

The Adaptation of women's work to family responsibilities between international standards and Algerian labor law

تكييف عمل المرأة مع مسؤولياتها العائلية بين المعايير الدولية وقانون

العمل الجزائري

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Abstract: *The orchestration of the temporal aspects of employment remains a pivotal concern within labor laws globally. The enactment of prolonged working hours poses a significant risk to the well-being of workers and their familial counterparts. In response, the International Labour Organization inaugurated its inaugural conventions in 1919, centered on the regulation of work durations. These benchmarks have since been integrated into the ILO's framework as global norms that address the temporal dimensions of labor, crucial to structuring employment practices. National laws have embraced these standards, forming a normative apparatus to oversee work stipulations regarding hours, duration, nocturnal labor, intervals of rest, holidays, and part-time engagements. Subsequent conventions have strived to harmonize elevated productivity with the physical and mental welfare of employees, progressively tackling pivotal matters such as gender equity, equality of opportunity, and treatment. (International Labour Organization [ILO], 2021) This includes particular focus on familial obligations predominantly shouldered by employees, especially women. This adjustment has necessitated the introduction of global mechanisms to tailor the working schedules of women to their familial duties, seeking an equilibrium through the appropriate regulation of working hours and maternity leaves.*

Keywords: Women's work, equality, family responsibility, international standards, working time, working conditions, Algerian law.

ملخص: كان ولا زال تنظيم العنصر الزمني للعمل يشكل أحد أولى انشغالات تشريعات العمل. فأداء عمل لساعات طويلة صار من الأعمال الخطيرة على صحة العمال وأسرهم. وهذا ما أدى بمنظمة العمل الدولية إلى المبادرة بأولى اتفاقيات لها في 1919، بتحديد ساعات العمل. فصارت من معايير المنظمة، كمعايير دولية تخص العنصر الزمني للعمل باعتباره من أساسيات وعناصر تنظيم العمل، لتتخذ التشريعات الوطنية إطار معياري لضبط مقتضيات العمل من حيث ساعاته ومدته والعمل الليلي والراحة... والإجازات... وكذا العمل لوقت نسبي. فهذه الاتفاقية وتلك التي تلتها كآليات في هذا المجال تهدف إلى التوفيق بين ضمان إنتاجية عالية والحفاظ على الصحة البدنية والعقلية للعمال. وازدادت أهمية هذه

الآليات والمعايير مع تزايد الاعتناء أكثر فأكثر بمعالجة المسائل الجوهرية كتحقيق المساواة بين الرجل والمرأة وتكافؤ الفرص وفي المعاملة ، مع ضرورة الإعتناء بالمسؤوليات العائلية التي يتحملها العمال عموماً والنساء تحديداً ومن باب أولى. وهذا ما اقتضى إضافة آليات دولية لتكثيف العنصر الزمني لعمل المرأة مع مسؤولياتها الأسرية بحثاً عن التوفيق بينهما استناد إلى تنظيم مناسب لأوقات عمل المرأة ولإجازة الأمومة. الكلمات المفتاحية: عمل المرأة، المساواة، المسؤولية العائلية، المعايير الدولية، وقت العمل، ظروف العمل، قانون جزائري.

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1. INTRODUCTION

Employment is recognized as a fundamental human right, akin to the rights to education, health, and a decent standard of living. Article 6 of the International Covenant on Economic, Social and Cultural Rights articulates, "The right to work encompasses the right of every individual to the opportunity to earn his living by work he freely chooses or accepts.. " (United Nations [UN], 1966) This provision underscores that employment should enable individuals, regardless of gender, to contribute to the burdens of family and societal life in a manner befitting their capabilities and without coercion, in exchange for equitable remuneration that guarantees a respectable existence. (International Labour Organization [ILO], 1965)

Historically, Islam, predating the contemporary international compendium of human rights statutes, ensured equitable rights for all and exhorted Muslims to engage in work earnestly, with promises of rewards both in this life and the hereafter. The Quranic verse, "*Whoever does righteous deeds, whether male or female, while being a believer, we will surely grant them a good life, and we will surely give them their reward [in the Hereafter] according to the best of what they used to do*" (Quran 16:97), vividly supports this ethos. Nonetheless, the realm of women's employment is fraught with challenges. Amidst advocates and detractors for various reasons, women find themselves either denied this right or compelled into unsuitable occupations, potentially facing disparities in wages, progression opportunities, and exposure to diverse forms of violence from family, spouses, supervisors, colleagues, and other societal elements. This study opts not to explore all related issues comprehensively but to concentrate on the principal international declarations pertaining to women's right to work and the position of Algerian legislation in this regard. However, analyzing

this right detached from the context of familial stability would be inadequate.

Study objectives: This investigation seeks to unravel the intricate legal-social equation balancing women's right to work with the family's entitlement to stability, pivoting on a critical variable: time. The core question explored is how women can harmonize their professional commitments with familial responsibilities.

Study importance: From a jurisprudential standpoint, this study evaluates how international norms and national statutes have tackled this vital factor in correlating women's employment rights with familial stability. The aim is to delineate strategies for maintaining an equitable temporal alignment between occupational obligations and family duties, thus fostering familial harmony.

