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When Law is Complicit in Gender Bias: Ending De Jure Discrimination Against Women as an Important Target of Sustainable Development Goal 5

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Sustainable Development Goal 5: Addressing Gender Discrimination in the Law

Sustainable Development Goal 5: Gender Equality (1ª edición)

Chapter 2

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When law is complicit in gender bias: Ending de jure discrimination against women as an important target of sustainable development goal 5

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ABSTRACT:

Ending all forms of discrimination against women and girls is not only a basic human right, but also crucial to accelerating sustainable development. The very first target of Goal 5. 1.1 calls to end all forms of discrimination against all women and girls everywhere and the indicator for the goal is: “Whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex”. In many countries around the world the legal frameworks themselves allow for both direct (de jure) and indirect (de facto) discrimination against women. This essay identifies some areas of de jure discrimination in laws regulating women’s family lives that explicitly impact both their personal and public lives and examines some recent law reform in this area¹.

KEY WORDS:

Discrimination. Polygamy. Abortion. Inequality in land. Domestic violence.

I INTRODUCTION

Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.

- Sustainable Development Goal 5.C

¹The author thanks Hiroto Saito, undergraduate at Stanford University, for his work on the footnotes of this paper.

There is a new global consensus that inequality has severe costs, both economic and social. This is reflected in the inextricably interlinked nature of the Sustainable Development Goals (SDGs). The commitments under the SDGs and international law need to be given life and force on the ground through national laws and policies. However, in many legal traditions, de jure discrimination legalizes second class status for women and girls with regard to their public and private lives. One of the first critical steps to achieving SDG Goal 5 is to identify and combat gender and multiple forms of discrimination against women in the law.

Despite progress, systemic legal discrimination against women negatively impacts sustainable development. The majority of directly discriminatory laws in force relate to the family, including constraining a woman's right to marry, when to marry, whom to marry, and discriminatory marital practices such as "wife obedience" and polygamy.

The founding document of the UN, The UN Charter, reaffirms "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women". The Universal Declaration of Human Rights (UDHR) which followed and forms the basis of bills of rights of many national constitutions was equally clear providing in article 1 that, "All human beings are born free and equal in dignity and rights". Article 2 speaks of the entitlement of all persons to the enjoyment of the rights contained within the Declaration "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The two instruments coming out of the UDHR, the International Covenant on Civil and Political Rights, 1966 (ICCPR) and the International Covenant on Economic Social and Cultural Rights, 1966 (ICESCR) also so provide. The Beijing Platform of Action invokes the recommitment to: "the equal rights and inherent human dignity of women and men and other purposes and principles enshrined in the Charter of the United Nations, to the Universal Declaration of Human Rights and other international human rights instruments, in particular the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, as well as the Declaration on the Elimination of Violence against Women and the Declaration on the Right to Development".

Article 1 of CEDAW provides a definition of discrimination against women on the basis of sex and define discrimination as:

"any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment and exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".

Article 1 of CEDAW includes both direct and indirect discrimination and requires States parties to ensure equality of opportunity and result. Despite CEDAW requiring States who have ratified the Convention to eliminate discrimination against women "by all appropriate means and without delay", too many States still pervasively retain their discriminatory laws which indicate that the pace of reform is too slow for women.

Article 2 calls upon States who have ratified the Convention "to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women".

II LEGISLATIVE DRAFTING: DRAFTING AN ANTI-DISCRIMINATION LAW FOR WOMEN

One of the most significant assertions made at the Vienna World Conference on Human Rights in 1993 was that the human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights. Many State parties to the CEDAW have revised laws to address discrimination. But even when formal equality- adoption of law and policies- have been setup, substantive equality-the implementation of the laws and policies have been weak.

Formal equality embodies the presumption that all persons must be treated equally. The formal equality theory begins on the premise that all persons are similarly situated. Under substantive equality, in certain circumstances, equality will require differential treatment of persons who are not similarly situated. On the other hand, transformative equality requires a redistribution of power and resources and a change in the institutional structures. Intersectionality goes beyond the traditional understanding of discrimination to address multiple forms of discrimination based on gender, race, sexual orientation, disability and age.

The CEDAW Committee has identified intersectionality as a basic concept for the understanding of the scope of States parties' obligations. General Recommendation 28 of the CEDAW states:

Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in Article 2. The discrimination against women based on sex and gender is inextricably linked with other factors that affect women.

An anti-discrimination clause of a national constitution or anti-discrimination law must include some of the core values of: intersectionality, substantive equality, and transformative equality.

1. Intersectionality

Gender falls under the purview of a prohibited category of discrimination including but not limited to: race, marital status, pregnancy, HIV status, sexual orientation or any other status, attribute or characteristic.

A good practice example of an intersectional equal protection clause is Section 15 of the Canadian Charter which affirms:

“Every individual is equal before the law and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age, or mental or physical disability”².

Further Section 15 (2) allows for affirmative action policies which embodies the principles of equality of result:

²Canada, Charter of Rights and Freedoms, Section 15. See <http://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd/check/art15.html>.

“Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national origin, color, religion, sex, age or mental or physical disability”³.

Most recently, the Egyptian Constitution of 2014 covers gender and persons with disability in its equal protection clause: All citizens are equal before the law. They are equal in rights, freedoms and general duties, without discrimination based on religion, belief, sex, origin, race, color, language, disability, social class, political or geographic affiliation or any other reason⁴.

The Concluding Observations to El Salvador’s report too calls for the recognition of the multiple forms of discrimination against women and that it should be mainstreamed into El Salvador’s Act on Violence Free Life⁵. The Concluding Observations to Mexico’s report to the CEDW Committee recognizes intersectional discrimination”⁶.

2. Substantive equality for women

The classic liberal notion of equality was a notion of “equal opportunity”. Removing the formal barriers, for example, giving women voting rights was considered sufficient. A second concept of equality is gaining increasing relevance in international law: the notion of “equality of result”, or substantive equality. The argument is that real equal opportunity does not exist just because formal barriers are removed. If barriers exist, compensatory measures must be introduced as a means to reach equality of result. The basic argument for the use of temporary special measures or quotas is that it addresses inequality engendered by law and culture. Proponents of the quota system argue for its implementation by contending that quotas provide women direct access to decision-making posts.

3. Addressing harmful stereotypes through legislation

Unexamined assumptions in the law such as over protection of women or exclusion of women from certain categories of work reinforce stereotypes against women and do more harm than good. These stereotypes should be examined light of Articles 4 and e 5 of the CEDAW which calls for the reexamination of law in view of the advances of science and technology. Moreover, laws on education must address these harmful stereotypes through gender equal educational and curricular reform.

