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**WOMEN'S ECONOMIC EMPOWERMENT HUB**



**THE BREASTFEEDING MOTHERS BILL, 2019**  
**NATIONAL ASSEMBLY BILLS, NO. 74**

**A LEGAL ANALYSIS OF THE BREASTFEEDING**  
**MOTHERS BILL, 2019 AND ITS IMPLICATIONS**  
**FOR KENYA ECONOMIC EMPOWERMENT**

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# ABSTRACT

By law maternity leave in Kenya is three months. This presents a challenge to mothers who must be separated from their babies before the expiry of the six-month period for exclusive breastfeeding of infants recommended by the Government of Kenya. To address this, the Government of Kenya passed the *Health Act, 2017* that includes clauses which require employers to set up lactation stations in the workplace, thus helping mothers to combine their role at work and their role to breastfeed their baby, or express milk to be stored in appropriate conditions for use by the baby during periods of separation from the mother. The Breastfeeding Mother's Bill, 2019 was developed in response to the gaps that were evident in the implementation of the *Health Act, 2017* where the compliance by employers was found to be quite low. Essentially, the Breastfeeding Mother's Bill, 2019 seeks to promote the continued bonding of mother and child through the creation of breastfeeding friendly work environments. This would, in turn, lead to the achievement of optimal nutrition for the child at infancy through access to breastmilk for the recommended period by the Government and beyond. Through the creation of lactation places in the workplace, the Bill seeks to enhance the return and retention of women in the workplace after the delivery of their babies without the worry of losing their jobs, being passed over for promotion, or leaving their young babies under less-than-ideal care circumstances.

In this Paper, the clauses of the Breastfeeding Mother's Bill, 2019 have been analysed and interrogated against the letter and spirit of the Constitution, 2010 and considering the available information about the sectors where the workforce in Kenya is found. Given that the Bill addresses the situation of women in the workplace, among the questions that have been addressed, is the type of workplaces contemplated by the Bill and to what extent the majority of working women in Kenya are included. The definition of breastfeeding in the Bill has also been interrogated based on the changing dynamics in the way infants access breastmilk today with a view to establishing whether the definition promotes inclusion or exclusion of some working mothers and some infants. The role of employers and county governments in facilitating breastfeeding-friendly work environments has been examined and examples where this has been implemented provided. Indeed, the role of the Government in superintending the compliance by employers with legislation aimed at promoting exclusive breastfeeding for the first six months of an infant's life has been highlighted. Finally, the arguments in this Paper are synthesized in the conclusions with the emergent recommendations provided. Ultimately, the purpose of this Paper is to highlight issues arising from the Breastfeeding Mother's Bill, 2019 that have a direct bearing on women's economic empowerment and which if addressed, would improve the working environment for the majority of working mothers, whether in the formal or informal sectors.

## ABBREVIATIONS AND ACRONYMS

AWSC	African Women's Studies Centre
BFMB	Breastfeeding Mothers Bill, 2019
EBF	Exclusive Breastfeeding
KDHS	Kenya Demographic Health Survey
UON	University of Nairobi
WEE Hub	Women's Economic Empowerment Hub

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## INTRODUCTION

This Paper arises out of the response made by the Women's Economic Empowerment Hub (WEE Hub) of the African Women's Studies Research Centre, the University of Nairobi, to a *Call for Public Participation* published by the Labour and Social Welfare Committee of the National Assembly in the local dailies with regard to the content of the Breastfeeding Mothers Bill, 2019 (BFMB). The BFMB was sponsored by the Murang'a Woman Representative, Honourable Sabina Chege and the public was invited to submit their views on it by way of written memoranda to be received by the Labour and Social Welfare Committee of the National Assembly by 16 July, 2021.

The Memorandum of Objects and Reasons of the Bill stated the principal object of the Bill to be the provision of a legal framework for mothers who may wish to breastfeed their children at the workplace and particularly to *“provide for the right of a mother to breastfeed freely or express milk for her infant. The Bill further requires employers to provide breastfeeding employees with lactation rooms to either breastfeed or express their milk for their children.”* The Memorandum of Objects and Reasons also stated the following as reasons for the Bill:

Breastfeeding is the first preventive health measure that can be given to a child at birth and it also enhances mother-infant relationship. It is nature's first immunization, enabling the infant to fight potential serious infection and it contains growth factors that enhance the maturation of an infant's organs systems.

Kenya is a signatory to treaties that provide for the right of an infant to

exclusive breastfeeding for six months. The government should therefore promote and encourage breastfeeding and provide the specific measures that would present opportunities for working mothers to continue expressing their milk and breastfeeding their infant or young child. Furthermore, the practice of breastfeeding may save the country's valuable foreign exchange that may otherwise be used for milk importation.

Presently, female employees exit the work force or stop breastfeeding in order to secure their job security. No woman should be forced to compromise the health of her child in order to make a living.

From the above, the Bill specifically addresses only the category of lactating mothers who must go to a formal physical premise whether in the private or government sectors to work, thus occasioning separation from their infants while they are at work. Except for this law being passed, these lactating mothers would have no choice but to be separated from their infants in order to keep their jobs. In addition, it is also clear from the excerpt of the Memorandum of Objects and Reasons that the interest of the Government of Kenya is three-fold: firstly, to make it possible for lactating mothers to physically breastfeed their infants at the workplace and/or express milk from their breasts into appropriate receptacles; secondly, to provide infants with an empowering start in life by preventing any break to the access of their mothers' breast milk which is brought about by absences due to their having to go to work, especially during the first six months of the infants' lives; and thirdly, to ensure the



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security of working mothers' jobs by integrating breastfeeding of infants in the working environment legitimately.

Among other key definitions, the Bill defined breastfeeding as *"the act of feeding an infant directly from the mother's breast"* while expressing milk was defined as the *"act of extracting human milk from the breast by hand or by pump into a container"*. Two other key words defined were 'lactation place' that was defined as *"private, clean, sanitary and well-ventilated rooms or areas in the workplace or public places where breastfeeding mothers can wash up, breastfeed or express their milk comfortably"* while the word 'workplace' was defined as *"work premises, whether private enterprises or government agencies, including their subdivisions"*.

These definitions are quite important because they act to circumscribe the actual beneficiaries and duty bearers of the Bill who, in this case, can be deduced to be: lactating mothers who work in formal physical premises, whether in

the private or government sectors; infants with mothers who work in formal physical premises, whether in the private or government sectors and who are actually being physically breastfed; employers both in the private and government sector who have physical workplace premises and, therefore, must establish lactation places, failure to which, they could be fined, imprisoned or subjected to both ; and persons who own, lease or rent a public or private building with a minimum occupancy capacity of fifty persons that is accessible to the public as they are required by Section 8 of the BFMB to install a baby changing facility.

On the other hand, it is evident from the foregoing definitions that the following categories are excluded from the ambit of the Bill: lactating women who do not work in formal physical premises whether in the private or government sectors; infants of the latter mentioned lactating mothers given that the Bill contemplates the presence of infants in the workplace only in the context of being physically breastfed; employers of women who work in workplaces that do not have formal physical premises; self-employed lactating women; and women who feed their infants below six months of age in ways other than through physical breastfeeding. Thus, the WEE Hub's memorandum was based principally on the constitutional principle enshrined in Article 27(1) of the Constitution of Kenya that states, "every person is equal before the law and has the right to equal protection and equal benefit of the law."

