

# UN Women E-discussion: Enabling Environment and Legal Incentives for Women's Employment

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Submission by the ABA-UNDP International Legal  
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The following report has been prepared by the ABA-UNDP International Legal Resource Center (ILRC) in response to the e-discussion on creating an enabling environment and legal incentives for women's employment. This report includes the personal views of eight professionals. They have shared this feedback on behalf of the ILRC, but in their own capacity. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association (ABA) or the United Nations Development Programme (UNDP) and, accordingly, should not be construed as representing the policy of the ABA or UNDP. Furthermore, nothing contained in this report is to be considered rendering legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. The opinions expressed herein are those of the author(s) and do not necessarily reflect the views of the ABA or UNDP. For more information, please contact [Jacqueline.Gichinga@americanbar.org](mailto:Jacqueline.Gichinga@americanbar.org).

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**Federal Civil Servant**  
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*Getting a Job: Many economies have enacted legislation mandating maternity, paternity or parental leave. Such legislation may enable equitable distribution of household responsibilities and promote women's equal access to employment. Factors that may play a role include whether the law mandates leave; leave is paid or unpaid; paid leave is partially paid or fully paid; the government, the employer or both pay for leave benefits; and the length of leave. Another factor could be how parental leave can be shared by both parents.*

In Pakistan, the law related to leave is called "Revised Leave Rules, 1981". According to this law, a woman is entitled to maternity leave of 90 days as a whole out of which 45 days leave is granted before the delivery of child and 45 days after delivery. This law is both properly and effectively implemented. This is a paid leave in which full pay is paid to the female government employee. There is no concept of paternal or parental leave in the service laws of Pakistan but there are other kinds of leaves through which a civil servant can achieve his/her paternal or parental objective. Some leaves are fully paid, some partially, and some are unpaid.

Women in Pakistan give birth to more children as compared to advanced countries. This practice adversely affects the work environment and output of women in work places.

In Pakistan, the law of maternity leave is fully implemented and enforced and every female government employee has access to such kind of leave and there is no obstacle which can deny them this privilege.

*Large gaps exist between written laws and their implementation: women do not always have access to the equality that exists for them in formal laws. What would you recommend to improve the implementation of maternity, paternity and parental leave laws?*

Amendments are needed in the laws of Pakistan relating to leave, in that the concept of paternal and parental leave may be introduced in these laws. In order to make it more effective, the maternity leave should be allowed only twice to a female civil servant so that it would not affect the output ratio of these servants. Presently, it is allowed three times during the entire service career. The salary during leave is unaffected and increments are not added in it. This needs amendment and the increments and other incentives, accruing during the leave period, need to be added to the salary so that the woman employee would not be at a disadvantage due to the leave.

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**Washington, DC United States**

***Getting a Job:** Many economies have enacted legislation mandating maternity, paternity or parental leave. Such legislation may enable equitable distribution of household responsibilities and promote women's equal access to employment. Factors that may play a role include whether the law mandates leave; leave is paid or unpaid; paid leave is partially paid or fully paid; the government, the employer or both pay for leave benefits; and the length of leave. Another factor could be how parental leave can be shared by both parents.*

*The 2014 Women, Business and the Law report finds that more women participate in the labor force in economies with longer fully paid maternity and parental leave available for new parents. Is this the situation in your country? In your experience what is the impact of laws mandating maternity, paternity and parental leave on women's work-life balance and economic empowerment?*

While there may be a correlation between participation of women in the labor force and generous provisions of leave for mothers, fathers and new parents, drawing a causal connection between the two phenomena may result from an incomplete analysis. Countries with generous parental leave provisions tend to be high wage social democracies in Scandinavia and Northern Europe with strong trade unions and social dialogue among trade unions, employer groups and the government, and participation by women in legislative bodies.

The United States is a country with ungenerous maternity and paternity benefits, but high participation of women in the labor force. Paid maternity leave is a legal requirement in Mexico and many other Latin American countries where women's participation in the workforce has increased over the last four decades, but they lack of empowerment among women workers and the predominance of low wage work and homework means that women do not always have access to paid maternity leave in Latin American countries.

Moreover, while the indicators in the World Bank's Women, Business and the Law focus on important fundamental indicators of women's formal equality under the law (such as access to property rights and ownership of one's salary and bank account), women in most Latin American countries have these rights and have access to the labor market. Women require additional attention as members of the workforce once they have reached beyond the indicators of fundamental formal equality and are in the labor market. The availability of maternity benefits in some Latin American nations leads to discrimination based on pregnancy as well as being forced to suffer the indignity of pre-employment and post-employment pregnancy tests. Sexual harassment, including *quid pro quo* demands for sexual favors in exchange for employment and improved working conditions, is prevalent in agriculture, manufacturing and household work in the Americas, in Africa (for example, in the cut flower industry in Colombia and Kenya) and in the United States. Thus, it seems that the World Bank indicators are practically irrelevant to these women, who require

empowerment in the workplace and genuine protection from sexual harassment and other forms of sex-based discrimination.

*Large gaps exist between written laws and their implementation: women do not always have access to the equality that exists for them in formal laws. What do you find are the greatest obstacles to effective implementation? What would you recommend to improve the implementation of maternity, paternity and parental leave laws?*

To be honest, I find this question to be out of sync with the World Bank's fundamental formal equality indicators (access to a bank account, access to ownership of property, being able to own one's wages even while married) and the goal of improving women's access to the labor market. It seems that a number of steps have been skipped between having the legal right to open a bank account and being provided 6 months of paid maternity leave by one's country's social security system. As demonstrated by conditions in garment manufacturing sectors in Bangladesh, Vietnam, Cambodia, Mexico, Central America and elsewhere, women and men are struggling simply to earn enough money to put food on their tables, much less earn enough to make contributions to a social security system that will pay maternity benefits. The World Bank, as well as international and regional organizations such as the WTO, the ILO, UNDP, EU and Asian, African and Inter-American Development Banks must take a serious look at the issue of Export Processing Zones and the negative impact they have on the ability of women workers to earn a decent living while engaged in low wage manufacturing. By allowing employers to sidestep labor and employment laws and other tax requirements in EPZs, the international economic system denies women the capacity to earn a decent salary to improve their lives and those of their partners and children.

*What do you find are the greatest obstacles to effective implementation?*

Another problem is that so many women and men work in the informal sector. They may be formally or effectively excluded from social security programs that provide parental benefits. The World Bank should continue efforts to help countries develop methods to entice workers in the informal sector to participate in social security programs to ensure their present as parents and their future as retirees.

*What would you recommend to improve the implementation of maternity, paternity and parental leave laws?*

Certain fundamental steps must be accomplished to create the conditions for effective implementation of maternity, paternity and parental leave laws. The first step is to raise wage levels so that women and men work fewer hours and have a baseline income and the leisure time to take care of their families and themselves.

***Driving advocacy for women's employment:*** *The 2014 Women, Business and the Law report provides objective, cross-country comparative data in the hopes that it can be used as a tool by civil society organizations, policy makers, social entrepreneurs, and development groups to empower women.*

*How could the Women, Business and the Law report and database be used to promote women's and men's shared responsibility and work-life balance, advocate for reforms and accelerate implementation of the laws in your country?*

There are a number of studies that indicate in highly traditional cultures where men and women had set defined roles in society, increased labor market participation by women in a context of high unemployment among men has led to familial imbalances which can have negative side effects - for example, when women work in manufacturing for low wages and become the primary wage earners in the family. On the one hand, women gain more control within the family unit because as wage earners they have more say in how the money is spent. On the other hand, if their male partners do not have access to work, the situation can lead to resentment in the home and, possibly domestic violence.

Labor market policies must be developed to assist both men and women to open businesses and enter the labor market. The World Bank might also consider that international policies that discourage participation in trade unions, social dialogue and collective bargaining where workers can negotiate for better wages and also have a forum in which to discuss changing social and familial patterns. Public education campaigns targeted at men might also help men feel more comfortable being the primary child care parent at certain points in the family's trajectory.

It should also be noted that many formal migrant labor programs, such as the U.S. H-2A and H-2B and Canadian Seasonal Agricultural Worker Program tend to separate families by not allowing visas for the visa holder's spouse and children. As women accept low wage work at home and men migrate through visa programs and without formal documentation, women are left alone to be the sole caregivers and men miss out on the joys of being family caregivers. International programs and policies should examine these negative effects of formal migrant labor programs and consider changing them, to help more families stay together. Guaranteeing the freedom to associate and join trade unions and collectively bargain for a fair wage would allow men and women to achieve a level of financial stability that would make it possible for families to remain at home and intact.

*What successful advocacy initiatives have been carried out in your country that could stimulate action and advocacy in other countries around the world?*

While the United States has many problematic issues, especially when it comes to the treatment of migrant agricultural workers, I have been impressed with migrant education programs in the U.S. where educators migrate alongside the workers so that children have some continuity with their education.

