



THE WORLD'S
SHAME

THE GLOBAL
RAPE
EPIDEMIC

How Laws Around
the World are Failing to
Protect Women and Girls
from Sexual Violence



Equality Now

A just world for women and girls.



“By rape, the victim is treated as a mere object of sexual gratification...without regard for the personal autonomy and control over what happens to his or her body...rape is one of the most repugnant affronts to human dignity and the range of dignity-related rights, such as security of the person and integrity of the person...”

*African Commission on Human and Peoples' Rights:
Communication 341/2007 –
Equality Now v Federal Republic of Ethiopia*



"Unless governments fix their laws on rape and sexual assault and implement them effectively and sensitively, we are unlikely to see an end to the worldwide abuse of women and girls anytime soon".

Yasmeen Hassan

Global Executive Director
Equality Now

EXECUTIVE SUMMARY

Around the world, rape and sexual abuse are everyday violent occurrences -- affecting close to a billion women and girls over their lifetimes. However, despite the pervasiveness of these crimes, laws are insufficient, inconsistent, not systematically enforced and, sometimes, promote violence. Since Equality Now's founding in 1992, we have worked with survivors of rape and sexual assault to help them get justice and to push for measures to bring an end to this unacceptable crime. This report looks at how laws around the world are still failing to protect women and girls from sexual violence.

According to the World Health Organisation (WHO), 35 per cent of women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence. According to UNICEF, around 120 million girls worldwide, just over 1 in 10, have experienced "forced intercourse or other forced sexual acts" at some point in their lives. Everyone reading this report is likely to have either survived, or to know someone who has experienced, some form of sexual violence.

By any measure, gender-based violence, including sexual violence, is being inflicted on women and girls in epidemic proportions. If it were a medical disease, sexual violence would have the serious attention and the funding to address it, from governments and independent donors alike. Sexual violence is inflicted on men and boys as well as on women and girls. However, since many laws contain explicit discrimination against women and girls and since perpetrators of rape are almost exclusively male and the vast proportion of survivors of sexual violence women and girls, this report is largely written from that perspective. We wanted also to underscore the predominantly gendered nature of rape - that is of male sexual violence against women -- to highlight how this violence and discrimination not only influences the way laws are written and carried out, but how sexual violence against women and girls is a form of discrimination itself that needs to be addressed if sexual violence against women and girls is to be eradicated.

Globally, governments have committed and recommitted to ending all forms of violence against women and girls, including sexual violence. In September 2015, the UN General Assembly adopted [Transforming our world: the 2030 Agenda for Sustainable Development](#) ("Agenda 2030"). This includes to "Achieve gender

equality and empower all women and girls" (Goal 5), "eliminate all forms of violence against all women and girls in the public and private spheres" (Target 5.2), and "[e]nsure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices..." (Target 10.3). This is a welcome spotlight on the human rights violations which continue to affect countless women, girls, their families and communities and a promise to re-double efforts to end them. However, promises are easy to make. Now is the time to join efforts between government, business and civil society to grasp this focus and together make meaningful change to promote equality and truly make violence against women and girls unacceptable. A concerted and serious approach would make a huge difference for women and girls today and lay the foundation for a future where we can all thrive.

The findings and analysis in this report are a reflection of information and trends emerging from our review of surveys on sexual violence laws submitted by members of the legal profession in 82 jurisdictions (including within 73 UN member states)¹ around the world. Under the auspices of UN Women, in 2012 expert civil society groups and others provided guidance on drafting, advocating for, implementing and monitoring legislation on sexual assault. UN Women's Virtual Knowledge Centre² established general guidelines about what this legislation should and should not contain to give the most protections to women and girls. This report positions the information received from our surveys against these UN Women benchmarks.

The report's findings illustrate that governments still have a long way to go to transform their laws, policies and practices into instruments to;

- a) prevent sexual violence**
- b) provide better access to justice for victims (including specialized services)**
- c) effectively punish sexual violence crimes.**

February 2017

KEY FINDINGS

1. Rape is a largely-ignored global epidemic.

According to [UNICEF](#), one in ten girls alone experiences rape or sexual assault around the world and the WHO estimates that 7% of women have been assaulted (not including by intimate partners) – yet laws and justice systems continue to fail them on all continents.

2. Rape of a woman or girl by her husband is expressly legal in at least 10 (out of 82) jurisdictions.

These are Ghana, India, Indonesia, Jordan, Lesotho, Nigeria, Oman, Singapore, Sri Lanka and Tanzania. In four of these, marital rape is expressly legal even where the “wife” being raped is a child “bride” and the “marriage” is in violation of minimum age of marriage laws.

