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**THE EFFICACY OF THE NEW KENYAN LABOUR LAWS OF 2007 IN ADDRESSING  
MATERNITY LEAVE: WOMEN'S EXPERIENCES IN NAIROBI AND NAIVASHA  
DISTRICTS OF KENYA**

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**BY  
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## Abstract

The writer of this dissertation, an experienced senior legal officer in Kenya's Ministry of Labour, critically analyses the effect of improved and ILO-inspired maternity benefits (enshrined in Kenya's new Employment Act of 2007) on employees, especially women, in the formal and informal sector, employers, the government and society at large. Not only do women comprise the majority of the workforce in Kenya, they are crucial to certain vital export industries (such as flower exports and EPZ textile factories) many of which are based in the researcher's case study area in the heart and capital of Kenya.

Skilfully employing a combination of gender-sensitive methodologies, in particular, the Women's Law ("WL"), Human Rights and Grounded Theory Approaches, the writer collects and analyses a wealth of documentary data (including a comprehensive law and literature review) as well as evidence from her case study respondents and key informants (e.g., in employers' and employees' organisations, the Ministry of Labour and NGOs). According to the unique WLA, she presents her findings in the form of the 'lived realities' of her respondents constructed so as to reveal the impact upon them of the various forces relating to their crucial child-bearing status which affect their roles in all aspects of their lives, especially in their workplaces. Here, she sadly discovers that their crucial child-bearing and rearing role comes into direct conflict with the interests of the majority of employers who are greedy, unscrupulous and intimidating. Rather than protect and build up their female workforce whose unique mothering qualities make them such ideal and actively sought-after employees (women are typically hard working, loyal, patient, disciplined and uncomplaining), these vicious employers ruthlessly and unlawfully use their employees' inherent physiological condition as an illegitimate excuse to engage in highly discriminatory, exploitative and illegal practices which directly and indirectly cause them, their babies and families extreme and often long-term physical, psychological, economic, social and cultural harm. Desperate to keep their low-paying jobs in a country with a high unemployment rate, some female workers even engage in life-threatening secret and illegal abortions than dare to keep their babies and face inevitable malicious disciplinary/dismissal proceedings at the hands of mainly male-run wealthy organisations who flaunt their illegal conduct, arrogant in the knowledge that they are rarely successfully prosecuted by a grossly under-resourced, demoralised, corrupt and often legally illiterate Ministry of Labour. While some law reform is desirable to clarify the labour legislation (the enforcement of which remains highly problematic) and to establish a scheme to help employers bear the burden of meeting their employees' maternal (and paternal) staff benefits, the writer suggests large and long-term investments in high quality financial, material and human resources in GOs and NGOs in order to improve their promotion and protection of the general and maternal health of all their valuable female employees

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## **Declaration**

I declare that this is my original work and has not been submitted for any study programme in any university or college or for any other thesis. The ideas and views herein except where expressly indicated are strictly my own and I take full responsibility for them.

All rights reserved. No part of this dissertation may be reproduced, stored in a retrieved system, or transmitted in any means, mimeograph, recording or otherwise without written permission from the author.

Declared this .....Day of .....2010

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**ROSE M. N. WASIKE**

## **Dedication**

This dissertation is dedicated to my children Evans Masaka, David Chokaa and Bartha Marysellah Chokaa. Thank you for allowing mummy to study even when you wanted to breastfeed.

To the father of my children, Vincent Chokaa, my mother Margaret Nafula and my father Abiud Wasike, for their patient and continuous faith when my own hand and head had failed , and for taking care of my children in my absence. Special thanks go to my sisters Purity Wasike and Saida and their husbands for their continuous prayers and encouragement.

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## Abbreviations

AIDS	Acquired Immune-Deficiency Syndrome
BCEA	Basic Conditions of Employment Act
BIFU	Banking Insurance Finance Union
CBA	Collective Bargaining Agreement
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
COTU	Central Organization of Trade Unions
DLO	District Labour Officer
EA	Employment Act (may refer to the repealed AE, Chapter (Cap) 226 or the AE No 11 of 2007)
FKE	Federation of Kenya Employers
GOAP	Goal-Oriented Antenatal Care Protocol
HIV	Human Immunodeficiency Virus
IBFAN	International Baby Food Action Network
ILO	International Labour Organization
ILS	International Labour Standards
KAM	Kenya Association of Manufacturers
MoL	Ministry of Labour
MoH	Ministry of Health
MPC	Maternity Protection Coalition
NGO	Non Governmental Organization
PLO	Provincial Labour Officer
SA	South Africa
UK	United Kingdom
WHO	World Health Organization

### **List of Statutes and Legislation cited**

The Kenyan Constitution  
The South African Constitution  
The Kenyan Employment Act No. 11 of 2007  
The Kenyan National Social Security Fund Act Cap 258  
The Kenyan National Hospital Insurance Fund Act  
The South African Basic Conditions of Employment Act  
The Kenyan Civil Servants Code of Regulations (2006)

### **List of Kenyan Policies cited**

The Draft National Employment Policy  
The Draft National Gender Policy  
The Draft National Human Rights Policy  
The Draft National Health Policy

### **List of Conventions, Protocols and Declarations cited**

The International Labour Organization Conventions (C3, C103, C183, C156)  
The Universal Declaration of Human Rights  
The United Nations International Covenant on Civil and Political Rights  
The United Nations International Covenant on Economic, Social and Cultural Rights  
The Vienna Declaration and Programme of Action  
The Cairo Declaration on Population and Development  
The Convention on the Elimination of All Forms of Discrimination against Women  
Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa ('The African Protocol on Women's Rights')  
The Convention on the Rights of the Child

### **List of Kenyan Cases cited**

*Industrial Court case no. 154 of 2007*

*Okunda v Republic (1970) EA*

*Pattni & Another v Republic (2001) KLR*

*Tailors & Textile Workers Union v. Wild Elegance Fashions Ltd. IC Cause No. 154 of 2007*

### **List of International Cases cited**

*Webb v EMO Air Cargo (UK) Ltd [1994] ICR 770*

*Dekker v Stching Vormingscebtrum Voor Jonge Volwassen (VJV-Centrum) Plus [1991] IRLR 27 ECJ*

*Hurley v Mustoe [1981] IRLR 208 EAT*

*Mahlburg v Land Mecklenburg-Vorpommern [2000] IRLR 276 ECJ*

*James v Eastleigh Borough Council [1990] IRLR 288 HL*

*Hayes v Malleable Working Men's Club and Institute [1985] IRLR 367 EAT*

*Smit v Workman's Compensation Commissioner 1979 (1) SA 51 (A)*

## CHAPTER ONE

### 1.0 INTRODUCTION

The view that women are primarily child bearers for raising families is widely held by all sectors of the societies, including the employment sector (Moffat: 1999). Most, if not, all working women at some point in their personal life, face unequal treatment in employment due to this role.

Because of this social attitude, negative attitudes are carried invisibly into the employment field providing a psychological excuse for gender discrimination in employment, because pregnancy is a “*physiological disadvantage to the employer who needs his constant service*” (Madhuka: 1999). It is a worker’s duty to place her services at the disposal of the employer [*Smit v Workman’s Compensation Commissioner 1979 (1) S.A 51 (A).*]

However, men too, have family responsibilities as child rearers, hence the concept of paternity care [ILO Convention No 156 on Workers with Family Responsibilities (1981)]. This concept was recognized in order to create effective equality of opportunity and treatment between workers with responsibilities and other workers.

Pregnancy related discrimination and dismissal of women remains rooted in the developing world despite attempts by global and national workers’ movements to stop it. With nearly 60% of the world’s child-bearing age in the labour force, many female workers are continually being pushed outside legal and social protection systems exposing them to loss of jobs (ILO Global Report: 2007). Throughout the world, workers are facing a health crisis; most of it related to conditions under which they work. Discrimination and potential hazards facing working women during pregnancy and after child birth can be mitigated by social and legal measures (*ibid*). The importance of paid work in the lives of so many women makes maternity protection at work a key to safeguarding the health and economic security of women and their children.

In many developing countries, Kenya included, maternity leave is viewed as a luxury enjoyed only by a small minority of salaried women covered by social security or where laws prescribe, by the employer or government. However, poverty compels many women in poor countries to

work up to their due date and to return immediately after child birth, at the risk of their health and that of their child.

This dissertation, therefore, discusses the findings of research carried out in Nairobi and Naivasha districts of Kenya from October 2009 to January 2010 on the efficacy of Kenya's new labour laws of 2007 in addressing maternity leave. It is divided into five chapters. Chapter one gives the background to the research, the significance of the research, the statement of the problem, objectives, research assumptions and questions to the research. Chapter two discusses the literature review on the concept of maternity leave, theories related to maternity protection, and relevant research on maternity. Chapter three contains a discussion of the research methodologies and methods used during the research, giving a description of how each of them was used during the research. It also gives an account of the limitations of the research. The findings and data analysis of the research are discussed in Chapter four based on research questions and assumptions. Some of the themes include: adequacy of the new Kenyan labour laws of 2007 in addressing maternity leave; conformity of Kenya's new maternity protection provisions to international human rights /ILO instruments; implementation of the new Kenyan maternity provisions by employers etc. This chapter reviews the Kenyan laws and policies vis-à-vis other countries like South Africa, Zimbabwe, Denmark, Netherlands and Norway, human rights framework and international labour organization conventions relevant to the research. It ends with Chapter five which gives recommendations of the research/study based on each assumption and conclusion.

## **1.1 Background to the Research**

Nairobi, one of the districts where the study was carried out is a capital city of Kenya situated in the highlands of the southern part of the country and has a population close to four million. Nairobi's history dates back in 1890's when a railway depot was built in brackish African swamp occupied by a nomadic people, the Maasai, as well as the pastoral Kikuyu people who were displaced by the British as they build the Mombasa –Uganda railway line (Wikipedia, Free Encyclopaedia, 2010). The railway complex and the building around it rapidly expanded and urbanized until it became the largest city of Kenya and the country's capital, replacing Mombasa as the capital city in 1907.

The name “Nairobi” comes from the Maasai phrase *Enkare Nyorobi*, which translates to “the place of cool waters”. It was difficult for the British to pronounce it and instead called it “Nairobi” and here was born *Nairobi town*. Nairobi is popularly known the “Green City in the Sun (Wikipedia, Free Encyclopaedia, 2010). It is Kenya’s principal economic, administrative and cultural centre and is one of the largest and fastest growing cities in Africa. Manufacturers include processed food, textiles, clothing, building materials, and communications and transportation equipment. The city also has a large tourist industry.

Naivasha town on the other hand comes from the Maasai Word E-na-iposha (meaning “living waters”). It is one of the Kenyan Districts with a population of over 300,000 people due to the presence of many flower farms. Its main industry is agriculture, especially horticulture and floriculture. The town has attracted many women from the Luhya and Luo community working in the flower farms as craters and packers. There is not a single flower farm that does not have women workers. The Kikuyus and Maasai who are occupants of the town find working in flower farms a waste of time due to what they term bad conditions and terms of service. To them, hawking or being employed elsewhere would earn them more money and give them time to rest as opposed to working on the flower farms and Export Processing Zones (EPZs) where one works for long hours and receives less pay.

The exemption of the Export Processing Zone (EPZ) by government from the application of various Kenyan laws make the situation worse, especially since they are one of the major employers of women in the country. The years 2003 and 2008 saw a lot of strikes in EPZs with workers calling upon the government to rescue them from the hands of the EPZ employers. At one time in 2006, the workers frog marched the District Labour Officer (DLO) of Industrial Area, Nairobi from his office to the Ministry’s headquarters. They also carried placards calling upon the then acting Minister to resign or be killed if he could not take action to protect them and rectify the situation. All this happened when I was working as the legal officer in the Ministry headquarters and it really bothered me as to what the government needs to do and what advise to give when called upon to do so.

In addition, when the new labour laws were enacted in October 2007, there was a hue cry from employers that the new laws were expensive to implement and a call for the three months maternity leave in addition to 21 days annual leave to be reduced or be annulled. This, coupled

with many other gaps that will be highlighted in the study later, made me undertake this research to establish whether the new labour laws fully address maternity leave.

## **1.2 The Significance of the Research**

My 16 years experience as a Legal Officer (14 years) and as a Deputy Registrar (2 years) in the Ministry of Labour (MoL) saw many disputes relating to unfair dismissals of pregnant women and non payment of their maternity leave benefits land in my office. Unprotective laws for pregnant women and those proceeding on maternity leave made the settlement of maternity related cases very difficult. Most of the claims related to maternity were dismissed by the labour officers and courts. During the labour law review, the MoL had proposed that the National Social Security Fund ( NSSF) Act Cap 258 be amended to cover maternity costs; a proposal that was rejected by Parliament.

The significance of my research therefore is to establish the extent to which the Kenyan labour policies and the new labour laws of 2007 cater for maternity leave and their adherence to international human rights instruments/ILO standards and use the findings to come up with suggestions for policy and law reform to deconstruct the gender disparity and inequality that prevent women from realising their right to maternity protection.

## **1.3 Statement of the Problem**

Section 7(2) of the repealed Employment Act Cap 226 (EA) provided for two months' maternity leave with full pay but with a proviso for the forfeiture of annual leave; the cost of maternity was totally borne by the employer. The new Kenyan labour laws of 2007 provide for three months maternity leave in addition to 21 days annual leave all with full pay. They also protect the employee on maternity from unfair dismissal and discrimination while pregnant and on maternity leave. However, their implementation is a problem as the cost of maternity is borne by the employer. Employers have continuously complained that the new maternity provisions are expensive and have threatened to close down their companies; migrate to other cheaper countries or to stay in operation but discriminate against women employees unless the government reduces the burden of maternity leave benefits imposed upon them.



Further, the MoL which is the main enforcement organ of government on labour issues is facing serious challenges while enforcing and monitoring implementation of the new laws. The challenges include; low government budgetary allocation, attrition, wrong public perception of the ministry and an inadequate staff that is not trained in the new labour laws. This indicates that the Ministry is unable to fully enforce and monitor implementation of the new maternity provisions on all employers. This study therefore seeks to assess the effectiveness of the new Kenyan labour laws in addressing maternity leave, the magnitude of the above problems and their effect on implementation of the new maternity provisions; how they prevent women from realising their maternity rights and identify aspects of the new maternity provisions that need to be reviewed or amended.

#### **1.4 Research Objectives**

The research objectives of my study are derived from the topic: **“The Efficacy of the New Kenyan Labour Laws of 2007 in Addressing Maternity Leave: Women’s Experiences in Nairobi and Naivasha Districts of Kenya.”**

##### ***1.4.1 The Overall Objective***

The main objective of this research is to assess the efficacy of the new Kenyan labour laws of 2007 in addressing maternity leave using women experiences in Nairobi and Naivasha Districts of Kenya. This will enable me identify the strengths and weakness of the new maternity provisions and make recommendations on how different actors can address the weakness.

##### ***1.4.2 The Specific Objectives***

The specific objectives of this study were to:

1. Establish the extent to which the new labour laws address maternity leave.

2. Investigate whether the new labour laws meet the international labour standards/international human rights instruments.
3. Assess the challenges of the new maternity leave provisions.
4. Provide strategies to be adopted by the Kenyan government to address the challenges.

## **1.5 Research Assumptions**

The research was guided by the following assumptions drawn from the objectives of the study:-

1. The new labour laws are inadequate in addressing maternity leave.
2. The maternity leave provisions in the new labour laws do not conform to international labour standards and the international human rights instruments.
3. The new labour law provisions on maternity leave are not being fully implemented by employers.
4. A lack of policies, regulations, administrative measures, and bureaucracy prevent women from fully realising their maternity leave benefits.
5. Kenyan women are ignorant of their right to maternity leave benefits.
6. The new provisions on maternity leave have led to the discrimination of women employees by their employers.
7. Administrative, policy and legislative measures may assist women fully realising their right to maternity leave benefits.

## **1.6 Research Questions**

The research was also guided by the following questions which were derived from the research assumptions.