Malta’s Equality for Men and Women Act of 2003, S 8(3) states:

³Canada, Charter of Rights and Freedoms, Section 15. See <http://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd/checked/art15.html>.

⁴Egypt, Constitution of 2014, Article 11. See https://www.constituteproject.org/constitution/Egypt_2014.pdf.

⁵El Salvador, Committee on the Elimination of Discrimination against Women, Concluding Observations (2017). See https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=CEDAW/C/SLV/CO/8-9&Lang=En.

⁶Mexico, Committee on the Elimination of Discrimination against Women, Concluding Observations (2012). See <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-MEX-CO-7-8.pdf>.

It shall be the duty of educational establishments and entities providing vocational training, within limits of their competence to ensure that curricular and textbooks do not propagate discrimination⁷.

Prohibitions against discrimination should be expanded to cover gender and other forms of discrimination including disability. Iceland's Act on the Equal Status and Equal Rights of Women and Men 2000 Article 19 too affirms that: "Introduction on educational and vocational training opportunities, and counseling within schools, shall introduce to both boys and girls those occupations which up to now have been considered as traditional male or female work"⁸. The instructional opportunities must include women and men with disabilities so that within the disability rights community, gender stereotypes are dismantled. Finally, it is important to ensure that incentives are offered to comply with laws and policies that combat stereotypes in public and private life.

In drafting education laws it is important to ask the question whether the law containing provisions that prohibit discrimination against women are part of the text books, curriculum and vocational training.

The Lithuanian Law of the Republic 1998, in Article 4 states that the "institutions of education and science must ensure equal conditions for women and men regarding: 1. Admission to vocational educational institutions, colleges, institutions of higher education, and to qualification improvement courses; 2. Award of grants and providing loans for students".

The Croatian Gender Equality Act 2003, s 14(4) allows for the "competent government body for education and institution that are active in the field of education shall implement affirmative actions especially in regard to Access to education; Preparation, adoption and implementation of the educational programs; Issuing mandatory approvals for text books and teaching aids and changes in teaching and pedagogical methods"⁹.

Legislative drafting provides a normative baseline and a transformative blue print for action. Legislation also provides a strong framework for the rule of law and access to justice for persons with disabilities. Legislation has a fundamental role to play in ensuring equality under law for all persons. Gender equality laws have often covered the areas of women's health, education, employment, family and marriage and violence against women. Apart from laws, a national Action Plan or strategy with an adequate budget must address the access of women with disabilities in employment and economic participation. This main body of this Paper will examine de jure discrimination and how normative change can be shaped through lawmaking.

⁷Malta, Equality for Men and Women Act of 2003, Section 8(3). See <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8922&l=1>.

⁸Iceland, Act on the Equal Status and Equal Rights of Women and Men 2000, Article 19. See <https://www.government.is/library/04-Legislation/Act%20on%20equal%20status%20and%20equal%20rights%20of%20women%20and%20men%20no%2010%202008%20as%20amended%20101%202018%20final.pdf>

⁹Croatia, Gender Equality Act of 2003, Section 14(4). See [https://www.prs.hr/attachments/article/126/Act%20on%20Gender%20Equality%20\(Official%20Gazette%2082_08\).pdf](https://www.prs.hr/attachments/article/126/Act%20on%20Gender%20Equality%20(Official%20Gazette%2082_08).pdf)

III DE JURE DISCRIMINATION IN LAWS

Nearly forty years since the Convention's entry into force, direct gender discrimination in law and practice remain pervasive.

The last two decades following the Beijing Platform of Action have seen a proliferation of laws that address gender equality in intersecting areas of women's political and economic participation, violence against women, equal pay for equal work, family relations, reproductive rights, land and property rights, and access to services. Several countries around the world have made great progress in bringing their legislative frameworks in compliance with the CEDAW. To date, over 125 countries have enacted laws prohibiting gender based violence and some 139 countries have laws prohibiting gender discrimination. Legislative reform can often perpetuate the myth that gender equality has been normalized by the legal system. The reality, however, can be different.

The IFC's most recent, 2018, Women, Law and Business Report shows that from 2016-2018, 65 economies have carried out 87 reforms. Despite these reforms, according to the Report, 104 economies still have legal barriers to women's employment due to their gender, nearly 60 economies have no laws on sexual harassment in the workplace. In 18 economies, husbands can legally prevent their wives from working. According to the IFC, 2.7 billion women have restrictions from the same choice of employment that men are employed in.

Gender inequality in laws have far reaching effect, beyond the scope of the particular provision in the law. For example, gender inequality in inheritance impacts girl's access to education and women's access to the marketplace and family's progress. Though legal gender parity has improved around the world, major differences persist. Many laws and regulations continue to discriminate against women and impede women's well-being and that of their families.

Gender equality by 2030 requires urgent action to eliminate the many root causes of discrimination that still curtail women's rights in private and public spheres. For example, discriminatory laws need to change and legislation adopted to proactively advance equality. Yet 49 countries still lack laws protecting women from domestic violence, while 39 bar equal inheritance rights for daughters and sons. Eliminating gender-based violence is a priority, given that this is one of the most pervasive human rights violations in the world today. Harmful practices that are enshrined in the law, such as child marriage, steal the childhood of 15 million girls under age 18 every year. These discriminatory laws have moral, social and intergenerational and economic costs.

Legal restrictions in the family shape women's employment and entrepreneurship.

In 18 countries across the world, husbands can legally prevent their wives from working. The OECD estimates gender-based discrimination in laws in the Middle East and North Africa (MENA) region costs US\$575 billion (\$779.30 billion) a year.

The McKinsey Global Institute report on "*The Power of Parity*" examines how a "best in region" scenario in which all countries match the rate of improvement of the fastest-improving country in their region could add as much as \$12 trillion, or 11 percent, in annual 2025 GDP. In a

“full potential” scenario in which women play an identical role in labor markets to that of men, as much as \$28 trillion, or 26 percent, could be added to global annual GDP by 2025.

Gender equality by 2030 calls for the removal of gender discriminatory laws on the books and the elimination of the underlying causes of discrimination that still impede women’s rights in the private and public spheres.

This study analyzes several de jure discriminatory provisions and gender differentials in the law in countries in the Middle East and North African region and the reformist efforts in certain communities. Many of these discriminatory provisions are in laws concerning the regulation of the family.

