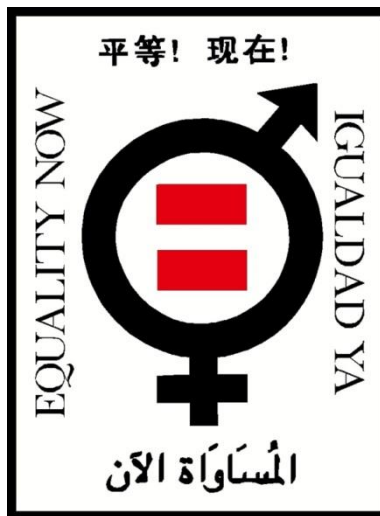


EQUALITY NOW



**The impact of discrimination in law and legal processes
on women and girls – some case examples**

**Submission to the Working Group on the issue of discrimination against
women in law and in practice**

October 2012

Submission to the Working Group on the issue of discrimination against women in law and in practice¹

Introduction

Equal treatment of women and men under the law is necessary for women and girls to realize their full potential and enjoy equal rights and opportunities with men. Laws that discriminate against women not only impede gender equality but also send a message that the State considers women to be on a lower footing than men.

Well-functioning legal systems with laws guaranteeing gender equality and protecting women and girls from all forms of discrimination against them, are crucial when preventing, penalizing and remedying discrimination, including violence, against women and girls. Changing social norms (through awareness raising and education) is essential to the prevention of violence against women and girls, but such change must be boosted by laws and policies that the State establishes or agrees to and is ready to uphold. Amending or repealing discriminatory laws may not eliminate discrimination entirely and enacting laws that promote gender equality may not automatically create equality. However, without laws that promote and safeguard the rights of women and girls, they remain vulnerable, have no access to justice, and lack the government support and legal standards necessary for equality.

This paper will give examples of laws that add to gender inequality. Specifically, it will illustrate the harm done where there is no a law in place to protect the rights of women and girls; where there are explicitly discriminatory laws in place; and where there is a good law but poor or no implementation. It should also be noted that some countries, particularly those in political transition, even if they do not have discriminatory legislation at this the moment might change important legislation such as their constitution to the detriment of women's rights. Other barriers that women face in accessing justice will also be discussed. These examples are drawn from Equality Now's work over the last 20 years.

It is important to note that in every case mentioned below, our method has been to work with grassroots organizations on the ground who we feel are the best judges of what is needed and will work in a particular context. In addition, we have also always prioritized putting the voices of women and girls impacted by violence at the center of all interventions. The testimonies of activists and survivors have therefore been included in the narrative below.

¹ Adapted from Expert paper prepared by Yasmeen Hassan, Global Director Equality Now, "Laws and Legal systems as an essential strategy to prevent violence against women and girls," EGM/PVAWG/EP.3, Sept. 2012

1. Missing laws protecting the rights of women and girls

The absence of explicit laws banning certain forms of discrimination, such as child marriage, incest or FGM, against women and girls may mean that the State condones such acts resulting in impunity for perpetrators. Laws set standards that the State is obliged to uphold and are an essential step for awareness-raising and prevention of discrimination in practice.

Child marriage in Yemen:

Yemen does not have a law banning child marriage or setting a minimum age of marriage.

Wafa, an 11-year-old Yemeni girl, was married off by her father to a middle-aged farmer who repeatedly beat her and forced her to have sex with him. She finally ran away from her husband and wanted to never return to him. As Yemen does not have a law banning child marriage (setting a minimum age of marriage), Wafa's marriage could not be annulled. Her older sister, who was also married off as a child, had 5 children by the time she was 17 years old and had come back to her family as a result of domestic violence. The average age of marriage for girls in rural areas is around 12 or 13 and up to fifty percent of all Yemeni girls are married before they reach the age of 18. To get a divorce Wafa was at the mercy of the judge and had to pay back her dower (money that her husband paid to her father). Even after her divorce she was not safe to enjoy her childhood as she was pressured by her aunt's husband to marry him. *Without a law banning child marriages girls like Wafa are at constant risk.* After several months of residing in a shelter for adult women run by our partner Yemeni Women's Union, Wafa now resides in a shelter for children and is attending school.

