

## Legislation & Policies Gear

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*Are there national policies and legislation that protect, promote and support breastfeeding for mothers, including working mothers? What is the quality and coverage of these policies/legislation?*

### Background

Establishing and enacting national breastfeeding legislation and policies demonstrates country-level commitment to scaling up, promoting and supporting breastfeeding programs and initiatives. The adoption of national breastfeeding legislation and policies, such as the National Breastfeeding Policy, adoption of the International Code of Marketing of Breast Milk Substitutes, Maternity Protection Legislation, and Baby Friendly Hospital Initiative (BFHI) legislation is one key step countries can take towards improving maternal and child health. To be effective, policies supporting breastfeeding must be officially adopted, integrated into existing health programs, supported through vigorous coordination and monitoring efforts, and enforced if violated. Proper integration and support of legislation and policies requires adequate funding and resources.

### Themes and Benchmarks

Themes for this gear assess the adoption, coverage and quality of key breastfeeding legislation and policies (including maternity laws):

- 1) National Breastfeeding Policy
- 2) BFHI
- 3) International Code of Marketing of Breast Milk Substitutes
- 4) National Maternity Protection Legislation

Each theme is assessed by at least one benchmark.

All benchmarks are referenced to “the past year” unless otherwise noted.

## 1. National Breastfeeding Policy Theme

***Benchmark LPG1: A national policy on breastfeeding has been officially adopted/approved by the government.***

***Description:*** The existence of a national policy on breastfeeding is a key step to scaling up breastfeeding nationally. This national policy needs to reflect country level support and commitment towards breastfeeding mothers. This benchmark assesses whether a national policy on breastfeeding has been officially adopted/approved by the government.

***Example:*** Malta developed a National Breastfeeding Policy for 2015 - 2020 that includes an Action Plan to implement the policy. The policy was developed through an extensive national process of consultation. The policy “recognizes the biological, health, social, cultural, environmental and economic importance of breastfeeding. It also provides direction for priorities and action for the Maltese government at all levels working in partnership with mothers and society to promote, protect, support and maintain breastfeeding.”

***Possible data sources:*** Government legislation and policies as well as policy briefs are key sources of information for this benchmark. Interviews with national level government officials, especially within the health sector or infant/young child feeding area, may reveal the existence of this policy, the development stage it is at, and whether it has or is expected to be adopted/approved.

***How to score:*** The scoring for this benchmark reflects the existence and level of development and adoption of a national policy on breastfeeding.

- No progress:** There is no national policy on breastfeeding.
- Minimal progress:** A national policy on breastfeeding is under discussion.
- Partial progress:** A national policy on breastfeeding has been written but has not been officially adopted/approved by the government.
- Major progress:** A national policy on breastfeeding has been written and has been officially adopted/approved by the government.

***Benchmark LPG2: There is a national breastfeeding plan of action.***

***Description:*** The national breastfeeding plan of action should reflect the way a country will be implementing their national policy on breastfeeding. If a country doesn't have a national breastfeeding policy, then it is probable that they would not have a national breastfeeding plan of action. This benchmark assesses if a country has a national breastfeeding plan of action.

**Example:** The Philippine IYCF Strategic Plan of Action 2011-2016 is an example of an action plan with measurable, time-bound objectives and detail on the actions, interventions, collaborations and internal structural arrangements necessary to achieve the strategic breastfeeding objectives within the national health strategy.

**Possible data sources:** Interviews with national level government officials, especially within the health sector or infant/young child feeding area, may reveal the existence of the national breastfeeding plan of action, the development stage it is at, and the content of this plan of action. Government legislation and policies as well as policy briefs should be closely reviewed to examine the national breastfeeding plan of action, assess its content, and score it accordingly.

**How to score:** The scoring for this benchmark reflects the existence and quality of the objectives (i.e. measurable and time bound) of the national breastfeeding plan of action. For this benchmark, *measurable objectives/targets* refers to objectives that are followed and can be easily assessed to evaluate progress with the national breastfeeding plan. *Time bound objectives/targets* refers to objectives that have a time frame within which they have to be achieved/accomplished.