The elimination of discrimination against women in areas of citizenship, marriage, divorce, succession, inheritance, travel, and customary law will have major ramifications on women’s lives, their communities and their economies. In many countries such as Egypt, Jordan and Libya, women must still get permission from their husbands or fathers to work. Unfair inheritance laws disadvantage women in starting a business or seeking a loan and often impoverish women and their families. Labor laws that restrict women’s working hours and the sectors they can work in also segregate women, restrict their economic agency and reinforce stereotypes and expectations that women are primary caregivers who should shoulder housework and child care, impact women’s choice of economic participation and employer’s decisions to hire them.

1. Regulating women’s status in the family

In every country in the world, family law is a locus of gender discrimination and magnifies the unequal status of women in the economic sphere. While domestic violence has been described as the biggest barrier to women's economic development, unequal inheritance and citizenship rights inhibit a woman's access to economic resources, credit and government loans and collateral. Inequality in custody, guardianship, place of residence inhibits a woman's freedom of movement. Discrimination in marriage and divorce impact a woman's rights to economic participation and reinforces an unequal playing field for women. In terms of economic costs, just one example of inequality, Child marriage costs over 60 billion dollars a year and is an enormous barrier to global development. Many of the practices defended in the name of culture, violate against women’s rights and these include: child marriage, patriarchal marital arrangements which deny women agency and restrict women to the roles of housewives or mothers. The CEDAW enshrines a strong normative framework for combating religious and cultural traditions.

The next sections will examine existing inequality in the laws under polygamy, citizenship, marriage, guardianship, fornication, abortion and domestic violence and ways in which the gaps in the laws and the lack of enforcement of these laws impede women’s full participation and citizenship rights.

2. Polygamy

Gender equal laws must prohibit polygamous marriages under both formal legal and customary systems without exception . Article 5(a) of CEDAW calls upon States Parties to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the

elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women". The Committee on the Elimination of Discrimination against Women in its Concluding Observations and in its General Recommendation 21, paragraph 14. General Recommendation 29 have found that polygamous marriages discriminate against women and recommend their prohibition. Polygamy places women and girls at greater risk of contracting HIV/AIDS. It also risks excluding additional wives from asserting their marital and inheritance rights.

In Algeria, polygamy is still legally permitted. According to Article 8 of the Family Code, a male is allowed to contract marriage with more than one wife within the limits of the Sharia, if there is a just ground and the conditions and intentions of equity can be fulfilled"¹⁰. Polygamous marriages are recognized in Tanzania too and according to the Marriage Act. Section 10(1), monogamous marriages can also be converted to polygamous unions¹¹.

In Gabon, Article 177 of the Family Law states the spouses make the choice on monogamy or polygamy¹². Despite this choice in the law, most often given the power differentials, it will be men who will make the decisions as to the form of marital relations. Moreover, according to Article 178, "the spouses may, during the marriage, renounce the option of monogamy"¹³. Although this waiver is made by a joint declaration before a notary or a civil registry officer who has previously heard the couple separately, given the social, economic and political power differentials between men and women, it is unlikely that will be a non- discriminatory renouncement.

3. Guardianship

The male guardianship system is the most significant impediment to realizing women's rights and it effectively renders adult women legal minors without agency or decisionmaking powers. In Algeria, according to article 11 of the Family Code, an adult woman concludes her marriage contract in the presence of her "wali" who is her father or close male relative or any other male of her choice¹⁴.... It is equally temporarily prohibited:... Article 30 of the Family Code also prohibits the marriage of a Muslim woman with a non-Muslim man¹⁵.

4. Husband obedience

Obedience in return for maintenance finds its source in customary Islamic marriage contracts. Obedience in exchange for financial support allows women to be commodified and gives husband's power and control over their spouses.

Several countries still maintain husband obedience provisions in the legal system. According to the Family Code of Algeria-Article 39(1), the wife is required to obey her husband

¹⁰Algeria, Family Code, Article 8. See UN Women's Family Law Database.

¹¹Tanzania, Marriage Act, Section 10(1). See UN Women's Family Law Database.

¹²Gabon, Family Law, Article 177. See UN Women's Family Law Database.

¹³Gabon, Family Law, Article 178. See UN Women's Family Law Database.

¹⁴Algeria, Family Code, Article 11. See UN Women's Family Law Database.

¹⁵Algeria, Family Code, Article 30. See UN Women's Family Law Database.

and grant him respect as the head of the family¹⁶. Not only is the wife called upon to obey her husband but she must also according to Article 39(3) of the Family Code respect the parents and relatives of her husband¹⁷. Although Chile does not include a husband obedience principle, a similar provision according to Chile's Civil Procedure Code's article 829-832, provides that married women need their husband's or judge's authorization to litigation¹⁸.

5. Customary laws

Customary law has most impact in the area of personal law in regard to matters such as marriage, inheritance and traditional authority. In Botswana, according to the succession rights of the surviving spouse and inheritance and family provisions, the customary law has precedence over other laws in regulating inheritance¹⁹. In Sierra Leone, Sec. 27(1) of the 1991 Constitution states that "no law shall make any provision that is discriminatory in itself or its effect"²⁰. This is weakened by the exceptions in Sec.27 (4) d and e, which states that "it shall not apply to any law that makes provision for adoption, marriage, divorce, burial, devolution of property on death and customary law"²¹.

Even in South Africa, where the Constitution states that customary law must be consistent with the Bill of Rights, Section 17 of the Children's Act states that a Minister or any officer in the public service authorized in writing thereto by him or her, may grant written permission to a person under the age of 18 years to enter into a customary marriage if the Minister or the said officer considers such marriage desirable and in the interests of the parties in question"²².

Moreover, the South African Children's Act. Section 12(5) disallows virginity testing of children under the age of 16²³. The assumption here is that virginity testing is allowed for women and girls over the age of 16.

6. Inequality in Land

SDG Goal 5 A. recognizes the importance of land ownership and the underrepresentation of women in land ownership. The Goal calls upon governments to "Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws". One of the important targets include 5.A.2 which states:

Proportion of countries where the legal framework (including customary law) guarantees women's equal rights to land ownership and/or control.

¹⁶Algeria, Family Code, Article 39(1). See UN Women's Family Law Database.

¹⁷Algeria, Family Code, Article 39(3). See UN Women's Family Law Database.

¹⁸Chile, Civil Procedure Code, Article 829-832. See UN Women's Family Law Database.