A program that I have always been impressed with in Canada is that of Frontier College, where high school and college students work on farms alongside migrant agricultural laborers from the Caribbean, Mexico, Guatemala and elsewhere and teach basic literacy and numeracy skills. While attending a talk at the World Bank on Youth Employment in Africa last week, it occurred to me that a similar program might be started in the EU, whereby

unemployed youth from the EU would go to communities in Africa to work as teachers to fill the educator gap over the next few decades. Thus an unemployed youth would be given a fruitful job and assist another youth on another continent.

***Incentives to work:*** *The ease, cost, and availability of childcare for young children and free public education for school-age children can affect a parents' decision to work outside the home for paid compensation, or to stay at home with the children. The 2014 Women, Business and the Law report finds that childcare subsidies, such as tax credits, and the availability of childcare, increase women's participation in the labor force.*

*In your experience, what is the impact of laws providing for tax-deductible or government subsidized childcare, public provisions of childcare and free and compulsory primary education on women's and men's work-life balance and women's employment?*

I suspect that some low wage workers with one or more parents and family members working in low wage manufacturing or in the informal sector in many developing countries might have a long laugh at the idea of tax-deductible or government subsidized childcare, especially in countries struggling to make ends meet in Central America, some parts of Mexico and Bangladesh, for example. Most people work because they must. Staying at home is a much-dreamed-of luxury. Yet an intelligently designed childcare program with funding provided by the World Bank, foundations like the Soros Foundation, NGOs, national governments and companies might be a positive step in addressing a host of workplace issues. For example, with the prevalence of child labor and lack of education in agriculture in many countries in the world and in low wage manufacturing, providing adolescent boys and girls with basic education and training to be child care providers and paying them to care for younger children would get both adolescents and young children out of the workplace while allowing the adolescents to earn a wage to continue to help their families economically. Such a program, operating like a franchise program the world over, would also teach male adolescents the benefits of being a caregiver and get both male and female adolescents into the workplace. Removing adolescents from agriculture and low wage manufacturing would limit the labor pool somewhat, requiring employers to pay adults more in order to perform their work.

Mexico has a program whereby mothers are paid a stipend so their adolescent children - especially the girls - may attend school without losing the income they might bring home if they were in the workforce instead. I have read that the results of this program have been extremely positive and that it may be replicated in other countries, like the Philippines. This seems like an effective idea that should be replicated in more countries.

Another idea I have read about in Latin America is the idea of *promotoras* - lay health care workers who are trained to perform certain diagnostic tasks and then train one another and members of the community to improve health on a local level. I have often thought that this is a wonderful program that could be replicated both with regard to health care, but to advocacy (for example, paralegal services to advocate before labor and other departments) and teaching.

*In your experience, how are these laws implemented in your country? What do you find are the greatest obstacles to implementation? What would you recommend to improve the implementation of these laws?*

Unfortunately, in my country (the U.S.), tax deductible childcare is discouraged. Childcare workers are often among the least respected and most poorly remunerated in the workforce - despite the important role they play in child development. On the other hand, the U.S. Headstart program started in the 1960s as part of Johnson's War on Poverty is in a way a government-sponsored childcare program since the children are so young (3-5 years old) and are taken care of while receiving basic education and some free or subsidized meals. A Headstart program based on the *promotora* model might be an excellent hybrid U.S. and Latin American model.

***Additional Helpful Information and/or Recommendations:***

While I believe that conditions in agriculture and manufacturing must be improved and wages must be increased through recognition of the freedom of association and right to collective bargaining, I also despair that so many talented women and men from such rich cultural traditions are toiling away in factories around the world. I feel the World Bank and regional institutions should find ways to encourage people to develop their informal sector and home-based businesses so that one day they can put their talents to designing as well as making clothing and textiles, to running their own shops and receiving the education to make new scientific and technical discoveries.

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***Getting a Job:** Many economies have enacted legislation mandating maternity, paternity or parental leave. Such legislation may enable equitable distribution of household responsibilities and promote women's equal access to employment. Factors that may play a role include whether the law mandates leave; leave is paid or unpaid; paid leave is partially paid or fully paid; the government, the employer or both pay for leave benefits; and the length of leave. Another factor could be how parental leave can be shared by both parents.*

*The 2014 Women, Business and the Law report finds that more women participate in the labor force in economies with longer fully paid maternity and parental leave available for new parents. Is this the situation in your country? In your experience what is the impact of laws mandating maternity, paternity and parental leave on women's work-life balance and economic empowerment?*

Women's participation in the Brazilian labor market is growing. Consequently, there has been an increase in the discussion of the impacts of such participation, and the correlation between incentive laws of this activity. Thus, the discussion of the laws that governs the periods of maternity and paternity leave are directly related to that expansion.

Maternity leave in Brazil is provided by the Brazilian Federal Constitution of 1988<sup>1</sup>, in its Article 7, XVIII. Article 932 of the Consolidation of Brazilian Labor Laws of 1943<sup>2</sup> also contains applicable provisions. Both legal instruments allow the paid maternity leave for a period of four months (120 days).

Paternity leave, in turn, was constitutionally guaranteed in Article 7, XIX. The Consolidation of Labor Laws of 1943 also provided paternity leave, which initially consisted of payment for only one day of leave. Since 1988, Article 10 paragraph one of the Transitional Constitutional Provisions Act changed this situation, increasing paternity leave from one to five paid days to employees regularly registered, by means of the labor laws, in the National Social Security System.

There are no legal provisions in Brazil regarding the parental leave, where both parents can take time off from work to take care of their children<sup>3</sup>.

With respect to adoptive parents, the Federal Law No. 12.873, of October 24th, 2013<sup>4</sup>, allows adoptive parents the same period of maternity leave, which is four months. However, this period may be reduced to 30 days depending on the age of the adopted child. The salary paid to the citizens is insured by the National Social Security System.

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<sup>1</sup> Document available in: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm).

<sup>2</sup> Law-Decree No. 5.452, from May 1st, 1943: Document available in: [http://www.planalto.gov.br/ccivil\\_03/decreto-lei/del5452.htm](http://www.planalto.gov.br/ccivil_03/decreto-lei/del5452.htm).

<sup>3</sup> Although there is no legal provision, there is a Bill in the National Parliament in this regard, the Bill No. 6753/2010. Document available in: [http://www.camara.gov.br/proposicoesWeb/prop\\_mostrarintegra?codteor=732616&filename=PL+6753/2010](http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra?codteor=732616&filename=PL+6753/2010).

<sup>4</sup> Document available in: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2013/Lei/L12873.htm](http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/Lei/L12873.htm).

In 2008, the enactment of Federal Law No. 11,170<sup>5</sup> created an extension of the period of maternity leave for federal, state and municipal public servants from four to six months<sup>6</sup>. In the case of state and municipal servants, the law provided the existence of specific laws in their states and municipalities to ensure that the benefit was given.

For private companies, the time extension provided for in Law No. 11.170/2008 is optional because the abovementioned law has established a program called "Corporate Citizen"<sup>7</sup>. For this program, companies that adhere to the program and guarantee the benefits to their employees would receive a seal of "corporate citizen" and may have deducted from their income tax amounts paid in both additional months of maternity leave<sup>8</sup>. To be granted that benefit, all women employees of companies that participate in the program and who have children only need to apply for an extension of maternity pay from four to six months after the end of the first delivery month.

The abovementioned program was designed by the Brazilian Pediatrics Society with the support of the Brazilian Federal Government Secretariat for Women's Policies, with the justification of the need to extend the time of the mother with her child after birth, strengthens the maternal and family ties, and also allowing a longer lactation period for the baby.

However, until today, there were not many companies that adhered to the "Corporate Citizen" Program. Some trade unions in the country also seek to negotiate with companies an expansion to six months of paid leave for workers in their sectors.

Even being a very important step in the empowerment of women, in February 2012 there were only 15,735 participating companies<sup>9</sup>, representing a very small number compared to the number of companies in Brazil, which currently reaches nearly 160,000. Another extremely important issue is that such benefits were excluded from the contractors employed by an individual, such as maids, and special individuals insured by law, as agricultural workers.

Also in the public sector, an increased regulation on behalf of the Brazilian states and municipalities is needed to effectively provide benefits. For example, currently only 154 municipalities have regulated this issue. In the states and municipalities that did not yet regulate the extension of eligibility for maternity leave, some women filed a writ of mandamus to ensure the application of their right to maternity paid leave for six months. Another problem regarding some companies is that they can only claim the tax incentive/deduction if they declare their taxes based on their taxable income, which is not

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<sup>5</sup> Available in: [http://www.planalto.gov.br/ccivil\\_03/ato2007-2010/2008/lei/111770.htm](http://www.planalto.gov.br/ccivil_03/ato2007-2010/2008/lei/111770.htm).