- No progress:** There is no national breastfeeding plan of action.
- Minimal progress:** Some strategies in the national breastfeeding plan of action are implemented but the plan does not contain measurable nor time bound objectives/targets.
- Partial progress:** Some strategies in the national breastfeeding plan of action are implemented **and** the plan contains measurable and time bound objectives/targets.
- Major progress:** All strategies in the national breastfeeding plan of action are implemented and the plan contains measurable and time bound objectives/targets.

## 2. BFHI Theme

**Benchmark LPG3:** *The national BFHI/Ten Steps criteria has been adopted and incorporated within the healthcare system strategies/policies.*

**Description:** The healthcare system has strategies/policies designed to deliver high quality health care. The BFHI/Ten Steps criteria is the “gold standard” for promoting breastfeeding within facilities. To deliver high quality maternity care, the healthcare system should include the BFHI/Ten Steps criteria as a standard that facilities need to meet. This benchmark assesses

the question of *how well the BFHI/Ten Steps criteria are included into the health care system strategies at a national level*. Furthermore, if they are included, they need to reflect the BFHI WHO/UNICEF global criteria.

**Example:** On May 22, 2014, the Brazilian Ministry of Health put forth a decree (#1,153) that acknowledges the Baby Friendly Hospital Initiative (BFHI). In Brazil, BFHI is a strategy to promote, protect and support breastfeeding as well as the health of children and women within the Unified Health System. This Decree includes the BFHI as a Health Program in the context of other Health Policies and Programs as the Program for Humanization of Prenatal and birth, Health Care Network, Stork Network, Primary Care for the Family Health Strategy and the Program of Community Health Agents. It is consistent with the BFHI WHO/UNICEF global criteria.

**Possible data sources:** Interviews with national level government officials, especially within the health sector or infant/young child feeding area, may reveal the existence of national BFHI/Ten Steps criteria. Government legislation and policies as well as policy briefs should be closely reviewed to examine the national BFHI/Ten Steps criteria (if it exists) and assess its content and level of incorporation in the national health care system strategies/policies.

**How to score:** The scoring for this benchmark reflects the existence, adoption, and level of incorporation (i.e. coverage) of the BFHI/Ten Steps criteria in healthcare system strategies/policy. It also addresses the quality of the criteria (i.e. if it is consistent or not with the BFHI WHO/UNICEF global criteria).

- No progress:** There are no national BFHI/Ten Steps criteria in country.
- Minimal progress:** A national BFHI/Ten Steps criteria exists and it is consistent with BFHI WHO/UNICEF global criteria, or it has been adopted but it has not been incorporated into the healthcare system strategies/policies nationally.
- Partial progress:** A national BFHI/Ten Steps criteria exists and it is consistent with BFHI WHO/UNICEF global criteria, it has been adopted and it has been partially incorporated into the healthcare system strategies/policies nationally.
- Major progress:** A national BFHI/Ten Steps criteria exists, it is consistent with BFHI WHO/UNICEF global criteria, and it has been adopted and incorporated into the healthcare system strategies/policies nationally.

### 3. The International Code of Marketing of Breast Milk Substitutes Theme

***Benchmark LPG4: The International Code of Marketing of Breast Milk Substitutes has been adopted into legislation.***

***Description:*** The International Code of Marketing of Breast Milk Substitutes (i.e. the Code) is an international policy developed by the WHO that protects breastfeeding by setting standards, requirements, and enforcement penalties in response to the unethical promotion of manufactured breastmilk substitutes. The specific content of the adopted Code is essential to the scoring of this benchmark since the Code must include provisions for a monitoring system, penalties for violations, and reporting of violations.

***Examples:***

In the case of Mexico, the adopted Code only covered formulas for children 0-6 months, even though WHO Code states that it should cover all formulas and products for children <24 months. In the most recent Health Assembly, WHO modified the Code to cover children <36 months.