¹⁹Botswana, Succession (Rights of the Surviving Spouse and Inheritance Family Provisions). See UN Women's Family Law Database.

²⁰Sierra Leone, 1991 Constitution, Section 27(1). See UN Women's Family Law Database.

²¹Sierra Leone, 1991 Constitution, Section 27(4). See UN Women's Family Law Database.

²²South Africa, Children's Act, Section 17. See UN Women's Family Law Database.

²³South Africa, Children's Act, Section 12(5). See UN Women's Family Law Database.

Despite an increasing number of countries enshrining women's equal rights in their constitutions, these same constitutions permit discriminatory customary and personal laws, such as inheritance. Even when constitutional provisions prohibit discrimination including in customary law and practice (as in Uganda, South Africa and Mozambique), several laws are yet to bring their laws in compliance with the constitutional provisions.

Even when laws allow for co-ownership of land, women are not registered as co-owners. In practice, it is only men who do so. It is important that approaches, such as those in Tanzania's Land Act of 1999, where land occupied by both spouses are assumed to be co-registered unless otherwise challenged by the spouses, are followed²⁴.

Female policy-makers and women's groups around the world have warned that unequal inheritance is a challenge because it touches the very fabric of any society. In Tunisia, President Essebsi announced plans to review the inheritance law on Tunisia's National Women's Day in August 2017. The debate was highly contested and split both civil society and religious communities. The ruling Islamist political party, Ennahda, challenged the proposed law as reflecting a foreign agenda. Consistent with Essebsi's August 2017 pledge, proposals to reform the inheritance law are now ready to be presented to parliament²⁵.

7. Nationality laws

Nationality laws in over twenty countries (*The Bahamas, Bahrain, Barbados, Brunei, Burundi, Iran, Iraq, Jordan, Kiribati, Kuwait, Lebanon, Liberia, Libya, Malaysia, Mauritania, Nepal, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Swaziland, Syria, Togo, United Arab Emirates*) worldwide prevent mothers from passing their nationality to their children on an equal basis with fathers. More than double that number of states disallow women equal rights with men in their ability to acquire, change and retain their nationality, and to confer nationality to non-national spouses. Nationality laws that discriminate on the basis of gender are in violation of Article 9 of the CEDAW, which calls upon states to guarantee equal nationality rights to women. When a State denies equal nationality rights to women and men, it creates a category of second class citizens and when children are unable to acquire their parents' nationality, it leads to statelessness. Gender discrimination in nationality laws restrict a child's access to public education and health care. Unequal nationality laws also impede access to driver's licenses, bank accounts and access to social welfare programs. Gender discrimination in nationality laws can contribute to gender-based violence as women are forced to remain in violent relationships because of fear of being rendered stateless.

The Sierra Leone Citizenship Act is discriminatory in both sex and race. Under the Citizenship Act 1973, one can be a citizen by birth if his father or grandfather was born in Sierra Leone before 19 April 1961 or who resided in, Sierra Leone on 18 April 1971²⁶. Furthermore, Sec.7 states that women who are not Sierra Leonean citizens but who marry a Sierra Leonean man can apply to become Sierra Leonean citizens in the manner prescribed and they will be granted a

²⁴Tanzania, 1999 Land Act. See UN Women's Family Law Database.

²⁵Tunisia, See <https://www.reuters.com/article/us-tunisia-women/tunisian-president-proposes-inheritance-equality-for-women-with-exceptions-idUSKBN1KY1GE>.

²⁶Sierra Leone, 1973 Citizenship Act, Section 2. See UN Women's Family Law Database.

certificate of naturalization²⁷. A foreign husband married to a Sierra Leonean woman cannot, even by application, be accorded similar rights to citizenship as does the foreign wives of Sierra Leonean husbands.

One of the most important law reform initiatives in the recent past was the Canadian Senate approval of legislation in 2017, to amend a 141-year-old law that has prevented indigenous women and their descendants from obtaining the same rights allotted to indigenous men, including some tax breaks, the ability to vote for indigenous governments, access to land on reserves and expanded health care coverage, but most of all to pass citizenship rights to their progeny. Under the Indian Act of 1876, if a female member of the First Nation, married a non-indigenous man, then she would lose her First Nation status as well as the right to pass down said status to her children²⁸. Male members of the First Nation, however, were not subject to such limitations.

Another recent reformist initiative was seen in Jordan. The Jordanian Nationality Law does not allow Jordanian women married to foreign-born spouses to pass on their nationality to their spouses and children. In 2014, the cabinet directed government ministries to grant special privileges to non-citizen children of Jordanian women, including public education and access to public health services. These privileges are unfortunately restricted and apply to children whose mothers have resided in Jordan for a minimum of five years.

In 2011, the Lebanese parliament repealed article 562 of the Penal Code, the provision that had reduced the sentence for “honor” crimes. Mobilized by these revisions, women's groups pressed for other reform. Combating honor crimes laws open up space for reform in other areas, including, the following: 1) In 2009, the Association of Banks in Lebanon decided to allow women, for the first time, to open bank accounts for their underage children, independent of the father's legal consent; 2) In 2014, parliament enacted Law no. 293 on domestic violence; 3) and in late 2016, a parliamentary subcommittee approved a bill to abolish article 522 of the Penal Code, which allowed the prosecution to drop charges against a rapist if he marries his victim.

8. Fornication

Fornication is a term for consensual sexual intercourse between two people who are not married to each other and women are punished for sexual intercourse outside of marriage. For example, in Comoros, according to the Penal Code of Article 331, the fornication resulting from the flagrante delicto according to the Koranic law may be punished by a sentence of one month to one year of imprisonment and a fine of 20,000 to 150,000 francs or only one of these two penalties²⁹. The unmarried woman, who becomes pregnant because of fornication is liable to the same penalties.

²⁷Sierra Leone, 1973 Citizenship Act, Section 7. See UN Women's Family Law Database.

²⁸Canada, 1876 Indian Act. See UN Women's Family Law Database.

²⁹Comoros, Penal Code, Article 331. See UN Women's Family Law Database.

9. Child marriage

SDG Goal 5.3 acknowledges that eliminating child marriage is both a human right and development priority. The SDG goal is to “Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation.”

UNICEF estimates 12 million girls under 18 are married each year. Girls who marry before they turn 18 are less likely to remain in school and more likely to experience domestic violence and live a life of economic impoverishment. Maternal deaths related to pregnancy and childbirth are common for girls aged 15–19 worldwide, accounting for 70,000 deaths each year.