<sup>1</sup>Section 4 of the BFMB states, "(1) Every employer shall establish a lactation place in the manner prescribed under this Act. (2) A lactation place shall – (a) be shielded from view from intrusion from co-workers; (b) be clean, quiet, private, and warm; (c) not be a bathroom or toilet; (d) have a lockable door; (e) have a wash basin; (f) have a fridge for storing expressed milk; (g) have a provision for an electric outlet and lighting; and (h) have a chair, table, and a clean space to store equipment. (3) An employer, who establishes a lactation place for breastfeeding purposes, shall in addition to the requirements provided for under subsection (2) – (a) provide a physical environment that is safe for the baby that meets the requirements under the relevant law; and (b) provide appropriate programs that develop a baby's cognitive, emotional, social and language abilities. (4) Any employer who does not comply with this section commits an offence and shall be liable upon conviction to a fine not exceeding five hundred thousand shillings or to an imprisonment for a term not exceeding one year, or to both."



The WEE Hub sought to highlight the circumstances of working lactating mothers who are not covered under the workplaces contemplated under the Bill as well as infants who cannot access breast milk through physical breastfeeding because in these cases separation of the working mother and the infant is occasioned, thus preventing the enjoyment of the benefits outlined in the Bill for both mother and infant. It is important to point out at the outset that because the BFMB does not address all lactating mothers, but only those who have to go to a defined work place in the private or government sectors, the scope of this analysis and discussions thereon are limited concomitantly.

The analysis of the BFMB in the light of the above assertions will be structured in seven main sections, including the background to this Paper where foundational information about breastfeeding globally and in Kenya will be reviewed. Modern day advancements in the conceptualisation of breastfeeding will be reviewed in Section One, whereupon the Regulatory Framework for breastfeeding mothers at work in Kenya will be examined in Section Two.

An overview of the Breastfeeding Mothers Bill will be undertaken in Section Three with the issues arising therefrom being interrogated in Section Four. Section Five and Six will comprise the conclusions and recommendations of this Paper respectively.





## BACKGROUND

For the longest time the Government of Kenya, through the Ministry of Health, has been in the forefront of encouraging breastfeeding for infants owing to a variety of reasons, including nutritional value; hygienic delivery of nutrition to the infant; protection of an infant from certain diseases in the short and long term; presentation of bonding opportunity between mother and child; cost effectiveness; and health benefits for the mother, among others. In fact, there is an abundance of literature which indicates that breast milk contains all the nutrients required for the proper growth and development of an infant in the first six months of the infant's life. According to the World Health Organization, infants should be exclusively breastfed for the first six months of life to optimally maximize their growth, development and health, and thereafter, be provided with complementary foods as their nutritional requirements evolve while continuing to be breastfed for up to two years and beyond. Sub-Article 2(b) of Article 14 of the 'Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' states regarding the issue of Health and Reproductive Rights that, "Parties shall take all appropriate measures to: establish and strengthen existing pre-natal, delivery and post-natal health and nutritional services for women during pregnancy and while they are breast-feeding;"

At a national level, in accordance with the World Health Assembly targets, the Government has committed to increasing breastfeeding rates by 50% by the year 2025. This corresponds to global and regional targets for nutrition and is expected to contribute to the realization of the sustainable development goals and particularly the second goal on zero hunger. In his Foreword to the 'Ministry of Health's Guidelines for Securing a Breastfeeding Friendly Environment at the Work

Place, May 2018', the then Ministry of Health's Director for Medical Services, Dr. Jackson Kioko addressed the status of breastfeeding in Kenya and stated:

According to the Kenya Demographic Health Survey (KDHS), exclusive breastfeeding (EBF) rates have improved from 32% in 2008 to 61% in 2014. This is as a result of accelerated efforts in promotion, protection, and support for breastfeeding by the MoH and other stakeholders in the last decade. Consequently, these efforts have contributed directly and indirectly to reduction of infant and child mortality rate from 74/1000 live births in 2008 to 52/1000 live births in 2014.

It is inarguable from the foregoing that breast is best for infants and that the Government's efforts at promoting exclusive breastfeeding through the Ministry of Health have paid off with improved outcomes regarding infant and child mortality rates. However, this presents a conundrum for lactating working mothers who must be separated from their infants during working hours because their workplaces do not have internal policies, guidelines, or facilities that would allow for breastfeeding or expressing and safe storage of breast milk at the workplace.

Indeed, the Director of Medical Services, Dr. Kioko, referred to above, recognized in his Foreword that sub-optimal breastfeeding of children continues despite the significant improvements made in the rates of exclusive breastfeeding because of various factors including insufficient support for breastfeeding at the workplace. Dr Kioko appreciated the challenges faced by lactating mothers in achieving optimal breastfeeding upon their return to work after maternity leave, an issue that has clearly been illustrated by several studies

that cite causes such as, “lack of or inadequate breastfeeding breaks, facilities for expressing and storing breastmilk, resources that promote breastfeeding and support from employers and colleagues.” He further notes that the majority of women in Kenya (52%) resume work within three months after birth which contributes to the rapid decrease in breastfeeding rates upon their return to work. Thus, the importance of creating a conducive work environment that enables lactating mothers to successfully combine their duties at work, together with their duty to provide their infants with a fighting chance in life through exclusive breastfeeding.

Clearly, the advisory about exclusive breastfeeding for the first six months of an infant’s life collapses where a mother has to report to work, whether in the formal or informal sector, following her post-birth confinement period that usually lasts for less than six months given that the statutory period for maternity leave in Kenya is three months. Where a mother is compelled to stop breastfeeding her child well before six months are over, in order to cope with the demands imposed by her work, there is a high likelihood of this resulting in negative consequences for the child, the mother, and the mother’s employer. Certainly, the latter has to manage an employee who is stressed because of the early separation from her baby.



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# SECTION 1.0

## MODERN DAY ADVANCEMENTS IN THE CONCEPTUALISATION OF BREASTFEEDING

If the discussion of the *Breastfeeding Mothers Bill, 2019* is to be wholly appreciated, it is necessary that changes in the idea of breastfeeding, which have arisen in tandem with changes in society, are reviewed. In particular, the conceptual scope of the term ‘breastfeeding’ has been expanded to consider the different ways in which infants access milk today. In their article in the *Breastfeeding Medicine Journal*, Rasmussen, Felice, O’Sullivan et al have explored some of the changes to the term breastfeeding, which they acknowledge to historically have meant the simultaneous dyadic behaviour where a mother feeds her infant at her breast. They assert that this is, in fact, the meaning assumed in the 1990 United Nations Children’s Fund Innocenti Declaration on the protection, promotion, and support of breastfeeding and in the World Health Organization’s recommendations concerning the apt duration for exclusive breastfeeding. Rasmussen, Felice, O’Sullivan et al note that the term ‘breastfeeding’:

is no longer clear because the development of affordable high-efficiency pumps and their widespread adoption by women provide the means for women to pump and store their milk that is separate from how and when their own infant is fed. Mother’s milk is no longer provided just “at the breast,” but also in substantial quantities from a bottle or cup. This milk may have been stored in

various ways and/or transported long or short distances. Moreover, a mother may stop lactating and have enough milk stored so that her child (or another child) can be fed this milk weeks to months later.<sup>7</sup>

Notably, to be more inclusive, there is a move to change the definition of ‘breast’ milk to ‘chest’ or ‘human’ milk. This is in recognition of the fact that some mothers are unable to produce milk of their own while others are adoptive mothers and hence rely on the milk of a wet nurse for their baby to access breast milk.

