

**End All Forms of Discrimination against Women and Girls with Disabilities and Enhance
the Participation of Women with Disabilities in Inclusive Innovation**

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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

Introduction

Recent developments around the world give support to the idea of the #MeToo movement's transformative potential. A postmodernist claim was that the feminist movement was essentialist and that no one expression of feminism can be applicable to women of different ethnicity, cultural, or class identity. The #Me Too movement has found expression in different cultural traditions and helped to challenge this theory.

China's #我也是; Latin America's #YoTambien; the Middle East's and the United States' #MeToo have sparked a mini revolution for women and spurred a crop of law reform on gender equality. However, this note argues that these gender – based law reform do not include women with disabilities. In the final analysis, the note calls upon the new legal changes to engage with women with disabilities in a way that strengthens justice, equality and a new global economy that is truly inclusive and advances gender justice and economic inclusion for all women. Toward that goal, the note suggests two recommendations: 1) the elimination of all forms of discriminatory laws for all women; 2) ensure that new technologies engage with women with disabilities both as developers of new technology as well as users of new technologies as way to enhance human capabilities and inclusive innovation.

The newly released IFC Report on Women, Business and the Law (2018) reveal that 104 economies still prevent women from working in certain jobs, because of their gender. In 59 economies there are no laws on sexual harassment in the workplace.

In 18 economies, husbands can legally prevent their wives from working. A *tour- de- force* of Penn Law's newly released first phase of the family law data base show that legalized discrimination remains enshrined in the law.

Despite much remaining legalized discrimination, the last few years were watershed years for women. Although it is difficult to prove causation, it could be argued that the #MeToo movement has helped to spark some policy change and debate in different parts of the world

In 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 victim.

The recent domestic violence law 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.

However, it could be argued that the global forces unleashed by the #MeToo movement was the final nudge to see it through parliament. The law also criminalizes sexual harassment in public spaces.

After years of mobilizing by women, in 2017, Lebanon's parliament rolled back Article 522 of the Penal Code, which had allowed rapists to escape prosecution by marrying the victim. However, the legislative body retained a loophole relating to sex with children between the ages 15-17 and seducing a "virgin" girl into having sex with the promise of marriage.

Again in 2017, India's Supreme Court banned the controversial Islamic divorce practice known as "triple talaq" or instant divorce in a landmark ruling. The practice allowed a husband to divorce his wife simply saying the Arabic word for divorce, talaq three times.

Even when laws failed to pass, it seems that the #MeToo movement helped spark otherwise long suppressed debate. Just this month, in the Pope's home country, the Argentinian senate narrowly rejected a Bill that would allow elective abortion in the first fourteen weeks of pregnancy.

In Brazil, home to the largest Catholic population, where abortion carries a punishment of three years, both supporters and opposers discussed a bill to decriminalize abortion.

At a moment when the traditional liberal world order as we know is floundering, the global women's movement and the #MeToo movement offer potentially transformative ways to translate women's experiences into lawmaking in areas where the law itself is complicit in the unequal status of women.

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.

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 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.” The CRPD in Article 6 on Women with disabilities speaks to

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.
2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

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

Article 1 of CEDAW includes both direct and indirect discrimination and requires States parties to ensure equality of opportunity and result. Despite CEDAW requiring State 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 indicates 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.”

The Convention on the Rights of Persons with Disabilities sets out the legal obligations of State parties to promote and protect the rights of persons with disabilities. A key requirement in this regard, as set out in Article 4, General Obligations, is for State parties to harmonize domestic law with the Convention. The responsibilities of State parties under Article 4 include: adopting all appropriate legislation, administrative and other measures for the implementation of the rights recognized in the Convention; taking all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute

discrimination against persons with disabilities; take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise. In addition to the general provisions contained under Article 4, the Convention in some cases also provides instructions for legislative measures that State parties are to take in relation to specific rights. For example, it requires State parties to take appropriate measures, including legislative measures, to prevent persons with disabilities from being subjected to torture or cruel, inhuman or degrading treatment or punishment (art. 15) and to protect persons with disabilities from all forms of exploitation, violence and abuse (art. 16). Legislation plays an important role in CRPD implementation in all countries, but its role varies depending on the legal context in each country, viz.: in some countries, new legislation is needed to write the provisions of an international convention into the laws of the land; in other countries, an approved international treaty is automatically accepted as part of the law, and can, for example, be directly enforceable by courts; in some cases a mixture of both approaches might be needed – that is, parts of a convention might automatically become law, but some parts might need new legislation to bring the provisions into law.

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.

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; in 39 countries, daughters and sons do not have equal inheritance rights; and 49 countries lack laws protecting women from domestic violence. The OECD estimates gender-based discrimination in laws in the Middle East and North Africa (MENA) region US\$575 billion (\$779.30 billion) a year. 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 parties deny 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.

Last few years have seen legal change for women around the world. Tunisia, Jordan, and Lebanon parliaments have 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 victim. 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 marriage. 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 victim. Despite these reforms, in the MENA region, countries such as Algeria, Bahrain, Iraq, Kuwait, Libya, Syria, and Palestine still allow rapists to escape punishment. Bahrain's parliament proposed a full repeal of article 353 in 2016 but it was not successful.

Despite these changes in the laws for women, very little has been done to change the legal landscape for women with disabilities.

The IFC's most recent, 2018 report shows that from 2016-2018, 65 economies have carried out 87 reforms. Despite these reforms, according to IFC's 2018, Women, Law and Business Report, one hundred and four 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.

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.

The McKinsey Global Institute report in 2014 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. This calculation forces us to look at ways in which each country could match the best in region in achieving the rights of all women, including women with disabilities and how that could help

advance a new global economy that fosters the end of all forms of discrimination against women and women with disabilities.

Women with disabilities are still excluded from new technologies and financial inclusion, including mobile money and digitalization of financial services such as e-wallets and Artificial Intelligence that could promote and strengthen the rights of women with disabilities. While new technologies could promote the rights of women with disabilities, if immediate action is not taken, it could widen existing divisions and exacerbate discrimination against women with disabilities. While much has been written about how AI and other adaptive technologies are poised to improve the lives of people with disabilities, the challenge is to make sure that we do not enhance the digital divide. Are these new technologies available to women and women with the greatest need in the Global South. Are women with disabilities engaged in the design and production of these tools? And finally is the regulatory framework ensuring the gender and disability biases that creep into innovation? These are some of the greatest challenges of our time that the EGM must address.