In several countries unequal age of marriage for women and men is common. For example, in Gabon the age of marriage for man is 18 and for the woman it is 15. Nevertheless, the President of the Republic of the Supreme Court may grant age waivers for serious reasons³⁰.

These exceptions in the law vitiate efforts to raise the age of marriage. For example, Sierra Leone too provides exceptions to the age of marriage, in the Child Rights Act, Section 34 which allows underage marriage under special circumstances. The exceptions include marriage under personal law or customary law or with the consent of at least one of her parents or guardians³¹.

In Liberia too, the Domestic Relations Law, Sub 2.2 allows for exception to minimum age of marriage. Males and females under the age of 16 could apply for a “license for marriage with the consent of his. her parents or guardian, or of the parent of person standing in loco parentis having the actual care, custody and control of the said applicant...”³².

Namibia too allows for marriages of parties over 16 years of age by the office of marriage according to the Recognition of Marriages Act, Article 10.³³ In Venezuela, according to the Civil Code, the minimum age of marriage is waived when the girl is pregnant³⁴. Girls in refugee communities are often given in marriage as a way to address financial hardships and fear or sexual abuse. Marriage becomes a way to alleviate the burden of caring for a child.

10. Bank accounts

In Gabon, women still need the permission of a guardian or husband to open a bank account. According to Article 257 of the Civil Code although a woman may, on her own signature, open a special current account to deposit or withdraw funds reserved for the household, the opening of this account must be notified by the custodian to the husband³⁵.

11. Abortion

SDG Goal 5, Target 6.1 calls governments to “Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of

³⁰Gabon, Civil Code, Article 203. See UN Women’s Family Law Database.

³¹Sierra Leone, Child Rights Act, Section 34. See UN Women’s Family Law Database.

³²Liberia, Domestic Relations Law, Sub 2.2. See UN Women’s Family Law Database.

³³Namibia, Recognition of Marriages Act, Article 10. See UN Women’s Family Law Database.

³⁴Venezuela, Civil Code. See UN Women’s Family Law Database.

³⁵Gabon, Civil Code, Article 257. See UN Women’s Family Law Database.

Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences. The Targets for this Goal are:

‘Proportion of women aged 15-49 years who make their own informed decisions regarding sexual relations, contraceptive use and reproductive health care’. and ‘Number of countries with laws and regulations that guarantee women aged 15-49 years access to sexual and reproductive health care, information and education’”.

Several countries prohibit abortion by law.

The Namibian law disallows abortion by both a woman and a girl child. According to Section 152 (1) of the Civil Code, “Every woman being pregnant who, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used, commits a felony and is liable, upon conviction, to imprisonment for a term of fourteen years³⁶. (2) Any female child being pregnant who, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing or uses any force of any kind commits an offence and is liable to such community service or counseling as the court may determine, in the best interests of the child: provided that where a female child is raped or defiled and becomes pregnant, the pregnancy may be terminated in accordance with the Termination of Pregnancy Act”.

More over the law provides that “Any person who unlawfully supplies to or procures for any person anything whatsoever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman or female child, whether she is or is not with child, commits a felony and is liable, upon conviction, to imprisonment for a term not exceeding fourteen years”³⁷.

While many countries allow exception to the anti-abortion rule, El Salvador in penal Code 133-139 allows no exception to the rule that abortion is a crime³⁸, In many countries in the Latin American, African, and Asian regions, abortion is criminalized. A woman’s so called honor plays a role too in regulating abortion. For example, in Chile, according to Article 344 of the Penal Code, the punishment shall be reduced if the abortion was done in order to hide a woman’s dishonor³⁹.

An estimated 93 percent of women of reproductive age in Africa live in countries with restrictive abortion laws. For example, Uganda, Zambia, Gabon, and Burundi prohibit abortion and punishes the woman and any person aiding and abetting the marriage.

The Ugandan Penal Code in Section 142 punishes any woman who tries to voluntarily miscarry. “Any woman who, being with child, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means, or permits any such things or means to be administered to or used on her, commits a felony and is liable to imprisonment for seven years”⁴⁰. Under Section 143, “Any

³⁶Namibia, Penal Code Act, Section 152(1). See UN Women’s Family Law Database.

³⁷Namibia, Penal Code Act, Section 152(2). See UN Women’s Family Law Database.

³⁸El Salvador, Penal Code, Article 133-139. See UN Women’s Family Law Database.

³⁹Chile, Penal Code, Article 344. See UN Women’s Family Law Database.

⁴⁰Uganda, Penal Code, Section 142. See UN Women’s Family Law Database.

person who unlawfully supplies to or procures for any person anything, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, commits a felony and is liable to imprisonment for three years”⁴¹.

The Zambian Penal Code Act too carries the same penalties for abortion. Section 152 states: every woman being with child who, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used, is guilty of a felony and is liable to imprisonment for seven years”⁴². Furthermore, according to “Section 153. ‘any person who unlawfully supplies to or procures for any person any thing whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, is guilty of a felony and is liable to imprisonment for three years”⁴³.

Similarly, according to the Penal Code Act Section 337 of Cameroon, any woman procuring or consenting to her own abortion shall be punished with imprisonment for 15 days to one year with fine or with both such imprisonment and fine⁴⁴.

In Lesotho too, the Penal Code Act. Section 45 (1) provides that a “person who does any act bringing about the premature termination of pregnancy in a female person with the intention of procuring a mis- carriage, commits the offence of abortion”⁴⁵.

In Swaziland, the Constitution in Article 5(1) (a) states that abortion is unlawful and may be allowed- only on medical or therapeutic grounds including where a doctor certifies that continued pregnancy will endanger the life or constitute a serious threat to the physical health of the woman or if the continued pregnancy will constitute a serious threat to the mental health of the woman. Abortion is also restricted if there is serious risk that the child will suffer from physical or mental defect of such a nature that the child will be irreparably seriously handicapped or where the pregnancy resulted from rape, incest or unlawful sexual intercourse with a mentally retarded female; on such other grounds as parliament may prescribe⁴⁶.

Recently, the Argentinian senate rejected a Bill that would allow elective abortion in the first fourteen weeks of pregnancy⁴⁷. In Brazil, abortion carries a punishment of three years⁴⁸. Recently, both supporters and opposers discussed a bill to decriminalize abortion.

12. Guardianship laws

Saudi Arabia’s guardianship laws legalize discrimination and render women minors in the eyes of the law. A recent Saudi directive to government offices attempted to attenuate some of the most restrictive forms of the current guardianship regime in Saudi Arabia. The directive ruled

⁴¹Uganda, Penal Code, Section 143. See UN Women’s Family Law Database.