"The problem was that the judge was dealing with my case as if I am a grown up woman. He forgets that I am just a child. . . . My message to other parents is that they should not think of marrying their daughters at a young age, girls should go to school. I don't want any girl to suffer as I did. Girls should be educated in order to be able to live happily and in dignity." – Wafa

Incest in Pakistan:

Although Pakistan has laws against rape and statutory rape, there is no specific law against incest, resulting in further harm to victims.

Mariam, a 15-year-old Pakistani girl, was repeatedly raped by her father after her mother left the house due to severe domestic violence. Although Pakistan has laws against rape and statutory rape (the age of consent is 16 years), there is no specific law against incest. As a result, Mariam had a very difficult time reporting the crime to the police who would not believe that such a crime was possible. A review of incest cases followed by Equality Now's partner, War Against Rape, Lahore, showed that most incest cases were not

followed up by the police and by and large judges ruled in favor of the alleged perpetrator disbelieving that incest was possible. *A specific law banning incest could have resulted in the law enforcement and justice systems taking such complaints seriously.*

“Many policemen called me a liar, a fraud and said you are doing something wrong. Very few of them understood what I was trying to say and few said that this girl should get justice. While I was describing the occurrence I was too afraid to tell all the details and frightened that they would harm me, kill me or punish me. . . . I used to weep all the time and felt that I must be a very bad girl but with time I realized that nothing will change if I will cry.” – Mariam

Female genital mutilation (FGM) in Mali:

Mali is one of the few countries in West Africa that do not have a law against FGM.

Fanta, a Malian girl, was subjected to FGM at the age of five and was left with a permanent condition that resulted in her leaking urine and caused numerous infections. In addition to her disability, she was prevented from getting an education and ostracized by the community. *Because Mali, with an 85.2% FGM prevalence rate, does not have a law against FGM, Fanta has no recourse.* Despite a range of awareness raising campaigns aimed at getting communities to abandon FGM, including by our partners the Malian Association for Monitoring and Orientation on Traditional Practices (AMSOPT) and the Association for the Advancement and the Defense of the Rights of Women (APDF), girls in Mali continue to be subjected to State-sanctioned FGM. Mali also serves as a safe haven for FGM practitioners from Burkina Faso, Senegal and Guinea-Conakry, who bring girls across the border and cut them in Mali to escape punishment in their own countries. AMSOPT and APDF believe that a national law against FGM must be enacted urgently in order to ensure that the life and health of thousands of women and girls are protected from the harmful effects of FGM.

“My suffering stopped me from going to school with other children. I just want to be healed. I want to go to school and get an education” – Fanta

“Mali doesn’t have a law against FGM. Circumcisers from Burkina Faso and Senegal, where there are laws, cross the border to perform FGM here. We are pushing for a law. Mali is doing a disservice to other countries that have enacted laws against FGM.” – Kadidia Aoudou Sidibe, AMSOPT

2. Sex discriminatory laws

Laws that condone or promote discrimination and violence against women are a clear signal to perpetrators that they will enjoy impunity and implicit State support for their actions. Such laws must be repealed or amended in order to prevent further violence and discrimination. Legislators and law enforcement officials should make it clear that customary law which discriminates against women is invalid and contrary to the

obligations of the state under domestic and/or international law to promote equality. A recent good practice example of this is from Botswana where a judge found that customary law denying women the right to inherit a family home was unconstitutional.

Marriage to rapist in Morocco:

Under Moroccan law, a rapist could escape punishment by marrying his victim.