3. It is legally possible for a perpetrator of rape or sexual assault to escape punishment if he marries the victim in at least 9 (out of 82) jurisdictions.

These are Bahrain, Iraq, Jordan, Kuwait, Lebanon, Palestine, Philippines, Tajikistan and Tunisia. It also appears possible in Greece and Russia, Serbia and Thailand, in circumstances where the couple are in a sexual relationship and under the law the girl is otherwise deemed too young to consent to sexual intercourse.

4. A perpetrator can be exempt from punishment by reaching a “settlement”, financial or otherwise, with the victim or the victim’s family in at least 12 (out of 82) jurisdictions.

These are Belgium, Croatia, Iraq, Jordan, Kazakhstan, Lebanon, Palestine, Nigeria, Romania, Russia, Singapore and Thailand.

5. Penalties imposed for paid sex with a minor may be significantly and improperly lower than for other forms of rape of a minor

including, for example, in Indonesia where there is only a small overlap in penalties, i.e up to 15 years imprisonment for statutory rape and only up to 5 years for buying sex from a minor of the same age.

6. Rape is treated as an issue of morality rather than one of violence in at least 15 (out of 82) jurisdictions.

These are Afghanistan, Belgium, China, India, Indonesia, Jordan, Luxembourg, Netherlands, Nigeria, Pakistan, Palestine, Peru, Singapore, Taiwan and Yemen. In these jurisdictions, sexist terminology of humiliation, outrage, honour, modesty, chastity or morality is used in legal provisions on rape.

7. Burdensome evidence and witness corroboration requirements under the law exist in various countries around the world.

In Lebanon, Malawi, Pakistan, Panama, Peru and Yemen for example, a medical examiner’s report is absolutely required as part of evidence and in all of these, except possibly Malawi, such a report can only be obtained through specially designated and accredited medics whose availability nationwide is unlikely to be adequate.

8. Judicial discretion to reduce charges or define evidence is not uncommon and allows judges to be influenced by stereotypes around survivor’s behaviour.

In Bolivia, judges are reducing charges of rape and in Luxembourg, Morocco and Spain the standard of evidence required to prove rape is at the judge’s discretion.

9. Unless governments fix their laws on rape and sexual assault and implement them effectively and sensitively, we are unlikely to see an end to this worldwide abuse of women and girls anytime soon.

"We hope that this global report will open up a conversation to bring addressing sexual violence into the very centre of our collective thinking and action and to promote the right of women and girls everywhere to equality and to be free from violence."

Yasmeen Hassan
Global Executive Director



FRAMEWORK & METHODOLOGY

Analysis of surveys on laws on rape and sexual assault from 82 jurisdictions

We aim to show a general picture of laws on sexual violence in the countries surveyed and to highlight obstacles to justice for survivors of sexual violence and common themes in drafting and some practices as a way of illustrating the extent of the issues that need to be comprehensively discussed and addressed. This report does not purport to be a definitive representation of the law in any country. It was challenging to compile based on the data available, including unclear wording in the law itself. We did not undertake to verify the information provided in the surveys. Many were very detailed and others less so. In addition, local legal concepts, practice and implementation are important factors that should be explored further.

Information for this report was collected over a period of several months from late 2014 to late 2015 and changes may have been made to laws subsequently. Translation of legal texts into English was sometimes necessary for the analysis but may not have captured the full picture. Readers should therefore independently verify specific legal provisions as needed.

We have included case studies from our work to illustrate the impact of discriminatory rape laws or weak enforcement of good laws – many of them would fit in several sections as there are often multiple discriminatory aspects of the law which violate a woman's or girl's right to be free from sexual violence.

The UN Women guidelines recommend that the definition of sexual assault should not require force or violence. **They recommend that a definition of sexual assault should require either:**

- The existence of “unequivocal and voluntary agreement” and requiring proof by the accused of steps taken to ascertain whether the complainant/survivor was consenting; or
- That the act take place in “coercive circumstances” and includes a broad range of coercive circumstances.

The UN Women guidelines also suggest provision for enhanced penalties for aggravating circumstance such as threat or use of force or the age or disability of survivor. Most common among the aggravating factors found in the surveys are the age of the victim, abuse of a position of trust or authority, vulnerability of the victim and use or threatened use of force.

Several good practices regarding provisions that support survivors are highlighted in Annex A.

The report also provides links to active Equality Now country campaigns so that readers may Take Action through our website, to urge relevant government officials to amend sex discriminatory laws.