1. Do the new labour laws of 2007 adequately address maternity leave?
2. Do the new labour laws of 2007 meet the international labour standards /international human rights instruments pertaining to maternity leave?
3. Are employers complying with/implementing the new maternity leave provisions as provided for in the new labour laws of 2007?
4. Is it the lack of policies, regulations, administrative measures and bureaucracy that prevents women from fully realising their right to maternity leave benefits?
5. Are women ignorant of their right to maternity leave?
6. Are women being discriminated against by employers because of the new provisions on maternity leave?
7. What are the measures that can be adopted to address the gaps identified in the new labour laws in relation to maternity and the problems facing women in accessing and realising their maternity leave benefits?

## **1.7 The Target Group**

The key informants of my research were the courts, Ministry of Labour (MoL), the Public Service Commission (PSC), the Government Department of Personnel Management (DPM), the Ministry of Gender (MoG), Kenya Human Rights Commission (KHRC), hospitals, Non Governmental Organizations (NGOs), workers and employers' organizations, employers in public and private sectors (formal and informal) and employees working in the public and private

sector (formal and informal). The interviews targeted workers, human resource managers, the Registrar of the Industrial Court, the Labour Commissioner, the Provincial and District Labour Officers (PLOs and DLOs), Labour Officers and Labour Inspectors, Administrators, Health Officers, union and employers' representatives, shop stewards and work committees (men, women, boys and girls both working and unemployed and married and single).

It was easier to get information from the administrators, human resource managers, workers' and employers' organizations and hospital staff (who are enforcers of the laws and policies) and the workers themselves (who are the beneficiaries of the new labour laws and policies and corroborated each other's information) than from employers.

## **1.8 Demarcation of the Area of Study**

This study was carried out in Nairobi and Naivasha Districts of Kenya from 12th October 2009 to January 2010. Nairobi as mentioned earlier is the capital city of Kenya, situated in the highlands of the southern part of the country and has a population close to four million. Naivasha is 200 Km away from Nairobi with more than half of its population staying in Naivasha town and the lake region, which covers less than a quarter of the total district square area(LBSI,2007). I chose to do my research in these two districts because it was convenient for me since I work in Nairobi and Naivasha is close to Nairobi. The MoL I work with has two district labour offices in Nairobi and one in Naivasha which made it easier for me to connect with the employers and workers through the respective DLOs, the Federation of Kenya Employers (FKE) and the Kenya Plantation Workers Union (KPWU). It was easy to get information from government offices because they understood the meaning of research. Furthermore, the government is encouraging its officers to further their education to be able to rise to a certain level. This has reduced the level of bureaucracy that used to be there before for one to get any government information. An example is the booking I did on the phone to interview the Director Human Resource at the Public Service Commission (PSC). It took me only a day to meet her and on meeting, she gave me all the required information and contacts of the relevant officers to interview at the DPM.

## **CHAPTER TWO**

### **2.0 LITERATURE REVIEW**

This chapter reviews the literature related to the concept of maternity, theories and studies behind maternity protection, previous research and findings relating to the implementation and efficacy of the new labour laws in addressing maternity leave. These findings will in a later Chapter be linked to the current findings to determine the efficacy of the new labour laws in addressing maternity leave, recommendations and conclusion.

#### **2.1 The Adequacy of the new Labour Laws in addressing maternity leave**

To address the question as to whether the new labour laws fully address maternity leave, there is a need to understand the concept of maternity leave and make a comparative study of laws in other countries (e.g., South Africa, Zimbabwe, Netherlands and Denmark).

##### ***2.1.1 The Concept of Maternity***

The concept of maternity has existed since the days of our ancestors and it is here to stay. Traditional societies acknowledge the need for women to rest after childbirth and to be supported by the extended family and neighbours. In many cultures including the *Bukusu* people (my sub-tribe of the Luhya tribe in Kenya), a pregnant woman was not allowed to dig, plough or carry heavy loads lest they break their backs and miscarry. On giving birth, new mothers were assisted for approximately 40 days, during which they attend in privacy to their own special needs and those of the new born infant. A special woman attendant was attached to them and if there was none, the new mother went to stay with her mother or aunt until the 40 days were over. A cow was slaughtered (if girl child) or bull (if boy child) and the backbone meat spared for the mother for her to get proper soup out of it. During this period, she stayed and ate alone to avoid infection of the baby and herself. This period often ended with a celebration in which both the baby and mother were ceremonially presented to the community. Some societies have however, more elaborate and extensive ceremonies than others. Further after giving birth, there were

different ceremonies held depending on the sex of the child. If it was a boy, the mother had to stay in the house for 3 days, and the girl 2 days. During this time, she was not visited by anyone and the baby was not seen except by **omwalikhisia (the person taking care of her cooking)**. This was to protect the new mother and her new baby from any infection. This was the trend until early 19<sup>th</sup> Century when more women entered paid employment and means of providing collective support for childbearing women were introduced in the working world; therefore employed women have no time to support the system, leaving it to the non-employed and therefore dying a natural death with time.

These collective support for maternity by the African community represent an integrated system that has given African cultures the stability and longevity to provide a model of consistency and inter-generational unity. It also represents a complete set of device that prevents the systematic ill treatment of women and children. Though not “perfect” as all human societies have problems, but they do provide a viable example in the modern world of how to give women and children the social support (Mulford C. et al, 2003).

In the modern world, *maternity rights* refer to safe working conditions for pregnant women, maternity leave, leave pay and job security, while *maternity protection* means protecting the jobs and welfare of working pregnant women, working mothers, and their babies and it provides the support women need to help them satisfactorily harmonize their productive and reproductive roles (IBFAN Africa, 2004).

Maternity protection maybe broad enough to cover women in all sectors of the economy, or it may be narrow and cover only some women. In general the scope tends to be narrow, exclusive rather than inclusive. National legislation usually covers only women who are employed in the formal sector, that is, only those who have entered into a formal contract of employment and/or who have contributed to a specific fund such as insurance or other such schemes. In other words, whole sectors of the economy may be excluded like women working in the private sector, or in the informal sector, or independent workers (Maternity Protection Coalition, 2003).

A national law may include only full-time workers, or only women who have worked for the same employer for a minimum length of time (qualifying period) and who have been confirmed or made permanent in their jobs, or those who have paid into a benefits fund. Moreover, a law may be used to serve a religious, or social agenda, or an economic purpose. Benefits may be

reserved only for mothers who are married. They may apply only for a woman's one or two children. Leave or benefits could be distributed only once every two or three years, thus favouring women who are able to space their pregnancies (IBFAN Africa, 2004).

The need for maternity protection arises from the fact that more women are spending their childbearing years in active employment. More and more women are the sole breadwinner for their families and cannot afford to lose income when they give birth. The only way that women can be sure that they will not be penalized when they take time off work to give birth and nurture their infants, is if there is adequate national legislation to ensure employers give them the necessary paid leave and job security (IBFAN Africa, 2004).

*Maternity leave* is not defined by the Maternity Protection Coalition (MPC), Kenyan Legislation nor the International human instruments. I define maternity leave as “*an approved period of absence from work by a woman who is about to give birth, has given birth, has had a miscarriage or still birth, or by a woman or man who has adopted a child below two years old, to enable her/him recuperate and/or take care of her new born baby or adopted child and the leave may be paid, unpaid or partially paid*”.

The following observations are made about the main elements of maternity leave by the MPC: *Maternity Protection Campaign Kit, 2003*.

*Maternity leave length* varies from country to country, running from approximately eight weeks in many countries to one year or more in a few. Worldwide, the typical maternity leave ranges from 12 to 14 weeks. Many laws including ILO C183 impose “*compulsory leave*” of six weeks, following the birth so as to prevent anyone from forcing her back to work before she has recovered, at least minimally. It takes an average of six weeks for women's bodies to return to normal after delivery; this is why caregivers schedule a postnatal check-up six weeks or 40 days after birth; the same reason Bukusu women of Kenya stayed in doors for 40 days.

According to the MPC, *related types of leave* are often included in discussions about maternity. In some countries, one to 14 days of *paternity leave* are granted to new fathers who thus can directly participate when the baby is born, and care for mother, baby and any other dependent members of the household. *Adoption leave* is similar to maternity or paternity leave and allows workers who become parents through adoption to enjoy the same job-protected leave as people

who give birth. In most countries that offer *parental leave*, it is available to both parents, although a portion of the leave may be assigned specifically to the father or to the mother. In many cases, parental leave is gender-neutral, which protects both parents from discrimination and gives fathers opportunity of increasing their involvement with the care of their children. The length of leave may be as short as three months or as long as three years; or it may offer the option of part-time work for some years. In general, is unpaid or partially paid, but it does guarantee that the parent can return to the same job or a similar one. *Family leave* is leave taken to care for any family member, such as a spouse, older child, or infirm parent (MPC, 2003)

Some of the *maternity costs* are covered by the national health insurance plan. Where social security is not provided, some women contribute to local health schemes or private insurance that cover some of the costs of maternity. However, women who lack maternity protection are not covered at all and they have to pay for all the services. One way of financing maternity benefits is from a public insurance fund, usually provided through a social security system. This method shares the costs broadly; other needs such as retirement funds/pension, disability pay, or unemployment benefits, compete with maternity protection benefits and are often given higher priority (Ibid).

In countries where social security or insurance systems are not well developed, employers are often required to pay the woman's salary while she is on leave. This may however act as a disincentive to hiring women or to continuing to employ them if they become pregnant. In other systems, employers and workers share the burden of contributing to an insurance scheme (Ibid)

The workplace can expose women to conditions that are hazardous for her pregnancy. National laws therefore should protect a pregnant or breastfeeding worker from being obliged to do work in conditions that risk her health or her child's health. Occupational health and safety regulations should require employers to make the job safer or provide another equivalent work setting during the period of maternity protection (Ibid set 2).

National laws should protect women on maternity leave from being discriminated against; not to be placed at a disadvantage relative to other workers who have not had to cope with the demands of child bearing; from being transferred to a lower position, isolation or being passed over for job advancement. Gender discrimination for child bearing women can also be subject to discrimination in relation to women who do not have children as well as in relation to men; they



put measures in place that discriminate against child bearing women or refuse to hire married, pregnant or young women because they might become pregnant or take maternity leave and become a liability to the company in meeting maternity costs. Without protection from discrimination, breastfeeding women could even find themselves at a more disadvantage in relation to other mothers who are not breastfeeding (Ibid).

The benefits of maternity leave and breastfeeding as observed by IBFAN, 2004 publication, *Maternity Protection; WHAT? WHY? HOW?* are as indicated in sub-chapters 2.1.2 to 2.1.7 herein below .

### ***2.1.2 How Maternity Leave Affects Breastfeeding***

Adequate maternity leave is necessary to ensure the good health of the woman and her baby. A woman needs time off work to recover from the physical, psychological and emotional stresses of pregnancy and childbirth. The mother also needs the time to establish breastfeeding and care for her baby. Paid maternity leave enables her to take that time without suffering economic loss. This is even more important for the HIV positive mother if she opts to breastfeed, as she needs to do so exclusively, (that is, breastmilk only for the first six months of life), to avoid the more dangerous option of mixed feeding. Mixing breastfeeding and replacement feeding allows for easier access for the virus through the delicate infant gut, which gets damaged by the foreign proteins in formula and other milks. If an HIV positive mother opts not to breastfeed, she will also need the leave to establish whichever feeding method she has chosen.

### ***2.1.3 The Benefits of Maternity Leave***

In 2002, after reviewing the scientific literature, the World Health Organization (WHO) concluded that for optimal maternal and infant health, women need 4-6 weeks of leave before giving birth and at least 16 weeks afterwards, with adjustments for increased leave if the woman or her child is sick [WHO intervention at ILO General Conference, 2000]. Maternity leave facilitates successful breastfeeding which provides enormous benefits for babies, mothers and society in general and exclusive breastfeeding greatly reduces infant mortality and morbidity. A new strengthened Resolution on Infant and Child Nutrition (WHA 52.25), was adopted in May

2002; stating that *to achieve optimal growth, development and health, infants should be exclusively breastfed for the first six months of life .*

#### ***2.1.4 The Benefits of Breastfeeding for the Baby***

The benefits of breastfeeding are: babies are healthier and get sick less often; breastmilk provides all the nutrients a baby need for the first six months of life, after which it continues to provide a major portion of the infant's nutrition along with appropriate family foods, for up to two years and longer; helps the child to achieve its full physical and mental potential; breastmilk is easily digested by the baby and contains antibodies and other factors that protect the baby against diarrhoea and other infections and breastfed babies are protected from the dangers of artificial feeding including, diarrhoea and malnutrition that results from unhygienic preparation of artificial feeds, contaminated water and over or under-dilution of formula.

#### ***2.1.5 The Benefits of Breastfeeding for the Mother***

The benefits of breastfeeding for the mother are: breastmilk is clean, safe, cheap and available. The mother does not have to spend money on baby milks; provides a perfect opportunity for building a close bond between the mother and the baby; has contraceptive benefits for the mother; helps prevent iron deficiency anaemia; breast feeding mothers have a lower risk of breast and ovarian cancer; and breastfeeding costs less in terms of health care expenses, as breastfed infants get ill less often.

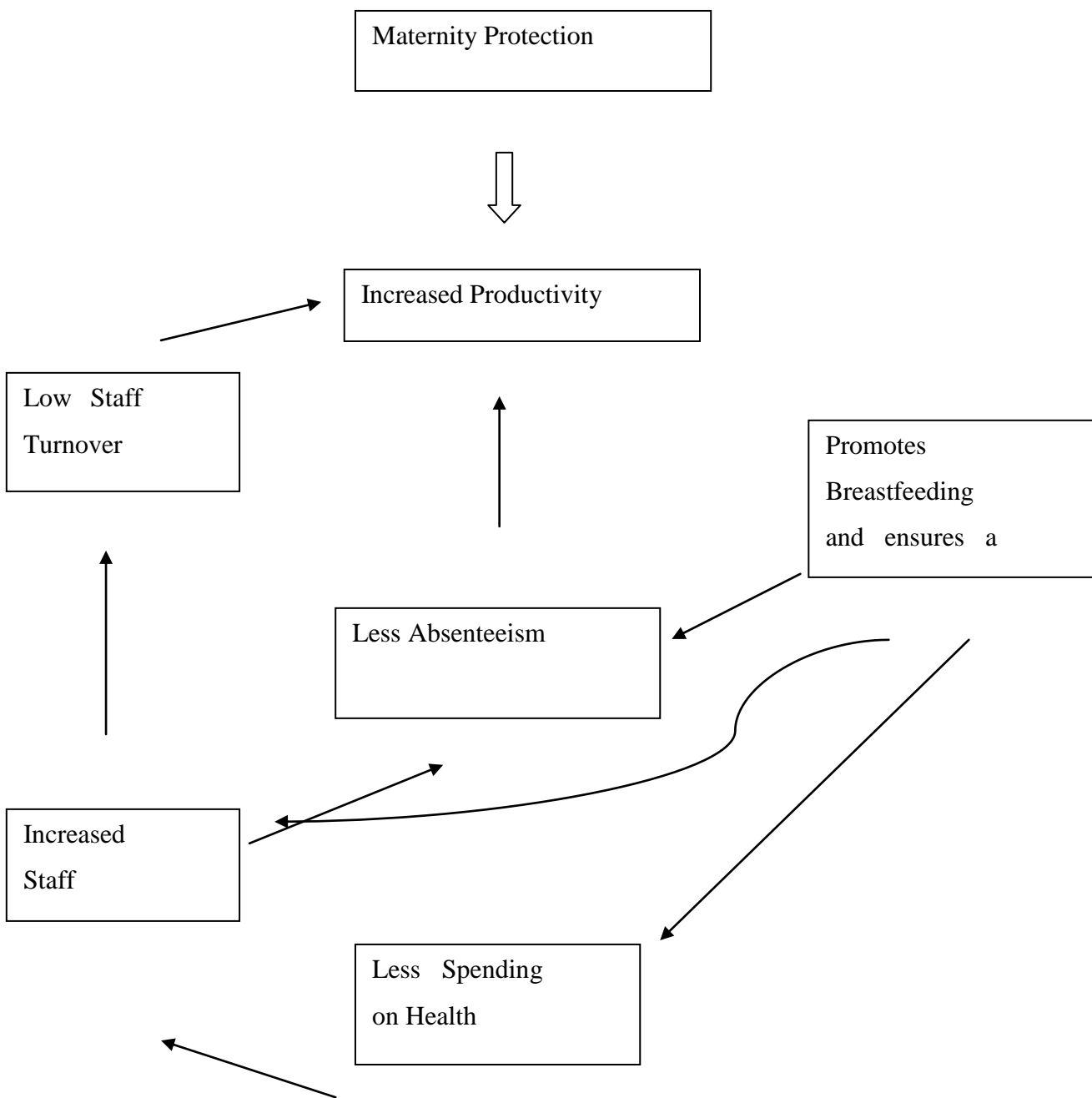
#### ***2.1.6 The Benefits of Breastfeeding for Families and Society***

The benefits of breastfeeding for the families and society are: human milk is a natural resource and a breastfed baby can be food-secure for the first six months of life; lower infant morbidity and mortality rates; everyone benefits when there is less spending on health care; breastfeeding does not damage the environment as it does not generate any left over waste like such as tins and plastics; and the country saves foreign exchange when it does not have to import baby milks.