Methodology: The methodology of this research is rooted in an institutional analysis, employing a legal-textual approach enriched by a comparative international perspective. This involves a detailed examination of legislative documents to understand the mechanisms employed to balance professional and family life for women.

1. Adapting the temporal element of women's work according to international standards

In this section, we aim to clarify the legal frameworks set by international standards dedicated to tailoring women's work commitments to their domestic responsibilities. This analysis covers the following:

1.1 The normative framework for adaptation and areas of application of family responsibility

The adaptation of the temporal aspects of women's employment is governed by international norms advocating for gender equality and equal opportunities across all workers. These standards are designed to tailor women's professional lives to these principles by delineating the domains where family responsibilities are most pertinent.

A. The normative framework for adapting the temporal element of women's work to family responsibility requirements:

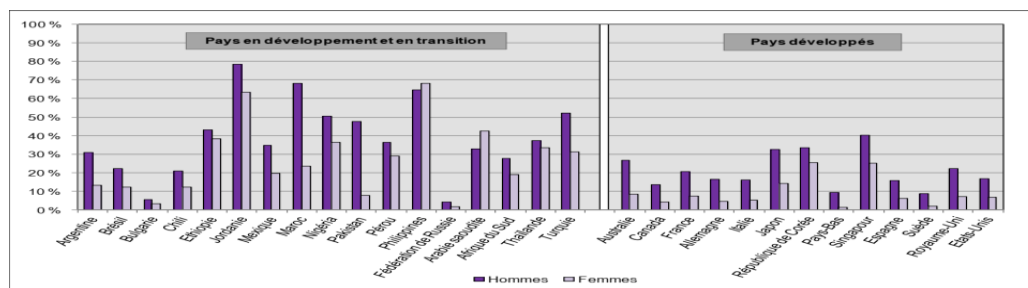
The focus here is on achieving a balance between enabling women's work rights and enforcing principles of equality, equal opportunities, and equitable treatment. This involves adjusting working hours, holidays, and rest periods with consideration for women's multifaceted societal roles, economic, social, political, cultural, educational, and historical. These adjustments serve not only the legal imperative of progeny preservation but also extend to safeguarding religion (including familial duties such as caregiving), wealth (protecting family and personal assets), life (preventing harm from continuous or hazardous work), and intellect (protecting against impairments that could destabilize family life). In this statutory context, the International Labour Organization (ILO) played a pivotal role with the promulgation of Recommendation No. 123 in 1965 concerning workers with family responsibilities. (International Labour Organization [ILO], 1981) This recommendation established the initial normative framework and legal underpinning necessary to calibrate the delicate balance between occupational demands and familial obligations. (International Labour Organization [ILO], 1981) Initially, the right to work recognized under this framework did not encompass an equitable distribution of family responsibilities between spouses; this burden predominantly remained with women, further complicating and impeding their ability to reconcile professional and familial roles effectively.

More than a decade later, recognizing the necessity to extend the principles established in Recommendation No. 123, the ILO broadened its scope to encompass all workers, irrespective of gender, through the adoption of Convention No. 156 and Recommendation No. 165 in 1981, concerning workers with family responsibilities. This expansion was predicated on the observation that existing mechanisms for ensuring equal opportunities and treatment, a principle endorsed by the United Nations, its specialized agencies, and the ILO, had not yet achieved their intended outcomes. (Lee, McCann, & Messenger, 2007, pp. 53-54)* The traditional role of men

* The following table illustrates this paradox in the temporal element of employment and its excess on a global scale: "Percentage of workers whose working time is excessive (2010 or most recent year **, by gender)"

within both the familial and societal framework needed to be elevated to match the contributions made by women. (International Labour Organization [ILO], 1981) Furthermore, given the persistence of excessive working hours globally, particularly affecting women, the ILO revised the 1965 recommendation to reflect contemporary developments, thereby establishing new international labor standards under the 1981 Convention. These standards were designed to integrate both genders within a more inclusive framework, aiming to harmonize the demands of work with family responsibilities. (International Labour Organization [ILO], 2011)

Significantly, the foundational tenets of the 1965 recommendation were preserved and adapted within the 1981 convention and its ancillary recommendation to better align women's work, particularly the temporal aspects, with their functional and familial roles. An expert group noted the particular relevance of Recommendation No. 165, supplementing Convention No. 156, for those engaged in family duties, stating it was "very suitable for women, as they are predominantly responsible for family care." This acknowledgment led to the introduction of general measures aimed at enhancing work conditions and quality³⁴¹: life in the workplace. These measures include efforts to gradually reduce daily working hours and overtime, alongside introducing more flexible arrangements for organizing work schedules, rest periods, and holidays, taking into consideration the developmental stage as well as the specific needs of the country and various sectors of activity. (International Labour Organization [ILO], 1981) This



Source: Eurostat, national statistical offices, OECD.