<sup>6</sup> Recalling that Brazil is a Federation composed by the Federal Government, States and Municipalities.

<sup>7</sup> Program formally instituted by Decree No. 7.052, of December 23<sup>rd</sup>, 2009. Document available in: [http://www.planalto.gov.br/ccivil\\_03/ato2007-2010/2009/Decreto/D7052.htm](http://www.planalto.gov.br/ccivil_03/ato2007-2010/2009/Decreto/D7052.htm). See also: <http://www.receita.fazenda.gov.br/pessoajuridica/empresacidada/default.htm>.

<sup>8</sup> In the case of private companies, the first four months of maternity leave are paid by the National Social Security System, while the next two months are paid by the company. Hence, the deduction of taxes by the company is applied only in the last two months of maternity leave.

<sup>9</sup> The Brazilian Federal Revenue Service does not have an updated balance of the number of accessions to the program. The latest numbers were taken from <http://www1.folha.uol.com.br/mercado/2013/07/1310768-multinacional-adere-a-licenca-expandida.shtml>.

the case for all the Brazilian corporations. Most Brazilian companies are small businesses, which have different ways of declaring taxes.

With regard to paternity leave - which currently is set at five days - there are Federal Bills in the National Parliament that seek to extend the benefit, in particular, for fifteen paid calendar days<sup>10</sup>. Also, in the Brazilian Ministry of Health, there is the Technical Area of Men's Health<sup>11</sup>, that follows the bills' progress, and also the jurisprudence regarding paternity leaves. This area also makes campaigns to encourage companies to allow men to follow their partners in prenatal, delivery and postpartum. The importance of the issue is also dealt with through research and production of informational materials that addresses the parents' rights. There is only one very recent example of a company that has expanded parental leave for 5 to 30 paid days under the claim that parents who spend more time with their children in their first days of life are happier and hence more productive<sup>12</sup>. Some non-governmental institutions also have similar programs, such as the "Daddy's Institute"<sup>13</sup>, which advocates in favor of the expansion of paid paternity leave of 15 days.

Despite the progress, a considerable number of matters still need to be improved in Brazil with respect to maternity, paternity and parental leave. A Federal Law that extends paid maternity leave from 4 to 6 months for all professional categories and in all federal units is needed, as well as a specific regulation for private companies. Also, there should be more attention to the matter regarding the extension of paternity leave and the creation and regulation of a paid parental leave.

The impacts of these changes are already well known: when a mother spends more time with her baby, she strengthens the ties with the child, and prolongs the duration of breastfeeding, which is essential for the health of the baby. Moreover, the importance of a united family in the first moment of the child's life is of utmost importance. Parents that are secure of their family situation are also more satisfied workers. And, finally, but still of great importance: the effective female participation in the workforce contributes directly to national economic prosperity. The extension of paternity leave is also important for the empowerment of women, specifically, by dividing household chores and child rearing, women have more time to be able to better devote to their careers and also bring home good results and better income.

*Large gaps exist between written laws and their implementation: women do not always have access to the equality that exists for them in formal laws. What do you find are the greatest obstacles to effective implementation?*

Particularly in Brazil, economic and cultural matters are the main obstacles to the effective implementation of the rules governing gender equality - not only in the field of work, but in

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<sup>10</sup> As, for an example, the Federal Bill No. 3935/2008:

[http://www.camara.gov.br/proposicoesWeb/prop\\_mostrarintegra;jsessionid=497C13DAC3C23856DF5044F28F5FD683.node2?codteor=594922&filename=PL+3935/2008](http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra;jsessionid=497C13DAC3C23856DF5044F28F5FD683.node2?codteor=594922&filename=PL+3935/2008).

<sup>11</sup> More information in: [www.blog.saude.gov.br](http://www.blog.saude.gov.br).

<sup>12</sup> It is the case of the Law Firm Souza, Schneider, Pugliese e Sztokfisz. More information in:

<http://revistacrescer.globo.com/Familia/Rotina/noticia/2014/01/empresa-de-sao-paulo-e-primeira-ampliar-licenca-paternidade-para-30-dias.html>.

<sup>13</sup> <http://www.institutopapai.blogspot.com.br/>

all areas. Economic matters in the sense of a better income distribution to employers, and cultural matters in the sense that there is still a sexist and gender disparity mentality in the labor market - and in Brazilian society in general.

Unfortunately, one of the main obstacles is the living conditions of the family who receives the benefit of the maternity leave. Very often, women receive productivity bonuses in their jobs in addition to the fixed salary they receive, and the amount that is paid for maternity leave corresponds only to the fixed amount of the salary. The need to increase the family income, especially after the arrival of a new family member, often make women want to come back as soon as possible to their jobs, not giving real justice to their benefit.

The fear of losing their jobs after the end of the stability period is also quite large, especially because of the fierce competition seen today in the labor market. Thus, there is a considerable pressure from some companies when women are away from their positions for a long time. In many cases, women are not promoted or even suffer other forms of discrimination for being away for a long time from their jobs. This uncertainty due to the absence of a promise that their situation at work will not change is also an extremely important factor for the laws to be easily disregarded.

*What would you recommend to improve the implementation of maternity, paternity and parental leave laws?*

A cultural change of the employers' mentality, and more than that, a bigger and better income distribution in the country, are particularly needed. It is not enough for the law to be well written if a financial gap and a cultural mindset of discrimination against women by employers still remain in Brazil.

And, certainly, it is necessary that the Brazilian Federal Government gives the necessary attention to the importance of paid maternity and paternity leave not only for family reasons, but also to ensure the growth of the country's own economy, since there are a great number of policies to increase gender equality and empower women in the labor market<sup>14</sup>.

Those actions implies in the creation of greater incentives also to companies to join the "Corporate Citizen" program, for example. Many companies, for tax reasons, do not follow to the program as it jeopardizes their profitability. This prevents a greater number of women to be benefited with the law which, in theory, should support them. The Brazilian Federal Government should thus facilitate the implementation of laws that could expand maternity leave for private companies.

***Driving advocacy for women's employment:*** *The 2014 Women, Business and the Law report provides objective, cross-country comparative data in the hopes that it can be used as a tool by civil society organizations, policy makers, social entrepreneurs, and development groups to empower women.*

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<sup>14</sup> As also demonstrated by the Key Findings of the 2014 Women, Business, and the Law Report: <http://wbl.worldbank.org/~media/FPDKM/WBL/Documents/Reports/2014/Women-Business-and-the-Law-2014-Key-Findings.pdf>

*How could the Women, Business and the Law report and database be used to promote women's and men's shared responsibility and work-life balance, advocate for reforms and accelerate implementation of the laws in your country?*

Knowledge of the comparative data between countries regarding gender protection is extremely important to increase the awareness of governments, organizations, and private companies of the situation of women in the workforce worldwide. With such information, it becomes easier for non-governmental organizations of the countries with more restricted rights to fight for better working conditions for women, as well as companies to seek alternatives to its current gender protection policies.

For some States, in particular, by having their degrees of gender protection in the workforce revealed, they often end up passing by what can be interpreted as "name and shame": if they have negligible levels of protection for women, they can be somehow shamed before the international society. In this sense, for an extension in women's rights protection around the globe and in all spheres, the 2014 Women, Business and the Law Report is of extreme importance.

*What successful advocacy initiatives have been carried out in your country that could stimulate action and advocacy in other countries around the world?*

With regard to gender equality, although not necessarily in the labor field, the main Brazilian internationally recognized initiative of advocacy took place in the case known as "Maria da Penha" case. In this case, which involved gender related violence, the initiative of the non-governmental organizations Center for Justice and International Law (CEJIL), and the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM) was essential in reporting the extreme neglect of the Brazilian State to the Inter-American Human Rights System<sup>15</sup>. The decision rendered by the Inter-American Human Rights Commission in the abovementioned case was essential for the creation of a federal law in Brazil against gender violence, today known as "Lei Maria da Penha"<sup>16</sup>. This was undoubtedly an initiative of extreme importance, and which should always be remembered for new initiatives regarding gender protection.

*Practitioner views, observations and experiences:*

Unfortunately, I never had any practical experience with advocacy in the gender context. My knowledge in this area is theoretical, and my experience with advocacy happened with another vulnerable group in Brazil, namely, the indigenous population. My participation was made by volunteering for a non-governmental organization, by working in the elaboration of an *amicus curiae* for the Inter-American Commission in a case involving the Guarani-Kaiowá tribe. The case's analysis is still pending, but, undoubtedly, the action before the Regional Systems for the protection of Human Rights, as well as conducting internal awareness campaigns of the population regarding the end of discrimination and

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<sup>15</sup> More information about the case in: <http://www.cidh.oas.org/women/Brazil12.051.htm>.