Among the advancements in the conceptualization of breastfeeding, there have been proposals by Rasmussen, Felice, O’Sullivan et al, cited herein, regarding definitions, in order to make them more meaningful. For instance, they propose the use of the following terms:

“feeding at the breast” or “at-the-breast feeding” instead of “breastfeeding”; “expressed” for breast milk that is removed from the breast by hand or pump before it is fed to the infant; “donated” to describe breast milk that is obtained from a milk bank; “shared” to describe breast milk that is obtained without cost from a mother other than an infant’s own without having been screened and processed by a milk bank; and “purchased” to describe breast

See Section 29 of the Employment Act – “Maternity leave - (1) A female employee shall be entitled to three months maternity leave with full pay. (2) On expiry of a female employee’s maternity leave as provided in subsections (1) and (3), the female employee shall have the right to return to the job which she held immediately prior to her maternity leave or to a reasonably suitable job on terms and conditions not less favourable than those which would have applied had she not been on maternity leave.”



milk that is obtained from a mother other than the infant's own in exchange for money or services and that has not been screened or processed by a milk bank.<sup>8</sup>

To support the changing ways in which infants access breastmilk, there have emerged innovations including modern designs of breast pumps, both structurally and performance wise; breastfeeding Apps that help mothers to track such things as pumping schedules, their babies feeding times and that generally provide a lot of information and education about feeding of babies; user friendly nursing bras; breastmilk consumption meters to help track the sucking and swallowing of milk by an infant; emergence of breast milk donation banks; hygienic and sanitary breast milk storage and feeding containers; and breastfeeding awareness campaigns and support. Notably, a number of the mentioned innovations are not accessible to most lactating mothers in Kenya and the global south generally.



<sup>7</sup>Rasmussen, Felice, O'Sullivan et al, 'The Meaning of "Breastfeeding" Is Changing and so Must Our Language about It' Breastfeeding Medicine, 2017, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5802247/> [accessed on 4 August, 2021]

<sup>8</sup>Rasmussen, Felice, O'Sullivan et al, 'The Meaning of "Breastfeeding" Is Changing and So Must Our Language About It' Breastfeeding Medicine, 2017, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5802247/> [accessed on 4 August, 2021]

# SECTION 2.0

## LEGAL AND REGULATORY FRAMEWORK FOR BREASTFEEDING MOTHERS AT WORK IN KENYA

Kenya's *Employment Act, 2012* makes no mention of breastfeeding. However, Sections 71 and 72 of the *Health Act, 2017* provide as follows:

71. (1) All employers shall establish Lactation stations in the workplace which shall be adequately provided with necessary equipment and facilities including hand washing equipment, refrigerators or appropriate cooling facilities, electrical outlets for breast pumps, a small table, comfortable seats the standard of which shall be defined by the Ministry responsible for matters relating to health. (2) The lactation station shall not be located in the rest rooms. (3) All employers shall take strict measures to prevent any direct or indirect form of promotion, marketing and or selling of infant formula and or breast substitutes within the lactation stations.

72. (1) An employer shall grant all nursing employees break intervals in addition to the regular times off for meals to breastfeed or express milk. (2) The time intervals referred to in sub section (1) shall include the time it takes an employee to get to and from the lactation station and shall be counted as compensable hours worked provided that such intervals shall not be more than a total of one hour for every eight-hour working period.

In addition, the *Health Act, 2017* defines breastfeeding as the method where an infant

feeds directly from the female breast, while expressing milk means the extraction of human milk from the breast either by hand or with the use of a pump into a container. Furthermore, lactation stations are defined by the *Health Act, 2017* as “private, clean, sanitary and well-ventilated rooms or areas in the workplace where nursing mothers can wash up, breast feed or express their milk and hygienically preserve it;”

After the enactment of the Health Act, the Ministry of Health published in May 2018 the *Guidelines for Securing a Breastfeeding Friendly Environment at The Work Place* aimed at providing direction to both public and private institutions as regards the creation of breastfeeding-friendly workplaces.

The implementation of the *Health Act, 2017* regarding the provision of lactation stations was tested by the Honourable Zuleikha Hassan, the Kwale County Women Representative, who entered the National Assembly on 7 August, 2019 with her 5-month-old baby, thereby, disrupting the business of the House with calls by some Members for her to be removed from the House because she had brought a ‘stranger’ into the House against the Standing Orders of Parliament. The presiding Speaker, Chris Omulele, ordered the Sergeant-at-Arms to remove the Honourable Zuleikha Hassan from the chambers, terming her move unprecedented. The Chairperson of the National Gender Equality Commission, Ms. Mutinda termed the move as unfortunate and stated, “It is unfortunate that six years after the Parliamentary Service Commission was



Honourable Zuleikha Hassan, the Kwale County Women Representative,

*mandated to establish a creche to accommodate nursing members of Parliament and their children, the same is yet to be implemented.”<sup>9</sup>*

The Honourable Zuleikha Hassan, in subsequent interviews, pointed out that the Parliamentary Service Commission whose role it is to ensure the smooth functioning and operations of the two Houses of Parliament had in 2013 adopted a motion to provide spaces for breastfeeding female members of Parliament and child care support but it had yet to do so by 2019. The Honourable Zuleikha Hassan and other female

Members of Parliament were appalled that the Government had failed to show the way at the highest levels despite the passing of the Health Bill in 2017 that required all employers to provide lactation stations to allow for privacy and the safe feeding of infants whether directly from the breast or expressed milk.

The Government appreciates that some mothers may not be able to produce sufficient milk naturally while yet others are adoptive mothers and hence generated a Bill that was passed into law by Parliament, namely, the Breast Milk Substitutes (Regulation and Control) Act in 2012 in order to provide for the appropriate marketing and distribution of breast milk substitutes; the safe and adequate nutrition for infants through the promotion of breastfeeding and proper use of breast-milk substitutes. Recently, the Breast Milk Substitute (Regulation and Control) (General) Regulations, 2021 was made law in Kenya and announced by the Ministry of Health during the Breastfeeding Week in the first week of August 2021. The purpose of the Regulations is to encourage exclusive breastfeeding and stop dealers in baby formula from dissuading women from feeding their babies with breast milk. Evidently, it is the intention of the Government to promote breastfeeding and the use of human milk to the largest extent possible.

The enactment of the Health Act, 2017, including the clauses that require employers to establish lactation stations in the workplace and to provide nursing mothers with scheduled breaks at intervals to breastfeed their infants, is a clear indication of the intention of the Government of Kenya to promote and support breastfeeding in

<sup>9</sup>See article by Patrick Vidija (09.08.2019) in the Star Newspaper titled, Fact Check: Did Parliament Err in Kicking Breastfeeding MP out of the Chambers? <https://www.the-star.co.ke/news/2019-08-07-fact-check-did-parliament-err-in-kicking-breastfeeding-mp-out-of-the-chambers/> [accessed on 04.08.2021]

<sup>10</sup>See article by Daniele Selby (08.08.2019) on the Global Citizen titled, Kenyan Lawmaker Ordered to Leave After Bringing Her Baby to Parliament: 'A baby is not an Atomic Bomb, they won't Explode in the House'. <https://www.globalcitizen.org/en/content/kenya-breastfeeding-parliament-zuleikha-hassan/> [accessed on 04.08.2021]



the workplace. The laws are augmented by the Guidelines provided by the Ministry of Health for securing a breastfeeding friendly environment in the workplace. However, the reality is that achieving the goal of breastfeeding-friendly workplaces in Kenya is far from near since the Health Act, 2017 has hardly been implemented regarding the provision of lactation stations as defined in the Act. Mutua states that:

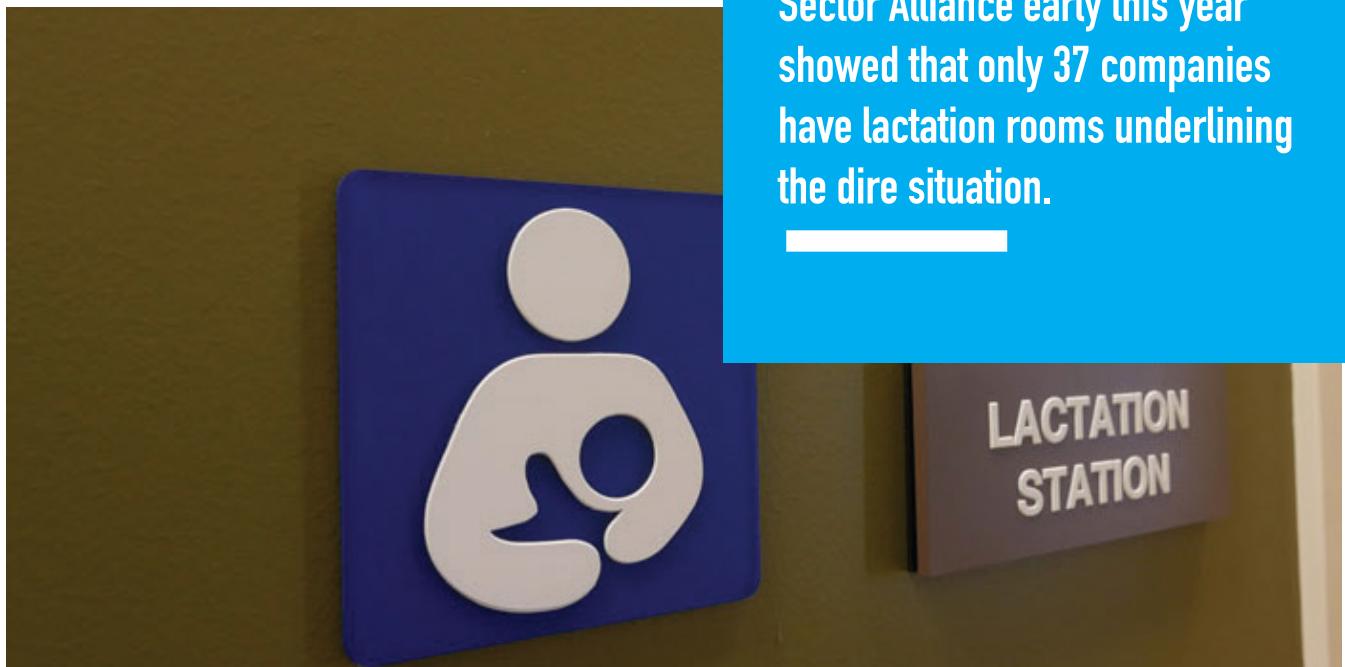
Currently, only a handful of private and public organisations have lactation rooms with most breastfeeding mothers returning to work after three-month maternity leave being forced to express milk for their infants in cars, washrooms or empty boardrooms...A report by lobby, Kenya Private Sector Alliance early this year showed that only 37 companies have lactation rooms underlining the dire situation.

Further, in a study published in the *International Journal of Africa Nursing Sciences*, Barasa<sup>12</sup> acknowledges that the implementation of the recommendations of the World Health Organisation on breastfeeding in the workplace is affected majorly by socioeconomic factors

He also asserts the need for sustainable measures to be put in place to ensure secure breastfeeding friendly workplaces that support women to combine work and breastfeeding in both public and private institutions.



**A report by lobby, Kenya Private Sector Alliance early this year showed that only 37 companies have lactation rooms underlining the dire situation.**



<sup>11</sup>Mutua, J. (2021). Kenya-Proposed law to require employers & owners of commercial buildings to provide lactation rooms. England: Business & Human Rights Resource Centre. Retrieved from <https://www.business-humanrights.org/en/latest-news/kenya-proposed-law-to-require-employers-owners-of-commercial-buildings-to-provide-lactation-rooms/> . (accessed on 09.01.2022)

<sup>12</sup> Masaba, B, MMmusi-Phetoe, R, Mokula, L. 'Factors affecting WHO breastfeeding recommendations in Kenya'. *International Journal of Africa Nursing Sciences*, 2021. Online at, <https://reader.elsevier.com/reader/sd/pii/S2214139121000378?token=B8E79FA468F472C51DF8C02D70F68FC04F3771AB296FD996756B066A0999EEEB0B029AD1B5EFE78F1BB8ABCC0A6F4ED6&originRegion=eu-west-1&originCreation=20220111150506> (accessed on 07.01.2022)

## SECTION 3.0

### THE BREASTFEEDING MOTHERS BILL, 2019: NATIONAL ASSEMBLY BILLS, NO. 74

The *Breastfeeding Mothers Bill, 2019* (BFMB), which is annexed herewith, addresses the type of accommodation due and owed to breastfeeding mothers in the workplace more robustly than it is captured in the *Health Act, 2017*. In its *Memorandum of Objects and Reasons*, it is stated that the principal object of the Bill is to provide a legal framework for mothers who may wish to breastfeed their children at work to do so freely or alternatively express milk for their infant. The Bill also requires employers to provide lactation rooms for employees so that mothers can either breastfeed or express milk for their infants. The Memorandum notes that Kenya is a signatory to various international treaties that provide for the right of an infant to exclusively breastfeed for the first six months of its life and thus it is incumbent upon the Government to promote and encourage breastfeeding through the provision of specific measures that would enable working mothers to continue expressing their milk to feed their babies or breastfeeding their infants. Of much importance is the appreciation in the Memorandum of the plight of female employees who are forced to exit the workforce or stop breastfeeding prematurely in order to maintain their jobs. The Honourable Sabina Chege, as the Sponsor of the Bill, states in the Memorandum that, “*No woman should be forced to compromise the health of her child in order to make a living.*”

The BFMB contains eleven Clauses arranged in two Parts namely, PART 1 – Preliminary, which comprises the short title of the Bill and the

interpretation Section, and PART II that comprises the Provisions Related to Breastfeeding Mothers.

Among notable items that have been defined in the Interpretation Section include words such as ‘*baby*’ which means a child of within zero to 24 months of age; ‘*breastfeeding*’ which means the act of feeding of an infant directly from the mother’s breast; ‘*flexible working arrangement*’ which means the change of an employer’s terms and conditions of employment that provides ease in assisting the employee’s responsibilities of breastfeeding the baby; ‘*lactation place*’ which means private, clean, sanitary and ventilated rooms or areas in the workplace or public places where breastfeeding mothers can wash up, breastfeed or express milk comfortably; and ‘*workplace*’ that means premises, whether private enterprises or government agencies, including their subdivisions.

Essentially, the BFMB facilitates a pathway for women to breastfeed or express breast milk at a lactation place established in the workplace. The establishment of a lactation place is made mandatory for every employer and the lactation place described in Section 4(2) of the BFMB improves greatly on the provisions of the *Health Act* by prescribing the details of privacy expected, i.e. “*shielded from view and free from intrusion from co-workers; not be a bathroom or toilet; have a lockable door; have a wash basin; a fridge for storing expressed milk; an electric outlet and lighting as well as have a chair, table and a clean space to store equipment.*”

Furthermore, Section 4(3) obligates an employer to provide a physical environment that is safe for the baby in accordance with the standards prescribed by the relevant law as well as to provide appropriate programmes that develop the cognitive, emotional, social and language skills of the baby. Failure to do the latter invites sanction upon the employer who may be liable, upon conviction, to a fine not exceeding Kenya Shillings 500 000 or a term of imprisonment not exceeding a year or to both.