According to the recommendations of the Tripartite Meeting of Experts on the Measurement of Decent Work, a weekly duration of more than 48 hours is considered excessive. Given the available data, the cap used is 53 hours for the Republic of Korea, 51 hours for the Russian Federation, 50 hours for Chile, 49 hours for Australia, Canada, Singapore, Thailand, Turkey, and the United States, 47 hours for Morocco and Nigeria, 40 hours for the Philippines, and 39 hours for Jordan. For the same reason, data for the United States apply only to employees.

** Data from 2010 or 2009 were used wherever possible. Given the available data, those from 2008 were used for Brazil, Morocco, Peru, and the Russian Federation. The global economic crisis may have influenced the 2009 data, In "Working Time in the 21st Century," op cited, pp 30-31.

ongoing adaptation is manifest in the identification of areas where family responsibility standards are applicable, as well as in the regulation of working conditions in line with these responsibilities, which are imperative in alleviating family duties, as will be explored further in the second element of this study.

B. Areas of application of family responsibility

Convention No. 156 and Recommendation No. 165 of 1981 initiated their mandates by delineating essential foundational elements, specifically identifying the individuals concerned by these provisions, namely, workers who juggle family responsibilities alongside their professional duties, and the sectors of economic activity involved. Regarding the individuals concerned, the convention and its accompanying recommendation specify:

- The recommendation is applicable to workers of both genders responsible for dependent children, whose caregiving responsibilities might constrain their opportunities to prepare for, gain access to, participate in, or advance within economic activities.
- Additionally, this recommendation extends to workers of both genders who have obligations towards other immediate family members requiring their care or support, particularly when these duties impinge on their professional engagement capabilities.

To ascertain which individuals fall under the category of having dependents, whether children under care or other direct family members requiring support, the convention and recommendation draw upon a variety of sources, including legislative measures, collective agreements, institutional rules, arbitration, and judicial decisions, or an amalgamation of these, all tailored in accordance with national practices and the specific circumstances of the country concerned. (International Labour Organization [ILO], 1981) In terms of sectors, the convention and its supplementary recommendation are applicable across all branches of economic activity and encompass all worker categories within those sectors, implementing these standards progressively, taking into account the particularities of national contexts. (International Labour Organization [ILO], 1981)

1.2 Regulating women's working conditions and easing their family duties

In this section, we explore how international standards have been employed to regulate the working conditions of women to better integrate their professional obligations with their familial responsibilities:

A. Regulating women's working conditions in accordance with their family responsibilities

An analysis of Convention No. 156 and Recommendation No. 165 reveals that the International Labour Organization adopted what might be termed an "expansive" approach to modulate the working conditions of employed women. This approach aims to harmonize their professional and family responsibilities without conflict. The approach was pioneering in integrating the concept that no conflict should exist between professional and family responsibilities, aligning with the fundamental principles and standards of freedom of work, equality, non-discrimination, and equal opportunity and treatment. Historically, the alignment of women's personal issues with professional conditions and responsibilities was not deemed necessary. (International Labour Organization [ILO], 1981)

For this purpose, Article 4 of the convention mentions the need to "take into consideration their special needs regarding working conditions and social security." In support of this, Recommendation No. 165, which supplements the convention, introduces a series of measures under Chapter IV titled "Working Conditions." These measures are designed to elucidate the requirements of the convention concerning the adaptation of working conditions to ensure they are conducive to balancing professional and family demands effectively. (International Labour Organization [ILO], 2011)

To ensure the establishment of conducive working conditions for female workers with family responsibilities, it is essential to adopt measures that are in alignment with the national context and consider the legitimate interests of other workers. The focus is particularly on implementing general measures aimed at enhancing working conditions and quality of life in workplaces. These include:

- Reducing the daily duration of work and overtime,

- Introducing more flexibility in organizing work times and rest periods, holidays...
- Taking into account the special needs of exercising family responsibilities in organizing shift work and when assigning night work in certain sectors, because the principle is to prevent assigning them to night work,
- If necessary, when transferring from one area to another, family responsibilities and other factors such as the spouse's workplace and possibilities to provide educational conditions for children must be considered,
- To protect workers on part-time basis, particularly regulating and monitoring their performance conditions to align with their family responsibilities,
- Enabling the working mother to have a break immediately following maternity leave and a leave in case one of her children or one of her direct family members who need support falls ill, as will be explained later.

Various international charters have affirmed the right of women to work and their equality with men in this respect, granting them specific care and privileges that align with their natural roles during pregnancy, childbirth, and child-rearing. These rights are crucial not only for supporting the professional endeavors of women but also for ensuring their well-being and the well-being of their families. (Hamouda, 2007)

B. Easing family duties for working women

In the context of Article 4 of Convention 156 of 1981, which focuses on the regulation of working conditions, it emphasizes the necessity to consider the needs of working women who bear family responsibilities. Recommendation No. 165, complementing it, dedicates its fourth chapter to family duties. The paragraphs of this chapter state the following:

- Authorities and relevant bodies in each country should promote all possible initiatives, public or private, aimed at easing the tasks resulting from family responsibilities of workers.

- All possible initiatives consistent with national circumstances and capabilities should be taken to develop family support services and healthcare... which can provide qualified assistance to workers with family responsibilities.
- State authorities and relevant bodies are committed to promoting all initiatives aimed at making services, such as public transportation, water, and energy... adapted to the needs of workers who bear family responsibilities.