<sup>16</sup> Federal Law n° 11.340, of August 7th, 2006. Document available in: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2004-2006/2006/lei/111340.htm](http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/111340.htm).

protection of Women, are of utmost importance in the current Brazilian democratic environment.

***Incentives to work:*** *The ease, cost, and availability of childcare for young children and free public education for school-age children can affect a parents' decision to work outside the home for paid compensation, or to stay at home with the children. The 2014 Women, Business and the Law report finds that childcare subsidies, such as tax credits, and the availability of childcare, increase women's participation in the labor force.*

*In your experience, what is the impact of laws providing for tax-deductible or government subsidized childcare, public provisions of childcare and free and compulsory primary education on women's and men's work-life balance and women's employment?*

The impacts of laws providing for tax-deductible or government subsidized childcare, public provisions of childcare and free and compulsory primary education are essential for women empowerment. Once feeling secured and supported by the Government of their countries with regard to incentives to return to work without compromising their offspring education and livelihood, women will return to work more promptly and will remain in their positions longer. This, in turn, will, for an example, enable men to reduce their working hours - since they would have the financial support obtained by their wives' employment -, and, consequently, when spending more time with family, strengthen family ties and expand the development of their own children. Family support in the education and development of their children is extremely important, and such subsidies would contribute significantly to this question.

*In your experience, how are these laws implemented in your country? What do you find are the greatest obstacles to implementation? What would you recommend to improve the implementation of these laws?*

In accordance with Article 208 of the Brazilian Federal Constitution of 1988 pre-school and kindergarten education for children from 0 to 5 years old is guaranteed by the Brazilian State, and education for children from 4 to 17 years old (basic education) is mandatory and free, being assured for all<sup>17</sup>. Furthermore, the Statute of Children and Adolescents<sup>18</sup>, in its article 53, V, guarantees to children free access to the public schools that are close to their residence.

Despite the abovementioned legal provisions, the lack of sufficient daycare for all children is very apparent. Cases of mothers who seek to enroll their children in daycares closer to their home and cannot do it because there are not enough slots for all children are extremely recurrent. Very often mothers end up enrolling their children in daycare centers far away from their residence, increasing their transportation costs. The other available option is to enroll their children in private schools, which in the end consumes a large portion of their monthly income.

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<sup>17</sup> The original writing of the article was changed by the Constitutional Amendment No. 59, 2009.

<sup>18</sup> Federal Law No. 8.069, of July 13th, 1990. Document available in:  
[http://www.planalto.gov.br/ccivil\\_03/leis/18069.htm](http://www.planalto.gov.br/ccivil_03/leis/18069.htm).

In this last case, when it comes to paying for private schools in Brazil, there is the possibility of deducting school expenses from income tax (nursery, pre-school, elementary, middle and high school education, as well as specialized courses) - both from the taxpayer as their dependents. In 2013, the limit for income tax deductions with educational expenses was R\$3.091.35.

Greater investments by the Brazilian Government in education are necessary - for free schools, and better quality daycare centers, all with more qualified teachers. It is also essential that more vacancies are created in public daycares. It is remarkable the number of cases of mothers who spend years waiting for vacancies in public kindergartens and finish by only being able to enroll their children in private schools, which are often very costly and can compromise the family budget. A deductibility of higher value in income taxes when it comes to private education is also necessary. The current value is extremely low and do not represent the actual proportion of the amount spent on private education in Brazil.

*Practitioner views, observations and experiences:*

It is a common occurrence to see mothers in Court seeking their right to enroll their children in public daycare centers close to their residences<sup>19</sup>. This is, after all, their Constitutional right, and should be the obligation of the State to provide free and good quality education. The jurisprudence in this case is favorable to the mothers, ensuring their right to enroll their children in schools where they are entitled to.

However, the access to justice in Brazil is unfortunately restricted by economic and bureaucratic reasons. In many cases, the families are not capable to afford the costs of a court procedure, and the *pro bono* work done by lawyers is restricted in the country. The Public Defense<sup>20</sup> also does not have a complete structure to serve the entire population that cannot afford the juridical services of a lawyer, and such demand, which should be simple, can be decided only in long term, harming the child's access to school education. In turn, these conditions force many women to leave their jobs in order to take exclusive care of their children, reducing the female participation in the labor market and emphasizing even more the existing discrimination.

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<sup>19</sup> A very recent example can be found in the Appeal No. 0036909-14.2012.8.26.0554, in which the decision was rendered by the Supreme Court of the State of São Paulo in January 21<sup>st</sup>, 2012. Decision available in: <http://esaj.tjsp.jus.br/cjsg/getArquivo.do?cdAcordao=7288604>. In the same sense, there are very recent news on the topic in the website of the Brazilian Federal Supreme Court:

<http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=258619>.

<sup>20</sup> Public Organ that can be either Federal (Defensoria Pública da União) or State (each State of the Brazilian Federation has to have its own Public Defense, in accordance with the prevision of article 134 of the Brazilian Constitution).

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***Getting a Job:*** *Many economies have enacted legislation mandating maternity, paternity or parental leave. Such legislation may enable equitable distribution of household responsibilities and promote women's equal access to employment. Factors that may play a role include whether the law mandates leave; leave is paid or unpaid; paid leave is partially paid or fully paid; the government, the employer or both pay for leave benefits; and the length of leave. Another factor could be how both parents can share parental leave.*

*The 2014 Women, Business and the Law reports find that more women participate in the labor force in economies with longer fully paid maternity and parental leave available for new parents. Is this the situation in your country? In your experience what is the impact of laws mandating maternity, paternity and parental leave on women's work-life balance and economic empowerment?*

Maternity laws and paternity and parental leaves provide enabling environments and positively contribute to a balance of work and family life. It also empowers, encourages and provides space for women to learn skills, have jobs and contribute to the economy. Some countries, lack enforcement mechanisms, are outdated, inconsistent, complicated, and out of the reach of women. It is very hard for a majority of women to get benefits from these laws. Men dominate already limited legal aid and advisory services for women. Implementation is either non-existent or is away from women's' homes in city centers, or has prohibitive costs not accessible by women, and is always user and complaint driven. Such institutions delivering services are dominated and run by men, making those institutions inaccessible to women—especially when there are no clear, transparent rules for service delivery and officials are unaccountable.

*Large gaps exist between written laws and their implementation: women do not always have access to the equality that exists for them in formal laws. What do you find are the greatest obstacles to effective implementation? What would you recommend to improve the implementation of maternity, paternity and parental leave laws?*

Yes, that is another huge issue. The implementation gaps are eating into public confidence and trust in legal and justice institutions and are generating violence in societies. Where there is lack of enforcement of laws; there is rise of violence. The laws are not effective and are not enforced. There are implementation gaps. There is need to narrow these gaps and make implementation effective. Formulating laws is only half of the puzzle. The more challenging other half is ensuring that the legal framework is properly implemented. The sources of implementation gaps may vary from country to country. The way forward is to assess the sources of implementation gaps in each legal system and then develop strategies to narrow those gaps. The most common factors of implementation gaps are:

- State bureaucracy
- Legitimacy of the laws
- Quality of the laws

- Lack of communication
- Lack of sources to implement laws
- Lack of trainings
- Lack of awareness about laws
- Barriers to economic activities
- Vested interest
- Influence of local elites
- Social structure
- Cultural legacy
- Lack of adequate and competent institutions and incentives

*What do you find are the greatest obstacles to effective implementation?*

In democratic societies, governments at every level represent the people and are entrusted to work in the interest of their constituents. However, in practice this is often not the case in weak democracies, and non-democratic countries.

A government may adopt laws but not implement them. Governments often consider, and also show to the international community, that their work is done once a law has been adopted in the legislature. However, laws are meaningless unless implemented.

Other main obstacles in effective implementation of laws:

- Lack of political will
- Ineffective and incompetent justice institutions
- Laws drafted in haste under pressure and without proper analysis and research ad studies
- Low number of female justice actors
- Built in gender bias in society
- Lack or problem related to human resources
- Lack of material resources
- Corruption and malpractices
- Reception deficiency
- Public opposition
- Lack or blocked government channels of communication

*What would you recommend, to improve the implementation of maternity, paternity and parental leave laws?*

- Sustained political will
- Capable and competent human resource services
- Continuous training mechanism to reflect the lessons learned
- Increase women employment in enforcement institutions
- Material resources
- Transparency and accountability mechanism
- Tackle Corruption ad malpractices

- Enhance reception
- Work with the public to enhance ownership
- Inter-government agencies communication and coordination
- Work with the private sector (while the private sector can't be the answer to everything, it can provide some solutions)
- Work with the civil society
- Open data, data creation, and preservation in readable format (data must be translated and shared with policy makers and used to improve services to women)

***Driving advocacy for women's employment:*** *The 2014 Women, Business and the Law report provides objective, cross-country comparative data in the hopes that it can be used as a tool by civil society organizations, policy makers, social entrepreneurs, and development groups to empower women.*

*How could the Women, Business and the Law report and database be used to promote women's and men's shared responsibility and work-life balance, advocate for reforms and accelerate implementation of the laws in your country?*

To achieve objectives to this end, it is important to have better policies and proactive advocacy to link this data with women empowerment having political, economic and social rewards (e.g. women empowerment is a smart politics, women empowerment is a good economics and women empowerment has essential role in democracy). There is need to establish policy partnership, allies, champions, exchange programs, constituency building and institutional twinning.