Like the *Health Act, 2017*, the BFMB prescribes that a breastfeeding mother can only use the lactation place during working hours and an employer is required to provide reasonable break times for breastfeeding mothers to feed their babies or express breast milk for the baby. Section 6 of the BFMB provides breastfeeding mothers with the option of a flexible work arrangement upon application for the same from the employer and such arrangement would need to specify the number of hours the employee ought to work, the type and number of work assignments, as well as precise location where the employee ought to work. An employer is required to respond to an application for flexible working arrangement by a breastfeeding mother within 14 days of receipt of such application and where such application is denied the employer is required to explain the same in writing. Where the terms of a flexible working arrangement are abused, the same may be revoked.

Section 7 of the *Breastfeeding Mothers Bill, 2019* prohibits discrimination of women in accessing employment opportunities or benefits on account of breastfeeding or any other maternity related condition. The BFMB also requires persons who own, lease, or rent public or private buildings for public use that can hold a minimum of 50 persons to install baby changing facilities that

must, in accordance with Section 8(2) be, *“clean and private; have a baby changing table; a waste basket and signage to its location”*.

Section 8(3) states that such a baby changing facility must, without exception, be open for use by any person who is accompanied by a baby in public. Of great importance is the right of a woman to breastfeed her child in public without the same being construed as an indecent act is upheld in the BFMB. In addition, the BFMB prescribes general penalties for any person convicted of an offence under the Act and empowers the relevant Cabinet Secretary at Section 11 of the BFMB to make regulations deemed necessary and appropriate for the better administration of matters canvassed in the Act in consultation with the Ministry of Health. Such regulations may touch on, *“matters such as the requisite standards and contents of rooms or buildings contemplated under the BFMB; the manner and conduct of promoting public awareness on breastfeeding mothers at the workplace; and the standards of safety for the breastfeeding mother and baby at the workplace.”*

Overall, the *Breastfeeding Mothers Bill, 2019* goes much further than the *Health Act, 2017* and targets employers much more directly with specific actions required to be undertaken by employers in order to integrate the idea of breastfeeding mothers at the work place. The BFMB reiterates the protection of the human rights of women who have babies by requiring that reasonable accommodation is made in the workplace for them to breastfeed their babies or express milk for their babies. Indeed, the protection of the time utilised towards breastfeeding is also protected through ensuring it, too, is compensable and that the breastfeeding mother will not suffer any prejudice with respect to any benefits, including upward mobility in the workplace.



Ultimately the Breastfeeding Mothers Bill, 2019 provides breastfeeding mothers with the opportunity to ensure that their infants aged from zero to two years benefit from the nutrition that can only be delivered through breast milk and allows the breastfeeding mother to have peace of mind brought about by the job security enjoyed during this phase and the consistent contact with her baby even while at work. Certainly, the BFMB which places a premium on breast milk for infants, including for those whose mothers must go to work will change the established norms in Kenya concerning breastfeeding not only for working mothers but for all breastfeeding mothers given the obligation placed on the proprietors of public spaces to ensure that adequate baby changing facilities are built in their establishments and which must be open to all persons with infants in public places.

“  
The Honourable Sabina Chege,  
as the Sponsor of the Bill,  
states in the Memorandum  
that, “No woman should be  
forced to compromise the  
health of her child in order to  
make a living.”

## SECTION 4.0

### ISSUES ARISING FROM THE BREASTFEEDING MOTHERS BILL, 2019

Having appreciated the strengths of the *Breastfeeding Mothers Bill, 2019* in the previous Section, attention will now be turned to the gaps therein which, if sealed, will serve to enhance the utility of the Bill. The issues have been addressed as follows:

#### 4.1 Dyadic Nature of Breastfeeding: Need for Perspectives of Both Mother and Child

Appreciably, the act of feeding a child directly from the breast is interactive between mother and baby. This also applies to cup-feeding of a

baby. Indeed, there can be no feeding of a baby without the mother proffering her breast and the baby latching on to the breast or the mother or other guardian extending a cup to the baby who latches on to the same. Notably, the BFMB makes prescriptions only from the breastfeeding mother's perspective rather than from the perspective of both mother and child. The latter approach has, therefore, resulted in the discrimination of some babies and, by extension, the discrimination of some mothers, especially because the BFMB defines breastfeeding as the act of feeding a baby directly from the mother's breast. The reality is that not all babies access

milk directly from the breast of their mother but do so through cup-feeding of either expressed breast milk or non-human derived milk. The foregoing arises for various reasons such as the refusal by a baby to suckle milk from the breast or the inability of a mother to produce milk in sufficient quantities. Adoptive mothers of infants are certainly not able to produce breast milk, but are mothers nonetheless.

To avoid the discrimination of babies who cannot access milk directly from their mother's breast, or even the expressed milk of their mothers, it is essential that the BFMB considers the perspectives of both mother and child. An array of necessities is left out when only the mother's perspective is considered, for instance, the human assistance required to bring a baby to the mother for feeding; the necessity for a room where the baby can be kept under supervision when the mother is working in between feeds; the requirements in the lactation rooms for babies who must consume non-human derived milk; etc. Where the realities of some babies are not considered, the result is that mothers who cannot produce breast milk at all, or the quantity produced is insufficient, are not being taken into consideration; hence it is of utmost importance to look at the feeding of babies holistically. All babies at their infant stage require equal protection, regardless of the way in which they access milk, as indeed similarly, all mothers of babies require equal protection and the benefit of the law in order to feed their babies. Thus, comes the proposal to make the description<sup>13</sup> of the Bill accommodating for both mother and child by adopting the following description:

An ACT of Parliament to make provision for the 'feeding of babies at the workplace; to make provision for lactating mothers; to provide for employers' obligations towards

working mothers with babies that require to be breastfed or cup-fed with breast or non-human milk while the mother is at the workplace; to provide for lactation places and baby changing facilities in public spaces by County Authorities for use by the public; and for connected purposes.

This is as opposed to its current description that lays emphasis on breastfeeding from the mother's perspective and particularly mothers who feed their babies directly from the breast.

## **4.2 Inclusivity: Not all Mothers Can Produce Breastmilk or Produce it in Sufficient Quantities**

The *Breastfeeding Mothers Bill, 2019* defines breastfeeding as the physical act of delivering milk to a baby directly through the breast. This definition excludes mothers who cannot produce sufficient milk for physiological or other reasons and adoptive mothers, and the exclusion is carried on throughout the text of the Bill.

In this Section, the matters with respect to exclusion that have already been canvassed in the preceding Section will not be rehashed, save to say that the language of the BFMB and the conceptualisation of issues therein is attuned towards mothers who are able to breastfeed directly from the breast. In Part 1 of this Paper, the advancements in the definition of breastfeeding to include cup-feeding of expressed milk were noted as well as the use of a wet nurse. There is need for the scope of the BFMB to be expanded

An ACT of Parliament to make provision for breastfeeding mothers; to provide for employers' obligations towards breastfeeding working mothers in the workplace; to provide for baby changing facilities for use by the public; and for connected purposes.

in order to design solutions that include mothers who are unable to produce milk of their own at all or in sufficient quantities and thus factor in their requirements. As was noted in the Introduction to this Paper, the BFMB contemplates infants at the workplace only in the context of them being physically fed from their mother’s breast. It does not factor in infants who may be brought to the lactation spaces to be cup-fed with milk expressed from the mother’s breast, or cup-fed with milk either from a breastmilk bank or non-human derived milk. The separation arising between mother and child in the latter circumstances would be counterproductive to nurturing the necessary bond between mother and child and to ensuring a calm and relaxed working mother.