⁴²Zambia, Penal Code Act, Section 152. See UN Women’s Family Law Database.

⁴³Zambia, Penal Code Act, Section 153. See UN Women’s Family Law Database.

⁴⁴Cameroon, Penal Code Act, Section 337. See UN Women’s Family Law Database.

⁴⁵Lesotho, Penal Code Act, Section 45(1). See UN Women’s Family Law Database.

⁴⁶Swaziland, Constitution, Article 5(1). See UN Women’s Family Law Database.

⁴⁷Argentina, See <https://www.nytimes.com/2018/08/09/world/americas/argentina-abortion-vote.html>.

⁴⁸Brazil, Penal Code, Article 124. See <https://www.hrw.org/legacy/women/abortion/brazil.html>.

that women could no longer be denied access to government services if they do not have a male guardian's permission. However, even with the new directives, women still need guardian approval if they wish to travel abroad, get a passport. The directive is limited to the public sector and the permission of the guardianship for work in the private sector are still in place.

13. Discrimination in labor laws

Around the world, special protection for women have sometimes being used to justify excluding women from holding certain jobs based on paternalistic views of employers who see women in their roles as primary caregivers. Discrimination and gender differentials in labor laws have a cause and effect relation to women's status in the family. Many of the gender-based restrictions in labor laws relate to women's assumed care giving roles in the family or their biological differences shaped by women's maternal functions. Nigerian Labor Act in Section 55 (1) states that woman cannot be employed on night work in a public or private industrial undertaking or in any branch, or in any agricultural undertaking⁴⁹. Section 57 provides a blanket authorization for "The Minister may make regulations prohibiting or restricting, subject to such conditions as may be specified in the regulations, the employment of women in any particular type or types of industrial or other undertakings or in any process or work carried on by such undertakings"⁵⁰.

Sierra Leone too restricts women's employment. The Employment Act in Section 47(1) states that women or girls of any age shall be employed or allowed to be for the purpose of employment in any mine below ground. Section 48 states that "No girl or woman of any age or boy who appears to be under eighteen years of age shall be employed during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed"⁵¹.

These provisions reinforce the stereotype that women are less hardworking, fragile and unable to take care of themselves. It denies women employment opportunities available to men.

A list of work occupations that are prohibited for women in Russia lists 456 occupations and 38 industries that are considered too "arduous", "dangerous" or "harmful" to women's health, in particular to their reproductive health. The list was first adopted in the USSR in 1974 and was confirmed in 2000 by Russian Government Regulation No. 162 which allowed for exemptions only if safe working conditions were established by the employer⁵².

There is a tension between protecting the special needs of women and achieving equality of employment between men and women. A more dynamic conceptualization of women's roles and gender equality must be shaped by laws that envision women and men's roles in gender neutral terms.

⁴⁹Nigeria, Labor Law, Section 55(1). See UN Women's Family Law Database.

⁵⁰Nigeria, Labor Law, Section 57. See UN Women's Family Law Database.

⁵¹Sierra Leone, Employment Act, Section 48. See UN Women's Family Law Database.

⁵²Russia, Criminal Code, Regulation No. 162. See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17226>.

14. Work/family reconciliation laws

SDG Goal 5.4 recognizes and values unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate. It is important that gender neutral work/ family reconciliation laws play a central role in labor laws.

New revisions in laws are trying to capture the changing reality of both men and women and attempting to give voice to the needs of working women and caregiving men. Work/family obligations, traditionally thought to be private sphere activities outside the realm of the law are now becoming the lynchpin of gender equality in employment.

Laws that view women only or primarily in their care giving functions can disadvantage women. What is needed instead is a more dynamic conceptualization of women's roles. This can be achieved through work family reconciliation laws that are gender neutral.

Today the most critical determinant of gender equality in the workplace and at home is work/ place family reconciliation policies that shape both men and women's opportunities to provide care.

The reexamination of the co-relation between protective gender laws and gender bias in hiring, firing and leaving employment must be seen as the first step in re-envisioning a more egalitarian workplace. There is a tension between protecting the special needs of women and achieving equality of employment between men and women.

The nexus between gender discrimination in the home and workplace subordination can be combated only by workplace policies that facilitate greater male engagement in family care. Today one of the most critical determinants of gender equality is work place family reconciliation policies that shape both men and women's opportunities to provide care.

For example, the United Kingdom's Equality Act of 2006 requires all public authorities, to have "due regard" for the promotion of equality between the sexes⁵³. The law states that the lack of shared caring responsibilities between women and men is often the single biggest cause of the pay gap. Thus, workplace regulations that support both fathers and mothers in taking more responsibility for caring for children is a key pre-determinant of gender equality in the workplace. Women's disproportionate share of family and caretaking responsibilities relates directly to the discrimination they face in the labor market and the subsequent inequalities in their economic progress.

Unequal care giving policies undermine the rights of everyone in the family and create the feminization of poverty. Women are trapped in low- paying, low ranking jobs.

The European Union first stated in 1986 that sharing of family responsibilities and occupational responsibilities was pivotal to the promotion of true equality at work.

Sweden was one of the first countries to transform men and women's roles in the family. This created a paradigm shift around the world in understanding the dual roles of men and

⁵³Equality Act, 2006, c. 3, § 4, available at www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060003_en.pdf

women in work and family. Responding to a United Nations request to report on the status of women, Sweden argued: “No decisive change in the distribution of functions and status as between the sexes can be achieved if the duties of the male in society are assumed to be unaltered”⁵⁴.

Women’s disproportionate share of family and caretaking responsibilities relate directly to the discrimination they face in the labor market and subsequent inequalities in their social and economic progress. Gender discrimination in the home and workplace can be combated by workplace policies that facilitate greater male engagement as caregivers in the lives of children. Labor laws that equalize employment opportunities for men and women by redistributing family leave benefits create an environment in which women are neither discriminated against nor stereotyped and men are better able to shoulder family and caregiving responsibilities.

Unequal family leave policies impede gender equality both in the family and in public life. For example, in Guatemala, women are entitled to paid maternity leave of 30 days before and 54 days after child birth. On the other hand, men are entitled to two days of leave after child birth⁵⁵.