Amina, a sixteen-year-old Moroccan girl, was raped and forced by the judge hearing her case to marry her rapist. Under Moroccan law, a rapist can escape punishment by marrying his victim and the judge felt that this marriage would restore Amina's honor. Amina took her life by swallowing rat poison after being subjected to further rapes and domestic violence. *Laws that result in rapists being pardoned for marrying their victims condemn women and girls to a lifetime of violence.* Such laws, which exist also in Lebanon and other countries, also send a public signal that a perpetrator, if caught, can find a way out of punishment. Our partner Union de L'Action Feminine and other civil society organizations have been campaigning for many years for the repeal of this law in Morocco.

There has been some progress in amending these laws, such as in Argentina which amended its Penal Code in April 2012 to remove the possibility of a settlement between a victim of sexual abuse and her perpetrator which allowed the perpetrator to go unprosecuted. This was a result of both campaigning to amend the specific Penal Code Article at the international level as well as media coverage at the national level on a case of a woman murdered by her abuser after she signed a settlement agreement and he was released from prison. Governments must amend these laws shielding violent men before another woman loses her life.

Male guardianship over women in Saudi Arabia:

Saudi Arabia has a system where women are considered perpetual legal minors permanently under the guardianship of male relatives.

This makes women subject to the whim of their guardians resulting in all forms of State-condoned violence including forced marriage and divorce, domestic violence, restriction of movement, deprivation of an education, etc. Illustrative is the case of Fatima who was happily married with two young children when her father passed away and her half-brothers, as her new male guardians, petitioned the court to divorce her from her husband because he was not of the same class. The court agreed and Fatima, who refused to sign the divorce papers, was imprisoned for over a year with her young son. Systems of male guardianship deny women any agency over their lives, making them vulnerable to violence. To stop the violence, it requires that the legal system protect and promote the rights of women.

Saudi girls have no legal protections against child marriage. Equality Now has been informed of several cases of Saudi girls being married off at the behest of their male

guardians. The most recent case concerns a 12-year-old girl also named Fatima from Najran who was married on 5 October 2010 to a 50 year old man who already has a wife and ten children, most much older than Fatima. Her father Ali, who is unemployed and addicted to drugs, sold her in marriage for a sum of 40,000 Saudi Riyals (approximately US\$ 10,665), which he used to buy himself a car. Fatima's grandfather and uncle are frustrated that the Saudi legal system recognizes only the rights of the father and not the rights and interest of the girl child.

Similar problems appear in Mali among other countries. Even though a new family code adopted in January 2012 replaced the former discriminatory Code of Marriage and Guardianship, the new code still includes discriminatory provisions on wife obedience and polygamy. Marital rape is another issue where in some countries there is simply an absence of law and in others, such as the Bahamas and Singapore to name just two, marital rape is explicitly recognized as not being a crime in their Penal Codes. The Penal Code of Northern Nigeria also allows husbands to "correct" their wives as long as it does not inflict grievous hurt. These are just a few examples among laws that accept and implicitly promote violence against wives.

FGM in Indonesia legitimized:

In November 2010, the Indonesian Ministry of Health passed a regulation (No. 1636/MENKES/PER/XI/2010 regarding "Female Circumcision") legitimizing the practice of female genital mutilation (FGM) by authorizing medical professionals to perform it.

3. Good existing laws but lack of implementation

Abduction, rape and forced marriage in Ethiopia:

Even though there are now laws against forced marriage and abduction, it is a common practice in parts of Ethiopia that such laws are not being implemented.

In 2001, Makeda, a 13-year-old Ethiopian girl, was abducted, raped and forced into marriage. Although there were laws against abduction and rape, such laws were not being implemented in the Oromiya region where this practice continued unabated. Indeed, until 2005, under the old Penal Code rapists who married their victims were exempt from punishment. Makeda reported the incident to the police and with the help of our partner, Ethiopian Women Lawyers Association, pursued her case against the rapist and his accomplices. When the judge sentenced them to substantial prison terms, our partners informed us that forced marriages through abduction stopped in the area. However, the perpetrators appealed and the appellate court freed them, disbelieving Makeda because the health report was inconclusive as to whether she was a "fresh virgin," and "no one wants to rape anyone who is not a virgin." Once Makeda's rapist was freed, abductions and forced marriages started again and Makeda's rapist is reported to have abducted another girl who he forced into marriage. Makeda's case demonstrates clearly both how

proper implementation of laws can deter violence against women and how an ill-functioning legal system can promote such violence.