*Practitioner views, observations and experiences:*

The traditional tribal leaders and religious leaders are obstacles to advocacy. Many societies believe that the working world is not for women and that women's best place is in the home. Poverty becomes their written fortune, especially in developing countries. It is important to change this mindset through education, especially the education of leaders who influence policies.

***Incentives to work:*** *The ease, cost, and availability of childcare for young children and free public education for school-age children can affect a parents' decision to work outside the home for paid compensation, or to stay at home with the children. The 2014 Women, Business and the Law report finds that childcare subsidies, such as tax credits, and the availability of childcare, increase women's participation in the labor force.*

*In your experience, what is the impact of laws providing for tax-deductible or government subsidized childcare, public provisions of childcare and free and compulsory primary education on women and men's work-life balance and women's employment?*

Tax benefits, child care facilities and benefits, child care systems, child care facilities in the work place, compulsory primary education for women, training in appropriate skills close to their homes or accessible to women are all huge incentives for women to work. It would be most ideal for women to work where these benefits are made available. Women can

easily speak to women. Successful examples of childcare businesses can be found in New York City and the ABC Pathway program in the UK. In countries like Afghanistan, Pakistan and Turkey and other developing nations, there are laws and policies but they are either not enforced at all or only enforced to favor a few in power and for political gain. There is no monitoring of institutions responsible to enforce these laws. In England, social service agencies approach expected parents and educate them on benefits they are entitled. Social services are extended to parents and services are available virtually at their doorsteps. While in other countries, parents have to pay visits to these agencies to get those services.

*In your experience, how are these laws implemented in your country? What do you find are the greatest obstacles to implementation? What would you recommend to improve the implementation of these laws?*

I have experience of living and working in England, Pakistan, Turkey and Afghanistan. There are huge gaps between laws and policies enforcement is huge gap and disincentivizes women employment. Men dominate the law making process and it is not inclusive and participative. The laws are faulty and of low quality. Usually laws are made in haste without carrying out regulatory impact analysis either to ease international pressure or to please funders and donors. There is no discussion in the public media; there are no trainings of enforcers in that new law and in most of the cases, the enforcement agency is not mentioned in the law. There is no monitoring and post law evaluation mechanism. Ultimately, such laws fail to bring sustained incentives for women.

We need to draft women empowerment laws and project properly from the very beginning. Hastily drafted and passed laws and projects do not bring results in sustained impact, and often lead to a loss of public confidence and trust. Laws should be written through a democratic, inclusive, transparent and consultative process based on data and research. There should also be a clear enforcement mechanism in these laws and a post evaluative mechanism.

*Please share your practitioner views, observations and experiences. We would also like to hear your stories and real life experiences.*

In countries of my experience, there are no schools close to women and families do not allow their daughter(s) to travel. The institutions are dominated by men and are not accessible to women. There is a stigma for women if they go to police station, prosecutors' offices or courts. It is not that these institutions have something bad in themselves; it is because society knows that men dominate these institutions and women are not respected there.

Maternity and childcare services are not accessible to working women. The majority women still live in villages and childcare and maternity services agencies are more common in urban areas. In addition, there is little or no protection for women at work place; there are no codes and guidelines against work place harassments, etc, including nonexistent accountability mechanisms.

The family planning and family health services were not successful in Pakistan, although millions of dollars were spent. The failure resulted in public mistrust of these services and the propaganda. Trust and public confidence is very critical for success of these initiatives.

These facilities were used for political gains. Women were recruited without any training and any monitoring. The female health workers received payments without working. Corruption permeated from top to bottom. There are ghost schools and ghost maternity and childcare services. There is a need for independent monitoring and evaluation mechanisms and then accountability of those who fail to deliver. Transparency of the process is also vital. Secrecy leads to malpractices and corruption. There also can be a lack of trust and communication on both sides.

***Additional Helpful Information and/or Recommendations:<sup>21</sup>***

1. Making the law work for everyone. Effective laws are necessary for every one and more so for women. Effective laws are enforced laws.
2. Democratic, participative, open, transparent and accountable legislative governance is essential for making law work for everyone and for making stable laws. Exclusion of women from lawmaking process is desperately unfair; it denies them the opportunity to make law that reflect their aspirations and improve their work and domestic lives.
3. Making the institutions work for everyone. Institutions reach to the users is vital. Access to administrative, legislative and judicial institutions is critical. Exclusion of women from institutions and participation impacts access to institutions. Secrecy in institutions leads to malpractices and distrust in institutions and this is truer in case of institutions providing services to women.
4. Complete reform and overhaul of inheritance laws, divorce laws, maintenance laws and marriage laws. The improvement of the language of the laws to not discriminate and include gender-neutral words and vocabulary to the law and law making process. Many countries need to review and reform majority of their laws to reflect gender neutral language and remove all discriminatory provisions
5. I firmly believe that drafting of laws and regulations is no longer a domestic concern. It has become an international and regional phenomenon. International development post-2015 world hinges largely on an enabling environment and able institutions.
6. Consultation is very essential for effective and efficient laws and regulations and for determining the contents of a law. It facilitates compliance and enhances public confidence, trust in law and rule of law. The consultations must be open and well publicized.
7. Distribution of laws and regulations is important. States must make sure that laws are not only published in official gazettes, but communicated and understood by those regulated by the law.

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<sup>21</sup> Sources include: Making the Law Work for Every One, Volume 1, Commission on Legal Empowerment of the Poor; Making the Law Work for Every One, Volume 2, Commission on Legal Empowerment of the Poor; Improving the Public Governance: Closing the Implementation Gaps between Law and Practice

8. Access to justice is another concern for women. There is need for strategies to create affordable, inclusive and fair access to justice as well as increasing women working in justice institutions. Women need to be working in police stations, prosecution offices, courts, notaries and bar associations.
9. An effective family dispute settling system out of the formal court system. Disputes take time, money and have impact on health of litigants.
10. Property rights for women. Property rights help women establish their own business, insurance, security and surety in the financial market to get loans.
11. Labor rights generating protection and opportunities.
12. Business rights and more economic opportunities for women.
13. Independent, impartial and competent means of settling service and business disputes.
14. Invest in the health of women—health is wealth.
15. Job security. Clear rules on work place harassment, protection from harassment, and training of all staff in equality and the consequences of work place harassment. Women should feel safe at work.
16. Facility for internal migration and movement. There is need for secure travel arrangements, secure residences for women and secure work places,
17. Education and training opportunities and facilities for women.
18. Access to job premises and facilities at job premises.
19. Incentives for employers to employ more women. It is critical to enhance women employability in private sector.
20. Investment in work opportunities that don't require too much training for women with little or no education.
21. Investment in the home industry.
22. Increase childcare options in both public and private sectors.
23. The use of quotas to include women can lead to new breakthroughs in gender equality
24. Promoting women's leadership in businesses and providing leadership and entrepreneurship training for women.
25. Legal empowerment is way forward.

It is a process by which women are protected and enabled by law and institutions to advance their rights and their interests in the public and in private sectors. They need identity, voice, rights and access to justice, property, labor rights, and business rights. These factors would lead to access to justice, access to assets, access to decent work and access to markets and access to financial markets.

**Ayesha Khan**  
**Human Rights Lawyer**  
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***Getting a Job:** Many economies have enacted legislation mandating maternity, paternity or parental leave. Such legislation may enable equitable distribution of household responsibilities and promote women's equal access to employment. Factors that may play a role include whether the law mandates leave; leave is paid or unpaid; paid leave is partially paid or fully paid; the government, the employer or both pay for leave benefits; and the length of leave. Another factor could be how parental leave can be shared by both parents.*

*The 2014 Women, Business and the Law report finds that more women participate in the labor force in economies with longer fully paid maternity and parental leave available for new parents. Is this the situation in your country? In your experience what is the impact of laws mandating maternity, paternity and parental leave on women's work-life balance and economic empowerment?*

In India, according to the Maternity Benefit Act, every woman is entitled to receive from her employer, maternity benefit at the rate of the average daily wage for the period of her actual absence, if she has worked with that employer for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery. The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks, of which not more than six weeks shall precede the date of her expected delivery. However, please note that this legislation is not applicable to the unorganized sector, which constitutes 94 percent of India's labour structure.