### 4.3 The Interpretation Section of the Bill: New Words and New Meanings in the Context of Breastfeeding

The inadequacies of the *Breastfeeding Mothers Bill, 2019* highlighted above can be addressed through the expansion of the scope of already used terminologies and the adoption of new terminologies in order to promote inclusivity from the perspectives of both mother and child. The following are proposed:

EXISTING PHRASE	PROPOSED NEW WORD/ PHRASE	REMARKS
This Act may be cited as the Breastfeeding Mothers Act, 2019 and shall come into force....	This Act may be cited as the ' <i>Breastfeeding and Substitute Feeding of Babies by Mothers in the Workplace Act, 2019</i> ' and shall come into force....	Incorporates the modern idea of feeding of babies through other means other than directly from the breast.
Definition of “lactation place” – means private, clean, sanitary, and well- ventilated rooms or areas in the workplace or public places where breastfeeding mothers can wash up, breastfeed, or express their milk comfortably	“Lactation place” – means private, clean, sanitary, and well-ventilated rooms or areas in the workplace or public places where <i>mothers can: breastfeed or cup-feed their babies; wash up; or express milk comfortably and hygienically preserve it.</i>	Includes mothers who cup feed their babies.
Definition of “workplace” – means work premises, whether private enterprises or government agencies, including their subdivisions.	“workplace” <i>means any premise or site where a contract of service is undertaken.</i>	Expands the restricted sense in which the word workplace as used connotes i.e., formal workspaces. Most women work in the informal sector in Kenya.



UNADDRESSED ISSUE	NEW DEFINITION	RATIONALE
Does not define breast milk	<i>“Breast milk” is milk developed within the mammary glands of a female following gestation and made available to an infant whether directly through breastfeeding or indirectly through cup-feeding of expressed breast milk.</i>	Expands the idea of breast milk away from only that produced by a specific mother to her specific child to that which may be obtained through cup-feeding from another mother or milk bank provided it emanated from the human breast.
Does not define ‘feeding of a baby’	<i>Feeding of baby means feeding a baby with milk directly from the mother’s breast OR cup-feeding of expressed breast milk OR feeding a baby with non-human milk.</i>	This definition considers the various ways in which a baby can access milk rather than only directly from the breast or from human beings.
Does not define ‘Substitute Milk’	<i>Substitute Milk has the meaning of milk suitable for babies and derived from non-human breast sources. (Includes animal milk and infant formula which despite discouragement of its use is still the only option available to some mothers).</i>	This definition factors in babies who take non-breast derived milk for various reasons.
Does not define ‘mother’	<i>mother means biological or adoptive mother</i>	Expands the meaning of the word to include non-biological adoptive mothers.
Does not define mother’s assistant	<i>‘mother’s assistant’ means the individual authorized by the mother to bring her baby to the work place for feeding purposes in the absence of there being a creche that is well staffed with persons to look after infants while the mother is at work.</i>	A mother of a baby will require assistance with her baby being brought to work or remaining at work in an appropriate room
No provision made for the mother’s assistant	<i>An employer shall facilitate the entry of a mother’s assistant with the baby into the workplace with ease for the purpose of accessing the baby care room. (See the proposed definition of baby care room)</i>	Need to make provision for mother’s assistant to access the work place during working hours in order to give the baby to the mother for the purposes of feeding.

<p>Does not define 'Baby Care Room'</p>	<p><i>'Baby care room' means a comfortable designated space for mothers' assistants' to hand over babies to their mothers for the purpose of feeding and for purposes connected to ensuring the comfort and soothing of babies as well as changing of babies' diapers.</i></p>	
	<p><i>The BFMB requires that where a lactation room has been set up by an employer that a suitable physical environment be set up that is safe for the baby in accordance with the relevant laws, which are yet to be established. Such an environment would necessarily include a baby care room.</i></p>	
<p>Does not define 'Protected time'</p>	<p>'Protected time' means the period prescribed for a mother to feed her baby in the workplace or other circumstance without consequence to her status, including remuneration, other lawful breaks, or any other benefit due to the mother.</p>	<p>Buttresses the compensable time a mother takes to feed her baby and which ought not to invite any consequences to her.</p>

## 4.4 Every Employer: Who Exactly?

The *Breastfeeding Mothers Bill*, 2019 imposes obligations on every employer to comply with the prescriptions of the Act and threatens specified sanctions. Noticeably, the language of the BFMB leads one to believe that it applies to formal type of employment whereas most women work in informal workplaces. By defining ‘workplace’ to mean “*work premises, whether private enterprises or government agencies, including their subdivisions*” it is evident that a workplace must necessarily be a specifically defined space in a specified location. Also, Section 4 of the BFMB requires a lactation place to have the following characteristics, that is,

(2) A lactation place shall – (a) be shielded from view from intrusion from co-workers; (b) be clean, quiet, private, and warm; (c) not be a bathroom or toilet; (d) have a lockable door; (e) have a wash basin; (f) have a fridge for storing expressed milk; (g) have a provision for an electric outlet and lighting; and (h) have a chair, table, and a clean space to store equipment.

(3) An employer, who establishes a lactation place for breastfeeding purposes, shall, in addition to the requirements provided for under subsection (2) – (a), provide a physical environment that is safe for the baby that meets the requirements under the relevant law; and (b) provide appropriate programs that develop a baby’s cognitive, emotional, social and language abilities.

(4) Any employer who does not comply with this section commits an offence and shall be liable upon conviction to a fine not exceeding five hundred thousand shillings

or to an imprisonment for a term not exceeding one year, or to both.

From the foregoing, the type of work premise contemplated can only be a formal workspace that is likely to have the facilities listed, including the wherewithal to adhere to all the requirements stated. It remains to be seen whether all formal work premises in the private sector, particularly small and medium enterprises, can afford to isolate a room as a lactation place or fully comply with the furnishing requirements.

In a 2014 Institute for Economic Affairs Publication,<sup>14</sup> it was noted that Kenya had:

a total workforce of twelve (12) million, ten (10) million of whom are in the informal sector. The remaining 2 million make up the formal sector which is comprised of the government civil service jobs, parastatals, as well as the private sector. It is estimated that Kenya currently has a civil service workforce of about 700,000. This has been said to be one of the largest numbers of public employees in comparison to other sub-Saharan countries that are relatively at par with Kenya in terms of the rate of economic growth. This has greatly contributed to the rising wage bill.

In 2019, it was estimated that approximately 18 million people were employed in Kenya with the informal sector employing the majority who were estimated to be 15 million. The formal sector accounted for 3 million persons. Evidently, the informal sector plays a key role in the creation of employment in Kenya, production, and income generation.<sup>14</sup> In a more recent publication

<sup>14</sup>Issue No. 4 • June, 2014, The Point: 'Brief on Public Sector Wage Bill: Policy Options'

<sup>15</sup>See Statista, 'Total employment in Kenya 2015-2019, by Sector' <https://www.statista.com/statistics/1134332/total-employment-in-kenya/> [accessed on 05.08.2021]

<sup>16</sup>See Article by Patrick Alushula titled, 'Civil servants spared cut on allowances' Business Daily, 17 March, 2021. <https://www.businessdailyafrica.com/bd/economy/civil-servants-spared-slash-on-allowances-3325140> [accessed on 05.08.2021]

by the Business Daily in March 2021<sup>16</sup> the number of public servants in Kenya were stated to be 865,200 although this does not provide disaggregated information about the number of lactating women public servants who would require the facility to breastfeed, express milk or cup-feed their babies in the workplace in the year 2021.