### 2.1.7 The Benefits of Breastfeeding for Employers

The benefits of breastfeeding for the employers are: less absenteeism as mothers will be less likely to take time off work to look after sick children; better productivity as workers are more productive when they are not distracted by family concerns such as sick children; and employers who accommodate workers' family needs, such as facilitating breastfeeding, are likely to benefit from increased employee loyalty and lower staff turnover.

Maternity protection benefits are summarised in the diagram below (IBFAN, 2004).



### **2.1.8 Discrimination and Job Protection**

ILO Convention No. 111 defines *discrimination* as “*any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation*”, and allows additional criteria to be included after consultation by the governments concerned with employers’ and workers’ organizations.

Discrimination can be direct or indirect. It is direct when rules, practices and policies exclude or give preference to certain individuals just because they belong to a particular group. Forms of direct discrimination include job advertisements stating that persons above a certain age need not apply, or human resource practices that require regular pregnancy tests of female employees with a view to refusing to hire or even dismissing those who happen to be pregnant (ILO Global Report, 2007).

Discrimination based on pregnancy appears to be on the increase, even in countries that have long combated it and are facing plummeting fertility rates. In the United Kingdom, for example, a recent report by the Equal Opportunities Commission states that 30,000 women each year lose their jobs because of their pregnancy, and only 3 per cent of those who experience a problem lodge a claim at an employment tribunal (ILO Global Report: 2007). Discrimination also occurs when enterprises recruiting female workers require them to work for a certain period in the enterprise before being allowed to become pregnant (F. Howell: 2003).

## **CHAPTER THREE**

### **3.0 RESEARCH DESIGN: METHODOLOGIES AND METHODS**

This chapter discusses the methodologies and methods I used in collecting data during the research. Methodology refers to the justification and theoretical assumptions that underlie a particular study. The methodologies used to collect and analyse data were dependent on the research assumptions, research questions, and objectives of the research, my beliefs, values and skills. Further, the methodologies depended on the practicability and time available for the research which was three and half months. Different assumptions and questions may require different methodologies and methods or a combination of both in order to achieve the set objectives of the research. Following these guidelines, I decided to use the methodologies and methods that are discussed in this chapter with an analysis of the advantages and disadvantages of each methodology and method.

#### **3.1 RESEARCH METHODOLOGIES/RESEARCH DESIGN**

According to Lobit and Hagedon (1998:9), methodology refers to the techniques utilized to gather data to solve a problem. In this case, specific techniques utilized to gather data on the gaps that exist in the new Kenyan labour laws in addressing maternity leave are discussed below.

##### ***3.1.1 The Women's Law Approach***

To know whether the new labour laws adequately address maternity leave and their impact on the women, the Woman's Law Approach was chosen because of its various advantages. It takes the woman's experiences and lived realities and not the law as the starting point for analyzing the position of women in law and society (Bentzon et al, 1998). It aims at describing, explaining and understanding the legal position of women in order to improve their position in law and society. I used it as an overall methodology to explore the gap between the new Kenyan labour laws,

policies, human rights instruments and the society, using the lived realities of the women and girls in Nairobi and Naivasha Districts.

In this study, the women's law approach was employed to enable the collection of empirical data from women themselves on what they perceived to be the benefits and challenges of the new maternity provisions and why in both situations. I also sought to find out from the women whether they are benefiting from the MoL in terms of awareness on the new maternity provisions and service delivery. Under this approach, several methodologies are employed. These include; the grounded theory, legal centralism, human rights framework and legal pluralism. Details on these are discussed below.

### ***3.1.2 The Grounded Theory Approach***

As a theory for research, grounded theory in Women's Law approach involves investigation of the "lived realities" of women in their day to day interaction with the law and their social life. The value of using the grounded theory approach is that it is an interactive process that allows one to constantly engage with the collected data, sift and manage it, consider the complications and determine what to collect next (Bentzon et al, 1998).

Glaser and Strauss (1967) suggest six skills that researchers can employ in the research process as guidelines in the research process. These are; an open mind, the next question technique, concept building, constant comparative method, theoretical selection or sampling and limitation theory. Using the above skills, I went to the field with an open mind that was not prejudiced by the literature review I had done and my experience in the MoL as the legal officer that led to my assumptions. Smith (1997) has suggested that general reading of the literature may be carried out to obtain a feel for the issues at work in the subject area, and identify any gaps to be filled using grounded theory. The researcher is able, therefore to approach the subject with some background knowledge, but it is important that the reading is not too extensive, as theories should evolve from the data itself, producing grounded theory.

The investigation employs a very open approach in that an issue under investigation might lead to so many other interrelated issues which need to be investigated as well. All this is aimed at understanding the situation of women in order to formulate appropriate interventions or measures

that should be put in place in order to improve their situation. This methodology was particularly related to assumptions four, five, six and seven.

The grounded theory was therefore used to determine whether the labour market institutions (employers' and workers' organizations, employers, employees, relevant government ministries and departments, and Non-Governmental Organizations-NGOs) in Nairobi and Naivasha districts of Kenya were implementing the existing administrative guidelines, policies and the new provisions on maternity protection. I had to research the institutions structures and actors to access the adequacy of the same in meeting the women's maternity needs. It was also used to determine whether the labour market institutions were conforming to the international human rights standards and the laid down structures. This theory enabled me to formulate extra assumptions and questions to enable me tie up any loose ends in my research.

This approach further enabled me to understand why small employers deny women maternity leave and why large employers were calling upon the government to reduce the maternity leave period and others were terminating the contracts of their women employees once they become pregnant or proceed on maternity.

### ***3.1.3 Legal Centralism Approach***

This approach assumes that the law is the handicap to women's problems and that the gaps that exist in the law lead to women's oppression. It is totally law centred and assumes that there are no other factors besides law that make women be oppressed by others; in my study, I had to look at the inadequacy of new labour laws in addressing maternity leave, the non-implementation of the new maternity provisions and women's ignorance of the new provisions and discrimination against them by employers and others. This approach therefore was used to analyse whether the new provisions on maternity are efficient in addressing women's needs during pregnancy, during and after maternity leave. It also establishes whether the new provisions are an improvement of the repealed laws or not. The approach also helped me to analyse the new provisions vis-à-vis the international human rights conventions and comparisons to laws from other jurisdictions. It further helped me to establish whether the employers are implementing the new maternity provisions or not and whether the government is able to enforce and monitor their

implementation. Finally, it helped me identify the weak and strong areas of the new provisions and the recommendations to be made in the last chapter.

### ***3.1.4 The Human Rights Approach***

Human rights are a set of universal entitlements that individuals enjoy irrespective of their sex, nationality, religion, culture or status and are inherent to human beings, interdependent, proclaimed and protected by international law.

A human rights approach therefore as far as my research is concerned, is an avenue of improving women's access to maternity leave by identifying factors that lead to compliance and non compliance and making recommendations to the various actors for their review or change. This approach should be used in every research that one undertakes as long as it touches on peoples' lives to determine whether the society, government or any actor is complying with the required international human rights standards. I had to link the Kenyan Constitution, labour laws, health policies and administrative measures relating to maternity leave and protection with the requirements of the human rights instruments and international labour standards (ILS) to be able to determine whether the Kenyan government and labour market institutions in Nairobi and Naivasha are in compliance or not and whether there are any elements of cultural and religious practices in Nairobi and Naivasha that were in compliance or in violation of the human rights instruments and make recommendations where necessary.

Approaching healthcare issues from a human rights angle in addition to administrative, policy and legislative initiatives is a strategic way to elevate women's needs to their legal entitlements. Using human rights approach enabled me to determine whether the government and employers are respecting and fulfilling the human rights instruments relating to women access to maternity healthcare and access to the enforcement institutions like the MoL, MoH and the courts.

The human rights approach also helped me to suggest and recommend strategies that Kenya can use to respond to the challenges faced by the enforcement institutions, employers and women in enforcing not only the new maternity provisions in Nairobi and Naivasha, but the new labour laws in totality and in the whole country.



My interviews and observations were therefore aimed at getting information from a human rights perspective to find out whether the reality on the ground was in conformity with the international human rights requirements and constantly linking the emerging issues with the relevant maternity healthcare human rights instruments.

### ***3.1.5 Legal Pluralism Approach: The Impact of Semi-Autonomous Social Fields***

Women and girls are part of society. In society, there are many external bodies that generate norms that affect men and women and their decisions to utilize and have access to maternity leave and its accompanying benefits. These are normative systems other than formal law that affects people's lives, influence and shape women's legal and social positions.

Thus semi-autonomous social field is a tool that assists in describing and analyzing the rule-generating and rule-upholding processes which affect the position of women and gender relations in a situation where plurality of normative structures informs human interaction (Bentzon et al 1998).

There are a number of other semi-autonomous bodies like religion, culture, and socialization which affect women's lives and decisions. With regard to one assumption, especially that employers are not implementing the new provisions on maternity, I realised that most employers know the new provisions but because of their up-bringing and attitude that a pregnant woman should be at home and cannot perform while pregnant, end up terminating/dismissing them unfairly by giving different reasons like absent without permission, refusal to obey orders etc. This approach helped me to determine how employers view and treat pregnant women and how they also view the young girls looking for employment vis-à-vis the middle aged and the aged. It also helped me to determine the contradictions and interplay between formal laws, and the other semi-autonomous bodies that influence the woman's utilization of their right to maternity benefits.

This approach recognizes the existence of both customary law and the general law. It is used as a concept to identify other factors that control the woman's life other than the law, like religion, cultural values and norms, cultural beliefs etc. This approach enabled me to determine and understand how other factors (the family, church, community and other institutions) control

women's access to maternity health care apart from the operation of the law. It was important to explore the family to determine whether men who take paternity leave assist their wives while recuperating and the new born baby; and why women whose husbands disappear from home after taking paternity leave fear reporting or prosecuting them for fear of being stigmatized by the family, community, church and therefore such institutions have more power and force than the formal law.

This approach further enabled me to understand how the Collective Bargaining Agreements (CBAs) and the Codes of Practice like the one signed between the Agricultural Employers' Association and the Kenya Plantation Agricultural Workers' in the flower farms prevent women from fully realising their maternity rights.

Finally, the semi-autonomous social fields were used in this study to analyse situations which prevent women from fully utilizing available medical services and realising their maternity health rights. The approach was used as a tool to look at how structures in society like the family, church, peers and community influence women's decisions on their right to maternity and child care despite the policies and legislation that are in place.

### ***3.1.6 Gender Perspective Approach***

Gender is a cultural definition of behaviour and roles in a given society at a given time. It thus entails on the one hand, men's and women's active roles in society and on the other hand ingrained social ideas about feminism and masculinity. What men and women should do and how they ought to behave and interact spliced together with culture, social and legal interpretations of perceived gender differences constitute a gender system (Benzton A. et al, 1998: 23).

The socialization of both girls and boys and men and women was thus investigated and this gendered approach enabled me to understand the differences in the behaviour between women and men and girls and men in relation to family responsibility or care of children. My approach was then to listen to the voices of girls and women as well as men so that I could get all their views. Since I was advocating for the inclusion of men in advancing and realization of womens' right to maternity and job protection, this methodology helped me to explore the lived realities of

both women and men and boys and girls. Given that there are more women than men working in the EPZ and the flower farms in Naivasha, I was able to analyse the effects of this division of roles on the availability of maternity leave and protection of women during pregnancy and maternity leave and their working environment and conditions. Women seemed to have separate concerns from men ranging from pregnancy, maternity, sexual harassment, health and safety. In terms of division of roles, there are more women than men working in textile and flower farms as packers in pack houses and ware houses where they stand for a long time while men preferred working in male jobs (spraying and tailoring where they work for fewer hours than women). Women are perceived to be more careful, more compliant and cheaper to hire than men. It is thus important when researching on the problems facing women to consider the sex and gender perspective within the empirical approach to the issues.

## **3.2 RESEARCH METHODS**

During the collection of the research data, I used both qualitative and quantitative methods to ensure that the data collected answered my research questions. I used primary sources which included interviews, group discussions, observations, questionnaires and secondary sources which included library research, newspapers, articles, reports from previous studies done on maternity protection, both in Kenya and elsewhere and any other material on the internet. Fifty women and fifteen men were interviewed and 16 questionnaires answered by both men and women in Naivasha and Nairobi from the public and private sectors (both formal and informal sectors).

### ***3.2.1 Key Informant Interviews***

Key informants are people with a professional background or unique skills to the issues under study. I therefore chose to interview officials from various institutions that I considered critical to my research. Individual interviews were conducted with a view to getting professional opinion from the relevant ministry departments and the Ministry of Labour staff who are well versed in government labour policies, laws and administration issues. My interview with one of the Deputy Labour Commissioners, the Provincial and District Labour Officers from Nairobi and Naivasha were also very useful. In addition to getting information on the structure of the MoL,

labour laws and policies, they also assisted me in obtaining easy access to the three companies that I visited at the Export Processing Zone. The two officers in charge of legal affairs that I interviewed at the Federation of Kenya Employers and one Union Official from the Plantations Workers Union also stretched their hands further and assisted me in accessing the two flower farms I visited in Naivasha.

I also interviewed two doctors and one Occupational Health Officer at the Industrial Area Labour Office in Nairobi who gave an insight into the strengths and weakens of the Occupational Health and Safety Act of 2007 in relation to maternity leave. This method enabled me get information from the key actors and therefore increased the credibility of the findings of my research. The only disadvantage I had with this method was the postponing and re-booking of appointments. It allowed me to combine the questionnaire and interview methods in that I would leave them with the Questionnaire so that they would get a feel for my line of inquiry and when I collected it I would also interview them. This was so because they were often in meetings (employers and employees organizations and senior government officials) while labour officers and inspectors were often out of the office inspecting companies or in meetings settling disputes.

The Table below Shows Key Informants

Name of Institution	Males	Females	Total
Ministry of Labour	6	10	16
Ministry of Health	1	2	16
Office of the President	1	1	3
Trade Unions	2	1	2
Employers' Organization	2	2	4
NGOs	1	1	2
Total	13	17	30

### ***3.2.2 Individual Interviews***

This method involved interviews with both employed and unemployed men and women in the formal and informal sectors including the government. I also interviewed those who had been terminated by different employers especially teachers from private schools like Starehe boys Center for one reason or another, the EPZ, flower farms in Naivasha and manufacturing companies in the industrial areas of Nairobi.

These were conducted at random to get views from them separately and freely without fear of being incriminated by fellow staff members or their supervisors. This enabled me to utilise my time as I waited for key informants. At various ministries and institutions, I managed to interview employees during their lunch breaks as I waited for the managers and supervisors to come from meetings. The best example was at the district labour offices where I interviewed employees who had been terminated by different employers and were queuing to see different labour officers or inspectors. At that time I was also waiting either to collect questionnaires from the officers or to interview them. It therefore enabled me to kill two birds with the same stone. All the workers I interviewed had never been trained in the new labour laws except the managers and the human resource managers who either had been trained by FKE or through attending workshops. This method also enabled me to talk with the respondents freely hence getting answers to my questions in depth and more questions from workers emerged like: do we also need to be paid while going on paternity leave or do only women get paid? Is it possible for our employer to give us out salary in advance before proceeding on maternity leave? What happens if I miscarry and maybe develop complications when being cleaned by the doctor? These questions indirectly answered my assumption that the new labour laws are inadequate in addressing maternity leave.