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FOREWORD

This comprehensive global report of 82 legal systems and their laws in protecting people against sexual violence is a daunting task, but one of critical importance. The report highlights, across the different jurisdictions, the gaps in the laws, policies and practices, to prevent sexual violence, provide access to justice for complainants and punish sexual violence adequately. It concludes that there is still much that needs to be done to ensure that adequate laws are enacted, developed and enforced.

The International Bar Association (IBA) and, in particular, the IBA's Legal Policy & Research Unit (LPRU), was pleased to be able to assist Equality Now disseminate its survey, through which it obtained details on local laws that apply to sexual violence, through its global network. The IBA's LPRU was delighted by the enthusiasm with which the members who responded to the survey did so.

Members of the legal profession are exceptionally well placed to help fill the gaps in the legal protections from sexual violence available to women and girls. Throughout history, lawyers have been integral to safeguarding the rule of law and ensuring that human rights are respected and protected. Legal professionals are well equipped to help develop good laws in terms of both text and practice and to ensure such laws are appropriately enforced.

It is critical that lawyers ensure they uphold a high standard of practice when representing clients who experience sexual violence, abuse and rape. Lawyers and legal associations must also use their collective voices to advocate that sexual violence will not be tolerated and those who commit sexual violence will be prosecuted as perpetrators of serious crimes of violence.

Sexual violence is not just violence against women and girls but violence against society with drastic, negative effects on individuals, families and communities as well as the broader economy. The UN agenda, Transforming our world: the 2030 Agenda for Sustainable Development ("Agenda 2030"), unanimously adopted by the UN General Assembly in September 2015, includes the requirement to eliminate all forms of violence, including sexual violence, against all women and girls in the public and private spheres. To achieve this, and to ensure the necessary measures to do so are not just established and implemented but also enforced requires a collaborative and cooperative effort between government, civil society and the private sector, including professionals such as lawyers.

I commend this report and encourage all members of the legal profession, and others, to work together and with government and civil society to eliminate sexual violence against women and girls.

Jane Ellis

Director, Legal Policy & Research Unit
International Bar Association

INTRODUCTION

Rape and sexual assault are a daily occurrence in every country of the world. Rape is always a violent act and one of force. Yet, as this report will show, the way laws are framed in many countries dismisses this reality.

Speaking after events in Cologne, Germany, and some other German cities on New Year's Eve 2015 when hundreds³ of women reported being sexually assaulted⁴ by what appeared to be organised gangs of men, the German justice minister, Heiko Maas, said the definition of rape in German law was too narrow. German law require[d] penetration or a similar sexual act: with force; by threat of imminent danger to life or limb; or by exploiting a situation in which the victim is unprotected and at the mercy of the offender. "There's no clear answer in law to how much resistance a woman has to offer for an offence to constitute rape," he was reported to have said.⁵ He posed the question:

“Does a woman need to be killed or severely beaten to prove she did not consent to rape?”

On 10 November 2016 a new law entered into force in Germany that changed the focus of the law on rape from how much additional violence the perpetrator used to the survivor's lack of consent to sexual intercourse and provided for higher punishments where additional violence was used. This is a welcome shift. It remains to be seen though how the previous framing of the law will continue to contribute to the way the role of the survivor of sexual violence is perceived and judged in the minds of those implementing the new law.

In many jurisdictions around the world the law on rape, either through its text or through its manner of implementation or lack of it, sends a signal that sexual assault has only happened if a victim actively tries or is unable to resist violence. There are a whole range of circumstances under which a survivor of rape may feel coerced or threatened. The law should never interpret a woman's lack of physical resistance to sexual violence as acquiescence in that violence.

This report shows other serious failings in the law to prevent sexual violence and to allow survivors access to justice when rape is perpetrated against them.

The law should protect all complainants in equal measure, no matter their gender, race, class, disability or any other socio-economic status.

When even the German Justice Minister had questions about the rape law in Germany, it's easy to see how judges, courts and the general public are perpetuating and receiving confusing messages about rape and sexual violence, many of which result in minimising its harm or impact. The law and enforcement of laws must be dealt with specifically and understood within the broader context so that positive change is comprehensive and permanent.