2. Regulating working hours for women and maternity leave

Various international charters have affirmed the right of women to work and their equality with men in this respect, granting them specific care and privileges that align with their natural roles during pregnancy, childbirth, and child-rearing. (United Nations [UN], 1948) These rights are crucial not only for supporting the professional endeavors of women but also for ensuring their well-being and the well-being of their families. Both the Universal Declaration of Human Rights states that every person, without discrimination, has the right to work and to choose their work under fair and satisfying conditions as part of protection against unemployment, and like men, working women have the right to decent work that ensures a dignified life for them and their families, (United Nations [UN], 1948) enjoying the same rights including reasonable regulation of working hours, the right to rest, leisure, and paid holidays. (Law No. 90-11 of April 21, 1990, on Labor Relations) This is confirmed by both the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women.

The International Labour Organization has ratified many conventions and recommendations concerning women's work, urging member states to consider women's work and its relationship to family stability. Perhaps what complicates this equation further is the nature and conditions of work through working hours, rest periods, night work, hazardous work, alongside the right to maternity leave. From this standpoint, we will clarify suitable working and rest times for working women (A) and maternity leave as a personal and family right for working women (B).

2.1 Suitable working and rest times for working women

This involves regulating the working hours for women, the issue of overtime, and rest periods (1), as well as night work for working women with family responsibilities (2), with the necessity to protect them from hazardous work (3).

A. Working hours, the issue of overtime, and rest periods

Like men, working women benefit from suitable hours within the framework of their work, and they have the right, according to labor legislation and social security, to rest periods as human beings and also in consideration of their natural role in bearing and raising half of society. Law 90-11 concerning labor relations, (Order No. 97-03 of January 11, 1997, Defining the Legal Duration of Work) and Decree 97-03 specifying the legal duration of work, state that the legal daily working hours must not exceed twelve (12) hours. (Order No. 97-03 of January 11, 1997, Defining the Legal Duration of Work)

As for the weekly work, it is set at forty (40) hours under normal working conditions, distributed over at least five (5) days as organized through collective agreements and regulations for the sector of public institutions and administrations. (Order No. 97-03 of January 11, 1997, Defining the Legal Duration of Work) Exceptions may reduce for individuals engaged in highly strenuous and dangerous jobs, or increase for certain job positions that involve inactive periods, provided that collective agreements specify the list of concerned positions and detail the extent of reduction or increase for each position. (Order No. 97-03 of January 11, 1997, Defining the Legal Duration of Work) Employers must provide a rest period not exceeding one hour during continuous shifts, half of which is considered actual work. (Law No. 90-11 of April 21, 1990, on Labor Relations) And regarding overtime, according to Law 90-11 on labor relations, it can only be used when necessary and exceptionally, not exceeding 20% of the legal working duration, with the worker receiving a compensation increase of no less than 50% of the ordinary wage. (Law No. 90-11 of April 21, 1990, on Labor Relations)

As for holidays and legal rest for workers, as for men, workers have the right to a full weekly rest day, which is Friday under normal working conditions. They also benefit from public holidays and paid leave according

to the law, and if they work on a legal rest day, they are entitled to an equivalent compensatory rest. (Law No. 90-11 of April 21, 1990, on Labor Relations) Female workers also have the right to an annual paid leave that cannot be waived in whole or in part (Law No. 90-11 of April 21, 1990, on Labor Relations). They may also benefit from absence periods provided for in labor and social security legislation, such as attending professional or trade union training courses, participating in academic or professional exams, their marriage or the marriage of one of their descendants, the death of an ancestor or descendant or direct relatives of the worker, or their spouse, the death of their spouse, provided that the duration does not exceed three (3) paid days. (Law No. 90-11 of April 21, 1990, on Labor Relations) They may also benefit from unpaid absences permitted by the employer under the conditions specified in the internal regulations.

B. Night work for working women with family responsibilities

One of the pivotal international conventions addressing night work for women is Convention No. 89, revised in 1948. This convention explicitly defines "night" in the occupational context as a period of at least eleven consecutive hours, which includes a span of at least seven consecutive hours between 10 PM and 7 AM. (International Labour Organization [ILO], 1948) It specifies various industrial sectors where the night employment of women, regardless of their age, is prohibited. These sectors include industrial establishments, mines, activities related to the extraction of minerals from underground, material processing facilities, construction works, and others. (International Labour Organization [ILO], 1948)

However, this prohibition is not absolute. The convention permits exceptions for women's employment at night in different work areas, including establishments operated solely by family members, in situations of force majeure that necessitate the involvement of all hands, or when national interests are at stake. It leaves the decision to permit such exceptions to national governments, who are advised to consult with labor and employer organizations. (International Labour Organization [ILO], 1948) This principle underwent further revision with the introduction of the ILO Convention 171 in 1990 concerning night work. (Law No. 90-11 of April 21, 1990, on Labor Relations) This more recent convention shortened the defined period of night work to at least seven hours between midnight and 5 AM. It also abolished the previous gender-specific ban on night work, broadening the definition to include workers of any gender, and allowed

certain exemptions. This newer convention delegates the organization of night work to national governments, in consultation with employer and worker organizations, emphasizing the need to enhance protective, preventative, and security measures for all workers, without discrimination. (Law No. 90-11 of April 21, 1990, on Labor Relations)