This legislation has had a positive impact by enabling women to enter the workforce in large numbers and seek economic independence, as they now have the assurance from the State, that they will be entitled to paid maternity leave. Unfortunately, there are several small organizations in the organized sector which downplays this requirement and do not provide the mandated period of paid maternity benefit. Instances of violation are very common.

In regards paternity leave, while it is authorised for government employees there is no law that instructs the private sector to make it obligatory. Hence, paternity leave is open to interpretation by individual companies. Thus, on the one hand you have a Cisco Systems (India) which grants its employees 12 weeks paternity leave and on the other, you have Infosys which offers 5 days of paid leave. Some companies even shy away from identifying it as paternity leave, instead they have christened it Compassionate Leave. And then there are many companies that don't care much for the concept. It is important for the state to make this leave mandatory for the private sector as well since there is a greater understanding of a man's role during childbirth in contemporary times and an increased desire on the part of the modern man to be an involved father right from the beginning.

*Large gaps exist between written laws and their implementation: women do not always have access to the equality that exists for them in formal laws. What do you find are the greatest*

*obstacles to effective implementation? What would you recommend to improve the implementation of maternity, paternity and parental leave laws?*

The greatest obstacles to implementation are (i) Lack of an Effective Monitoring Mechanism by the State which will ensure that these laws uniformly implemented across private sector organizations. (ii) Increasing the penalty payable by employers on non-implementation or tardy implementation of this requirement (iii) Lack of opportunities for women in the organized sector (iv) Lack of incentive for employer to provide this benefit. Creating a mechanism to solve these problems would greatly improve the implementation of maternity, paternity and parental leave laws.

***Driving advocacy for women's employment:*** *The 2014 Women, Business and the Law report provides objective, cross-country comparative data in the hopes that it can be used as a tool by civil society organizations, policy makers, social entrepreneurs, and development groups to empower women.*

*How could the Women, Business and the Law report and database be used to promote women's and men's shared responsibility and work-life balance, advocate for reforms and accelerate implementation of the laws in your country?*

The first step is to create awareness and to that end, the findings of this Report should be presented in a manner that can easily be understood across public spaces by the Government, in the form of advertisements, website campaigns, social media (Facebook, Twitter, Youtube etc). The language of the masses, i.e., Hindi should be used. The State should then take it upon itself to start a large scale implementation drive, providing tax benefits for employers who formulate policies which are in accordance with the recommendations suggested by the Report.

Secondly, this cause can be taken up by civil society activists and organizations which can then seek effective implementation through petitioning the higher courts, which in India have recently become very active on women's issues.

*What successful advocacy initiatives have been carried out in your country that could stimulate action and advocacy in other countries around the world?*

Several initiatives have been carried out by private civil society organizations as well as by the state on improving maternal health. For example, Sahahyog, an NGO, is advocating for all women's rights to maternity benefits, including wage-equivalent benefits for women workers in the informal sector, towards ensuring food security, child nutrition and livelihood security. The Indian Supreme Court in the case of Municipal Corporation of Delhi v. Female Workers (Muster Roll) (AIR 2000 SC 1274), extended the benefits of the Maternity Benefit Act, 1961 to the Muster Roll (Daily Wagers) female employees of Delhi Municipal Corporation (state government employees). However, surprisingly, there is a dearth of initiatives in this regard by the central and state Governments.

***Incentives to work:*** *The ease, cost, and availability of childcare for young children and free public education for school-age children can affect a parents' decision to work outside the home for paid compensation, or to stay at home with the children. The 2014 Women, Business*

*and the Law report finds that childcare subsidies, such as tax credits, and the availability of childcare, increase women's participation in the labor force.*

*In your experience, what is the impact of laws providing for tax-deductible or government subsidized childcare, public provisions of childcare and free and compulsory primary education on women's and men's work-life balance and women's employment?*

Such laws do provide a positive reinforcement for women's employment. They enable more women to take-up employment and thus complete their education. Securing financial independence is a strong incentive for women, which will ensure that they achieve the requisite qualifications needed to secure gainful employment. It will also enable men to leave home and seek gainful employment in distant places, knowing that there is a financial provider at home and will reduce the pressure on them. In India, there is however a strong dearth of such laws and institutions which may promote this balance.

*In your experience, how are these laws implemented in your country? What do you find are the greatest obstacles to implementation? What would you recommend to improve the implementation of these laws?*

In India, very few states actually have institutions which provide free or subsidized childcare for working women. In villages, one can see Anganwadi workers. The word Anganwadi means "courtyard shelter" in Hindi. They were started by the Indian government in 1975 as part of the Integrated Child Development Services program to combat child hunger and malnutrition. The Anganwadi system is mainly managed by the Anganwadi worker (AWW). She is a health worker chosen from the community and given 4 months training in health, nutrition and child-care. She is in charge of an Anganwadi which covers a population of 1000. About 20-25 Anganwadi workers are supervised by a Supervisor called Mukhyasevika. Four Mukhyasevikas are headed by a Child Development Projects Officer (CDPO).

The higher judiciary should step in and suggest certain binding guidelines for the State to enforce which will make this program more effective. It is found that most of the anganwadi workers are untrained, unskilled and unable to provide adequate care. This is primarily because of lack of training. The state should train such workers more effectively. In the urban areas as well, similar crèche systems must be set up. It should be noted that such crèches are hygienic, with well trained workers as parents may hesitate sending their child to a crèche where the child will not be cared for, or will catch a disease. There should also be a focus on improving the pay scales of Anganwadi workers and giving them more benefits, to incentivize this profession for more people to join in.

**Helena Nord Lee**  
**Swedish/USA Perspectives**  
**Previously worked with UN Procurement and Contracts**

***Getting a Job:** Many economies have enacted legislation mandating maternity, paternity or parental leave. Such legislation may enable equitable distribution of household responsibilities and promote women's equal access to employment. Factors that may play a role include whether the law mandates leave; leave is paid or unpaid; paid leave is partially paid or fully paid; the government, the employer or both pay for leave benefits; and the length of leave. Another factor could be how parental leave can be shared by both parents.*

*The 2014 Women, Business and the Law report finds that more women participate in the labor force in economies with longer fully paid maternity and parental leave available for new parents. Is this the situation in your country? In your experience what is the impact of laws mandating maternity, paternity and parental leave on women's work-life balance and economic empowerment?*

I have experience from, growing up, studying and working in Sweden, working at the UN, and having a child and living in the US. All my female friends from Sweden and most of their mothers work, which is supported by official data from 2012 stating that [77% of women work compared to 82% of men](#). In my generation, we all assumed that we would not have to choose between having children and having a job. We wanted both and the Swedish society had created a belief in us that this could be done. Let me emphasize that, we did want to have children and we did want the right to stay home with them for a while and we did want the society to be shaped in a way that allowed us to do this. We took for granted that we would be financially independent in the sense that we would always be able to support ourselves and our children and would not have to rely on someone else to support us. Although our moms worked, we didn't really identify with them since they mostly worked in typical women sectors (child care, teachers, etc). Obviously, they could only work within sectors with working arrangements that allowed them to take care of us and work. We assumed we could be anything we wanted; doctors, lawyers, and diplomats. My Grandma once told me that she always wanted to be a lawyer but this was not possible in those days (I am a lawyer). My generation of women never felt restricted by being women. After university we changed a little bit because the reality was not as straight forward, but I would say that none of the women I know from Sweden have been deterred from doing what they wanted to do with their lives. Their careers have been somewhat impacted when they had children because in reality most women take some kind of leave when they have children, spend more hours per week on house work and stay home when the children are sick. It mostly impacted the women who work in the private sector. Most women chose jobs where there was a possibility for flexible working arrangements.

What made all this possible? One important issue is job security. The Swedish legislation protects women and men from losing their jobs while being on parental leave (up to 18 months of parental leave). If the consequence of taking parental leave would be losing a job, it would certainly mean that a lot of women would never go back into the workforce after having a baby. That is not the case in Sweden, all women I know with children have returned to the workforce after being on leave.

Another important issue is to get paid during the parental leave. If this right doesn't exist, women or men on parental leave would have to rely on someone else for support. The ability to support oneself and one's children is an important factor in empowering women. I believe that a right to be fully paid is the better option. However, in Sweden you are not entitled by law to full pay during the parental leave. The government will pay you a percentage of your income up to a maximum amount during the mandatory parental leave. This is indeed fantastic but a consequence of not paying in full is that women-instead of men-often take the parental leave since the man often earns more. It becomes an economical choice. This puts the woman in a difficult situation. Is she going to choose what is best economically for the family at that point in time or what is best for her and possibly the family in the long run? In addition to women receiving less money during parental leave, which undermines their financial independence, the time away from work may lead to missed opportunities in pay raise and promotions and less pension benefits.