This method however consumed a lot of time as it took no less than 30 minutes to interview one respondent which sometimes caused me to rush the interviews.

The Table below shows Individual Interviews

Institutions	Males	Females	Tot.
Workers	8	25	33
Employers	3	2	5
Unemployed	2	6	8

### **3.2.3 Observations**

Observation was very critical for my research. I observed what was happening at the workplaces and government offices. At one time on my way to see the district labour officer Industrial Area in Nairobi, I posed as an employee as most of the officers were newly posted and could not recognize me. Here I observed how labour officers handled the complainants. I noticed that the officers did bother much about people queuing outside. At one time I forced myself into one of the labour inspector's offices to inquire why the queue was long, not moving and where the District Labour Officers was. I was shocked to find him chatting with one of his fellow colleagues and had done so for more than one hour. This corroborated information received from most employees I interviewed that the labour office is understaffed and the few who are there do not perform professionally. I also observed the attitudes of the ministry of labour staff, practice, adequacy of the structure and the queues at various ministry departments and the general conditions of the labour market institutions. This enabled me to note the difference between the private, public, formal and informal institutions and the attitudes between their staff, including the reception I was given. This method of data collection is problematic in that the researcher does not necessarily know the full story and may draw unwanted inferences that may distort the data (Bentzon et al, 1998:195).

This method was not fully utilized because most of the companies were closing down for Christmas and most of the government officers had taken their annual leave.

### **3.2.4 Structured Questionnaires**

Quantitative data was obtained using different questionnaires for the labour officers, employees, employers, unions and employers organizations. This method was used because most of the

officers to be interviewed were out in meetings or out inspecting like the Labour Officers and Inspectors. Twenty six questionnaires out of the thirty six circulated were completed and returned between 20<sup>th</sup> October, 2009 to early February 2010. Three unions and one employer organization filled in the questionnaires. Twelve labour officers and ten employees also filled in the questionnaires. The questionnaires had a range of issues and were developed to suit each institution; each questionnaire was designed to suit the organisation to which it was addressed. The advantage of this method is that I could send them to employers through the internet and get their replies the same way. This method hid the identity of the respondents and they therefore expressed their views freely without fear especially where I left many of them. The challenge I faced here was some people never filled all the required information, refused to indicate their names, age, and sex, and forced me to follow up with personal interviews. Analysing them too was very hectic as I had to compare each and every question for all the respondents with similar questions.

### ***3.2.5 Group Discussions***

It was easy to summon 3-5 employees during lunch breaks and engage them so that they talked about and revealed the problems they face in accessing maternity leave, service from the government and unions. The best example was when I visited the EPZ and Relay Security Services. It was easy for me to interview the workers outside their work environment after I was refused entry by the employer. As in Sher Karuturi Flower Farm, the human resource manager summoned ten employees and we had a one hour discussion. One woman who was also a shop steward had many questions and was one of the most knowledgeable employees on the new labour laws and she knew all her maternity rights under the new law. She suggested that the period for maternity leave be extended to six months to be at par with the health requirements. I obtained collective views on the problems and challenges facing women while pregnant, on maternity leave and once back on duty. Also obtained were men's views on what they think about the new maternity and paternity leave provisions. Because they are set up in a social context where people consider their own views in the context of the views of others, and where new ideas and perspectives can be introduced, good quality data was obtained from group discussions.

### **3.2.6 Secondary Information**

For any research to be complete there is always need to look at the secondary data. I relied heavily on newspaper reports in formulating my assumptions and statement of the problem. They were very helpful in bringing out what was perceived to be the major challenges facing employers in implementing the new labour laws, women in utilizing their maternity protection rights and the struggle between the government, unions and employers representatives over the impact of the new labour laws (conflicting interests). When I came back from Kenya, the Women's Law Library was also very useful in terms of accessing the relevant books I required to build up the concept of maternity leave as I wrote my dissertation. The unlimited access of the internet was also very useful to build up on information. The many researches and books on maternity were very useful in filling the gaps in my data that I was not able to collect due to the limitations of the research.

I also looked at secondary sources of information such as strategic plans and reports for various labour market institutions and NGO's in Nairobi and Naivasha Districts. Newspapers, libraries and journals were also used to get additional written information to strengthen my research.

This method therefore helped me to review local and international literature to gain a picture of the global understanding of maternity protection, the social-legal issues relating to maternity protection and a review of any local and international studies conducted on maternity protection.

### **3.3 Limitations of the Research**

Accessing premises and workers was a challenge. First the employers requested for a letter from the University authorising me to carry out research. Upon its production and their realising that I was a Deputy Registrar of the Industrial Court and the topic was on new labour laws, and because of their fear that I was investigating them on behalf of the government to have them prosecuted, they denied me entry into their firms. The period between November and December is very bad for any research because almost all employers claim that they are closing for Christmas and are busy with annual reports and balancing books. In the field, employees feared talking to me for fear of intimidation by their employers, supervisors and fellow workers. I was



also pick pocketed which meant I was without a student Identification Card for two weeks. This made my research for two weeks very difficult as I was denied access to the premises.

Most government registries are not computerised; all court registries were unable to trace maternity related cases in their records. I only came across one maternity case from the Industrial Court and after one month of perusing through previous cases and files.

## **CHAPTER FOUR**

### **4.0 FINDINGS, DISCUSSIONS AND DATA ANALYSIS**

This chapter presents findings in accordance with the research assumptions. It discusses the findings with respect to the law, policy and theory to identify emerging themes that can be used to initiate interventions. The chapter also addresses how human rights/ILO instruments have been violated in addressing maternity leave. It explains how other factors besides the law have prevented women from fully realising their maternity rights in Nairobi and Naivasha Districts of Kenya. Lastly, it outlines measures that can be adopted and employed to improve maternity protection in Kenya.

The findings will be discussed and analysed under the following themes derived from the research assumptions: adequacy of the new labour laws in addressing maternity leave; compliance and non-compliance of the new labour laws to the international human rights /international labour organization's instruments; implementation of the new maternity provisions by employers; challenges of access to maternity leave by employees (lead a horse to the water but you can't force it to drink); discriminatory effect of the new maternity provisions on women; administrative, policy and legislative interventions and emerging issues.

#### **4.1 Adequacy of the New Labour Laws in Addressing Maternity Leave**

One of the key assumptions in this research was that the new Kenyan labour laws of 2007 do not effectively address maternity leave. To effectively address this assumption and answer the question as to whether the new labour laws adequately address maternity leave, there is a need to make a comparison between the maternity provisions in the repealed and new labour laws vis-à-vis the international human rights/ILO instruments, best practices from other countries and the women's experiences under both laws. The comparative study is important because it assesses how maternity protection has improved in Kenya given that the thrust of this research was to assess areas of the new maternity provisions that are weak, strong or in need of reform.

Kenya acceded to CEDAW on 3 March 1984 and is a party to many other international human rights instruments and treaties that protect women from discrimination and advocate for their right to health. It however has not taken steps to give these standards domestic effect. The judiciary has ruled on various occasions that international obligations not incorporated into domestic law have no force of law, implying that all international human rights /ILO instruments have no application in Kenya unless domesticated as indicated below.

In the case of *Okunda v Republic (1970) EA*, the High Court was categorical that international law is not a source of law in Kenya. In a 2001 case, *Pattni & Another v Republic (2001) KLR*, the High Court once more held that international norms, much as they could be of persuasive value, are not binding in Kenya except where they are incorporated into the Constitution or other written laws. These rulings indicate that for the international human rights instruments relating to maternity to be binding in Kenya, they must be provided for in the national legislation and in this study, in the new labour laws.

I am limiting my study to maternity protection at the workplace, which is a legal and social recognition of the contribution that women make by having babies. The ILO first recognized its importance in 1919. Since 1919 there have been three ILO maternity protection Conventions (C3, 1919; C103, 1952; and C183, 2000) and two Recommendations (R95, 1952; and R191, 2000). C183 came into force on 7<sup>th</sup> February 2002.

ILO C183 supersedes C103 which is now closed for new ratifications, although it continues to apply to those countries that had already ratified it and have not ratified C183. It is the main Convention governing maternity protection in most countries besides the Universal Declaration on Human Rights (UDHR), CEDAW, Beijing Platform, the African Protocol on Women's Rights, Cairo Declaration etc. C183 sets out seven key elements to maternity protection in general. These elements are: scope, leave, benefits, health protection, job protection and non-discrimination, breastfeeding breaks and breastfeeding facilities. The ILO goal is to have these elements implemented as a minimum standard in national legislation on maternity protection.

Unfortunately Kenya has not ratified ILO C183 to provide guidance for national law and practice on maternity protection. Further, Kenya has not developed rules/regulations to guide implementation of the new maternity protection provisions. This has had a negative impact on the protection of women's right to maternity which will be highlighted in later chapters.

Kenya has got various legislation governing employment but for the purpose of this study, the principal Act in examination is the E.A of 2007 vis-à-vis the repealed E.A, Cap 226. The adequacy of the maternity provisions is discussed below vis-à-vis the repealed E.A, HRS/ILS best practices from S.A, U.K, Denmark and Netherlands.

#### ***4.1.1 Application /Scope***

Article 2 of ILO C183 applies to all employed women including those in a typical form of dependent work. It however allows member states that ratify the Convention after consultation with employers' and workers' organizations to exclude wholly or partly limited categories of workers when its application to them would raise special problems of a substantial nature. It is no wonder that both the now repealed section 1 of the old EA and section 3 of the new EA of 2007 apply to all employees and binds the government but excludes the armed forces or the reserve; the Kenya Police; the Kenya Prisons Service or the Administration Police Force; the National Youth Service, and a family undertaking. This indicates that the Kenyan law is in compliance with the ILS to the extent of its scope and can change the scope depending on the circumstances.

#### ***4.1.2 Definition of Maternity Leave***

**ILO C183 does not define the term “maternity”** but defines a “woman” as any female person without discrimination whatsoever and a “child” as any child without discrimination. The same spirit is reflected in that **neither the Kenyan repealed nor the new E.A define the term “maternity”** and define the term “woman” to mean a female of the age of eighteen years or above and a “child” as male or female below sixteen years (repealed) and male or female below eighteen years (new). This lack of a proper definition of the terms “maternity” and a “child” in relation to maternity is a gap in the new Kenyan labour law that needs to be filled.

From the interviews carried out, most employees complained about maternity leave without knowing that maternity encompasses protection of their health and jobs while pregnant, when

giving birth, after giving birth and after resuming duty. One of the women employees at EPZ exclaimed:

The new law has drastically protected pregnant women from being terminated or dismissed unfairly but if you ask me what maternity leave is, I will define it in my own way because both the repealed and the new law failed to define it.

More confusion was reflected on the questionnaires and interviews carried out; though all of them reflected that it was for women who give birth, they were all defined differently and most of them failed to mention the protection of the woman's job, the mother and the baby's health and the benefits attached to it as indicated in the following definitions amongst many others:-

- \* Mr. Isaiah Kubai, the Secretary General of Kenya Banking Insurance Union defined maternity leave to mean *“leave given to women when they give birth and is paid”*;
- \* Susan Paul a secretary in the MoL defined it to mean *“leave granted to a mother after giving birth”*;
- \* Hellen Eresia one of the shop stewards of Sher Karuturi Flower Farm, Naivasha defined it as *“leave given to women when they give birth”*;
- \* a woman employee (MoL) defined maternity as *“permission granted to both the woman and man after receiving a new born baby to rest”*;
- \* and most of the questionnaires from the informal sector (Gikomba open market) indicated *“no need to define, it is of no use to us.”*

The above statements indicate that the public at large has not been sensitized on the new maternity provisions and the new E.A needs to be amended to define maternity leave, and maternity protection to enable the public, especially, women to fully understand their maternity protection rights and enforce them.

### **4.1.3 Maternity Leave Duration**

While Article 4(1) of the ILO Convention No. 183 provides for 14 weeks maternity leave which includes six weeks compulsory leave after childbirth [Article 4(4)], its Recommendation No. 191 advocates an increase in the length of maternity leave from 14 to 18 weeks.

While section 7(2) of the Kenya's E.A, Cap 226 (Repealed) provided for two months (8 weeks) maternity leave with full pay with a proviso of forfeiture of annual leave, section 29(1) of the new EA provides for three months (12 weeks) maternity leave with full pay with no proviso to forfeit the annual leave.

Though the new (E.A) made a great shift from what was provided for in the repealed law, it still does not meet the required 14 weeks provided for by C183. Further, both the new and repealed E.A failed to provide for the six weeks compulsory leave after child birth. It is my suggestion that Kenya takes a leaf out of South Africa's book by following section 25 of the South African (S.A) Basic Conditions of Employment Act (BCEA), 1997 which provides for at least four consecutive months' maternity leave that include six weeks compulsory leave [section 25(3)]. The BCEA meets the ILS though but it does not comply with the WHO requirement. Denmark provides for 52 weeks maternity leave which include six compulsory weeks after giving birth and therefore meets the ILS ( both C183 and Recommendation 191) and the WHO requirements. The difference in the level of development between the three countries might explain the variation in the leave duration and many other provisions that will be discussed here below. S.A being more developed than Kenya has better provisions than Kenya and Denmark being more developed than S.A, has better provisions than S.A.

From the interviews carried out and questionnaires filled in, 80% of the women were satisfied with the three months maternity leave while 20% proposed that the period be increased to six months to be on a par with the WHO requirements of breastfeeding. This was well explained by Hellen Eresia of Sher Karuturi Flower Farm, Naivasha in the following statement:

The new laws are very good. Before my members used to suffer when pregnant or proceeding on maternity. We can't say the employers were bad. It was the law which was colonial. I myself nearly lost my job when I gave birth to my first born in 2000. It was hectic for me to balance my work and care for the baby. I left her after two months and it was hell for me at work. My breasts were swollen because of the milk and the employer refused to give me permission or break to

go and breastfeed my baby. Standing to pick flowers was also dangerous to my health especially the back. I found myself back in hospital for over bleeding. As if this was not enough, on return from hospital I found a disciplinary letter in the office asking me to explain why I should not be dismissed because of absenteeism. **Were it not for the union, I would have been sacked. Many of my friends were dismissed in the same manner. From then onwards, I campaigned and became one of the two shop stewards to be able to help and protect my fellow women employees from a repeat of what I underwent.** We have managed to include maternity protection in the CBA. Despite the few gaps, the new labour laws are God given. And our employer fears to be found violating them because the penalties are very high.

However, even then, most CBAs and employment contract letters did provide more maternity leave days than the set statutory minimums even before the law was reviewed. This was confirmed by the human resource manager of Safaricom Company Limited, Nairobi in her following statement:

I am a beneficiary of maternity leave under both the new and repealed laws. Safaricom has always had better terms of service for its employees. **We used to give them three months maternity leave instead of two months even before the new law came into effect. Our workers have always been happy under both the new and repealed laws.** However, the three months maternity leave plus the annual leave is too long and very expensive for employers to implement.

While section 7(5) of the repealed E.A defined the term “full pay” to include wages and salary at the basic rate excluding any deductions from wages as per the law, the new E.A of 2007 is silent on its definition. This has caused a lot of confusion among workers and employers as to what should be paid to women proceeding on maternity leave. One worker from the EPZ complained:

When I proceeded on maternity leave in March 2009, the employer deducted my salary saying that it was his right to remit part of my salary to the National Social Security Fund. **When I complained, he threatened to sack me** and send me to the labour office to get an explanation.

I did explain to her that the employer was right and it was for her future benefit after she retires. The above statement however indicates the bitterness employers have over the new maternity provisions.