15. Constructing honor and shame in the law

Many provisions that deal with women manipulate the concept of “shame” and “honor” to subordinate women. In Chile, for example, Article 344 of the penal Code states that while abortion is criminalized, punishment shall be reduced if the abortion was conducted in order to hide a woman’s dishonor⁵⁶. Similarly, in Bangladesh⁵⁷ and Venezuela⁵⁸, the age of marriage for both girls and boys is waived when the female is pregnant in order to protect the family honor.

Article 340 of the Jordanian Penal Code provides mitigatory sentences to male perpetrators of honor crimes⁵⁹. This debate is one defined by notions of family “honor”. In the absence of shelters, the Jordanian government provides administrative detention, which is used as a protective measure for women considered to be at risk of being killed by a family member and allows her indefinite detention under the country’s 1954 Crime Prevention Law⁶⁰.

Under this law, some women spend years in administrative detention in before being granted release, which usually requires signed assurances from their families that they will not be harmed. Protecting women in administrative detention is another way of guaranteeing the so-called honor of the family.

⁵⁴Hanna Beate Schopp- Schilling, *Impediments to Progress: The formal Labor Market; The Circle of Empowerment*, 2007.

⁵⁵Guatemala, See [https://uk.practicallaw.thomsonreuters.com/w-012-9888?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1](https://uk.practicallaw.thomsonreuters.com/w-012-9888?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1).

⁵⁶Chile, Penal Code, Article 344. See UN Women’s Family Law Database.

⁵⁷Bangladesh, Bangladesh Code, Child Marriage Restraint Bill 2017. See <https://www.cnn.com/2017/03/02/asia/bangladesh-child-marriage-law/index.html>.

⁵⁸Venezuela, Civil Code, Supreme Tribunal of Justice decision #1353. See UN Women’s Family Law Database.

⁵⁹Jordan, Penal Code, Article 340. See <https://www.hrw.org/reports/2004/jordan0404/4.htm>.

⁶⁰Jordan, Penal Code, Crime Prevention Law of 1954. See <https://www.hrw.org/report/2009/05/26/guests-governor/administrative-detention-undermines-rule-law-jordan#854717>

In 2017, the Jordanian parliament repealed the controversial Article 98 of the Penal Code that allowed “mitigating circumstances” over the honor crimes. It also abolished Article 308 of the Penal Code that allowed rapists to avoid prosecution if they married their victims⁶¹.

In Pakistan it was only in 2016, that an honor crime bill was passed by both houses in the parliament⁶². Until then, honor crimes were considered either as exculpatory or mitigatory offenses. Most of those killings have gone without punishment because of a tenet of the Qisas and Diyat Islamic law, that allows killers to go free if they are forgiven by the woman’s family. In 2014, Morocco’s parliament struck out Article 475 of its penal code that had, in effect, allowed some men who raped a child to escape prosecution if they married the victim⁶³.

Despite recent reforms, in the MENA region, countries such as Algeria, Bahrain, Iraq, Kuwait, Libya, Syria, and Palestine still allow rapists to escape punishment. In 2016, Bahrain’s parliament unsuccessfully proposed a full repeal of article 353 which allowed rapists to marry their rape victims as a form of mitigation of the crime of rape⁶⁴.

Several countries also call for four adult witnesses of good moral conduct to bear witness to a crime of rape making it almost impossible for a victim of rape to meet this evidentiary requirement. For example, the Iranian Penal Code states:

“Art. 74 Adultery, whether punishable by flogging or stoning, may be proven by the testimony of four just men or that of three just men and two just women. Art. 75 If adultery is punishable only by flogging it can be proven by the testimony of two just men and four just women”⁶⁵.

Apart from this onerous evidentiary requirement, two women equal the testimony of one male witness. In many countries, women’s testimony does not carry the same evidentiary weight in court as men’s. Although Bahrain, Iraq, Jordan, Kuwait, Libya, Oman, Qatar, Saudi Arabia, the Syrian Arab Republic, West Bank and Gaza and the Republic of Yemen, Mauritania, Sudan, Brunei Darussalam and Pakistan, laws reduce the worth of a woman’s testimony to half that of a man’s.

Apart from the reform of the penal codes, outdated and colonial style stereotypes and concepts of “honor” and “shame” about women abound in the laws that subordinate women in the family and in the economy. Many post socialist countries such as China, Belarus, Uzbekistan, Turkey, Moldova and Tajikistan restrict women from travel related jobs, night time and over time work relegated to traditionally female jobs and shut out from non- traditional opportunities. The result of this is that often women are relegated to traditionally female jobs and shut out from non- traditional opportunities.

⁶¹Jordan, See <http://www.unwomen.org/en/news/stories/2017/8/news-jordanian-parliament-abolishes-law-that-allowed-rapists-to-avoid-prosecution>.

⁶²Pakistan, A Bill further to amend the Pakistan Penal Code, 1860 and the Code of Criminal Procedure, 1898. See http://www.na.gov.pk/uploads/documents/1475762285_283.pdf.

⁶³Morocco, See <https://www.bbc.com/news/world-africa-25855025>.

⁶⁴Bahrain, See <https://www.hrw.org/news/2017/08/24/middle-east-roll-repeal-marry-rape-laws>.

⁶⁵Iran, Penal Code, Articles 74-75. See <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/3200-islamic-penal-code-of-the-islamic-republic-of-iran-book-one-and-book-two.html>.

In China, women are prohibited from underground over ground, under water work. These jobs include not just manual work but scientific and technological work opportunities. Tajikistan's Article 7 of the Gender Equality Law indicates that the rights and guarantees belonging to a "person of either sex with family obligations" should be taken into consideration when hiring, promoting, training, establishing labor regimes or during retirement of such persons⁶⁶. Although this phrase is applied to both men and women who can take time off to care for a sick child or family then it is consistent with CEDAW Article 11. The stereotyped image of a woman might render the term "family obligation" to be used against her in considering job promotion etc.

Around the world because of stereotypes, a plethora of employment opportunities are closed to women. Chinese laws reinforce negative stereotypes by restricting women's equal access to employment. Women are prohibited from underground/ over ground/ under water work. Women's employment opportunities are limited by laws that shut them out from performing jobs considered physically arduous like, scaffolding, logging timber and high-altitude work carrying weight over 25 kilos. Paternalistic laws restrict work according to their biological functions and restricts certain work for lactating or menstruating women.

Although it is important to regulate hazardous employment environments, these regulations must extend to both men and women. If not, women will be perceived as fragile and more deserving of work at home rather than advancing toward managerial positions.