In the context of the Arab Labour Organization, the approach has been to align with international standards on employing women at night while also considering the specific roles of women in their families and the traditional and climatic conditions of Arab countries. Both the Arab Convention No. 1 of 1966 and Convention No. 5 of 1976 originally prohibited the night employment of women. These regulations leave it to the competent authorities in Arab countries to define "night" and determine which jobs may be exempt from this prohibition for women. (Arab Labour Organization, 1966) As for Algerian legislation, it follows similar guidelines as other international and Arab laws by defining night work and regulating the extent of women's involvement. According to Decree 75-31, any work performed between 9 PM and 5 AM qualifies as night work. The employment of women and trainees of both genders under the age of 18 from 8 PM to 6 AM is generally prohibited, with the exception made for women over 18 years of age who may work during these hours in certain service units as specified by a decree from the Minister of Labour and Social Affairs. This decree also mandates that a break of at least half an hour be included during any period of night work. Furthermore, any employer who engages workers in night work must submit a declaration to the Labour and Social Affairs Inspectorate. (Decree No. 75-31 of April 29, 1975, Establishing Working Conditions in the Public Sector) In cases where night work is exceptional, the decision granting such an exception must be visibly posted at the workplace, ensuring transparency and adherence to legal standards.

Law 81-03 and Law 90-11 retain the definition of night work as initially established in Decree 75-31. Specifically, Law 81-03 dictates its regulation through a subsequent decree and restricts the employment of women over 19 years of age during night hours, unless within designated production or service units or specified job positions as decreed. (Decree No. 81-27 of February 7, 1981, Regulating Working Hours and Overtime) This law permits institutions to engage in night work only after consultation with worker representatives and after notifying the regional labor inspectorate.

(Decree No. 81-27 of February 7, 1981, Regulating Working Hours and Overtime) In contrast, Law 90-11 delegates the determination of rules, conditions, and entitlements related to night work to collective agreements and prohibits the employment of all workers under 19 years of age in nocturnal roles. It generally prohibits night work for women unless specific circumstances related to the job's nature and unique requirements necessitate it. In such instances, a special permit may be granted by the regional labor inspector. (Law No. 90-11 of April 21, 1990, on Labor Relations)

Upon scrutiny of these legislative frameworks, it becomes apparent that the Algerian legislator has predominantly upheld the prohibition of employing women during night hours, taking into account both the physiological considerations specific to women and the prevailing customs and traditions of Algerian society. This stance is in alignment with the Arab Labour Organization's standards yet shows some variance from the International Labour Organization's norms, which now advocate for parity in night work conditions for both genders and stress the importance of creating a safe and equitable work environment devoid of discrimination. Additionally, the legislated dual burden of family and professional responsibilities placed on women mandates that employers comply with these regulations under threat of fines ranging between 2000 to 4000 DZD for each infringement as detected by labor inspectors. (Law No. 90-11 of April 21, 1990, on Labor Relations) Furthermore, violations related to the provisions governing night work for women and youth are subject to financial penalties ranging from 500 DZD to 1000 DZD per infraction, scalable by the number of workers involved. (Law No. 90-11 of April 21, 1990, on Labor Relations)

C. Protecting women from hazardous work

To safeguard the well-being of women, whose health directly influences family stability, especially in scenarios involving fatigue or illness, both international norms and national legislation have been instrumental in exempting them from tasks that are unsuitable for their physical capabilities. Such tasks include strenuous and perilous duties that could potentially lead to occupational and psychological ailments.

Since its establishment, the International Labour Organization has endorsed a suite of conventions and recommendations dedicated to the safety of women in the workplace. Notably, Convention No. 45 of 1935 outright bans the employment of women, irrespective of age, in any form of underground

mining. It permits national laws and regulations to make exceptions for specific job roles from this ban. (International Labour Organization [ILO], 1935) Advancing towards gender equality, the organization advocates for the protection of both sexes from hazardous work. For instance, Convention No. 155 of 1960 underscores the necessity of implementing measures to shield workers from harmful radiation. (International Labour Organization [ILO], 1960) Additionally, Conventions 148 of 1977 and 155 of 1981 mandate that all employees are entitled to a working environment minimized of hazards related to air pollution, noise, and vibrations (International Labour Organization [ILO], 1977). It is incumbent upon each member state to develop, enact, and periodically review a national policy concerning occupational health and safety, in collaboration with key stakeholders including the most representative organizations of employers and workers. (International Labour Organization [ILO], 1981)

