kampala, 01/06/2015 (via e-mail).**

1. What do you think of the current legislation on maternity leave in Uganda? (60 working days = 10-12 weeks)
2. The majority of people working in small businesses are women. This suggests that maternity rights are especially relevant for employers and employees working in small enterprises. How do you think the current legislation works out for women working in these enterprises?
3. Compared to large and multinational firms, do you think there are specific challenges or obstacles for SMEs with regard to the implementation of maternity rights?
4. Uganda currently depends on an employer liability system for the funding of maternity leave benefits. This means that the individual employer is financially responsible for the maternity leave of his/her female employees. Do you think this system works well?
If not, what could be an alternative?
5. A possible alternative to employer liability is a social security system where both employers and employees contribute to social insurance. What do you think of a social security system? Do/don't you think that a social security system encourages SME's to actually provide paid maternity leave to their female employees, even if they operate in the informal sector?
6. Do you think that both employers and employees should contribute to the financing of maternity leave? Why (not)?
7. According to the ILO, employers can benefit from social security because there are wider societal benefits involved, like improved maternal health and increased gender equality. What are your views on that?
8. Do you think there is a role for the government to ensure that women have access to maternity rights provisions?
9. Legislation on maternity leave in Uganda does not comply with the international standard of 14 weeks set by the ILO. Do you think the Ugandan government should make efforts to meet the international standard?

Appendix 8: Questionnaire for interview with Ssebaduka Peter, Gynecologist at Mulago Hospital, Kampala, 02/06/2015.

1. In your view, is healthcare in Uganda easily accessible for women who are pregnant or are giving birth?
2. At the moment, Ugandan legislation on maternity rights provides 60 working days (10-12 weeks) of maternity leave. What is your opinion about this?
3. What are the dangers for female employees when they return to work too early after giving birth?
4. What are the dangers for the child? (short- and long-term)
5. Have you ever dealt with complications that resulted from a maternity leave that was too short?
6. In your opinion, what would be the ideal period of time for maternity leave?
7. In Uganda, there is an employer liability system, which means that individual employers are responsible for providing paid maternity leave to their employees. The ILO prefers a publicly funded social security system. Do you think that social insurance can contribute to the health of working mothers and their children?
8. What other provisions concerning maternity rights would you recommend?