Ideally, women and men would share the responsibility of taking care of children. Sweden is now taking different initiatives to try and encourage women and men to share the parental leave of 18 months by paying a bonus if parents share the parental leave equally. However, so far it appears that this bonus has not increased the number of cases where parents share the parental leave. It is at this point unclear why, although, one theory is that a decision to share is not based on money only. In my view, I think it is more an issue of the bonus not being high enough to make a real difference economically. Another initiative is a tax free monthly subsidy ("Vårdnadsbidrag") for a parent who stays home to take care of his/her children between the ages of 1 -3. This initiative has been criticized because only a very few men applied for the subsidy and there is a fear that this subsidy will keep women at home instead of encouraging them to enter into the workforce.

I worked at the UN when I had my son. The UN provided a fully paid maternity leave of 4 months (I believe). Since I was used to the Swedish standard of a longer leave I stayed home for 12 months in total, after the fully paid 4 months, I was on un-paid leave. I used my savings to contribute to our expenses during that time. Although, the UN is generous with the 4 months compared to others, it is not ideal to have to take from your savings to take care of your child the first year. The fact that I was on leave for 12 months did impact my possibilities for promotion.

*Large gaps exist between written laws and their implementation: women do not always have access to the equality that exists for them in formal laws.*

Information about what the benefits of taking maternity, paternity and parental leave are for the society as a whole and the workplace.

*What do you find are the greatest obstacles to effective implementation?*

A societal and corporate belief that you are not serious about your job if you take leave. It is a "cost" to the workplace since a new person has to be trained.

*What would you recommend to improve the implementation of maternity, paternity and parental leave laws?*

In the Swedish Discrimination Act (2008:567) it is stated that the employer shall facilitate for both men and women to combine work and parenthood (Ch.:3:5). There is a “Discrimination Ombudsman” office that oversees compliance with the Act. The office has power to take certain administrative actions (like fines). An employer has an obligation, according to the Act, to submit an Equality report every third year (if over 25 employees) setting forth what actions need to be taken with respect to equality in that particular workplace and an account of what actions will be taken during the coming three years.

***Incentives to work:*** *The ease, cost, and availability of childcare for young children and free public education for school-age children can affect a parents’ decision to work outside the home for paid compensation, or to stay at home with the children. The 2014 Women, Business and the Law report finds that childcare subsidies, such as tax credits, and the availability of childcare, increase women’s participation in the labor force.*

*In your experience, what is the impact of laws providing for tax-deductible or government subsidized childcare, public provisions of childcare and free and compulsory primary education on women’s and men’s work-life balance and women’s employment?*

As mentioned above, all my female friends in Sweden work. Most of them have children. They are all using the subsidized childcare provided by the Swedish Government. The Swedish Government is obligated to provide full day child care for all children from the age of 1. The child care offered has to be located close to the child’s home. The government/municipality has the right to charge a reasonable fee (not exceeding the cost) for the service. When a child goes to school, starting at the preschool level, which is entirely paid by the government, childcare is provided after school. Having an inexpensive, reliable, trustworthy and professional childcare and school located close to your home is one of the most important factors for women to be able to continue to work after having children.

*In your experience, how are these laws implemented in your country? What do you find are the greatest obstacles to implementation? What would you recommend to improve the implementation of these laws?*

As far as I know, there is no problem with implementing this law in Sweden. There have been issues with the government/municipality not providing a space for a child within the required 4 months but that is the only problem I know of.

*Practitioner views, observations and experiences:*

Without these provisions for child care before school age and thereafter, Swedish moms would not be able to work. I can compare my experience of being a mom in the US to that of Swedish moms. Often the childcare in the US is expensive. This expense would be taken into account when deciding whether to work or not. There are a number of childcare options available in the US and each family has to figure out what works best. A lot of moms stop working because of child care related issues (cost, quality, practicality) and the inflexibility of the US workforce. It is unknown what the possibility is for these moms to go back to work. Where I live, there are also a lot of families where both parents work. All these families complain about work-life balance issues.

***Additional Helpful Information and/or Recommendations:***

To make it easier to work and have a family, Sweden has introduced a tax deduction/credit for half the cost of household work up to a maximum amount. I understand that this is something my Swedish girlfriends find very helpful. This deduction/credit also helps women who provide household work.

**Darlene Prescott**  
**Former Legal Officer in the United Nations Office of Legal Affairs**

***Additional Helpful Information and/or Recommendations:***

Any discussion on the wellbeing of females must include the subject of religion. As is well known, religion has been a significant part of human culture for thousands of years, and, even in the United States, a developed country founded on the principle of separation of church and state, as well as on freedom and equality, religion often plays a negative role in women's economic opportunities.

Not only do religious institutions "legally" discriminate against women in employment, but also religious beliefs are preventing women and girls' equal access to medical services, including abortions and birth control. These personal beliefs significantly hinder women and girls from fully taking advantage of economic opportunities. And, in the case of a woman wishing to become a Catholic priest, for example, she is prohibited from fulfilling her "calling."

**Legal gender discrimination:**

Interpretation of the U.S. Constitution has not protected females from religious institutions' prohibiting their employment in leadership roles. Recently, in the *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission* case, the U.S. Supreme Court unanimously held that the "ministerial exception" is rooted in both the Establishment and Free Exercise Clauses of the First Amendment. In other words, a religious institution can legally discriminate against a woman seeking employment in such institutions.

**Equal access to medical services:**

Objection to abortion and birth control is generally based in religion. Not being able to control births is not conducive to training for a job, holding a job, or, in general, planning one's career in an orderly fashion. And in the U.S., women are not guaranteed maternity leave or other benefits in the workplace that would equalize the female's burden of birthing future workers and taxpayers. Recently, there has been a rash of anti-abortion and anti-birth control restrictions in the states that prevent women and girls from reaching their full potential. For example, in Texas, legislation was recently passed by the Legislature that further limits abortions – banning abortions at or after 20 weeks. This legislation also has the result of closing down some abortion clinics around the large state that will force women to travel great distances to obtain medical care. This, of course, will severely restrict poor women's ability to obtain an abortion and other essential medical services and, therefore, increase their economic hardship.

**Recommendations/solutions:**

While Christianity and other patriarchal religions are not likely to go away in the near future, other factors can come into play to mitigate the more anti-female aspects.

EQUAL RIGHTS LAW (Domestic & International): The Equals Rights Amendment (ERA) and the U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) both would extend legal rights to women and girls in the U.S. Both were criticized by fundamentalist religious groups that argued that those legal instruments, if accepted, would have allowed females more freedom in controlling their bodies. The passage of such laws and treaties are essential to the equal rights of women and girls. However, it must be mentioned here that in some of the countries that have ratified CEDAW not all the obligations under the treaty have been met. But the treaty is a start, especially in countries that did not have laws reflecting women's rights.

Support of the United Nations is also important in that this global Organization promotes equal rights, including economic rights, for women and girls around the world – and provides considerable resources to this end.

INFLUENCE FROM THE EUROPEAN UNION: While Americans pride themselves on being independent, Europe remains a strong influence on us. Relevant E.U. anti-discrimination law contains no exception allowing religious institutions to discriminate against women in relation to employment and occupation. Therefore, it is highly conceivable that in the near future any restrictions on women seeking a career as a bishop in the Church of England, for example, will not be denied based on her gender. The more countries that permit women leaders of religious institutions, the more pressure there would be on the U.S. to follow.

However, Members of the European Parliament recently rejected a report which suggested that abortion be defined as a “human rights and public health concern.” This (second) rejection affirms the ability of the individual E.U. nations to formulate their own policies as regards abortion and sex education. But, human rights law could be a viable avenue for the equalization of opportunities for women and girls in the future.