As of 2011, Brazil has adopted all or nearly all of the provisions of the Code. One adopted Brazilian laws, (#11,265) follows the International Code of Marketing of Breast Milk Substitutes. This law, adopted on January 3, 2006, set forth rules for foods for infants and early childhood's marketing and products related to childcare.

***Possible data sources:*** Interviews with national level government officials, especially within the health sector or infant/young child feeding area, may reveal whether the Code has been adopted or if there is an equivalent decree supporting and enforcing the Code.

Organizations, such as IBFAN<sup>1</sup>, may have websites that provide updates on country progress with adopting and enforcing the Code. Government legislation and policies as well as policy briefs should be closely reviewed to examine the adopted Code and assess its content to determine if it provides for a monitoring system, penalties for violations, and reporting of violations.

***How to score:*** The scoring of this benchmark reflects the level of adoption of the Code into legislation as well as the existence and level of provisions for a monitoring system, penalties for violations, and reporting of violators.

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<sup>1</sup> IBFAN website: <http://www.ibfan-icdc.org/index.php/news/state-of-the-code>

There can be situations where the provisions in the Code are modified to a lower standard than the Code. When this happens, a country cannot receive a score of major progress since the adopted Code provision is less than the recommended by the Code.

Additionally, there can be situations where countries may have decrees rather than legislation and these decrees have the same power as law, are enforceable and have to be carried out. If the Code is issued as a decree, countries will have to assess whether it conforms to the requirements of legislation (i.e. does this have power of law? Is it enforceable and has to be carried out?) and not a voluntary agreement. If so, that decree can be considered equivalent to legislation and countries would follow the scoring algorithm accordingly.

If it is a voluntary agreement lacking enforceability, countries would consider that the Code has not been adopted.

- No progress:** The International Code of Marketing of Breast Milk Substitutes has not been adopted in legislation.
- Minimal progress:** The International Code of Marketing of Breast Milk Substitutes has been adopted in legislation but does not include all provisions of the Code nor provisions for a monitoring system, penalties for violations, and reporting of violators.
- Partial progress:** The International Code of Marketing of Breast Milk Substitutes has been adopted in legislation and includes all provisions of the Code but not provisions for a monitoring system, penalties for violations, and reporting of violators.
- Major progress:** The International Code of Marketing of Breast Milk Substitutes has been adopted in legislation and includes all provisions of the Code and provisions for a monitoring system, penalties for violations, and reporting of violators.

***Benchmark LPG5: The National Code of Marketing of Breast Milk Substitutes has been enforced.***

**Description:** This benchmark assesses whether the Code of Marketing of Breast Milk Substitutes adopted by the country has been enforced during the last 3 years. This assumes that the International Code of Marketing of Breast Milk Substitutes has been adopted as a National Code. Enforcement of the Code is considered an important component to protecting, promoting and supporting breastfeeding. The level of enforcement of the National Code (local, subnational, national) is one component determining the level of breastfeeding protection within the country.

**Possible data sources:** Interviews with national level enforcement officials may reveal whether the Code has been enforced. If the Code is reported to have been enforced, then it is

key to identify the regulatory agency in charge and review their documents spelling out the provision of the Code.

**Example:** In Brazil, the penalties for non-compliance with the Code regulation are applied in a progressive manner, according to the severity and frequency of the infraction. The infractions will be punished, alternatively or cumulatively, with: 1) Warning, 2) Fine, 3) Product disuse, 4) Interdiction, 5) Suspension of product sale, 6) Cancellation of product registration, 7) Prohibition of advertising, 8) Imposition of rectifying message, and 9) Suspension of advertising and publicity. The fine is applied in accordance with infraction classification in (a) mild, (b) serious, and (c) extremely serious. In the case of recidivism, the fines will be applied twice. In each sphere of Government (Federal, State, Municipal and District), National Agency of Sanitary Surveillance (Anvisa) has a competent body for the judgment of Administrative Proceedings instituted by its Sanitary Authorities in accordance with the provisions of the Law.

