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Laws and legal systems as an essential strategy to prevent violence against women and girls

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Introduction

When thinking about ways to prevent violence against women and girls, most think in terms of awareness raising to change cultural norms, educational programs to empower women and girls or programs aimed at economic independence of women to end their vulnerability to violence. All these are essential for prevention, but equally important is a well-functioning legal system with laws that guarantee gender equality and protect women and girls from all forms of violence against them. Although a legal system is often thought of as part of an effective response to violence rather than prevention, such a system prevents violence against women and girls by deterring perpetrators and empowering women and girls. Changing social norms is essential to prevention of violence against women and girls but such change must be rooted in standards that the State establishes and is ready to uphold. State laws and policies are such standards.

The preventative impact of laws and policies is hard to measure as it is difficult to say that the enactment and/or implementation of a law or the proper functioning of a legal system resulted in there being less violence against women. However, Equality Now's 20 years of work in ensuring that laws around the world do not discriminate against women and girls, protect them

*The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations

from all forms of violence and are properly implemented to empower victims, has resulted in a wealth of experience and evidence that support the preventative aspects of well functioning legal systems.

Elements of a well functioning legal system

The following elements are essential parts of a legal system that will prevent violence against women and girls through deterring perpetrators and empowering women and girls. In each case, examples have been provided based on Equality Now’s work. 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. There must be laws against all forms of violence against women to establish enforceable standards

The absence of explicit laws banning all forms of violence against women and girls may mean that the State condones such acts resulting in impunity for perpetrators. Laws set standards that the State is held to uphold. They are an essential first in preventing violence against women. Some examples are illustrative:

- Child marriage in Yemen:

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. However, Yemen does not have a law banning child marriage (setting a minimum age of marriage) and as a result, Wafa’s marriage could not be annulled. Nor did the law provide any avenue for Wafa’s younger sisters to avoid the same fate. 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.* Wafa now resides in a shelter for adult women run by our partner Yemeni Women’s Union.

“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:

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 would 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:

Fanta, a Malian girl, was subjected to FGM at the age of five years and was left with a permanent condition that resulted in her to 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 a 92% 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 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 ALOUDOU SIDIBE, AMSOPT

2. Laws that promote violence against women need to be repealed

Laws that condone or promote 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 in order to prevent violence.

- Marriage to rapist in Morocco:

Amina, a sixteen-year-old Moroccan girl, was violently raped and forced by the judge hearing her case to marry her rapist. Under Moroccan law, a rapist could 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 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.

- 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 from 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 petitioned the court, as her new male guardians, 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.* Prevention of violence requires that such legal rights given to men be abolished.

3. Laws must be properly implemented in order to have a deterrent impact:

To have a deterrent impact a law must be properly enforced. If laws are not enforced, people lose faith in the legal system and rule of law is in question.

- Abduction, rape and forced marriage in Ethiopia:

Makeda, a 13-year-old Ethiopian girl, was abducted raped and forced into marriage. Although there were laws against forced marriage and abduction, a common practice in parts of Ethiopia, such laws were not being implemented in the Oromiya region where this practice continued unabated. Makeda reported the incident to the police and with the help of our partner, Ethiopian Women's Legal Association, pursued her case against the rapist and his accomplices. *When the judge sentenced them to 8 years imprisonment, our partners informed us that forced marriages through abduction stopped in the area.* However, the perpetrator appealed and the appellate court freed him, 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 abducted another girl who he forced into marriage. Makeda's case demonstrated 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:

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. Had the case not been followed, the police and the community would have remained unaware of the law and of the dangers of FGM.

“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 THEN 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:

Aziza, a young girl from Kyrgyzstan, was kidnapped and forced into marriage. Approximately 16,000 girls a year are kidnapped to become brides in Kyrgyzstan. 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.