16. Domestic Violence

The WHO argues that 35 percent of women worldwide have experienced physical, or sexual intimate partner or non- partner violence. While SDG 5 calls for the reform of discriminatory laws, it also calls for the adoption of new and enforceable laws to promote gender equality and address violence against women. Addressing violence against women is a critical SDG imperative. Violence against women is not only an egregious health and human rights abuse, it is only a drain on the economy and has enormous economic cost. The World Bank's research show that it drains 1.2 to 2 percent of the GDP in developing countries and is as much as the percentage spent on primary education in developing countries. The recent domestic violence approved by the Tunisian parliament in 2017 was a long time coming and was preceded by a decade long struggle by women to create a normative and legal framework to address violence against women.

The Tunisian law on violence against women, including domestic violence, passed by the parliament on July 26, 2017, was a landmark step for women's rights⁶⁷. The laws criminalizing domestic violence and eliminating the rape loophole (where rapists could marry their victims) are rooted in the 2014 constitution's Article 21, which provides equal protection under the law⁶⁸.

⁶⁶Tajikistan, Gender Equality Law, Article 7.

⁶⁷Tunisia, See <http://www.unwomen.org/en/news/stories/2017/8/news-tunisia-law-on-ending-violence-against-women>.

⁶⁸Tunisia, Constitution of 2014, Article 21. See https://www.constituteproject.org/constitution/Tunisia_2014.pdf.

The Tunisian women's lobbying was also critical to eliminating impunity for rape in striking out a provision in the penal code that allowed a rapist to escape punishment if he married his victim.

The law defines violence against women as "any physical, moral, sexual or economic aggression against women based on discrimination between the two sexes and resulting in damage or physical, sexual, psychological or economic suffering to the woman, including threats of such aggression, pressure or deprivation of rights and freedoms, both in public and private life."

The law also criminalizes sexual harassment in public spaces, and the employment of children as domestic workers. The law includes preventive measures, such as directing the Health Ministry to create programs to train medical staff on how to detect, evaluate, and prevent violence against women and educators on requirements under Tunisian and international law.

The law includes assistance to domestic violence survivors, including legal, medical, and mental health support. The restraining orders against their abusers require the suspected offender to vacate the home, stay away from the victim and their children, and refrain from violence, threats, damaging property, or contacting the victim and are important ways in protect the victim under international law.

The law also establishes family violence units within Tunisia's Internal Security Forces to process domestic violence complaints and assigning a public prosecutor in each governorate to handle such complaints. The law also prevents mandatory mediation of cases of domestic violence by providing for criminal liability for any official authority who might coerce a woman to drop her complaint or charge.

IV CONCLUSION

The CEDAW is one of the great milestones of the history of human rights. As the foremost, human rights document for women, the CEDAW stands out as a living document.

Although this paper focuses only on the normative domestic legislative frameworks, the CEDAW has also had a profound impact on the development on jurisprudence in different legal systems. The impact of a convention can be measured by its domestication: the ways in which it has been integrated and mainstreamed into national laws, policies, programming and used as a powerful tool of change. The barometer of a Convention's success then is the way in which it has been used as an interpretive tool in lawmaking. and, as a tool to fill in gaps in legislation.

CEDAW is far more than a treaty on paper. It is culmination of a historic movement of women over many decades and across borders and boundaries that created a profound shift in the human rights movement which located women as rights bearers. Out of this triumphant moment was born a rights charter that was the brain child of a social movement that exemplified the slogan nothing for us. The CEDAW is now a standard bearer for a new generation of women's rights jurisprudence including the implementation of the SDGs.

The year 2017 was a watershed year for women. The #MeToo movement propelled a time of change for women around the world. Tunisia, Jordan, and Lebanon parliaments repealed provisions in their penal codes that allowed rapists to escape punishment by marrying their

victims. In 2017, the Tunisian parliament repealed article 227 of the penal code exonerating the rapist if he married his victim⁶⁹. Lebanon's parliament too rolled back article 522, that had allowed rapists to escape prosecution by marrying the victim but allowed a loophole to remain in offences relating to sex with children between the ages 15-17 and seducing a virgin girl into having sex with the promise of marriage⁷⁰. In 2017, India's Supreme Court banned the controversial Islamic divorce practice known as "triple talaq" or instant divorce in a landmark ruling⁷¹. The practice allowed a husband to divorce his wife simply saying the Arabic word for divorce, talaq three times.

De Jure discriminatory laws are still pervasive universally. The situation is exacerbated by the co-existence of plural systems of laws and customary laws. The cultural construction of gender determines the role of women and girls within the family while the construction and definition of gender is deeply embedded in culture. Personal status laws that govern family pose the greatest challenge in the application of the universal concepts of human rights. Family law inequalities are often translated into inequalities in nationality law, penal law (for example, the responses to domestic violence), and employment law (husband's consent to employment, finances, etc.). Under Personal Law systems, subtle but insidious discrimination against women takes place in the name of religion and women are often sacrificed at the altar of the family. States reject civil marriage as an encroachment on the power of religious institutions. Women are essentially deprived of the benefits of the regulating power of international human rights norms or from the various principles of equity contained in those specific legal proposals. The discourse around marriage, reproduction, and divorce is supported by an invisible network of power exercised by all members in society. Law reform is often the first step and it provides women's groups and social movements to engage with the government and other stakeholders to further a broader social change and development agenda.

This study shows that laws regulating women's lives contain some of the most discriminatory provisions in the legal systems around the world and is inimical to women's safety, agency, citizenship and economic participation. SDG 5 must make reform of discriminatory laws central to its mission if it is to meet its goals by 2030.

In the final analysis, the most profound impact of the CEDAW in the last few years has been the way it has brought an intersectionality paradigm to the forefront of the human rights agenda. The CEDAW's focus on gender, race, ability, sexual identity as intersecting and multiple forms of discrimination has had a transformative impact on both international and national law and policymaking. While this phase of the CEDAW has resulted in normative change, the next stage in combination with the SDG's must ensure that these laws are transformed into practice. Although achieving social change through law may be a less than perfect tool, it is a critical part of transformation for women.

⁶⁹Tunisia, See <http://ohrh.law.ox.ac.uk/tunisia-revolutionary-steps-new-law-protecting-women-against-violence/>.

⁷⁰Lebanon, See <https://www.bbc.com/news/world-middle-east-40947448>.

⁷¹India, See <https://www.npr.org/sections/thetwo-way/2017/08/22/545257237/india-s-high-court-overturns-law-allowing-instant-divorce-by-muslim-men>.