“The judge in the case wanted me to give up the case and live with the perpetrator. I felt he was completely dismissive of me and did not think I had the right to bring the men to court. I also heard that he was bribed by the perpetrators. . . . I feel the legal process is unfair to women. The attitude towards women and especially attitudes towards cases like mine needs to change. I felt the legal process in general did not work for me... I am hesitant to say I would encourage other girls to take legal recourse given that it didn't help me bring the perpetrators to justice. However, if the legal system is made better and favorable to girls then it would be ideal.” – Makeda

FGM in Kenya:

FGM is banned in Kenya, but the police in some areas are not trained on the law and are not implementing it.

Sasiano, a 12-year-old Kenyan girl from the Maasai community, was subjected to FGM and bled to death. Although FGM is banned in Kenya, it has a prevalence rate of 73% among the Maasai community. The police in the area were not trained on the law and were not implementing it. Our partner, Tasaru Ntomonok Initiative (TNI), got the girl's body exhumed to establish cause of death and took the case to court resulting in a 10 year verdict against the father and the circumciser. While initially there was significant backlash against TNI for helping put the main breadwinner of the family behind bars, this case has resulted in significant awareness-raising in the community and Sasiano's mother is now supporting TNI.

“The good news about eradicating FGM is that women will live a healthy life and the girls will have a chance to go to school and be important people and by the end of us maybe educating these people and their agreeing to stop, our community will benefit like other communities and people, women will be empowered to make their own informed decisions.” – Agnes Pareyio, TNI

Bride kidnapping in Kyrgyzstan:

Kyrgyzstan has a law against kidnappings and forced marriages, but the police, prosecutors and judges often view bride kidnappings as a culturally protected tradition, and they fail to enforce the law.

Aziza, a young girl from Kyrgyzstan, was kidnapped and forced into marriage. In some villages in Kyrgyzstan it is said as many as 50% of the young women are kidnapped to become brides. Aziza's husband regularly raped and beat her and prevented her from leaving the house or seeing her family. Ready to commit suicide, she finally managed to escape only to be found by her husband who publicly beat her and left her naked in the street, threatening to sell her into slavery. While Kyrgyzstan has a law against kidnappings and forced marriages, the police, prosecutors and judges often view bride

kidnapping as a culturally protected Kyrgyz tradition, and they fail to enforce the law, resulting in encouragement of the practice. Our partner, NGO Public Foundation Open Line, is calling on the government to enforce the law against kidnapping and forced marriages and while the government has since said it has issued strong instructions to prosecutors and a bill strengthening the law has been drafted, firm implementation will be needed to address the issue in a meaningful way.

4. Barriers to accessing justice

Even if a law exists to protect women and girls and is being implemented, there are other barriers women and girls are facing during legal proceedings. Below are just some examples from Equality Now's work illustrating these issues: length of legal process, no protection of victim's identity (as can be seen in the Pakistan case), re-traumatization when enduring the legal system (U.S.), and unwillingness of the authorities to investigate the case (Uganda).

Incest in Pakistan:

We used the case of Mariam, the incest survivor in Pakistan mentioned in the first section of this paper, to document ways in which legal procedures hinder survivors from pursuing their cases. These included biases of medico-legal officers, police and prosecutors and their lack of understanding of the law; long drawn out trials with the survivor having to appear at multiple dates and wait for long periods of time, often in the same areas as the perpetrator; insensitivity during cross examinations; and lack of special measures for survivors of violence, such as the ability to testify out of sight of the perpetrator.