The Arab Labour Organization, as delineated in Arab Convention No. 1 of 1966, explicitly prohibits the employment of women in underground mines and any jobs classified as hazardous, detrimental to health, or overly strenuous, as per national legislation or specific regulations. (Arab Labour Organization, 1966) This prohibition was reiterated in Convention No. 5 of 1976, further underscoring the commitment to safeguarding working women's health and safety. (Arab Labour Organization, 1976) In the context of Algerian legislation, the state constitutionally protects families and women, actively fostering their empowerment within the workforce. The labor laws enshrine women's rights to employment equality, ensuring their health, psychological well-being, and social security throughout their professional endeavors (Decree No. 20-45 of February 15, 2020, Revising the National Labor Code). Law 88-07, specifically, guards against the employment of women in roles requiring physical exertion beyond their capacity, a safeguard that preserves their health and, by extension, family stability. This law mandates that employers assess the physical demands of tasks assigned to women to ensure they are within their capabilities, adhering to the stipulated legislative criteria (Decree No. 88-131 of July 4, 1988, on Social Security for Workers). It aligns with international norms by prohibiting tasks involving the lifting, dragging, or carrying of heavy loads, with a stipulated maximum weight limit of 25 kilograms to be carried unassisted over short distances. (Decree No. 91-29 of January 15, 1991, on Compensation for Work Accidents)

2.2 Maternity leave as a personal and family right for working women

The dual role of women as economic contributors and mothers continues to present considerable challenges and forms a basis for discrimination within the workplace. The responsibilities associated with motherhood, from pregnancy and childbirth to breastfeeding and childcare, necessitate absences from work, raising critical questions about who should bear the costs of such interruptions and how women can be protected from job loss during maternity leave. The International Labour Organization has been devising solutions to these issues since 1919, with the Arab Labour Organization joining these efforts in 1971. Algerian laws, particularly Law 90-11, align with these international and regional standards, offering robust provisions for maternity leave.

A. Maternity leave according to international standards and the Arab Labour Organization

Internationally: Convention No. 103 (Revised 1952) (International Labour Organization [ILO], 1952) established that to support families and pregnant women, maternity leave should include rest periods, financial aid, and in-kind benefits, ensuring job security, certified by a medical certificate. The duration of this leave must be no less than twelve (12) weeks, with a compulsory postnatal period not shorter than six (6) weeks. During this time, women should receive adequate financial support, at least two-thirds of their previous earnings, funded through mandatory social insurance or public budgets. Additionally, women are entitled to medical support from midwives or general practitioners before, during, and after delivery, including hospital care if needed. (International Labour Organization [ILO], 1952) This convention also stipulates that nursing mothers are entitled to breaks during work hours, considered as paid time, based on national legislation or collective agreements. Employers are prohibited from terminating the employment of women who are on maternity leave or issuing termination notices that would take effect during this period. (International Labour Organization [ILO], 1952)

Convention 183 (Revised Maternity Protection Convention of 1952) broadens these protections to include all women, regardless of their employment type, urging member states to extend these rights to those who might be partially or wholly excluded due to the specific nature of their

jobs. This extension follows discussions with representative organizations of both workers and employers. (International Labour Organization [ILO], 2000) According to this convention, maternity leave should extend for at least fourteen (14) weeks, with a mandatory postnatal period lasting six (6) weeks, and the specifics of these arrangements are to be determined through collective labor agreements and employer negotiations, in accordance with national laws. (International Labour Organization [ILO], 2000) In case of illness or complications, the Convention grants a woman the right to take leave before or after maternity leave, based on a medical certificate that proves illness, complications, or the possibility of such issues arising due to pregnancy or childbirth (International Labour Organization [ILO], 2000). The duration of this leave is to be determined according to national laws. As for financial and medical assistance, the Convention provides that a working woman during maternity should receive financial benefits to support herself and her child at a standard of living that is adequate. This assistance should amount to at least two-thirds of her previous earnings, or two-thirds of the amount considered for calculating the benefits if based on her previous earnings according to the law. (International Labour Organization [ILO], 2000) If a woman does not meet the criteria for receiving cash benefits under her national laws, she is entitled to appropriate assistance from social welfare funds, provided she proves her need. Medical benefits cover care before, during, and after childbirth, as well as hospital care when necessary, in accordance with the laws of her country. (International Labour Organization [ILO], 2000)

To protect the working mother and her family, the Convention prohibits employers from terminating a woman's employment during pregnancy, maternity leave, or after returning to work. The regulation of this matter is left to national laws and regulations, with exceptions for reasons unrelated to pregnancy, childbirth, or breastfeeding. (International Labour Organization [ILO], 2000) The burden of proof lies with the employer. The woman has the right to return to her original position or a similar one with the same pay after maternity leave. The Convention encourages member states to take appropriate measures to ensure that women are not discriminated against in employment due to maternity, such as being required to undergo a pregnancy test or submit a medical certificate, unless it relates to work that is prohibited for pregnant or breastfeeding women or

when there is a recognized health risk to the woman or her child. (International Labour Organization [ILO], 2000)

- **Breastfeeding:** The Convention grants breastfeeding women the right to daily breaks or a reduction in working hours to breastfeed their child. The national laws determine the duration and conditions for these breaks, including the number and length of the breaks, and they are considered paid hours. (International Labour Organization [ILO], 2000)