Considering the above data which indicates the formal sector as accounting for 3 million persons, including men and women, out of whom the number of women with infants is likely to be quite low, the enactment of the BFMB can only be justified where it addresses most of the population who work in non-defined work spaces where the facilities listed as being required in the lactation place can be ill afforded. It is necessary that the BFMB be amended to consider the realities of women who need to breastfeed, express milk, or cup-feed their infants within the informal sector by enhancing the services and amenities provided by county governments such as the provision of creches and lactation places in public places such as market places where women work to eke a living.

#### **4.5 Making Appropriate Adjustments in the Workplace: We Must Make this Work!**

As seen from the preceding Sub-Section, most employees work in the informal sector, thus it is important for the BFMB to consider the different types of work environment some of which may be in the field, in factories and so on. It is also important to consider the circumstances of employers in small holdings who may not have the resources to establish lactation rooms to the prescribed standard or at all. To achieve the best results, it is essential that the BFMB should investigate the different circumstances

at hand and make prescriptions that still make it possible for mothers who need to feed their babies to do so. At the very minimum, every employer ought to be obligated to use creative and innovative methods and materials available in their environment and ensure that they provide reasonable accommodation and employ appropriate adjustments to enable mothers to feed their babies. Employers must demonstrate the steps they have taken to comply with the law immediately, and progressively over a specified and they should not be allowed to do nothing at all by reason of cost alone.

The Kericho Tea Plantation is an example of a private entity that has piloted a successful breastfeeding friendly work environment. In its publication titled, *Implementing a Baby-Friendly Workplace Initiative in Kenya: Lessons Learned from Supporting Exclusive Breastfeeding in a Private Tea Plantation in Kericho*, the United Nations Children's Fund comments as follows:

Before the baby-friendly workplace initiative was introduced in Kericho in 2016, only 20 per cent of infants living on the tea plantation were exclusively breastfed. [*African Population and Health Research Centre. Baseline Report. December 2017.*] Maternal, infant, and young child nutrition was not prioritized and the lack of quality child care meant that working mothers had to leave their babies with village caregivers, house-help, and older siblings for long hours. Babies were often fed with water, cow milk or porridge to appease their hunger until their mothers returned... An innovative baby-friendly workplace initiative is being undertaken at a private tea plantation in Kericho, Kenya to support breastfeeding mothers as they return to work. The initiative provides mothers with time, space, and support for breastfeeding, including maternity leave, affordable child care, lactation



counselling, nursing breaks and dedicated nursing spaces. In Kericho this support has been effective in increasing breastfeeding rates, improving worker retention, and fostering greater satisfaction at work. In just two years, the initiative demonstrated its feasibility, effectiveness, and cost-effectiveness, providing proof of a scalable working model. This Field Innovation story shares valuable lessons for embedding maternity and child rights into business practices in Kenya and beyond.

On the other hand, for mothers who are self-employed but still need to feed their infants and work at the same time, the BFMB needs to obligate county governments to ensure that public facilities not only have baby changing facilities, but also lactation rooms where mothers can feed their babies in an environment that is safe, clean, and private. Indeed, county governments can go ahead to provide staff to man creches in public places where women can feel safe to leave their babies for periods of time as they work.

An example of such an initiative is that of the Tharaka Nithi County Government which has been hailed for providing a fully staffed creche at the Chuka open air market where mothers can leave their babies as they sell their wares and feed their babies when they need to. The Chief Officer for Lands and Infrastructure, Ms. Faith Kalunda, indicates that the facility was constructed by the County Government upon realisation that women in small scale businesses were constrained to quit their businesses after delivery of their babies with a low return to work rate after several months of nursing their babies at home. Further, Ms. Kalunda stated

that with the aid of the facility, which is fitted with mattresses for the infants to sleep on, as well as toys and other equipment necessary for the care of at least 50 babies at a time, mothers in the area can now continue with their small businesses uninterrupted even after delivery. In addition, up to 20 mothers can attend to their babies simultaneously in a safe and comfortable environment whereby the County Government has employed two caregivers to attend to the children from .<sup>17</sup>

## **4.6 Support Persons and Infrastructure to Enable the Feeding of Babies in Formal Work Premises**

For mothers to feed their babies effectively while at the workplace they need support in various ways, including the following:

### **4.6.1 Mothers' Assistants**

A mother who needs to feed her baby while at the workplace in a lactation room set aside for this purpose, requires an assistant who will bring her baby and hand over to her. Such an assistant who may be the father of the baby or a domestic worker needs to access the mother without delay during the designated feeding times and, therefore, needs to be let through whatever safety protocols there are in the workplace without being subjected to unnecessary hurdles. The BFMB must, therefore, obligate employers to make it possible for mothers' assistants to access the workplace with as much ease as possible in order to hand over the baby to the mother for feeding.

<sup>17</sup>See newspaper article by Alex Njeru titled, Kenya: Chuka Market Gets Creche for Traders' Babies'. Reported on 8 September, 2020 in the Daily Nation. Online at, <https://allafrica.com/stories/202009080250.html> (accessed on 10.01.2022)

### 4.6.2 Baby Care Rooms

A mother who has to feed her child at the workplace may not be able to have an assistant who brings her baby to her for feeding regularly. In addition, it would be very cumbersome for a mother's assistant to commute back and forth with the baby for the purpose of handing them over to the mother for feeding. This would expose the mother's assistant and the baby to the many dangers that may exist in the commuting process. For this reason, it would be important that the BFMB does encourage employers to set up fully kitted baby care rooms where mothers' assistants can take care of babies during the day and bring the baby to the mother safely for feeding without much hassle. Alternatively, mothers should have the choice, for a fee, to leave their babies in the baby care room under the supervision of trained and vetted personnel.

### 4.7 Need for an Enforcement Mechanism

Based on the Honourable Zuleikha Hassan's experience described earlier, it was clear that the Parliamentary Service Commission had not set up a lactation place since 2013 when they had committed to do so, until 2019 when the Honourable Hassan walked into the National Assembly Chamber with her baby. From this, it can be inferred that, if at the highest legislative making levels the Health Act, 2017 directive to set up a lactation place can be ignored, then what about other workplaces? For the proper administration of the BFMB it is essential that a Directorate under a relevant Ministry be set up to superintend employers with respect to the Act to ensure compliance and/or progressive implementation.



Substitute Milk has the meaning of milk suitable for babies and derived from non-human breast sources. (Includes animal milk and infant formula which despite discouragement of its use is still the only option available to some mothers).