While Article 4 of the C183 subjects maternity leave to production of a medical certificate or other certification as determined by national law and practice, stating the presumed date of childbirth, the repealed E.A was silent on the notice. Section 29(4) of the new E.A however requires a female employee to give not less than seven days notice in advance or a shorter period of her intention to proceed on maternity leave on a specific date and to return to work thereafter; and the notice is to be in writing [section 29(5)]. Further, section 29(6) requires the employee to produce a certificate as to her medical condition from a qualified medical practitioner or midwife if required by the employer. According to Section 25(2) (2), of the SA BCEA, an employee can commence maternity leave at any time from four weeks before the expected date of birth, unless otherwise agreed. Both the new Kenyan E.A and the S.A BCEA are in conformity with the ILS. From the interviews carried out, some women were satisfied with the seven days notice because it allows the employer to prepare for maternity related costs while others argued that it should have remained silent like the previous law to allow them work up to the last minute and earn extra money. Rose Mweru from one of the manufacturing companies in Nairobi complained:

When I gave birth to my second born child in 2008, my former employer dismissed me for not having given him enough notice before proceeding on maternity leave; yet I gave him a written notice immediately I gave birth. **I failed to understand why the Labour Officer failed to help me be reinstated and get my salary for the three months I was on maternity leave.**

A worker from Kuche Kuche Bar and Restaurant, Nairobi explained that a good employer should be able to understand that some women give birth before completion of the nine months and others after. The new E.A should be silent like the previous law to enable women apply for maternity leave on arrival of the baby or as advised by the doctor.

Hadija Nyongesa and Metrin Nelima of Sher Flower Farm informed me that they took their maternity leave the day they gave birth explaining;

**Our salaries are low, we cannot afford to take care of our new babies besides our other family members and therefore overtime is very important however little.** Furthermore we save on the time to be with the baby once born. In case one has complications after giving birth, the sick leave period of 14 days is very short which includes seven days half salary.



While C183 subjects illness, complications or risk of complications associated with pregnancy or childbirth to national laws, both the repealed and new E.A fails to cater for still births and miscarriages. Kenya should follow the example of South Africa: Section 25(4) of the South African BCEA provides for six weeks maternity leave where an employee has a miscarriage during the third trimester of pregnancy or still birth, whether or not the employee has already commenced maternity leave or not.

From the questionnaires and interviews carried out, some women workers at the flower farms and the EPZ complained that they are harassed into reporting back to duty immediately they have had a miscarriage or still birth. This is a risky and dangerous to their health. Jane Muli from the EPZ complained,

My friend Mary Wairimu a receptionist in our company was recalled to report back after a miscarriage but failed to do so because of over bleeding and stomach pains after surgical cleaning. On return after two weeks, **she was dismissed and accused of absenteeism without permission and the labour office was unable to assist her citing the gap in the law.**

Rose Marangu a former receptionist at Relay Security Services on the other hand complained of having been dismissed in 2006 for refusing to report on duty after she had a still birth; Hellen Eresia of Sher Karuturi Flower Farm proposed that women who get still births or miscarriages should be given equivalent days to maternity leave as most women working in flower farms and stand for a long time picking and sorting flowers leading to many still births and miscarriages. She explained:

**The women who miscarry or have still births have psychological problems after the experience and do not perform once recalled back immediately. Most of them end up being disciplined because of non performance.** They need time to reconcile themselves.

#### **4.1.4 Other Related Types of Leave**

ILO C183 fails to provide for other related types of leave. However, its accompanying R191 advocates for other related leave. Both the repealed E.A, section [7(1) (a)] and the new E.A, section [28 (1)] provide for not less than twenty one working days *annual leave* with full pay subject to working with an employer for twelve consecutive months; and a proviso that where employment is terminated after the completion of two or more consecutive months of service during any twelve months' earning period, to not less than one and three-quarters days leave with full pay for each completed month.

The repealed Employed Act however failed to provide for any *additional maternity leave* while section 29(3) (a) and (b) of the new E.A provide that with the employer's consent, the maternity leave can be extended or immediately on expiry of maternity leave before resuming duties a female employee can proceed on sick leave, annual leave, compassionate leave or any other leave and the three months maternity leave shall be deemed to expire on the last day of such extended leave.

ILO C183 is silent on paternity leave. The S.A BCEA provides for 3 days paid leave during each annual leave period to be taken by an employee when his child is born or is sick. The repealed Employment Act was also silent on *Paternity leave*. Section 29(8) of the new EA, however, provides for two weeks paternity leave, a spirit that might have derived from Article 13(i) of the African Protocol on Women's Rights and Article 1(1) of ILO C156 that places the responsibility of upbringing and development of children on both parents. This was a good gesture by the new law to try to balance family responsibility of working parents in taking care of children, a spirit that S.A and C183 should endeavour to emulate.

From the interviews carried out and filled questionnaires, 90% of the women proposed that paternity leave be deleted and 10% supported it. Some complained that their husbands disappeared for the whole two weeks from their homes and re-appeared at home minus their salary advance or loan taken. Wamboi a vegetable hawker, Naivasha town, lamented:

Our men do not care whether you eat or sleep hungry with your new born baby or children. Their work is to make us pregnant but how you meet the hospital expenses before and after giving birth is your problem.

She wondered why the new law failed to provide that fathers pay hospital bills and bring up children. Hadija Nyongesa and Metrin Nelima of Sher Flower on the other hand commended the government for introducing paternity leave. They explained:

We were happy to have our husbands at home and watch them change the baby napkins. It is hectic to bleed, have painful breasts and take care of the baby at the same time. For once we were stress free.

However, the new and repealed E.A fails to provide for parental, adoption, and family leave. This means that most of the responsibility for caring for the child when sick is borne by the mother, hence, defeating the idea of balancing family responsibilities between working men and women.

Both the new and repealed E.A provide for the establishment of industrial based Wages Councils that workers' and employers' organizations and government can use to improve on the statutory minimum terms and conditions of service including maternity leave and other related leave. For instance, while section 30(1) of the new Employment Act and section 7(3) of the repealed Employment Act provide for seven days *sick leave* with full pay and thereafter seven days with half pay in each period of twelve consecutive months of working and two months of service respectively, the repealed Regulation of Wages and Conditions of Employment Act that improved on the set minimum terms and conditions of employment provided for 30 days sick leave with full pay and fifteen days sick leave with half pay.

The Norwegian parental leave reform of the 1990's extended the leave to 52 weeks with special rights to the father; the fathers' four weeks quota leave is solely reserved for fathers and cannot be transferred mothers (NIKK magasin, 2003). It is based on the idea that fathers are obliged to take leave from work to care for the child to encourage their contact with the children and that the state is acting in the interests of small children. In addition to exclusive rights, both mothers and fathers have joint rights which they may decide to share (Ibid). The gesture for fathers' quota

four weeks leave and joint rights is good and should be undertaken by all other states including Kenya to balance child care responsibility between working parents.

On the other hand, 90% of the men were happy with introduction of paternity leave and 10% were against its introduction. However, only 10% were free to explain how happy they were to assist their wives in cooking and changing the baby's napkins. The rest were shy and only laughed and pretended not to have heard the question. Two members of the Industrial Court questioned:

How do you expect the African roles and duties at home to change? You expect men to start taking care of children and changing nappies while women sleep? This is unheard of in African Society.

They recommended that the paternity provision be deleted immediately as it serves no purpose in Kenya. The Director, Human Resource at the Public Service Commission (PSC) recommended its deletion saying:

Civil servants like free time and paternity leave is one of the leave taken frequently because it gives men free time to drink and stay with their mistresses. If given permission, I would delete it immediately.

#### ***4.1.5 Benefits of Maternity Leave***

While Article 4(7) of ILO C103 requires compulsory social security cover to meet maternity costs, Article 6 of C183 allows states to regulate the situation, a lacuna that most regions have taken advantage of to remain silent on the issue. While both the repealed and the new E.A provide for fully paid maternity leave, they also both fail to provide for a compulsory social security cover or insurance to cater for maternity costs; leaving maternity costs to be borne by employers.

From interviews carried out, all employers were of the view that maternity related costs should be paid through a social security fund or insurance scheme. The workers on the other hand

proposed that besides the salary, the employer should also meet hospital expenses related to maternity. Hellen Eresia of Sher Karuturi Flower Farm was very categorical in saying:

Life is very expensive this days and smaller flower farms surrounding us are refusing to pay maternity hospital bills yet our fellow flower workers earn as little as we earn if not less. The new law should have made the employer responsible for costs incurred when an employee gives birth, miscarry or have still birth and when the child is sick or being taken to clinic.

While Kenyan employers meet 100% of the maternity costs, in Denmark it is paid through social insurance institutions and the all the benefits are fully liable to taxation and contribution to the supplementary pension scheme. Sections 34 and 37 of the S.A Unemployment Insurance Act, 1966 (Act No. 30 of 1966), provide for the payment of maternity leave through a social security cover. Kenya and other countries that have no social security systems to cover maternity costs should perhaps take a lead from Denmark and S.A in order to reduce and avoid complaints from employers and employees.

#### ***4.1.6 Job Protection and Non-Discrimination***

Whereas Article 8 of C183 protects a pregnant woman from unfair termination or dismissals and protects the woman's job while on maternity and Article 9 protects pregnant women and those on maternity leave from discrimination including access to employment, Article 9(2) allows dismissal for reasons unrelated to maternity and discrimination where national law allows in respect of work that is prohibited or restricted for pregnant or nursing women and work that is a risk to the health of the woman or child. These requirements are necessary to safeguard the job and health of the mother and the child where work is hazardous.

Unlike the repealed E.A which was silent on job protection and non-discrimination, section 5 of the new E.A protects an employee against discrimination in employment and encourages affirmative action by requiring the Industrial Court, the Minister for Labour, labour officers and employers to promote equality of opportunity in employment and section 5(3) protects an employee or respective employee from direct or indirect discrimination on grounds of pregnancy among others. Section 5(7) defines an employee to include an applicant for employment and an employer to include an employment agency; for purposes of discrimination and section 5(6)

places the burden of proving that discrimination never occurred to the employer. This means that an employer is not supposed to discriminate against a woman who is looking for employment because of her pregnancy or has a new born baby; the conditions for recruitment and promotion should be same for all employees including those who are pregnant and on maternity leave.

Section 29(2) of the new E.A protects employees' job while on maternity leave (to return to the same job or a reasonably suitable job on terms and conditions not less favourable than the one held before proceeding on maternity). Further, section 46(a) provides that a female employee's pregnancy or any reason connected with her pregnancy does not constitute fair reasons for dismissal or for the imposition of a disciplinary penalty.

Failure by the repealed E.A to protect pregnant women against direct and indirect discrimination and their jobs led to many unfair dismissals and terminations especially in private schools and companies. On interview, Mrs Jennifer Bwoga a former secondary teacher of Starehe Boys Center Secondary School in Nairobi explained to me how she suffered after being sacked by the principal of the school in 1996 when she refused to return to work after she was recalled after one month while on maternity leave. Bitterly she explained:

**The school sacked so many women employees because of pregnancy and maternity leave. It made us sign down that we were entitled to one month maternity leave which I objected to because by then, the law allowed two months.** Fortunately enough I got a Managerial Job with Supreme Furnishers but later in 2003 the company collapsed. Since then I have been jobless and **I totally blame the late principal of Starehe because I am a very good teacher by profession. He messed up my life and many others who fear to go public.**

On interview on the phone, a woman worker from EPZ explained:

I am happy with the new laws because they protect pregnant women from being dismissed without a proper reason that is not connected to the pregnancy. Women are no longer being dismissed and terminated in EPZ like before. I did not know that a law can protect us this much; the previous law left us at the employers' mercy.

The repealed laws also left those who were discriminated against and dismissed unfairly to application of the Penal Code and common law. This was confirmed by *Industrial Court of Kenya Case No. 154 of 2007*; the only Kenyan case I came across during my research on maternity. In this case, two casual employees (Susan Muthoni and Jeniffer Wamboi) filed their case under the section 4(2) of the Trade Disputes Act, Cap 234 (now repealed) in 2002 through their Union (Tailors and Textile Workers Union) but lost all their claims and were only awarded certificates of service. The Honourable Judge, Paul Kosgei with Members of the Court J. Kilonzo & O.A Wafula in his award upheld the Labour Minister's report and the management's decision to dismiss the grievant stating that the two were casual employees as they signed and received their salaries at the end of each day. If the honourable Judge had applied the human rights approach/standards, the two women would not have lost all their maternity benefits and if this case was decided today, the award would favour the two employees.

In the past, United Kingdom (UK) courts and tribunals used a sick man as the comparator for a pregnant woman in direct discrimination cases (*Hayes v Malleable Working Men's Club and Institute [1985] IRLR 367 EAT*). However, in *Webb v EMO Air Cargo (UK) Ltd [1994] ICR 770 ECJ*, a case involving a pregnancy related dismissal, the ECJ held that this was wrong approach and that there was no need for a male comparator. The ECJ based its decision on previous cases where it was held that a refusal to employ a pregnant woman and the dismissal of a pregnant woman on the ground of pregnancy were contrary to the equal treatment principle under the Equal Treatment Directive (ETD). (*Dekker v Stching Vormingscebtrum Voor Jonge Volwassen (VJV-Centrum) Plus [1991] IRLR 27 ECJ*) and *Handles-og Kontorfunktioneremes Forbid i Danmark (acting for Hertz) v Dansk Arbejdforening (acting for Aldi Marked K/S [1991] IRLR 31*). The ECJ, in *Webb*, reasoned that pregnancy was unique and sex-specific condition and any less favourable treatment on the ground of pregnancy or for a reason related to pregnancy could amount to sex discrimination without the need for comparison with a male in similar circumstances. However, *Webb* did not lay the sick male comparator to rest completely. There are still some maternity related cases where a comparison with a male is required in order to establish less favourable treatment.

In UK, the method of selecting applicants (either for interview or the job itself) should be carried out in the same way for both men and women. The EOC's Code of Practice on Sex Discrimination 2000 warns against keeping separate lists of male and female or married and

single applicants (Para 22(b)). Automatic rejection of applicants will amount to unlawful sex discrimination (*Hurley v Mustoe* [1981] IRLR 208 EAT).

Regardless of motive or intention (e.g. health and safety or financial reasons), there can still be unlawful sex discrimination if an employer rejects a candidate for a maternity related reason. In *Mahlburg v Land Mecklenburg-Vorpommern* [2000] IRLR 276 ECJ, an employer breached the Equal Treatment Directive by refusing to employ M who was pregnant even though German health and safety law prevented a pregnant woman from carrying out the job that she had applied for. The ECJ held that the legislation should not result in unfavourable treatment (i.e. in relation to her access to employment) where the job that M had applied for was a permanent post and the prohibition on pregnant workers carrying out the job was only a temporary period

In *Dekker v Stching Vormingscebtrum Voor Jonge Volwassen (VJV-Centrum) Plus* [1991] IRLR 27 ECJ, an employer agreed to employ D but later changed its mind when it became aware that she was pregnant. The employer's reasoning was based on its inability to claim D's maternity pay back under an insurance policy as it was aware of her pregnancy when it took her. The ECJ held that the effect of employing a pregnant employee on the employer's financial resources was irrelevant. The refusal to employ D was a result of pregnancy and it was, therefore, contrary to the Equal Treatment Directive.

The Kenyan Judges should learn from the UK's approach where unfavourable judgements on pregnant women or those on maternity leave were reversed with time and depending on the circumstances of the case and they should Develop rules/regulations along the UK court positive decisions.

#### **4.1.7 Breastfeeding Breaks and Facilities**

Whereas Article 10 of ILO C183 provides for entitlement to breastfeeding breaks, it is silent on the exact number or lengths of breastfeeding breaks; which is left to national law and practice to determine. However, C103 which was reviewed by C183 provided for two half-hour breastfeeding breaks daily and its accompanying Recommendation suggested subsidizing the cost of workplace facilities for breastfeeding mothers at the expense of the community or by



compulsory social insurance; a provision that is not stated by C183 and its accompanying R 191. However, R191 advocates for facilities for breastfeeding at or near the workplace.

Both the repealed and new E.A fail to provide for breastfeeding breaks and facilities. This has impacted negatively upon breastfeeding mothers. A woman worker from Kuche Kuche Bar and Restaurant, Nairobi, in annoyance stated that:

Employers used to mistreat us under the repealed laws and I can see the same scenario under the new law because it also fails to provide for breastfeeding breaks and facilities. In 2000 I had to leave my baby with an in- experienced house girl, at the place of work I had to work until late in the night and I was denied permission to go and breastfeed my child; when I sneaked out to do that, I got a dismissal letter on my desk. Neither the labour officer nor the court was able to assist me get my terminal benefits after I was unfairly dismissed.