Monitoring of compliance with the legislation to protect breastfeeding has been done in the country every year since 2006. For example, in 2014, IBFAN Brazil in partnership with IDEC (Brazilian Institute of Consumer Protection) conducted a monitoring survey and found 114 infractions to NBCAL (Brazilian Standard for Commercialization of Foods for Infants and Toddlers, Teats Pacifiers and Bottles). In total, 35 companies (located in 10 cities of 5 Brazilian states) were notified of irregularities in products for children under two years that discourage breastfeeding. The results of the monitoring survey were sent to Ministry of Health and National Agency of Sanitary Surveillance (Anvisa) responsible for applying the penalties. Every year Anvisa provide a report about infractions and penalties related with NBCAL.

**How to score:** The scoring reflects the degree and coverage of enforcement of the provisions of the National Code that the country has adopted. Penalties and sanctions must be considered only if they are proportional to the violation. *Enforced* means that there is evidence that penalties and sanctions have been enforced during the last 3 years for violations of the Code.

- No progress:** The National Code of Marketing of Breast Milk Substitutes has not been enforced.
- Minimal progress:** The National Code of Marketing of Breast Milk Substitutes has been minimal enforced - enforcement happens only in a **few localities** or situations.
- Partial progress:** The National Code of Marketing of Breast Milk Substitutes has been partially enforced- enforcement happens in **most of the localities** or situations.
- Major progress:** The National Code of Marketing of Breast Milk Substitutes has been enforced in the **whole country**.

## 4. National Maternity Protection Legislation Theme

### *Benchmark LPG6: The International Labour Organization Maternity Protection Convention has been ratified.*

**Description:** This benchmark assesses whether the Maternity Protection Convention 2000 (No. 183), put forth by the International Labour Organization (ILO), has been ratified or existing maternity protection legislation meets some or all of their provisions. This benchmark allows for the existence of other maternity laws but uses the standards expressed in the Maternity Protection Convention 2000 as the benchmark countries should strive to meet.

**Example:** Brazil has signed the first two ILO Conventions, but not the third one. However, the Maternity Protection Law in Brazil covers and, in some cases, surpasses the latest ILO convention recommendations. The law provides for full paid maternal leave (120 to 180 days), full paid paternal leave (5-20 days), environmental protection against risk during pregnancy and breastfeeding, breastfeeding breaks, and job protection (a woman cannot be fired 4 months after delivery). This situation is considered major progress.

**Possible data sources:** The ILO website<sup>2</sup> provides data on countries that have ratified any of the Maternity Protection Conventions, although it is important to acknowledge that these data are not always up to date. This can be searched on the website through the country or by the Maternity Protection Convention. To assess if maternity protection laws exist, interviews with national level government officials, especially within the infant/young child feeding area, may reveal whether maternity protection laws have been adopted. Government legislation and policies as well as policy briefs should be closely reviewed to examine the maternity protection laws and assess the content of these laws.

**How to score:** The scoring for this benchmark reflects whether countries have adopted maternity protection laws but not ratified the Maternity Protection Convention, or if countries have ratified older versions of the Maternity Protection Convention but not the most current version (see **Annex 1** for further explanation).

- No progress:** There are no maternity protection laws in the country and the Maternity Protection Convention, 2000 (No 183) has not been ratified.

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<sup>2</sup> The ILO website can be accessed by going to the following link:  
<http://www.ilo.org/dyn/normlex/en/f?p=1000:11001:0::NO::>



- **Minimal progress:** There are a few maternity protection laws that meet the provisions of the Maternity Protection Convention, 2000 (No 183) but the Maternity Protection Convention, 2000 (No 183) has not been ratified.
- **Partial progress:** There are maternity protection laws and most meet the provisions of the Maternity Protection Convention, 2000 (No 183) but the Maternity Protection Convention, 2000 No. 3 has not been ratified.
- **Major progress:** There are maternity protection laws and all meet or exceed the provisions of the Maternity Protection Convention, 2000 (No 183) or the Maternity Protection Convention 2000 has been ratified.