**Carol Della Scott**  
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***Getting a Job:** Many economies have enacted legislation mandating maternity, paternity or parental leave. Such legislation may enable equitable distribution of household responsibilities and promote women's equal access to employment. Factors that may play a role include whether the law mandates leave; leave is paid or unpaid; paid leave is partially paid or fully paid; the government, the employer or both pay for leave benefits; and the length of leave. Another factor could be how parental leave can be shared by both parents.*

*The 2014 Women, Business and the Law report finds that more women participate in the labor force in economies with longer fully paid maternity and parental leave available for new parents. Is this the situation in your country? In your experience what is the impact of laws mandating maternity, paternity and parental leave on women's work-life balance and economic empowerment?*

There are a number of studies in the United States and at the state level on the impact of fully paid and parental leave policies, indicating that such policies permit continuity for women in the workplace, higher earnings, more seniority, more negotiating power when women do not have to give up seniority or earnings for maternity time, less incentive to change jobs, gain in tenure, skills and work experience and more ability to care for the health of their children.<sup>22</sup>

*Large gaps exist between written laws and their implementation: women do not always have access to the equality that exists for them in formal laws. What would you recommend to improve the implementation of maternity, paternity and parental leave laws?*

Barriers to enforcement and implementation include employee and employer lack of knowledge and confusion about the application of the laws and regulations; weak enforcement and weak penalties; failure to enact anti-discrimination and anti-retaliation policies and employer resistance to such laws and regulations. In some instances, penalties for failure to follow such laws and regulations become a cost of doing business. Employers are resistant because they believe that such laws and regulations undermine management

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<sup>22</sup> ABT Associates, Family and Medical Leave in 2012: Technical Report Contract #GS10F0086K TO DOLF109630906, September 7, 2012 *Updated September 13, 2013, Prepared for Jonathan Simonetta, U.S. Department of Labor; Williams, the Faces of Work Family Conflict. For the history of family leave in California and a description of legislation in New Jersey and Washington State, see Appelbaum and Milkman, "Employer and Worker Experiences with Paid Family Leave in California, The Center for Economic and Policy Research", 2011 (See <http://www.cepr.net/documents/publications/paid-family-leave-1-2011.pdf>); Williams and Boushey, "Three Faces of Work Family Conflict" University of California Hastings, The Center for American Progress and the Center for Work Life Law; Berkeley Center on Health, Economic & Family Security, UC Berkeley School of Law Labor Project for Working Families "Reforming Family and Medical Leave Laws: Promoting Health and Economic Security for California's Working Families", May 2011. For older reports see Gornick and Meyers, "Families That Work Policies for Reconciling Parenthood and Employment" Russell Sage Foundation, 2003; Hofferth and Curtin The Impact of Parental Leave on Maternal Return to Work after Childbirth in the United States OECD Social, Employment and Migration Working Papers, DELSA/ELSA/WD/SEM(2003) May 2003.*

and adversely affect productivity and there is no support for women or others who seek to enforce their rights under the law.

For example, a 2012 Department of Labor (DOL) survey conducted by Abt Associates, Inc. (the "ABT Report" indicates that in the United States only sixty six percent of employee had heard of the federal Family and Medical Leave Act (the "FMLA").<sup>23</sup> <sup>24</sup>As the study pointed out, lack of knowledge was one of the chief barriers to use of family leave.<sup>25</sup> At the time of the study, one in three workers had no idea that there is a law requiring covered employers to provide job-protected family and medical leave to eligible employees and it is likely that even fewer employees had heard of the applicable state laws with regard to leave, non-discrimination and similar laws. The Abt Report also found that even if workers know such laws exist they do not know how the laws apply to their specific situations. A similar knowledge gap exists with regard to employers. The study also found that knowledge had steadily increased the longer the FMLA was in effect.

There also needs to be a means of addressing employer's fears that complying with such laws will be detrimental to the workplace and will be abused. There is a need for a campaign to educate workers and employers, to advise that such laws exist and will be enforced, to change cultural norms so that use of such policies is accepted and regarded in a positive light. Suggestions include positive community and media campaigns, verbally and in writing; establishing non-legal or nonprofessional advocates or even workplace ombudsmen and women who can assist employees in learning about and enforcing such rights without the time and cost of having an attorney (which is a significant barrier to enforcing one's rights and may have other pre-conditions and stigmas); better record keeping requirements ; having effective governmental and nongovernmental entities assist in enforcing such rights.<sup>26</sup> Other mechanisms that are included in United States law include requiring employers to post general notice of such laws and notice to specific employees who might be affected, educating human resource personnel, enacting policies against retaliation and discrimination of individuals who use such laws; and enacting laws that prohibit discrimination against employees who have family responsibility. Other laws and regulations that would be helpful are paid sick leave days and rules permitting employees to have a more flexible work schedule. There could also be means of rewarding employers who make innovative changes by recognition, awards or otherwise.

Use of paternity leave and better communication can help take this issue from solely a woman's issue to a society issue. Additionally, in some instances, where more than one law or type of law applies, certain laws and regulations are conflicting and confusing.

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ABT Associates, Family and Medical Leave in 2012: Technical Report, Contract #GS10F0086K TO DOLF109630906, September 7, 2012 *Updated September 13, 2013, Prepared for* Jonathan Simonetta, U.S. Department of Labor.

<sup>25</sup> See Abt Report at pages iii, 23, 156. Of those workers aware of the FMLA, the vast majority learned about it through their employer. According to the Report, many of the employees learned about the FMLA by seeing a poster or other notice posted at work and others through employer communications which makes it essential that employers know about, understand and provide adequate information in a non-threatening, non-retaliatory manner.

<sup>26</sup> A recent example of an educational effort and one-on-one assistance is the use of patient navigators under the Affordable Care Act to educate individuals about their health care coverage options under the new law.

Reconciling such different requirements and providing sources of information would be helpful as well. In order to launch a positive campaign, there needs to be examples of specific individuals and stories of those individuals, there also needs to be data to counteract the argument that such laws are detrimental. One underlying issue that needs to be addressed is the positive value of having women in the work place and having women with children in the workplace so that work and home/family life are not two divergent choices. In addition, programs need to be available to women who may not work in a large company but are home care or domestic workers or have small businesses.

A recent advocacy and information document that addresses many issues raised in this document and provides a number of anecdotes is Maria Shriver and the Center for American Progress "The Shriver Report ' A Woman's Nation Pushes Back from the Brink", January 2014.

***Driving advocacy for women's employment:** The 2014 Women, Business and the Law report provides objective, cross-country comparative data in the hopes that it can be used as a tool by civil society organizations, policy makers, social entrepreneurs, and development groups to empower women.*

*How could the Women, Business and the Law report and database be used to promote women's and men's shared responsibility and work-life balance, advocate for reforms and accelerate implementation of the laws in your country?*

One of the most important issues in an educational campaign is having clear, reliable data. The data base can be used and made available in easily understandable form to policy makers and advocates to allay fears that work life balance is harmful and to address economic productivity issues and demonstrate that such policies not only benefit employees but employers as well and benefit the community at large. In addition to a data base with statistics, stories of individuals and community and replicable solutions and best practices are helpful as well. There should also be examples of changes that make a difference that are not financially burdensome.

*What successful advocacy initiatives have been carried out in your country that could stimulate action and advocacy in other countries around the world?*

Examples of advocacy efforts are the Family and Medical Leave Act and various state initiatives to provide paid leave to employees, to provide equal pay for equal work in various cities and to prohibit pregnancy discrimination. Three states – California, New Jersey and Rhode Island—operate paid family leave insurance programs.<sup>27</sup> In addition, seeing women leaders such as a female Secretary of State and head of General Motors are not advocacy efforts but set important models. A new, not yet successful, effort is the **Family and Medical Insurance Leave Act** ("FAMILY") to provide paid leave in the United States. Advocacy efforts by women leaders such as Sheryl Sandberg's Lean In Foundation

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<sup>27</sup> The Shriver Report, "chapter entitled "Putting Women at the Center of Policymaking" Both laws are temporary disability laws. For a review of New Jersey law, see <http://lwd.state.nj.us/labor/fli/fliindex.html>. For an explanation of California law, see <http://www.edd.ca.gov/disability/>. see also Harvard Business Review, "Women in the Workplace: A Research Roundup", September 2013.

may ultimately make a difference in influencing individual women and policymakers as well.

***Incentives to work:*** *The ease, cost, and availability of childcare for young children and free public education for school-age children can affect a parents' decision to work outside the home for paid compensation, or to stay at home with the children. The 2014 Women, Business and the Law report finds that childcare subsidies, such as tax credits, and the availability of childcare, increase women's participation in the labor force.*

*Practitioner views, observations and experiences:*

Accessible and free or low cost childcare is essential.<sup>28</sup> It is also essential to have childcare that is available when children are mildly ill and a parent would have to take time off to care for the child. Compulsory primary and even secondary education is essential for the basic skills required to work and to ensure that women as well as men are educated.<sup>29</sup> Other examples are schools for girls that encourage and teach leadership skills.

***Additional Helpful Information and/or Recommendations:***

One other issue to be addressed is equal pay for equal work. Women are not incentivized to return to the workplace if childcare exceeds or is equal to their income. Other policies are paid sick days. Other issues are preschool and afterschool education programs in addition to child care to allow workers to be more flexible at work.

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<sup>28</sup> Glynn and Farrell, The Importance of Preschool and Child Care for Working Mothers, Center for American Progress, May 2013; Glynn, Real Family Values: Flexible Work Arrangements and Work-Life Fit, Center for American Progress, December 2013.

<sup>29</sup> See Shriver Report.