One worker from EPZ complained that she was nearly sacked in 2007 when she frequently asked for permission to go and breastfeed her baby because of swollen and painful breasts that could not allow her to bend while sorting and packing clothes and she had nowhere to change or press the milk nor rest. This led to frequent stress and headaches.

The new labour laws as reflected above should however be commended for protecting women against unfair dismissals, recruitment and terminations during pregnancy and while on maternity as it totally outlaws indirect and direct discrimination. Hellen Eresia, of Sher Karuturi Flower Farm satisfactorily stated:

The new laws are good compare to the repealed laws. They protect pregnant women from being discriminated upon and they are assured of their jobs while on maternity leave.

#### **4.2 Implementation of the New Maternity Provisions by Employers**

Another main assumption in this study was that the new labour law provisions on maternity leave are not being fully implemented by employers. In response to the underlying question as to whether employers are fully implementing the new maternity leave provisions in accordance with the new Kenyan labour laws of 2007, the findings are stated below.

From the interviews I had with the employers' organizations (the Federation of Kenya Employers and Kenya Association of Manufacturers) and the employers, I found out that all the large companies in Nairobi and Naivasha districts were implementing the new provisions on maternity protection. They all however complained of the high cost involved due to the three months maternity leave in addition to one month annual leave which forced them to hire extra staff to step in and pay twice for the same post for four months.

They further claimed that the situation is worsened by the two weeks paternity leave where if the wife and husband were working together, then both of them proceeded for leave at the same time. The effect of the high cost seemed to be worse on companies whose nature of work required employment of women like Safaricom Company Limited (Nairobi), the flower farms in Naivasha, and the textile companies in EPZ. They all blamed the Parliament's refusal to adopt Task Force recommendation of two months maternity leave in addition to the annual leave.

The two Legal Officers I interviewed at the Federation of Kenya Employers made similar comments on implementation of the new maternity provisions by their members:-

We receive similar complaints from our members in relation to implementation of the new provisions on maternity and paternity leave. They continually complain of the new provisions being too expensive and having made operation of business in Kenya very difficult. Employers who rely more on women are confronted with high-skill leave takers and are having a hard time replacing the leave takers and if sharing arrangements are out of reach or unfeasible, both small and large firms are effectively bound to employ a substitute which is very costly due to the long period of maternity leave and the cost being borne entirely by the employer.

They gave an example of one of their members who at one time lost 1/3 of his women employees to maternity leave ( a sister company to Oserian Flower Farm) and nearly closed down because of the cost involved in reorganizing the company.

They however pointed out that despite the heavy costs involved, all their members were implementing the new provisions but with a lot of difficulties. They recommended that the government should develop rules and regulations to guide the implementation. That their members were having problems in granting the three months maternity leave at the same time

with the annual leave and paternity leave. They proposed that the regulations should ensure the three leaves are taken at different times to ease the stress on employers; a compulsory social security fund or insurance scheme be established to cater for maternity costs; and paternity leave be deleted from the law citing that Kenya is patrilineal and patriarchal in nature and the people will never accept that men take care of newborn babies and their mothers; a responsibility they claimed was for their mothers and aunts.

As part of literature review, I found a letter from the FKE to the Permanent Secretary MoL dated 29th January 2008 highlighting the problems employers are facing in implementing the new maternity provisions among other provisions of the new labour laws (absence of rules, and regulations, lack of implementation framework, legal vacuum in the law enhanced maternity leave, introduction of paternity leave etc).

One of the Legal Officers interviewed at FKE corroborated the contents of the letter by asking me this:

Where is the structure to meet this requirement? Removing labour cases from all other courts means that all labour and employment cases should go to the Industrial Court, yet it is only situated in Nairobi. What happens to cases in all other parts of the country, are they going to wait for the the Industrial Court to move there from Nairobi (circuit courts)? This will be so expensive before the government establishes other courts in provinces and districts. Was it really necessary for the government to do away with the other normal courts? How can the Industrial Court have exclusive powers to hear and determine labour and employment cases when it was not established directly by the Constitution? What happens to the High Court that has jurisdiction to hear all types of cases?

It is very unfortunate that the Federation had so many questions for the government yet they were fully represented at the Task Force and were in parliament from the first reading of the Bills to the last day of the reading. It is not surprising that in an endeavour to solve the issues raised by the Federation, the Permanent Secretary wrote to the Attorney General whose instructions were that lack of rules and regulations is not an impediment to implementation because the Interpretation Act, Cap 2 allows the application of the repealed rules where none exist. In my opinion, this is very difficult and ineffective because the repealed law was not as elaborate on maternity protection as the new law.

To corroborate the Attorney General, the Registrar of the Industrial Court of Kenya during an interview explained that employers had no option but to implement the new maternity provisions in the same way as the Industrial Court has no option but to hear cases all labour cases from all corners of the country. She categorically said that:-

Employers have no option but to implement the new provisions on maternity and paternity. We the civil service are implementing. We have not even reached the eighteen months that recommendation 191 recommends or the 14 weeks that C183 provides. With or without regulations, they should implement using the previous rules and regulations.

She however pointed out that the government too was encountering problems in implementing the new provisions especially the two weeks paternity leave just like the private employers. Citing one encountered with one of her officers she said;

This employee applied for paternity leave and before I approved it, proceeded on leave without my permission. He never attached the National Hospital Insurance Fund (NHIF) and NSSF cards as required by the government circular to prove that it was his wife who had given birth. When I wrote him a letter to show cause as to why he should not be disciplined, in his letter to the Director Human Resource, called me amnesia. This really annoyed me and I had him transferred. Get it from me; if he was here I would have had him sacked.

The registrar's statement indicates that challenges in implementing new laws are there for both the public and the private sector but all should strive to have them implemented.

One of the female managers of Safaricom Company Limited had this to say:

The new maternity leave provisions have a great impact on production. Not less than 10 of our women give birth in one month and this means that casuals or temporary staff has to step in for them for three to four months. This means double tragedy on the employer, paying two people for the same job and afterwards being sued by the casuals for not having converted them into permanent terms of employment as required by the new law.

She further explained that being a call centre, it is very costly to train new staff that step in yet training is crucial to meet the international standards and competition. Furthermore, they value

their customers and this has necessitated them to do more than what the law requires. To elaborate on this she explained:-

We have established a breastfeeding centre at one of our call centres and this has increased production and retention of workers leading to minimal movement from Safaricom to other companies because of the good services and terms of conditions of employment we offer. Employers who think that introduction of care centres is expensive should visit and learn from Safaricom. Safaricom has retained its staff, has gotten the best staff and is getting lots and lots of profit than ever before. In this company, women are more efficient than men may be because of it being a service call centre and the terms of service we offer. They never leave the company and we rarely sack them. Even before the new laws came in place, we used to grant them the two months maternity leave in addition to the annual leave. However, as large as we are, we are also feeling the impact of new provisions while implementing. It is not easy but we are managing. I do really pity the smaller employers. I do not know how they are coping.

She also proposed a compulsory insurance scheme to cover maternity protection. With this, none of the employers will complain about the expense. The National Social Security can be amended to provide for this.

To corroborate her information, she availed me a copy of the Kenyan Sunday Business Newspaper dated November 22<sup>nd</sup> 2009 which is attached hereto as Appendix 1. A summary of the article is as follows:-

Deployment of a mother in a shift based position of her choice, all immunisations paid for up to nine months, ensuring employment of up to 22 staffers with various disabilities, out of the total staff of 2,400 employees, 1, 067 are women and 60% of the employees are below 35 years and therefore, at their reproductive age, provided rooms for breastfeeding mothers and childcare professionals; the mother's room is fully equipped with hygienic and private environment for expressing milk and breastfeeding, a 24- hour medical facility, complete with a medical doctor, a prayer room for Christians and Muslims, gym, bathing-room, rest-room, library and cyber cafe facilities. The move by Safaricom to have family friendly policies has reduced staff absentia to a bare minimum, increased productivity, making the company the most profitable in the East and Central African region; boosted staff retention by almost 100%. Safaricom's attrition rate is considered one of the lowest in the country, with a turnover rate currently at 0.27 percent.

The new policies introduced by Safaricom are an example of the current emerging human policies in achieving work-life balance and allowing staff to manage work and family responsibilities more effectively; a move more Kenyan employers should consider taking.

The interview with Mr. Caleb Mudinyo and Mr Lukoba, the human resource managers of Sher Karuturi Ltd. and Oserian Ltd Flower Farms, Naivasha revealed that the Memorandum of Agreement between Agricultural Employers' Association and Kenya Plantation and Agricultural Workers' Union signed on 17<sup>th</sup> June 2008 by eight flower farms; Sher and Oserian included, had incorporated some maternity leave provisions based on the new provisions. In addition, the CBA provides the woman proceeding on maternity leave with a leave travelling allowance of Kshs. 1,800 (US\$24).<sup>1</sup> Mr. Mudinyo availed me some maternity/paternity leave application forms filled by some men and women who had benefited from the new provisions to confirm that the company was fully implementing the new provisions. However, the memorandum failed to include paternity leave though the company was granting it. Mr. Mudinyo also raised the same fears and challenges as those raised by FKE and other large companies. Despite the challenges, he explained that the organization has a fully fledged hospital with maternity facilities and where employees use National Hospital Insurance Fund (NHIF) cards and the organization tops up. He said:

Employees do not meet any maternity related expenses; have a fully fledged school starting from tertiary to secondary level; early child hood education for their children fully sponsored; secondary level subsidized by the employer and only pay Ksh. 12,000 (\$160)<sup>2</sup> per year. This is less than what government institutions offer by more than half. The employer and employee contribute each half to NSSF and NHIF. They however do not belong to any insurance scheme apart from the workmen's compensation. Maternity leave is embraced in the CBA but paternity leave is granted though it does not appear in the CBA and women are given free one hour to breast feed for twelve months.

Through an organized group discussion by Mr Mudinyo involving me, two shop stewards and 10 workers (eight women and four men), I discovered that one of the women (Hellen Eresia ), was one of the two shop stewards at the company and she was happy with the new laws. She informed me that the company gives the women proceeding on maternity leave Kshs 4,000 (US\$53) which is slowly deducted from their salaries and leave travelling allowance of Kshs.

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<sup>1</sup> US\$1= Kshs. 75 as at February 2010

<sup>2</sup> Ibid

1,800(US\$24) in addition to their salary. She however noted that though a good gesture from the company, it should be increased. As she put it,

Life is very expensive these days and as you know, flower farms salaries worldwide pay low wages because they have an international standard agreement that employers follow. Definitely Sher being the largest exporter of Rose Flowers pays a little higher than the government set minimum rates and the international rates. But still with the current financial depression, the women and men workers with family responsibilities are unable to cope. To improve women lives, the government and the international community should agree together to raise their salaries. Women in flower farms suffer more health wise than those in normal manufacturing companies like textile, shops, hotels, supermarkets etc. They need to feed well to be able to cope. Further they need facilities to breastfeed and rest which our new law is silent on. Most of them miscarry or have still births and the law too failed to address this issues. Most women in smaller flower farms are dismissed when they do not appear on duty after miscarriage or have still birth because the new law does not protect them. Here we used to face the same problems but now the new human resource manager seems to understand us. He gives such women permission or sick leave. What is required to protect women fully is meet all their needs during birth including leave for those who miscarry and have still births.

On whether they are visited by the Labour Office, she complained that the problem with the labour officers is corruption. They only come to assist the employer and not sort out our problems. Furthermore, they are only three and we are always visited by the same officer year after year thereby compromising his job. She however pointed out that the nearby small flower farms still implement the repealed maternity provisions and should be visited by the labour office. She continued:

Those I feel for are our colleagues in the surrounding small flower farms like Van Den Berg (VD Berg), Sian Longonot Horticulture Farm, Plantation Plants Flower Farm (Herneth Flower Farm) and many others who are not given their new maternity leave and their men denied paternity leave. On pregnancy or giving birth, they are dismissed unfairly without compensation. This has forced most of them to carry out abortions to save their employment or be employed. **Most employers have converted all the casual workers to seasonal workers to defeat the new provision.** This has impacted negatively on women because majority of them were casuals and casual employment is well paying than seasonal and is not subject to deductions. Is this improving or worsening women situation who are already burdened in their homes with a lot of responsibilities especially the single ones who head their homes and are bread winners like me?

The mood changed when I interviewed women from the smaller and informal sector. The employers and workers I interviewed at Gikomba one of the largest second hand clothes open market in the world expressed their annoyance at the government. One such statement was from Achieng the owner of Mama Achieng Fish Selling Kiosk:

I don't think this government thinks of small enterprises like this one of mine which over 70% are owned by women who were retrenched from the civil service. I used to work with the Ministry of Finance but was retrenched in the year 2000 against my wish when my first born was doing his standard eight, and knowing not what to do next, the Luo (fish eating tribe in Kenya) in me made me start selling fish near my door step. Later I realised I could survive on it though not fully and thought of opening a small joint at Gikomba. I started alone, then one casual employee and now five. Here we sell for survival and not to save. It is from the pocket to the mouth. We cannot afford to implement let alone the maternity leave but any government regulations. I cannot even afford to pay my workers the required minimum salary. How could the government make such a plunder to make the law binding to even small enterprises like us? They chased us from the formal employment and now this. Do they want us to pack and go home and let our children to steal for us to educate them or what? This days life is very expensive let alone education. University is for the rich. The government should exempt us from application of all the laws. We are not happy to see our workers suffer during pregnancy and after giving birth. They work up to the last minute because we only pay them as they come however long they work with you. Our business is unpredictable; sometimes we go days without selling losing all the fish at that time because we have no fridge or deep freezer to store them. We therefore can't afford to hire permanent workers. We lose when we get pregnant because the business stops and most of us have resorted to not giving birth to survive.

The District Labour Officer (DLO) of Industrial Area Labour Office was categorical in saying:

Madam, how do you expect us to enforce the new laws in the informal sector, it is hard. The people there are very un-cooperative and they can stone you if you insist. They are working to survive and not to earn or save. Going there raises the issue of the government wanting to punish them, close down their livelihood and therefore makes them violent to the enforcement officers. Once one of my officers was stoned at Mukuru Wa Njenga (a slum area in Industrial Area Nairobi) when he tried following an employer of a small canteen who had sacked a pregnant girl of twenty years and had worked for him since she was fifteen years. He never went back and told the girl to sort out the issue with her employer amicably. Our work is too risky madam as much as we want to work.

These statements indicate that small enterprises do not implement the new provisions and have no intention of doing so because they cannot afford to do so and the labour officers fear visiting



them. A woman receptionist working with Relay Security Services Ltd one of the smaller enterprises in Nairobi who requested her name not to be disclosed said:-

The women and men in the civil service are enjoying the new maternity and paternity provisions without problems while in Relay you can't get pregnant. Once it is noticed you are dismissed or terminated on wrong accusations. **Because of fear not to lose our jobs, we carry out abortions unnoticed during which you suffer silently** with leakage to very close friends. I have done it twice and if it comes again I will do it than lose my job. **The employer sacks women to avoid paying maternity leave and hiring casual employees to step in, which he claims will lead to closure of the firm as he gets very little profit from contracts.**

Another woman employee stationed at the Nyayo Stadium in Nairobi from the same company said:

**I have been employed in this company for the last 15 years but every time I give birth my service is broken. They claim I am a casual employee and therefore do not qualify for maternity leave. I have never had paid maternity leave for all the three children I have. I work up to the last minute to save;** after giving birth, I stay with my parents. Fortunately enough our rural home is Muran'ga which is closer to Nairobi. My mother takes care of me and stays with my children. I leave her with my baby after two months. The little money I earn, I take a fraction and I take the rest to my mother. At one time I had a miscarriage and the bill in the hospital was too high. It forced my mother to take a loan from a friend and to repay it was hell; **at one time I behaved like a prostitute to raise funds** to clear it. What amazes me is whether the labour office operates or not. Where are they when small people like us are suffering at the mercy of the employer? **This company hides in the name of closing down when followed by government yet they make a lot of money.** One time a serious officer should take it to court and see whether it will close down. The new women are sacked on getting pregnant because the employer fears they might antagonize him in court over maternity.