***Benchmark LPG7: There is paid maternity leave legislation for women.***

**Description:** This benchmark assesses if there is paid maternity leave legislation for women. Paid maternity leave is an essential standard to the Maternity Protection Convention 2000. Countries that have maternity leave legislation need to have legislation equal to or better than that provided in the Maternity Protection Convention 2000 to be able to score major progress with this benchmark.

**Example:** In Sweden, pregnant woman's benefits can be paid as early as 60 days (two months) into the pregnancy and continue up to 11 days before the due date. The amount received is roughly 80 per cent of the mother's daily pay and is paid by the Swedish Social Insurance Agency. Parents are entitled to 480 days of paid parental leave when a child is born or adopted. For 390 of the days, parents are entitled to nearly 80% of their normal pay. The remaining 90 days are paid at a flat rate.

**Possible data sources:** Interviews with national level government officials, especially within the infant/young child feeding area, should reveal whether maternity protection laws have been adopted. To assess if maternity leave legislation is included in any maternity protection legislation, this legislation should be read and reviewed closely to assess the content and coverage of these laws.

**How to score:** The scoring of this benchmark reflects the existence and quality of paid maternity leave with the specifications described in the Maternity Protection Convention 2000 serving as the standard for countries to meet or surpass for an optimal score on this benchmark. The Maternity Protection Convention 2000 stipulates at least 14 weeks maternity leave with women receiving at least 2/3<sup>rd</sup> of their previous earnings during this time, which serves as the scoring standard for this benchmark.

- **No progress:** There is no paid maternity leave legislation for women.

- **Minimal progress:** There is paid maternity leave legislation for women but it stipulates less than 14 weeks leave and receiving less than 2/3<sup>rd</sup> of their previous earnings.
- **Partial progress:** There is paid maternity leave legislation for women and it stipulates at least 14 weeks leave but receiving less than 2/3<sup>rd</sup> of their previous earnings OR it stipulates less than 14 weeks but receiving at least 2/3<sup>rd</sup> of the previous earnings.
- **Major progress:** There is paid maternity leave legislation for women AND it stipulates at least 14 weeks leave and receiving at least 2/3<sup>rd</sup> of their previous earnings.

***Benchmark LPG8: There is legislation that protects and supports breastfeeding/expressing breaks for lactating women at work.***

**Description:** Provision of breastfeeding or expressing breaks for lactating women is essential to protecting, promoting, and supporting breastfeeding. A policy providing maternal protection for breastfeeding/expressing breaks is required to encourage employers to adhere to protecting these rights. This benchmark assesses whether there is legislation that protects and supports breastfeeding/expressing breaks for lactating women at work. If a country committee feels that this legislation isn't being effectively exercised or not enforced, it can be put forth as a recommendation for action.

**Examples:**

- In New Zealand, under the law, employers are obligated to provide appropriate facilities within the workplace for breastfeeding employees. Employers are also required to provide additional paid breaks for employees that wish to breastfeeding during working hours.
- In Brazil, article 396 of the Labor Code stipulates that a breastfeeding woman has the right "to nurse her own child until the child is six (6) months of age. The woman is entitled during the working day, to two (2) additional special breaks, half an hour each, which does not include the normal breaks."

**Possible data sources:** Interviews with national level government officials, especially within the infant/young child feeding area, should reveal whether maternity protection laws have been adopted. To assess if legislation that protects and supports breastfeeding/expressing breaks is included in any maternity protection legislation, this legislation should be read and reviewed closely to assess the content and coverage of these laws.

**How to score:** The ILO standards were used for the scoring of this benchmark. The scoring for this benchmark reflects the existence and coverage of legislation that protects and supports breastfeeding/expressing breaks.

- No progress:** There is no legislation that protects and supports breastfeeding/expressing breaks at work.
- Minimal progress:** Labor policies encourage employers to protect and support breastfeeding/expressing breaks for their workers, but there is no legislation stipulating this.
- Partial progress:** There is local legislation that protects and supports breastfeeding/expressing breaks at work.
- Major progress:** There is national legislation that protects and supports breastfeeding/expressing breaks at work.