- **Recommendation No. 191 (revised maternity protection recommendation 2000):**

- Regarding maternity leave, the recommendation states that member states should aim to extend maternity leave to at least 18 weeks. The duration of maternity leave in cases of multiple births should also be specified, with the woman being free to choose when to take part of her maternity leave before or after childbirth. If the mother dies before the end of her post-birth maternity leave, the father (if employed) is entitled to take the remaining portion of the maternity leave. In cases where the mother is hospitalized or unable to care for her child due to illness after childbirth, the father (if employed) is entitled to the remaining part of the maternity leave to care for the child. Additionally, either parent may take parental leave following maternity leave to care for the child.
- **Financial assistance:** The recommendation further emphasizes that the financial assistance provided to the woman during maternity leave should be increased to equal her full previous earnings or the full amount considered for calculating benefits. This increase should be done after consultation with labor and employer organizations. The funding for these benefits should come from mandatory collective insurance contributions and payroll taxes, with no gender discrimination, and the benefits should be paid by employers and employees jointly, or solely by the employer.
- **Breastfeeding:** The recommendation suggests that breastfeeding breaks and their duration should be adapted to the specific needs of the woman, based on medical certification or other certificates as required by laws and practices. When possible, and with the consent of the employer and the woman, daily breastfeeding breaks can be combined into one period, allowing for a reduction in working hours at the beginning or end of the working day. Additionally, the recommendation stresses the importance of establishing appropriate facilities for breastfeeding in sanitary conditions at

the workplace or near it. The woman has the right to return to her position or a similar position with the same pay after maternity leave, which is considered as part of her service period. (International Labour Organization [ILO], 2020)

- **Arab Labour Organization:** Among the key agreements from the Arab Labour Organization, Convention No. 3 of 1971 concerning the minimum level of social security addresses maternity protection, particularly medical benefits. (International Labour Organization [ILO], 2020) These benefits include care before, during, and after childbirth, and if necessary, hospitalization and treatment, along with financial assistance amounting to at least 45% of the wage during the period of incapacity due to pregnancy and childbirth for a minimum of six weeks before and after childbirth. (Arab Labour Organization, 1971) These benefits are linked to the insurance subscription period, with a maximum period of six months. (Arab Labour Organization, 1976) Convention No. 5 of 1976 grants working women the right to paid leave before and after childbirth for no less than 10 weeks, with at least 6 weeks granted after childbirth. Women also benefit from special sick leave in cases of illness related to pregnancy or childbirth (Arab Labour Organization, 1976), in accordance with national legislation, and their job is retained during this period. The Convention requires national laws to include specific maternity insurance provisions. (Arab Labour Organization, 1976)

A. Protection of working women during maternity in Algerian legislation:

Algerian law also meticulously outlines the rights to maternity leave. Law No. 90-11 explicitly states that female workers are entitled to maternity leave before and after childbirth as per existing legislation, with additional provisions available as defined in the internal regulations of the employing entity. (Arab Labour Organization, 1976) Executive Decree No. 06-03, pertaining to the general status of public service, acknowledges a woman's right during pregnancy and childbirth to avail herself of legislated maternity leave. (Law No. 90-11 of April 21, 1990, on Labor Relations) Executive Decree 28-302, which addresses the application of legislative provisions specific to labor relations, in its section on special paid absences, affirms that cessation of work during the prenatal and postnatal periods is a protected right for female workers. Any termination notified during this leave is deemed null and void, and the conditions and modalities for pay,

along with the duration of absence surrounding birth, are dictated by social security-related legislation. (Law No. 06-12 of August 15, 2006, on the Regulation of Employment Contracts)

The duration of maternity leave in Algeria is set at fourteen (14) consecutive weeks, beginning at least six (6) weeks prior to the expected childbirth date, as per Article 29 of Law 83-11, amended by Article 12 of Decree 96-17. An insured woman who refrains from all paid work during this period is entitled to daily compensation for the duration of the leave. (Decree No. 82-47 of February 10, 1982, on Occupational Health and Safety) Should there be complications or illnesses resulting from childbirth that prevent her from returning to work, the leave may be extended under sickness insurance, ensuring that the benefits are at least equivalent to those provided by maternity insurance, as detailed in Article 10 of Decree 96-17, amending Article 25 of Law 83-11 (Constitutional Law No. 96-01 of November 28, 1996). To protect the rights and family stability of working women in alignment with international standards, the Algerian legislator has established that any dismissals affecting a woman on maternity leave are considered void and without effect. (Constitutional Law No. 96-01 of November 28, 1996) Decree No. 84-27, delineated in its second chapter on maternity insurance within the First Section on Entitlement to Rights, establishes specific criteria for an insured woman to qualify for cash payments under maternity insurance. To be eligible, she must not have ceased her employment for reasons unrelated to those covered by social security compensation from the initial medical examination of her pregnancy until the date of childbirth. The necessary conditions include: (Decree No. 82-47 of February 10, 1982, on Occupational Health and Safety)

_ Social insurance coverage.