My interview with the Human Resource Manager of Relay Security Services Nairobi gave a different picture from employees. He explained that:

It is very tricky as the person in charge to know whether a worker is requesting for genuine compassionate leave or not. We have had cases where workers cheat that their parents have died or relatives when actually it is a total lie. When the real parent dies, it leaves the employer in a state of confusion on whether to grant

another leave or terminate the employee for lying. This happens in many organizations not only in situations of death but also sickness. The same problem has now developed with the new clause on **two weeks paternity leave**. The law is silent on how this particular leave should be granted taking into account that Kenya is a polygamous state. **How many times are employers supposed to grant this leave in a year to a man whose five wives giving birth in the same year or every year? There are others with twenty/ten wives. What do we do as employers?** We have nothing to guide us. As for the maternity leave, women are in trouble. Three months in addition to annual leave is too expensive. They will end up with no jobs. The few we have granted leave have caused us a fortune.

This statement looked like all employees are given paid maternity leave but later interviews with both men and women revealed that only management staff were granted paid maternity leave and benefited from both the repealed and new provisions. The same applies to paternity leave. One security officer at the upper hill, KUSCO offices explained.

Do not bother talking to women, they will not give you information because they fear being seen by the management and sacked for talking to either a government officer or private investigator. This is because they are denied many rights including maternity leave. Even us we are denied paternity leave but we don't care so much if we are sacked. Women worry about their children, parents and their up keep. I can sleep in the bar as I look for another job. **The only people who benefit from the new laws in this place are those working in the managerial positions.**

This statement implies that most security companies do not implement the new provisions on maternity and the effect is high on women. This however needs a further research on all other security companies to establish the truth and the effect on the workers.

The interview with the civil servants revealed 100% compliance in implementing the new provisions on maternity and paternity leave. All the personnel officers interviewed and the heads of departments claimed they received a government circular from the head of the civil service and public affairs instructing all heads of departments to immediately implement the new provisions as per the guidelines set in the letter. However on literature review, I discovered that the Civil Servants Code of Regulations (2007) was not amended to reflect the circular and the new provisions. This is an oversight that the government should correct immediately because it is already implementing the maternity provisions. The Code still contains the provisions of the

repealed labour laws not only on maternity provisions but many other things like workmen's compensation, occupational health etc.

However, my interview with the Director Human Resource at the PSC revealed that government implements things without assessing the impact or the cost involved. She stated:-

To me, I find the introduction of paternity leave unnecessary and if possible, I could have amended the laws to delete it. Let us call a spade a spade. Which Kenyan man is going to assist in taking care of the new born baby or the mother? The civil servants are taking this leave in high numbers to go and drink and enjoy with their mistresses. Remember our men like free time a lot. This, to them was God given opportunity and they will do everything to retain it or increase it. Most of our traditions do not allow a man to be with his wife after giving birth; it used to take close to two months but with time reduced to 5-10 days. The same men passed this law in parliament to serve their selfish interests. Maternity leave is in line with the international standards. Given a chance, I would enjoy giving birth again. Before we did suffer because the period was too short (two months without the annual leave); our babies suffered too. They did not breastfeed enough and we ended up taking a lot of breastfeeding breaks and sick leaves because babies were weak and often got infected by maids due to dirty food, milk bottles etc

The MoL which is the main Ministry charged by the new labour laws and government to enforce and monitor implementation of the new provisions on maternity face many challenges that hinder its effectiveness in enforcing and monitoring the new provisions. These challenges include lack of implementation matrix, government bureaucracy that has led to insufficient government budgetary allocations, inadequate operational facilities, limited staff capacity, poor working environment, inadequate legal, institutional and policy framework.

The MoL is unable to establish Industrial Courts in Provinces and Districts as required by the new labour laws yet under the new laws, the Industrial Court has exclusive jurisdiction to hear and determine labour and employment issues all over the country. This has caused the normal courts to refuse to exercise jurisdiction over labour cases and without Industrial Court Branches in Provinces and Districts, the women employees are not able to meet travelling costs to have their cases heard in Nairobi. Furthermore, the labour officers do not have enough facilities including writing materials, inspection forms, and vehicles to take them to the factories and firms to carry out inspections, etc. Most labour officers to request complainants to finance their cases

hence being seen as corrupt by many aggrieved parties. Mr. Nyambari, the Labour Commissioner summarised the problem facing MoL as follows:

**My department is under funded and it has made my work very difficult.** The name of the Ministry has been tainted because of delay of cases, not out of our wish but because of lack of funds. How the government expects the ministry to enforce the new labour laws on a zero budget God knows. We are unable to convene the National Labour Board meetings yet this is the main institution that is supposed to advise the minister on regulations and amendments needed on the new maternity provisions. **Further, we have been unable to train our field officers and the public not only on new maternity provisions but all new labour laws.**

The Registrar of the Industrial Court explained that they do not have enough funds to have circuit courts in all the districts and provinces:

So far the ministry can only afford one trip for each Judge (5 Judges) and therefore they restrict themselves to the city towns (Mombasa and Kisumu) and all the cases that could not be heard in Nairobi are heard in this two towns. It is expensive for the Ministry and the public, let alone the women who are unempowered. It is hectic for the labour officers who are already too few in number and sometimes there is only one officer in a station which is without funds to take cases to these two towns.

Mr. Kubai from the Kenya Bankers Insurance Union expressed the same concern as follows:

We fought for the new labour laws to come in place. Parliament assured us that it will fund the Ministry to implement the new laws. How it failed to ensure the Ministry is funded is yet to be explained. It might take us to lobby for funds elsewhere or confront parliament once more. The ministry officials are being accused while the government knows where the problem is.

All the three respondents proposed an increase in the budgetary allocation and lobby of funds from development partners.

One woman employee who had been dismissed by Relay Security Services Company after informing them that she was pregnant complained:-

**I have been coming to the office (Industrial Area Labour Office) for the last four months but I have only been attended to once and I don't know when I will meet the inspector in the office again.** Every time I'm told he is gone for inspection or a follow up or when I meet him in the office, he is having a meeting to settle a dispute. Can't the government employ more staff? Many of us are jobless and this ministry has no staff! **We workers are suffering because of inadequate staff in the ministry.**

### **4.3 Challenges of Access to Maternity Leave by Employees: "You can lead a horse to water but you can't make it drink!"**

This subsection will address and combine the main assumption that a lack of policies, regulations, administrative measures and bureaucracy prevent women from realising their right to maternity leave with the last three assumptions (5-7). To answer the questions as to whether a lack of policies, regulations, administrative measures, bureaucracy and ignorance prevent Kenyan women from realising their right to maternity leave, the Approaches of Legal Pluralism and Women's Law were the methodologies used while literature review, observation, questionnaires, interviews and internet search were used as the methods for data collection. This was meant to identify other factors besides the law that prevent Kenyan women from fully realising their maternity protection rights.

#### **4.3.1 Kenyan National Policies**

Most of the Kenyan policies on health, gender, children, human rights labour and employment are in draft form and therefore there is nothing to guide the implementers. The draft National Employment Policy has been pending in Parliament for the last five years. The relevant ministries should forward the drafts to Parliament while the MoL and workers' and employers' organizations should lobby for the adoption of the draft National Employment Policy.

#### **4.3.2 The Non-Repeal of the Old Regulations**

The new provisions on maternity and paternity leave are operating in a vacuum without rules and regulations. The MoL has not developed rules and regulations to guide the implementation of the

new provisions on maternity and paternity leave. The employers are therefore forced to use the repealed rules/regulations which do not fully address the newly introduced provisions like paternity leave, protection of pregnant women against discrimination, unfair dismissal and termination and additional maternity leave.

From the literature review, I found out that Section N of the Kenyan Civil Servants Code of Regulation (2006) is based on the repealed labour laws and therefore needs to be reviewed in line with the new labour laws. However, unlike the repealed laws, it defines maternity leave, provides for paternity leave and extends maternity leave. The same spirit should be extended while reviewing them in line with the new provisions which also fail to define maternity leave or to provide for parental, family, and adoption leave.

A hundred percent of the employers I interviewed complained that the new maternity provisions were expensive and costly to implement; a situation which is worsened by the non-provision of rules and regulations. They all suggested that the rules be developed but in a way that maternity leave is taken at different time with the annual and paternity leave; a recommendation I agree with. It is recommended that we follow the Zimbabwean approach, or something similar, where the number of years is regulated and limited to two years before giving birth to another child.

It is my suggestion that all the draft policies that affect implementation of maternity/paternity leave be forwarded to Parliament for adoption and those that have been pending in parliament like the employment policy (for five years) be adopted by Parliament.

#### ***4.3.3 Limited Awareness of the Right to Maternity Leave among Women Employees***

Another assumption on challenges was that Kenyan women are ignorant of the new maternity provisions. To answer this question (as to whether Kenyan women are ignorant of the new maternity provisions), I asked the women whether they understood the terms maternity leave, maternity protection, the current maternity protection provisions, how they benefit them, the challenges they face while utilizing them and their views and recommendations.

Most women knew what maternity leave was though not fully but did not know what maternity protection entailed (60% of the women in the large companies, 50% from small enterprises and

20% from informal sector) were aware of the new maternity provisions. Hellen Eresia from Sher Karuturi Flower Farm explained the new provisions as:

Three months maternity leave plus the annual leave, which is fully paid and with a leave travelling allowance. Unlike the repealed law, the new provisions provide for two weeks paternity leave, protect pregnant women/new mothers against discrimination and unfair dismissals and terminations. They however fail to provide for still births and miscarriages.

Hellen's knowledge of the new maternity provisions changed my assumption that Kenyan Women are ignorant of the new provisions on maternity to read: "Some Kenyan women are ignorant of the new provisions on maternity." She was quite aware of the procedure for taking maternity, the legal rights under both the new and repealed laws and the memorandum of understanding between flower farm employers and their union. On inquiry she said she reads; an idea she started when she was nearly sacked after giving birth to her first born after developing complications.

However, Anne Njuguna from EPZ and the women in the informal sector at Gikomba Open Market totally refused to answer the questions stating that they were not aware of such laws and were not interested in knowing them. As to why this was the case, they pointed out the law was unable to solve the many problems facing them. All of them were against being sensitized claiming that it was of no use to them and that it would not make any difference to the many problems they have and would be a waste of time. "*We are not interested*", most of the women at Gikomba said.

It will be a waste of time when we need money to feed our children and educate them. Any single minute lost means loss of the little amount we get. Sensitization means loss of sales and sleeping hungry.

However with motivation, the informal sector can be sensitized on their rights; hence there is a need for funds to enable the MoL to change the attitude of the women in the informal sector. From literature review, interviews with workers' and employers' organizations and my work experience, I found out that Danish International Development Agency (DANIDA) was sensitizing the labour market institutions though limited to MoL (labour and occupational safety

departments), COTU and FKE(their officials only). The MoL should lobby for more funds to train all their staff and the public especially women not only on new maternity provisions but new laws in totality.

Mr. Kubai, the secretary general of the Kenya Bankers Insurance Union explained that the DANIDA Project is assisting them to train their officers including shop stewards. However, they are not able to train all their members because of limited resources and will have to lobby for funds elsewhere to be able to train all its members.

#### **4.4 The Discriminatory Effect of the New Maternity Provisions on Women**

Women at the workplace experience problems and forms of discrimination ranging from denial of leave to nurse a sick baby, dismissals, lack of promotion while pregnant and on maternity, low pay that is not commensurate with the kind of work they do, and very long hours of working in situations injurious to their health and the well-being of their baby. The situation is compounded by the lack of a proper procedure for the lodging and fair processing of complaints about these problems and by the fact that the workplace is an area that has traditionally been male-dominated, especially at the higher managerial levels where policy issues are discussed (Cole, 1991:401).

From the interviews and literature review, I found out that the kind of discrimination that used to be at EPZ used to strain marital relationships leading to high divorce rate, especially between spouses who worked for the same employer. Most men claimed that women used to put in too many hours at the workplace; ignoring them and their children and they were not sure whether their women were actually at work or were involved in other indecent practices that kept them away from home. The consequences of this situation of treatment had forced many female workers to delay or postpone marriage, child birth and other nurturing roles.

Further, the workers at EPZs were not allowed to join trade unions. They however confirmed that with the new laws most of them are now members of various unions, although I failed to meet any woman official apart from one of the shop stewards at Sher Karuturi Flower Farm who are in a position to lobby for better maternity provisions in the CBAs.



From the interviews, 90% of the women workers claimed the new maternity provisions were good and at EPZs, they improved the employers' treatment towards them. One woman employee from Protex Company Limited commended:

**Most EPZ companies used to discriminate against (women) before the new laws came in place.** Those who were pregnant were not employed, promoted and unfairly dismissed using false accusations. The rate of mistreatment has however gone down and we are now treated though not fully like human beings. **My only worry is for those looking for employment as employers are complaining about the new maternity and paternity provisions being expensive and have started reducing the number of permanent women employees and employing most of them on seasonal terms and low jobs to evade paying maternity.**

This statement is very clear; the EPZ employers have improved a lot in the way they treat women employees but there might still exist indirect discrimination which the government needs to monitor and take steps before it the situation becomes more unmanageable than it already is.

From the literature review and interviews carried at FKE, I found out that employers are threatening to discriminate against women employees or migrate to other countries if the laws are not regulated in such a way that the maternity leave, annual leave and paternity leave are taken at different times, penalties are reduced and social security to cover maternity costs is introduced (FKE Baseline Survey, 2008).

## **4.5 Emerging Issues**

### ***4.5.1 Making and Amending Labour Laws and Policies with a Gender Perspective***

It should be a top priority for the MoL to examine the possibilities of extending maternity protection to women in the informal sector, as they generally do not enjoy any formal maternity protection. Informal workers constitute a large percentage in Kenya. Most of them run their own small businesses or work for micro enterprises (selling food, tea, vegetables in a market stall or sewing garments in sweat shops); a similar situation which I saw at Gikomba open market in Nairobi. These enterprises and jobs are not officially registered, and workers have no or very few entitlements. The women work under harsh conditions with meagre earnings, often in temporary

and seasonal activities, with little or no job security and no health or financial benefits. They are most often not organized, and as a consequence they lack most forms of protection including the right to claim maternity benefits.

The same should be done for rural women who work in the fields as farm labourers or farmers and toil for long hours doing back-breaking work. Although women in agricultural work are technically not part of the informal sector, they suffer the same conditions. Maternity protection has hardly any meaning for these women even where legislation exists.

In both Nairobi and Naivasha, I observed that women and men use their maternity and paternity leave in different ways and thus have different priorities in terms of services and use of their leave as beneficiaries. Men usually spend their leave drinking while women spend it at home as they recuperate and take care of the new born babies and take them to clinics. Despite this, women's interests as concerns their right to maternity benefits rarely feature in government and employers' activities. This is because women are largely excluded from the planning and decision-making process. This is a strong argument for policy-makers and planners, whether men or women, to be gender aware so that women and men alike are consulted and encouraged to participate fully in policy making on labour and employment matters at all levels.

Observation and interviews carried out in smaller firms and in the informal sector revealed that workers (both men and women) attitudes towards the law and labour officers has not changed with the new labour laws in place. This perception can only change through serious awareness creation of both groups and their consultation on all planning and decision making as already mentioned above.

#### ***4.5.2 Persistence of Indirect Discrimination: Conversion of Casual Employees to Seasonal Employees***

Empirical evidence revealed that indirect discrimination is still being practised by employers and their agents. At Sher Flower Farm, the human resource manager said they had converted all their casual workers to seasonal ones in order to defeat the new law that requires the conversion of casual workers to permanent employees. This issue needs to be investigated further in all other companies in the country to enable the government act effectively as most casuals are women

whom offending companies are converting to seasonal workers thus deliberately and illegally stealing from them their statutorily guaranteed and protected rights to maternity benefits. This was a problem at EPZ too. FKE was categorical that employers might start refusing to employ women of child-bearing age.