***Benchmark LPG9: There is legislation supporting worksite accommodations for breastfeeding women.***

**Description:** If a particular job places a breastfeeding mother at risk of harm or negative consequences, maternity protection legislation needs to provide worksite accommodations for that mother. This includes: (1) not forcing a woman to perform work that is risky to her or her infant/young child and (2) providing alternative work at the same wage until she is no longer breastfeeding. This benchmark assesses the existence of legislation for supporting worksite accommodations for breastfeeding women. If a country committee feels that this legislation isn't being effectively exercised or not enforced, it can be put forth as a recommendation for action.

**Example:** Uruguayan Law states that any worker, during pregnancy or breastfeeding, is entitled to a temporary change of job if the health of the mother or child may be affected. This temporary change of job can not affect the woman's salary and she may not be suspended, fired, or adversely affected in her labor rights or delayed in her career.

**Possible data sources:** Interviews with national level government officials, especially within the infant/young child feeding area, should reveal whether maternity protection laws have been adopted or not. To assess if legislation supporting worksite accommodations for breastfeeding women is included in any maternity protection legislation, this legislation should be read and reviewed closely to assess the content and coverage of these laws.

**How to score:** The scoring for this benchmark reflects existence and coverage of legislation that supports worksite accommodations (including the provision of alternate worksite accommodations) for breastfeeding.

- No progress:** There is no legislation for supporting worksite accommodations for breastfeeding.
- Minimal progress:** There are labor policies that encourage employers to support worksite accommodations for their workers for breastfeeding, including providing alternate work at the same wage until the mother is no longer breastfeeding, but there is no legislation stipulating this.
- Partial progress:** There is local legislation that supports worksite accommodations, including providing alternate work at the same wage until the mother is no longer breastfeeding.
- Major progress:** There is national legislation that supports worksite accommodations, including providing alternate work at the same wage until the mother is no longer breastfeeding.

**Benchmark LPG10:** *There is legislation providing employment protection and prohibiting employment discrimination against pregnant and breastfeeding women.*

**Description:** Employment protection affords women protection against termination and is a guarantee of the same position or equivalent pay until the end of maternity leave. It also prohibits employers from requiring women to take a pregnancy test upon hiring unless under certain special circumstances. Protection against employment discrimination includes stipulations that prohibit discrimination during employment for pregnant or breastfeeding women. If a country committee feels that this legislation isn't being effectively exercised or not enforced, it can be put forth as a recommendation for action.

**Example:** Uruguayan Law specifically prohibits suspension and dismissal of a female worker during pregnancy and lactation.

**Possible data sources:** Interviews with national level government officials, especially within the infant/young child feeding area, should reveal whether maternity protection laws have been adopted. To assess if legislation providing employment protection and prohibiting employment discrimination against pregnant and breastfeeding women is included in any maternity protection legislation, this legislation should be read and reviewed closely to assess the content and coverage of these laws.

**How to score:** The scoring for this benchmark reflects the existence and quality of legislation providing employment protection and prohibiting employment discrimination against pregnant and breastfeeding women.

- **No progress:** There is no legislation providing employment protection and prohibiting employment discrimination against pregnant and breastfeeding women.
- **Minimal progress:** There is legislation prohibiting employment discrimination against pregnant and breastfeeding women but does not include any employment protections (i.e. against termination, same position and payment upon return from maternity leave, no pregnancy test upon hiring).
- **Partial progress:** There is legislation prohibiting employment discrimination against pregnant and breastfeeding women and it includes some but not all employment protections (i.e. against termination, same position and payment upon return from maternity leave, no pregnancy test upon hiring).
- **Major progress:** There is legislation prohibiting employment discrimination against pregnant and breastfeeding women which includes all employment protections (i.e. against termination, same position and payment upon return from maternity leave, no pregnancy test upon hiring).