## SECTION 5.0 CONCLUSIONS

Based on the foregoing narrative, the following are some conclusions that can be drawn:

- i. The nutritional value offered by breast milk to infants in the formative years of their lives is so important that it is worth setting up legislative protection mechanisms to ensure that all the activities concerned with it, including breastfeeding at the breast, and feeding of expressed milk are undertaken in an environment that is clean and safe for both baby and mother.
- ii. The reality today is that babies access milk through diverse ways, including directly from the breast; cup-feeding of expressed breast milk; use of a wet nurse; use of non-human derived milk such as appropriate animal milk. For this reason, all methods must be acknowledged and protected through legislation so that both the mother and infant who are not able to benefit from direct breastfeeding can also be equally protected. The BFMB must keep abreast with innovations in the breastfeeding arena.
- iii. Feeding of babies in the workplace can only be undertaken where there exists appropriate legislative protection to ensure that mothers are not penalized in any way while doing so through threats of job loss, being passed over for promotion or feeding time for babies not being compensable. In this way, the ability of mothers to feed their babies while at work will contribute toward the retention of mothers in the work place.
- iv. Feeding of babies in the workplace, through whichever means, requires investment on the part of employers in the creation of lactation rooms and other appropriate spaces for the baby and mother's assistant to use as a waiting room, baby changing room, etc. It also requires employers to absorb the breaks that must be taken by mothers during baby feeding times. It is, therefore, necessary to sensitize employers and involve them in discussions towards the implementation of the Bill.
- v. The legislative protection offered to mothers who need to feed their babies at work must take into account the statistics of how the work force in Kenya is spread over the formal and informal sectors in order to serve the interests of workers in both sectors. As seen from the data that was reviewed, the majority of Kenya's workforce is in the informal sector and hence it is important to ensure a legislative reach in this sector. The role of county governments in facilitating self-employed women and women who work for employers in the informal sector with infrastructure that will enable them to combine work and feed their infants cannot be overemphasised.
- vi. Mothers who need to feed their babies at the workplace require the support of assistants who can bring in their babies for feeding during the designated break times. Of equal importance is the infrastructure, that is, baby care rooms which the mother's assistants can use and stay at the workplace throughout the day with the babies. Baby care rooms where mothers can leave their babies under the care and supervision of a vetted and professional caregiver, for a fee, can also play a part in facilitating the continued feeding and bonding between mother and child at the workplace.

- vii. There exist various laws in Kenya touching on the issue of breastfeeding, including the Health Act, 2017; the Breast Milk Substitutes (Regulation and Control) Act in 2012; the Breast Milk Substitute (Regulation and Control) (General) Regulations, 2021; and now the proposed BFMB. There is need for harmonization of these laws to ensure that the message is one and the same throughout. For instance, if the meaning of the word breastfeeding is different in these laws, then it would cause confusion. Equally, if the meaning of the word breastfeeding is not aligned with the modern day meaning across all these laws, then these laws will not be effective in covering all possible situations.
- viii. Evidently, for the BFMB to come alive, there is need for a superintending mechanism over employers so that mothers in the workplace can enjoy the right to feed their babies freely. This is because despite the Health Act, 2017 requiring employers to have fully kitted lactation places in the workplace, the compliance with this law has been quite deficient.

## SECTION 6.0 RECOMMENDATIONS

Based on the conclusions above, the following are recommendations aimed at maximising Kenya's potential to provide a robust framework for mothers to feed their babies at work.

- i. Following the presentation to the Labour and Social Welfare Committee of the National Assembly in July, 2020 by the Women Economic Empowerment Hub of the African Women Studies Research Centre, the University of Nairobi on their findings regarding the inadequacies of the BFMB, it would be quite important for the WEE Hub to track the progress of the BFMB through the National Assembly until it becomes law. The arguments presented on the floor of the National Assembly would be useful for future studies on the impact of a work environment that enables women to feed their babies as they work, on women's economic empowerment.
- ii. The UON African Women Studies Research Centre WEE Hub should partner with the Kenya National Bureau of Statistics to carry out a survey of the incidence of women whose jobs become imperilled or affected in any way because of the need to breastfeed or feed their babies under circumstances that are not friendly to the same. For instance, how many women have lost jobs or been passed over in promotions because they needed to stay at home a while longer than the statutory period for maternity leave? This information would be useful to recognise the urgency of the measures that must be undertaken under the BFMB as well as the extent of the investment employers must make. It should also provide for incentives the state must make.
- iii. The UON African Women Studies Research Centre WEE Hub should lead a study bringing together other stakeholders in determining the extent to which Sections 71



and 72 of the Health Act, 2017, which require all employers to set up lactation stations, have been complied with both in formal and informal work spaces. This, together with breastfeeding awareness campaigners, will provide a basis for further action by various stakeholders, including the Ministry of Health, relevant Parliamentary Committees, and other researchers.

- iv. The UON African Women Studies Research Centre WEE Hub should approach the Cabinet Secretary, Ministry of Public Service and Gender for a joint study with other relevant stakeholders on the possible types of lactation rooms and baby care rooms that

can be set up in different types of workplaces as well as the cost of setting them up and running them effectively. This will assist employers who wish to roll out the lactation places contemplated in the BFMB, baby care rooms, as well as the appropriate programs mentioned in Section 4(3)(b) meant to develop a baby's cognitive, emotional, social and language abilities. The study should be able to provide guidance to employers of all cadres as to what reasonable accommodation can be made, and the appropriate adjustments that can be employed, to facilitate mothers in all types of work places to combine their roles at work with that of feeding their babies at the workplace.

## REFERENCES

### Bills and Statutes

Breastfeeding Mothers Bill, 2019, National Assembly Bills, No. 74

Constitution of Kenya, 2010

Employment Act, 2012

Health Act, 2017

### Journal Articles/Working Papers/and Policies

Belfield, Clive R. & Kelly, Inas Rashad. (2010). The Benefits of Breastfeeding Across the Early Years of Childhood. National Bureau of Economic Research Working Paper Series, No. 16496.

Government of the Republic of Kenya, Ministry of Health, Division of Nutrition, 'National Maternal, Infant and Young Child Nutrition, Policy Guidelines, 2013'

Hansen, Keith. (2016). Breastfeeding: A Smart Investment in People and in Economies. *The Lancet*, 387(10017), 416.

Institute for Economic Affairs, 'The Point: 'Brief on Public Sector Wage Bill: Policy Options', Issue No. 4, June, 2014

Masaba, B, MMmusi-Phetoe, R, Mokula, L. 'Factors Affecting WHO Breastfeeding Recommendations in Kenya'. *International Journal of Africa Nursing Sciences*, Volume 15, 2021, 100314

Rasmussen, Felice, O'Sullivan et al, 'The Meaning of "Breastfeeding" Is Changing and so Must Our

Language About It', *Breastfeeding Medicine*, Vol.12, No.9, 2017  
Republic of Kenya, Ministry of Health, 'Guidelines for Securing a Breastfeeding Friendly Environment at the Work Place, May, 2018'.  
WHO, & UNICEF. (2003). *Global Strategy for Infant and Young Child Feeding*. Report, 1–30. ISBN 92 4 156221 8.

## **Newspaper Articles**

Alushula, Patrick, 'Civil Servants Spared Cut on Allowances', Published in the *Business Daily* on 17 March, 2021.

Mutua, John, 'Kenya-Proposed Law to Require Employers & Owners of Commercial Buildings to Provide Lactation Rooms.' Published in the *Business Daily* on 11 November, 2019.

Njeru, Alex, Kenya: Chuka Market Gets Creche for Traders' Babies', Published in the *Daily Nation* on 8 September, 2020.

Selby, Daniele, 'Kenyan Lawmaker Ordered to Leave after Bringing Her Baby to Parliament: A Baby is Not an Atomic Bomb, They Won't Explode in the House.' Published in the *Global Citizen* on 8 August, 2019.

Vidija, Patrick, Fact Check: Did Parliament Err in Kicking Breastfeeding MP Out of the Chambers?' Published in the *Star Newspaper* on 8 August, 2019

## **Relevant Websites concerning Breastfeeding**

Statista - Total employment in Kenya from 2015 to 2020, by Sector  
United Nations Development Programme (UNDP)  
World Health Organisation (WHO)







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