4. *Legal systems and procedures must protect the rights of the survivors of violence so that they are empowered to pursue legal remedies*

Criminal legal systems around the world are protective of the right of defendants to prove their innocence. These same systems can result in trauma to, or re-victimization, of the survivors. Such systems can discourage women and girls from coming forward with cases of violence and can result in impunity for perpetrators. In order to have a deterrent and preventative impact, legal systems must be accessible to survivors, justice must be swift and legal procedures must be victim friendly. Police must conduct thorough investigations and prosecutors must build a case that does not solely rest on the testimony of the survivor.

- Incest in Pakistan:

We used the case of Mariam, the incest survivor in Pakistan, to document ways in which legal procedures prevented 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 was 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.

5. Special measures must be taken to prevent violence against particularly vulnerable victims

Legal systems must provide for additional measures to protect the rights of those who are particularly vulnerable, whether by reason of age, disability, ethnicity or class, in order to deter and prevent violence against such women and girls.

- 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 will be tolerated.

6. Civil remedies must be available and pursued to extend the reach of the law

Prevention of violence against women and girls is furthered by civil remedies to survivors, particularly where the criminal justice system has failed to provide an adequate response. Civil cases have a lower burden of proof and may result in monetary damages for survivors and deter perpetrators who feel that they were beyond the reach of the law. Civil cases can also expand prevention efforts through publicity of a particular issue and judgments that hold the state responsible for prevention.

- Teacher rape in Zambia:

A case in point is that of 15-year-old Zambian girl Mary, who was raped by her teacher. While Zambia has strict laws against statutory rape or "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 and Mary 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 preventing 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

In response to Mary's case a group of Zambian NGOs came together to form a coalition to prevent such abuses in the future. Equality Now got a three-year grant from the UN Trust Fund to End Violence against Women to work with the coalition on a project aimed to safeguard the rights of adolescent girls. A central aspect of this project is to empower girls through the creation of "safe spaces" where girls are encouraged to build their social networks, discuss issues, learn about their rights and worth and build skills. The project also works with the Ministry of Education to prevent sexual violence in schools through the institutionalization of clear guidelines governing teacher conduct and establishing a response system.

"(SAFE SPACES) HAS REALLY HELPED US AS WE DIDN'T KNOW HOW TO PROTECT OURSELVES, HOW TO DEFEND OURSELVES FROM BOYS... LIKE, WHEN YOU ARE HARASSED, WE DID NOT KNOW BY THEN THAT IT WAS HARASSMENT. BUT NOW THAT WE ARE EDUCATED, WE KNOW THAT THIS IS HARASSMENT AND WHAT TO DO ABOUT." – PARTICIPANT IN SAFE SPACES

- Sex tourism from United States to Brazil:

Another notable civil case is one brought in Atlanta, United States, against the operator of a sex tour operation, on behalf of four indigenous Brazilian girls who were sexually exploited by US sex tourists who came 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 trafficking. However, vulnerable victims in other parts of the world have not been able to use this law. *This lawsuit, filed in 2011, is perhaps the first one on behalf of victims of sex tourism who have been unable to get justice in Brazil because Brazil did not have jurisdiction over the defendant who is in the United States.* US law enforcement agents have traveled to Brazil to look into the matter, but a criminal case has not been filed 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

However, the filing of the civil case and the international publicity around it has spurred both the Brazilian and the US governments 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 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 operator and the Federal Police officer investigating the case testified.

The mere filing of this lawsuit has spurred significant change on the policy level in Brazil. We are hopeful that once the trial begins and lawyers have access to the tour operator's client list, there will be significant deterrent effect of this suit on sex tourism from the United States.

Conclusion

While laws and legal systems are commonly perceived as a response to violence against women, it is clear that a well-functioning system with comprehensive laws on gender equality and violence against women goes a long way in preventing violence against women through sending a clear message from the State that such acts will not be tolerated. Any strategy to prevent violence against women and girls must therefore include strategies to establish and implement laws and legal systems to promote the rights of women and deter violations of these rights.