GAPS IN PROTECTING WOMEN AND GIRLS FROM SEXUAL VIOLENCE

1 Laws allowing the perpetrator to walk free on reaching some form of “settlement”, including by marrying the victim

2 Laws framed in terms of morality rather than bodily integrity, thereby perpetuating a cycle of violence and discrimination

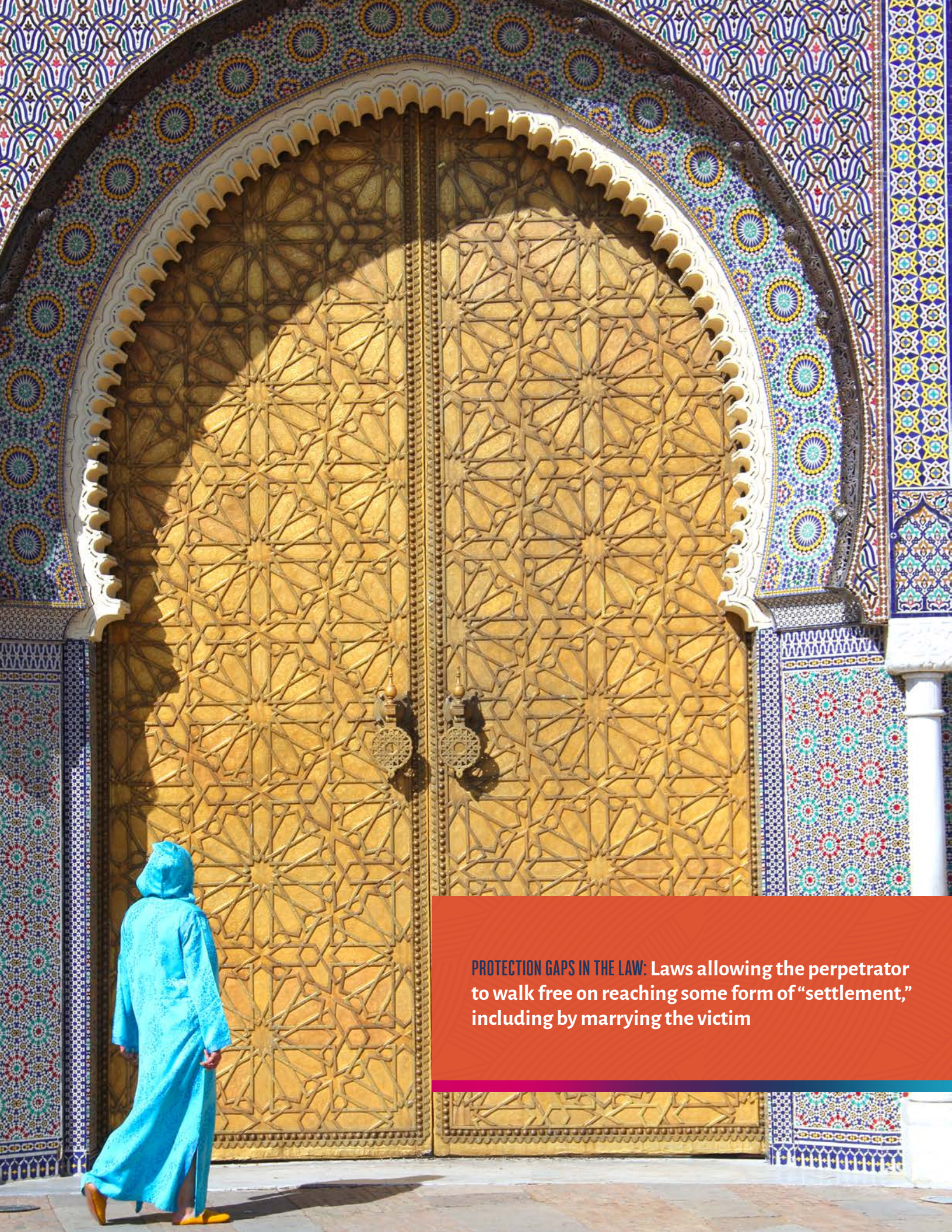
3 Laws that explicitly permit rape in marriage, even of children

4 Laws permitting judicial discretion to reduce charges or define evidence based on stereotyped assessment of the complainant’s behavior

5 Laws that fail to recognize true consent is impossible in situations of dependency or extreme vulnerability

6 Laws or practices inhibiting investigation or prosecution of sexual assault

7 Laws requiring witness corroboration and other overly burdensome evidence



PROTECTION GAPS IN THE LAW: Laws allowing the perpetrator to walk free on reaching some form of “settlement,” including by marrying the victim

CASE STUDIES - MOROCCO AND LEBANON

In January 2014, after a two-year campaign, the Moroccan government amended Article 475 of its Penal Code, a law that was used to exempt rapists from punishment if they married their victim. The campaign gained wide publicity following the suicide of 16-year-old Amina Filali and the attempted suicide of 15-year-old Safae, both forced to marry their rapists and destined for a lifetime of further rape and abuse. Campaigners continue to petition for a change in the law which allows judges to authorise the marriage of minors, a particularly vulnerable group, and because it gives legal sanction to the practice of child marriage.