#### **4.5.2 Persistence of Sexual Harassment**

Despite the new E.A and Sexual Offences Act outlawing sexual harassment at the workplace, workers at EPZ still complained of its existence. An employee from one of the firms at EPZ complained,

**At EPZ, we are sexually harassed on a daily basis.** Some girls and women give in to the personnel managers but some of us who refuse work under stress. One of my friends was denied maternity leave because earlier on she had refused to sleep with her personnel manager. She was accused of absenteeism when she was approaching delivery dates and the defence given at the labour office was that she was a casual employee who had worked for less than a month. Without employment records and employment letters, she had no one to corroborate her claims because all of us fear being sacked.

From interviews, some women employees pointed out that the labour office lacks integrity and cited among others that they were being sexually harassed by the male labour officers who request sexual favours before assisting them. This allegation however needs further investigation to establish the truth.

#### **4.5.3 The Effect of the New Laws on the Government, Employers, Employees and the Public**

Most interviews with employers revealed that maternity costs were expensive and borne entirely by employers. Further, a baseline survey carried out by the FKE in 2008 on *“the implications of the new labour laws concluded among others that the new labour laws will lead to increased mechanization, reduction in workforce, reduction in compassionate/charity employment and are not business friendly, hence the danger of slowing the economic growth and reduction in*

*employment opportunities that might lead to discrimination of women in employment.”* If these fears are confirmed, then women suffer even more if employers took the steps that have been recommended in the survey. However, another baseline survey needs to be carried out by an independent institution or the National Kenya Bureau of Statistics to corroborate FKEs survey to enable the government act effectively.

## **CHAPTER FIVE**

### **5.0 RECOMMENDATIONS AND CONCLUSION**

The recommendations and conclusion are based on all the seven assumptions and questions of the research. To make effective recommendations, I looked at the weak and strong points of the new Kenya's maternity provisions and factors that hinder women from utilizing them using the feminist theories, grounded theory and legal pluralism approach.

#### **5.1 Recommendations**

##### ***5.1.1 Implementation of the New Maternity Provisions by Employers***

To effectively implement the new maternity provisions and labour laws, I recommend that:-

ILO C183 and the new Kenya's labour laws (including the AE of 2007) be amended so that they include clear definitions of the terms "*maternity leave*" and "*maternity protection*".

The central government prioritize the MoL budgetary allocation and increase it.

The MoL, workers' and employers' organization mobilize resources and funding from development partners as effective implementation of the new labour laws/maternity leave provisions require adequate financing, human resource, facilities, continuous monitoring and evaluation, continuous and sustained sensitization and dissemination of information to all stakeholders.

The MoL, in collaboration with employers' and workers' organizations, and with the support of international institutions develops an implementation matrix and a monitoring and evaluation plan.

The MoL, in collaboration with employers' and workers' organizations, and with the support of international institutions examines ways and means of implementing fully the relevant international human/ILO instruments and programmes.

An independent institution carry out a baseline survey to assess the impact of Kenya's new labour laws on employers, employees, government and the public at large to corroborate FKE's survey of 2008 on the implications of the new labour laws.

The MoL carry out research to establish the truth or otherwise of allegations: made by workers in Naivasha flower farms and EPZ that women are carrying out abortions to avoid discrimination before and during employment; that sexual harassment still persists at EPZs and that labour officers request sexual favours from women employees before assisting them.

The central government carry out research to assess the impact of introduction of a child care centre by Safaricom Company Ltd. on the workers and the employer and to enable the MoL and employers draw lessons from them.

The government, in collaboration with international institutions should frequently train judges, court registrars, magistrates and labour officers on the new developments of the international human rights/ILO instruments to enable them apply the principles while determining disputes.

### ***5.1.2 Women's Ignorance of the New Maternity Leave Provisions***

The MoL should take the lead in sensitizing the public on the the new labour laws to change the public's perception of women as child bearers and rearers, homekeepers and careres with a view to achieving equity in employment and employment opportunities.

Since maternity protection is linked to the right to health, the Government, the United Nations Organizations, health professionals, research institutions, non-governmental organizations, donors, pharmaceutical industries and the mass media, should work together to promote research and disseminate information on women's health including pregnancy while at work and maternity protection. This will make information available to women to enable them make informed and responsible decisions on their health.

The Government, in collaboration with employers' and workers' organizations, NGOs, the media and with the support of international institutions, should promote public information on the benefits of breastfeeding , maternity leave and other related leave like paternity, parental and adoption.

### ***5.1.3 Administrative, policy and legislative measures***

The MoL in consultation with workers' and employers' organizations should lobby for ratification and domestication of the ILO C183 and other relevant human rights Conventions within trade unions, employers, key government ministries and relevant parliamentary labour committees.

The central government should review the Constitution and its policies to recognise the right to health, labour and employment. The draft Constitution of February 2010 that has enshrined this rights should be adopted or a leaf be taken out of South Africa's book whose Constitution has enshrined labour rights. This should be followed with a review and amending of the various health and labour Acts of Parliament and policies so as to guarantee and entrench women's access to maternity protection and medical health care.

While amending the Constitution, the labour and health Acts and policies, representation should be all inclusive involving all stakeholders especially women, children, girls and other vulnerable groups; the government should promote harmonization of work and family responsibilities for both women and men by encouraging job-protected parental leave and parental benefits like Netherlands, Denmark and Norway. It should also initiate the promotion of breastfeeding breaks and facilities.

The government should establish a national social security fund or insurance scheme to cater for maternity costs with contributions being met by every employee and employer. Alternatively, the NSSF Act Cap 258 should be amended to convert NSSF from a provident fund to a pension scheme that will also cover maternity costs with a view to enhancing social protection for a greater population of workers, including those in the informal sector. Good practices can be

drawn from Netherlands, Denmark, South Africa and United Kingdom where compulsory insurance schemes subsidize maternity and other related costs.

The government, workers ‘ and employers’ organization should lobby Parliament to adopt the draft National Employment Policy while relevant ministries forward all the draft policies related to labour, employment and health to Parliament and lobby for their adoption. The government should also amend the Civil Servants Code of Regulation (2006) in line with the new labour laws.

In summary, I recommend that the government adopts the Marxist/socialist feminist’s argument and strategy that the source of women’s problems lies in the structure of capitalism and therefore there is, thus, need to eradicate capitalism in addressing the gaps and challenges facing women to utilize their maternity right. To them, capitalism perpetuates the subordination of women and keeping women subordinate is functional to the capitalist system in a number of ways; they give birth to the new labour force and continue to do unpaid domestic labour; form *a reserve army of labour* that provide a cheap and available labour force to compete for existing jobs, thereby creating downward pressure on wages; as homemakers and mothers, they support the process of profit-making, both as consumers of goods and services for the household and as unpaid caregivers who subsidize and disguise the real costs of reproducing and maintaining the workforce. To them, long as women continue to act only on the domestic sphere, they will not be liberated. The government should therefore adopt this theory to balance family responsibilities and work between men and women the way the Denmark, Netherlands and Norway laws have done. This will change the stereotypes about women’s perception as child bearers and care takers.

The government can also adopt the Liberal Feminists approach who believes that women’s subordination is rooted in legal constraints which prevent their full participation in the public sector. Their struggle therefore strives for equal opportunities for both sexes. To them, all human beings have potential to be rational and any inequality has to be justified in rational terms and therefore equal participation in political organs, education and training are crucial to achieve equality between men and women. I agree with this because successful law and policy reform require women participation to effectively address their needs and achieve equity though law alone without other measures like research, information dissemination, sensitization and awareness creation is meaningless.



## 5.2 Conclusion

Arising from the above findings and recommendations, it is not so much the legislative, regulatory or contractual provisions that are discriminatory on women's access to their right to maternity. It is the practical aspects of their application. Most women workers are predominant in sectors that are not covered by social security such as domestic, part time or occasional work or in the informal sector where they lose their maternity leave plus all the attached benefits. Their situation is worsened by ignorance of their rights, inadequate representation at policy making level and negative perception of their roles by the society. Therefore, a multifaceted approach involving review of the Constitution, laws, policies, training and sensitization of the public on benefits of the new labour laws involving all stakeholders and baseline surveys to assess the impact of the new labour laws on the government, employers, employees and the public at large should suffice.

My conclusion therefore tallies with Oosterveld's (Oosterveld V. and Merali I, 2009) argument that "while the realization of economic, social, and cultural rights is greatly assisted by a legal framework that defines the content of such rights and provides an enforcement mechanism to protect against their violation, the focus cannot be exclusively legal if progress is to be made. A shift in ideological perspective to one that is more communitarian and egalitarian, both domestically and internationally, is imperative if we are to tackle the fundamental obstacles to realising these rights. Indeed, progress will be achieved where there is community and political will for substantive equality, social redistribution, and commitment to the dignity of the human being".

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...ed sentiment. The Development Bank says East Africa will manage six per cent, with Kenya doing 4.2 per cent. But the CBK chief Njuguna Ndung'u has upgraded that to three per cent. Speaking via videolink, Ndung'u said inflation target was "five per cent and below". Inflation rate slumped to 6.6 per cent last month from 17.8 per cent at the end of last year, largely due to the impact of a new calculation method.

-Reuters

**British firm to train corporates on fraud**

The British Standards Institute and Alpex Consulting Africa will hold a two-day information security management conference from November 26 to November 27 to discuss and offer solutions to the escalating growth of corporate fraud and espionage in the backdrop of worrying trends in the banking industry. Alpex Consulting Africa Ltd C.E.O Joseph Kibe said the increasing incidences of economic fraud and espionage constitute a real threat to the survival of corporate Kenya. "The need to guard business secrets from hostile competition and keep supplier correspondence secret has redefined information security and emphasised the need for proactive information security management" said Kibe. Kenya Police economic crimes data reveals that fraud cases are on the rise with 1,873 cases reported in 2006 and 1908 in 2007.

**Angola set for IMF loan facility**

An International Monetary Fund loan for Angola is likely to be approved next week, an IMF official said on Friday, as the country also prepares to launch a Eurobond. "We are close to approving a loan agreement, probably next week," Sean Nolan, senior adviser at the IMF, told an Africa conference organised by Thomson Reuters and the Emerging Markets Traders Association. Nolan did not give a figure for the size of the loan, but the IMF last month recommended a 27-month \$1.3 billion loan programme for Angola.

-Reuters

# Safaricom finds keeping workers

A theme in current human resource policies is achieving work-life balance

By LUKE ANAMI

Family-friendly policies have boosted staff retention at Safaricom by almost 100 per cent.

Kenya's leading mobile phone services firm told *Standard on Sunday* its investment in staff welfare had paid off.

Among the policies adopted by Safaricom is one that allows employees to bring children to work.

The company opted to adopt policies that exceed the statutory minimum requirements for employers.

They range from flexible working schedules and leave, comprehensive medical and insurance cover to all employees, among others.

"We increasingly recognise that employees' health and wellness affect the company's overall performance and we have come up with practical HR (human resource) policy interventions to support employees," said the firm's Chief Human Resources Officer, Joseph Ogutu.

"Our attrition rate is considered one of the lowest in the country, with a turnover rate currently at 0.27 per cent."

An important theme in current and emerging human resource policies worldwide is achieving work-life balance, allowing staff to manage work and family responsibilities more effectively.

**STAFF RETENTION**

Such policies increase staff retention, improve productivity, and send the message to workers that their employer cares.

"The road to profitability is not about services and products only. Neither is salary nor allowances the only motivating factors in today's working environment," he explains.

"The key issue, in our opinion, is that human resources policy and practice must consistently support employees in meeting their responsibilities to significant members of their households."

Ogutu noted that although labour laws provide for three months maternity leave for employees, the provision for a baby care centre to cater for breastfeeding mothers is a ges-



**MANAGING PEOPLE**

• Firms can retain more workers by adopting family friendly policies.

• AMP, a leading Australian wealth-management corporation, estimated that making its workplace more family-friendly, resulted in a 400 per cent return on investment.

• Smart companies know that keeping employees happy, in and out of the workplace, translates to business success.

• Flower firms in Naivasha introduced breastfeeding centres for new mothers at the workplace.



**Safaricom employees take their children at the Safaricom**

are below 35 years. Majority staff are, therefore, at their prime age, which calls for policies that can maximise their productivity," he added.

In the company's state-of-the-art contact centre, the Jambo Centre on Mombasa Road, Safaricom has provided for rooms for breastfeeding mothers and child daycares run by child care professionals.

Mothers can leave their children under the care of child minders in charge. The centre also houses a house doctor for any emergency.

**PRIVATE ENVIRONMENT**

"We have invested in facilities to support the employed parent to ensure they work in comfort," he says.

"The daycare child centre provided many a mother the needed relief of knowing that they can leave their child at the centre under the care of professionally trained care givers."

The mother's room is equipped with hygienic and safe environment for expressing milk for breastfeeding.

Apart from a 24-hour medical facility, complete with a medic-

ture that goes beyond the legal requirement.

"Once the mother has enjoyed the three-month maternity leave, she is deployed in a shift based position of her choice, that encourages breastfeeding for the first seven months after delivery," he explains.

Once the baby is born, all immunisations are paid for up to nine months, ensuring the child's healthy start in life.

This is in addition to spending on health and childcare and work-life benefits. Ogutu says the firm employs up to 22 staffers with various disabilities, mainly at the call centre.


"Not only have we perfected the principal of equity, but also of equality. Out of a total staff of about 2,400 employees, 1,067 are women."

Mr Ogutu said businesses that fail to address the health and wellbeing of their staff only serve to increase risks to their reputation, viability, and finances.

"Sixty per cent of our employees

**APPENDIX 2**

*Parternity leave*



**SHER KARUTURI LTD**  
P.O BOX 729  
NAIVASHA  
**LEAVE APPLICATION FORM**  
(IN DUPLICATE)

**PART 1**

NAME OF APPLICANT (MR/MRS/MS): WAMBUA FRANCO JOHN P/No. V98

DESIGNATION: SYSTEM ADMINISTRATOR DEPARTMENT: ADMINISTRATION

1. I wish to apply for - leave days plus **4 DAYS (PARTERNITY LEAVE)** days starting from **21<sup>ST</sup> DEC 2009** to **24<sup>TH</sup> DECEMBER 2009**  
(Annual/Accumulated/Local/Compassionate/Pro-rata/Sick/Maternity/Parternity Leave/Pending off)

My contact during leave: 0722-795525

Signature: *John* Date: 19<sup>th</sup> December 2009.

---

**PART 2**  
(FOR OFFICIAL USE ONLY)

2. I hereby certify that I have checked and do confirm that leave days balance carried forward will be **10 (TEN)** days as at **24<sup>TH</sup> DECEMBER 09**  
LEMANKEN JANE Date: 18<sup>TH</sup> DECEMBER 09  
HR - SECRETARY

3. I approve/don not approve that the applicant takes whole of 4(FOUR) days and Do/Do not consider a relief to be necessary.  
*Jane* (Date: \_\_\_\_\_)  
(Supervisor/Head of Department)

4. The applicant is granted **NIL Leave** days plus **4 (FOUR)** (PARTERNITY) day's w.e.f. **21<sup>ST</sup> DEC 2009** and should report on **28<sup>TH</sup> DEC 2009.**

5. Leave Traveling Allowance for 20 \_\_\_\_\_ is (Approved/Not Approved)  
Date \_\_\_\_\_

HUMAN RESOURCE MANAGER  
Distribution: Original - APPLICANT Duplicate - PERSONAL FILE



**APPENDIX 3**

FORM B1

REPUBLIC OF KENYA  
THE BIRTHS AND DEATHS REGISTRATION ACT (Cap. 149)

**ACKNOWLEDGEMENT OF BIRTH NOTIFICATION (FOR PARENTS)**

Serial No. BA 573129

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1. NAME Isida Louise Wambua 2. DATE OF BIRTH 17-12-09  
First name Other name Father's name Day Month Year

---

3. SEX:\* Male  Female  4. TYPE OF BIRTH\* Single  Twin  Other, specify \_\_\_\_\_ 5. NATURE OF BIRTH\* Born Alive  Born Dead

---

7. PLACE OF BIRTH Mt Longonot Medical Naivas  
Sub location or Estate and Town or health institution

---

8. NAME OF MOTHER Monica Mulwa Nasambo  
First name Middle name Father's name

---

NOTIFICATION ISSUED TO Monica Mulwa Nasambo ID No. 23192669

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