_ She is required to inform the social security authority of her medically verified pregnancy at least six (6) months prior to the expected delivery date, accompanied by a medical certificate from a physician or a qualified medical assistant that indicates the anticipated date of delivery. (Decree No. 84-30 of February 14, 1984, on the Social Security Code)

Mandatory medical examinations: these include:

- A comprehensive medical examination before the end of the third month of pregnancy.

- An examination during the sixth month of pregnancy.
- Two specialized gynecological examinations, with one conducted at least four (4) weeks before the expected childbirth in the earliest case, and the second no later than eight (8) weeks after childbirth. (Decree No. 84-30 of February 14, 1984, on the Social Security Code)

A female insured person requesting maternity insurance benefits must submit a certificate from her employer confirming the date of work interruption and the amount of the last salaries, which are primarily used to calculate the daily compensation. (Decree No. 84-30 of February 14, 1984, on the Social Security Code)

According to this decree, a pregnant woman is entitled to maternity insurance benefits even if the pregnancy ends, as long as it occurs by the end of the sixth month of fetal development, even if the child is not born alive.

The decree 84-27, in Articles 33 and 34, states that if the insured person fails to comply with the procedures regarding the specified deadlines, she will face a 20% reduction in the benefits due, unless there is a valid excuse. (Decree No. 84-30 of February 14, 1984, on the Social Security Code)

Similarly, Order No. 96-17 stipulates that a working woman who is forced to stop working due to childbirth is entitled to a daily compensation equal to 100% of her daily wage after deducting the social security contribution and taxes, under the following conditions: (Decree No. 84-30 of February 14, 1984, on the Social Security Code)

- She must have worked either fifteen (15) days or one hundred (100) hours during the three (3) months preceding the date of the required compensation.
- Alternatively, she must have worked sixty (60) days or four hundred (400) hours at least during the twelve (12) months preceding the date of the required compensation. (Constitutional Law No. 96-01 of November 28, 1996)
- She must have worked fifteen (15) days or one hundred (100) hours at least during the three (3) months preceding the first medical examination confirming pregnancy.

- Or she must have worked sixty (60) days or four hundred (400) hours at least during the twelve (12) months preceding the first medical examination confirming pregnancy. (Constitutional Law No. 96-01 of November 28, 1996)

The regulation of the breastfeeding period for working women, in line with international standards, and in recognition of the need to ensure family stability, which requires the mother to care for and breastfeed her child, entitles her, after completing her maternity leave, to daily times for breastfeeding her child. As specified in Order 96-17, the mother is entitled, starting from the end of her maternity leave and for one year, to take two hours per day with full pay during the first six (6) months, and one hour per day with full pay during the next six (6) months. (Constitutional Law No. 96-01 of November 28, 1996) These breaks can be distributed throughout the day as needed by the employee (Constitutional Law No. 96-01 of November 28, 1996). This is also confirmed by Presidential Decree No. 07-308, which states that a woman employed under a fixed-term or indefinite-term contract is entitled to maternity leave during pregnancy and childbirth. After the maternity leave ends, she is entitled to daily breastfeeding breaks. (Decree No. 07-23 of March 3, 2007, on Employment and Social Protection) These breaks are considered actual working hours and are paid. (Decree No. 07-23 of March 3, 2007, on Employment and Social Protection)

Conclusion:

In the study titled "Adapting Women's Work to Their Family Responsibilities Between International Standards and Algerian Labor Law," we sought to explore the intricate balance between the dual imperatives of recognizing women's work as a fundamental right and freedom, and acknowledging family responsibilities as crucial to the stability of the family unit. This exploration centered on the temporal dimension shared by these aspects, an area where international frameworks have developed standards urging national adoption. Our findings reveal that the challenge of aligning work obligations with family needs among women stems from entrenched societal attitudes and historical norms. Resistance to the idea of sharing family responsibilities is not rooted in the lack of international standards or legislative frameworks, as these are plentiful. Instead, the difficulty lies in the practical application of these standards, which often confronts entrenched interests that influence the enforcement of these laws across various societal strata. This ongoing struggle contributes to conflicts

over family stability, with women frequently depicted in a negative light and blamed for family disruptions due to their pursuit of work rights and freedoms.

Recommendations:

- In light of the preceding, while it is essential for researchers to offer recommendations at the conclusion of every study, we contend that the issue of reconciling the two temporal spheres for working women, the time allocated to their professional duties and that reserved for their families, represents a matter of concern not only for legal scholars but for all societal stakeholders and researchers across various disciplines.
- If there is one fundamental recommendation to steer towards a path of sound judgment, it lies in fostering interdisciplinary research, *la recherche pluridisciplinaire*, by encouraging the involvement of experts from other scientific fields. This implies that all parties should engage in critical reflection and investigation into the social, psychological, and historical factors that obstruct the establishment of essential societal balances, including family balance, as the family constitutes the cornerstone of any society.
- From a legal standpoint, the international frameworks and standards governing the time-related aspects of women's labor, within the context of their rights and freedoms to work based on principles of equality, fairness, and non-discrimination, continue to be at odds with outdated national or local traditions. The legislator, alongside institutions tasked with safeguarding women's rights, including their labor rights, remains entangled in secondary issues and unproductive debates, which preclude the opportunity to address more pressing concerns.

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