"[The medical examiner] said to me that, you did something very wrong and had relations with a boy and now you are blaming your father. I felt humiliated. . . She inflicted on me the same pain I had experienced on the occurrence of the rape. . . I hated waiting in court because it was full of men who stared at us. . . There should be separate sitting areas for women and children in courts. Also victims like me should only be called to court when it is necessary and once present testimony should be recorded in a timely manner so we do not have to wait for hours." – Mariam

"There is no law which protects the victim's identity and no provision of special methods of recording of evidence in case of vulnerable victims (through video, etc.). Victims are exposed to their perpetrators in open court and are badgered beyond reason." – Hina Hafeezullah Ishaque, Mariam's lawyer

"Perhaps the most difficult aspect of Mariam's case, for all those involved, was the length of the legal process. The judicial system is slow and legal proceedings are lengthy resulting in cases lingering for years. This also leads to increased costs adding another financial burden on survivors and their families as well as the organizations supporting them." – Sidra Humayun, War Against Rape, Lahore

Sex trafficking in the United States:

In a case of sex trafficking in the US, 15-year-old Sasha had been trafficked by two employees of a prominent law firm who had sold her to their friends at parties and made pornographic films of her. Although Sasha and Sasha's mother wanted to pursue justice under the US Federal Anti-Trafficking Law, they changed their mind after hearing of the trauma that Sasha would continue to endure through the legal system. A former federal prosecutor, who is now our partner in the NY State Anti-Trafficking Coalition, told us that if Sasha were his daughter he would never allow her to go through this system as she would be forced to relive her trauma over many years and be subjected to horrendous cross examination.

Rape of disabled girl in Uganda:

Sanyu, a 13-year-old who is blind, deaf and mute, was raped while her mother was away at a funeral and became pregnant as a result. According to her mother, Sanyu's father and three brothers were the only males who had access to her. Sanyu was unable to communicate the identity of her rapist due to her condition and DNA testing of the baby boy she delivered and of her male relatives who had access to her was the only way to identify the identity of the rapist. Despite the urging of our partner, Legal Action for Persons with Disabilities, the Ugandan government refused to pay for DNA testing, giving a message that violence against disabled girls will be tolerated.

5. Using civil remedies as an example of good practice

Teacher rape in Zambia:

Mary, a 15-year-old Zambian girl, was raped by her teacher. While Zambia has strict laws against rape of minors, or so-called "defilement", the police released the teacher shortly after Mary's aunt had helped get him arrested. The school also refused to take action although the headmaster indicated that this was not the first incident involving the teacher. Mary then felt compelled to change schools. As the criminal justice system and the school system had both failed Mary, she brought a civil suit against the teacher, the school, the Ministry of Education and the Attorney General. The High Court held the government responsible for Mary's rape and called on the government to prosecute the teacher. Significantly, the judge directed the Ministry of Education to issue regulations for schools which would "stem such acts in the future." Institutional measures called for by this judgment will go a long way in punishing violence against girls in schools.

In addition, the civil case led to Mary's lawyer receiving several calls from other girls and their families seeking help for cases of defilement. Girls also approached Mary quietly for advice on their own situations of incest and teacher abuse, illustrating all too clearly that the possibility of legal recourse encourages more victims to approach the legal system and ends impunity for perpetrators.

“When I was in school such things were not talked about but now I think a lot has changed and is still being changed and if they keep on educating the girls about sexual violence we will get there. If I had the information I have now I would not have allowed this teacher to defile me and I would have reported him immediately. . . . To other girls in this situation I want to encourage them to report this to the principal of the school, the police and NGOs that are ready to help. For this world to be a better place we need each other” – Mary

Sex tourism from United States to Brazil:

Another notable civil case is one brought in Atlanta, United States, against the owner of a sex tour operation, on behalf of four Brazilian girls who were sexually exploited by US sex tourists who went on fishing tours on the Amazon. US citizens make up an estimated 25% of child sex tourists worldwide and up to 80% of child sex tourists in Latin America. The US federal anti-trafficking law (the TVPA) criminalizes the sex trafficking of children and provides for a civil remedy for victims of US sex traffickers even if the victims were not trafficked in the US. However, it is difficult for vulnerable victims in other parts of the world to utilize this law, as these cases often take substantial resources and time. This lawsuit, filed in 2011, is believed to be the first civil case under the US law brought by victims of sex tourism against a sex tour operator. Even though the exploitation occurred over six years ago, these victims have not yet received justice, as a criminal case against the exploiters in Brazil has dragged on for many years and unless the owner of the sex tour operation travels to Brazil, he is unlikely to face prosecution and punishment in Brazil. US law enforcement agents have traveled to Brazil to investigate this sex tour operation, but a criminal case has not been filed in the US against the tour operator.

“I am frustrated that this has gone on for so long. I have told my story to many different people but nothing has changed or improved. I told my story to the police 4 years ago.” – Fabiana, survivor of sex tourism in Brazil

The filing of the civil case and the international publicity around it has spurred the Brazilian government into action. The Brazilian press extensively covered the filing of the case, which prompted government officials in Brazil to pledge to take action on the issue of sex tourism. Specifically, the Brazilian Minister of Women’s Policies stated that she would investigate sex tourism in the region of Amazonas and look into forming a committee to address the issue, and the Brazilian Federal Police stated that, in addition to the charges filed against the sex tour operator, they are now investigating 20 customers and potential ‘johns’ that went on the defendant’s fishing tours to Brazil. Additionally, the Brazilian Senate is conducting its own inquiry into the sex tourism allegations against the operator as part of a larger inquiry into human trafficking in general, and they have held hearings during which the Brazilian co-owner of the tour operation and the Federal Police officer investigating the case testified.

As seen from the above, the mere filing of this civil lawsuit in the US has spurred significant change on the policy level in Brazil. Although the case in Brazil is moving

forward slowly and the U.S. criminal investigation has been pending for several years, we are hopeful that once the civil trial begins in the U.S. and lawyers have access to the tour operator's client list, there will be a significant deterrent effect on sex tourism from the United States.

Conclusion and recommendations

All governments around the world need to give a clear message that discrimination against women under the law will not be tolerated. This is of extra relevance for countries in transition which are drafting new Constitutions. In this regard the Working Group on Discrimination against Women in Law and in Practice should ask governments to amend or repeal all sex discriminatory laws as a matter of urgency; introduce new legislation protecting women and girls where no law exists; and properly implement existing positive legislation, including by reducing barriers to justice after violations have occurred. Women and girls should be free, and supported rather than hindered by the law, to achieve their full potential including by having equal access with men and boys to resources and opportunities.

With regard to specific issues, for example, governments should:

FGM:

- Enact and implement comprehensive legislation banning FGM with strong penalties for violators.
- Include provisions for public awareness-raising and education campaigns about the law to change cultural perceptions and beliefs about FGM and acknowledging FGM as a human rights violation with harmful consequences.

Child Marriage, Forced Marriage and Male Guardianship:

- Enact and implement comprehensive legislation banning child marriages, setting a minimum age of marriage (18) and ensuring the enforcement of the law.
- Abolish legislation that exempts a rapist from punishment on marriage to his victim and ensure that law enforcement personnel do not coerce girls into marrying their abusers.
- Ensure that the judicial system reflects the stated claim that women are not subject to male guardianship.

Sexual violence:

- Ensure that girls and women are protected in all Penal Codes from violence and have access to justice. Incest, for example, should be a crime and victims should be protected when bringing complaints.
- Ensure that the law is properly implemented and cases of violence against women are treated not as a private issue, but as a serious public concern. For example, cases of bride kidnapping must be properly investigated and prosecuted to the full extent of the law. If necessary strengthen current legislation, including for example against bride kidnapping, including accomplice liability for relatives complicit in the kidnapping, and introduce amendments to guarantee protection of victims and provide easy access to medical, social and legal services.

- Ensure that girls have full recourse to the law if they are raped and that perpetrators are prosecuted to the full extent of the law.