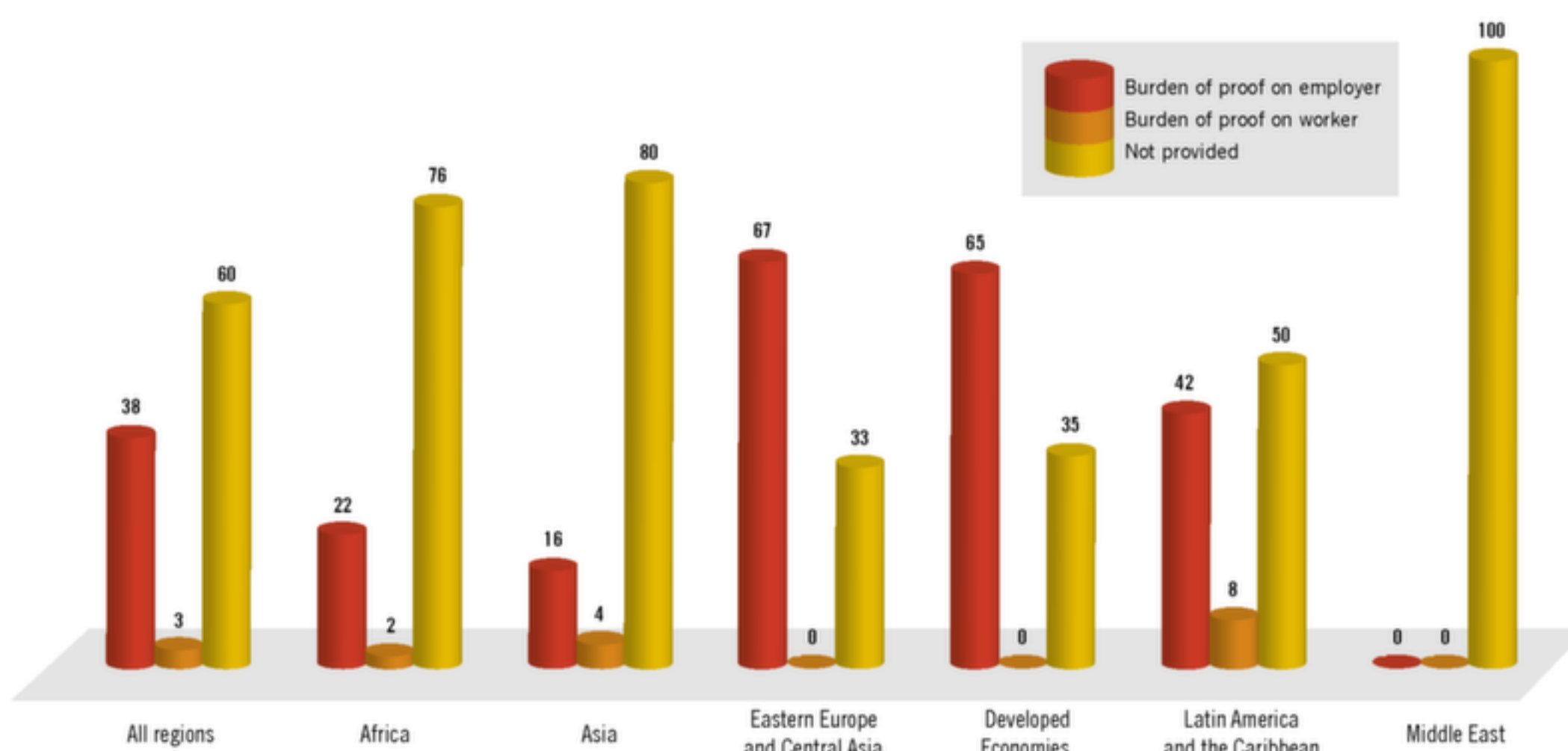


Figure 4.1 Burden of proof, 2013 (144 countries) (%)

Source: ILO Working Conditions Laws Database – Maternity Protection. Available at: <http://www.ilo.org/travdatabase> [30 Mar. 2014].

to women against discriminatory dismissal. The shift to the defendant to prove that discrimination had not occurred can significantly assist victims of discrimination in judicial or other dispute settlement mechanisms. Given that the “real” reason for dismissal is generally known only to the employer, in practice it is very difficult for workers to show that the dismissal was, in fact, maternity-based discrimination. Thus, transferring the burden of proof to the employer to demonstrate that dismissal was unrelated to maternity strengthens the worker’s protection and underpins the principle of equal treatment.

Of the 144 countries for which information was available, 54 (38 per cent) set out legal provisions that place the burden of proof on the employers (including Belgium, South Africa and Sri Lanka), while only four impose it on workers (Belize, Brunei Darussalam, Guyana and Namibia) (see figure 4.1 and Appendix V). A total of 86 countries (60 per cent) do not specify who bears the burden of proof (including China, Kuwait, Slovakia and Swaziland). In Estonia, the burden of proof is shared between employer and employee. One of the ways to oblige employers to prove in law that dismissal is not discriminatory is to lay down a presumption of dismissal being based on grounds of maternity when it occurs within the protected period. This presumption exists in Albania, Argentina, the

Bahamas, Colombia, Finland, Honduras, Mauritania, Norway, Sri Lanka and Zambia. In several countries, whether the presumption exists or not, the employer is obliged to ask for judicial or administrative authorization before giving notice of dismissal. Judicial authorization is required in Austria, Chile, Guatemala and Panama. In Bulgaria, Colombia, Equatorial Guinea, Honduras, Portugal, Slovenia (for dismissals due to negligence) and the Bolivarian Republic of Venezuela, authorization from the labour inspector is necessary. A non-specified authority shall give its authorization in the Dominican Republic, Ecuador and Seychelles.

In Italy, the 2012 law on the Labour Market Reform introduced an administrative authorization to address the *licenziamento in bianco*, that is, the practice of making the worker sign an undated letter of resignation at the time of hiring for future use at the employer’s convenience and which affects pregnant women particularly. The law provides that the resignation of a pregnant woman or of any worker with a child under 3 years of age must be validated by the labour inspectorate to be effective. However, the Committee of Experts noted that the number of resignations increased by 9 per cent from 2011 to 2012 and, according to the annual report on the validation of resignations of working mothers and fathers, the great majority of these resignations concern women