Legislators in many countries have still not amended or repealed similar laws that allow perpetrators of sexual offences to escape punishment by “settling” with the complainant financially, through marriage or by forgiveness.

The Lebanese Council to Resist Violence against Woman (LECORVAW) is a non-governmental organisation working to combat all forms of gender-based violence in Lebanon and counsels girls and women who are forced to marry their rapists or are threatened with such marriage. Amal (not her real name), a 12-year-old girl referred to LECORVAW, was raped by a 24-year-old man. LECORVAW referred the case to the Juvenile Protection Department which contacted the local prosecutor who had the rapist arrested. The rapist's family tried to persuade Amal's family to accept marriage to him, including with offers of money. This was so that they could use Article 522 of the Penal Code which would exempt their son from punishment if the prosecutor decided to proceed with the case. The prosecutor referred the case to the criminal court but the rapist was freed on bail. Because of the stigma on a survivor of rape, although Amal's parents did not accept the rapist's offer of marriage, they have not pushed for his prosecution. Amal's parents do believe marriage is Amal's only option, however, so they engaged her to a relative.

SURVEY FINDINGS

Survey participants were asked whether there was a provision in the law of their jurisdiction permitting a perpetrator of rape or sexual assault exemption from punishment if (a) the perpetrator marries the victim; (b) the perpetrator reaches a settlement with the victim or the victim's family; and/or (c) the victim forgives the perpetrator. According to the responses, of the surveyed jurisdictions:

- at least 9 appear to have laws under which a perpetrator of rape or sexual assault can escape punishment if he marries the victim⁶ (a further survey did not contain sufficient information from which to draw firm conclusions). It also appears possible in Greece, Russia, Serbia and Thailand, but it is unclear whether this applies only where the couple were in a relationship and under the law the girl is deemed too young to consent to sexual intercourse. It is also unclear if there is a lower age limit for marriage. Some surveys have not indicated any lower threshold or have suggested a threshold far lower than the age of majority suggested by the Convention on the Rights of the Child.
- at least 12 appear to have laws under which a perpetrator can be exempt from punishment by reaching a “settlement”, financial or otherwise, with the victim or the victim's family.⁷
- at least 8 appear to have laws under which a perpetrator of rape or sexual assault can escape punishment if he received forgiveness from the victim.⁸

There is hope, however, as in December 2016 Lebanon's parliamentary Administration and Justice Committee approved the repeal of Article 522, following advocacy work by Equality Now and our partners, including at the UN. Please Take Action on the law in Lebanon.

MARRIAGE

There are still laws which allow rapists to be exempt from punishment if they marry the survivor. In addition, various laws allow exemption from punishment upon marriage for statutory rape, that is where a minor may have given her consent to sexual intercourse but the law deems her too young to be able to make an informed decision. It is unclear in some of the laws whether they address genuine relationships or whether these laws also condone exploitation of girls by men of greater age and experience. In any case, the law should be clear in protecting the best of interests of the child. From the small number of survey responses that provided further information as to the circumstances under which marriage may be used as settlement, we learnt the following:

In Greece, it appears that marriage as settlement is permitted for “seduction” of a child. Where the perpetrator and the survivor get married, the criminal prosecution lapses and is declared inadmissible. In the case of future annulment of the marriage the prosecution is re-opened.

In Iraq, if the perpetrator lawfully marries the victim, any legal action becomes void and any investigation or other procedure is discontinued. If a sentence has already been passed, then the sentence will be quashed. Legal proceedings will resume or the sentence will be reinstated if such marriage ends in divorce brought about by the husband without legal justification or in a divorce ordered by the court for wrongs committed by the husband or for his bad behaviour within 3 years following the cessation of the proceedings. The public prosecutor, the accused, the victim or any person who has an interest in the proceedings may make application for the proceedings, investigation, procedures or execution of the sentence to be stopped or for their resumption.

In Jordan marriage as settlement is permitted unless the perpetrator divorces the survivor without just cause within 5 years of the offence, in which case the punishment for the crime will be implemented.

In Kuwait, if the perpetrator legally marries his victim with the permission of her guardian and the guardian requests that he is not punished, then the perpetrator will not be punished.

In Russia, if the perpetrator has reached 18 years of age and has committed statutory rape with a minor below 16, he is exempt from punishment if he marries the victim.

In Serbia, although rape is not mentioned specifically, “cohabiting with a minor” is prohibited, as is “enabl[ing] or induc[ing] a minor to cohabit with another person”. However, “[i]f a marriage is concluded, prosecution shall not be undertaken and if undertaken it shall be discontinued”.

In Thailand marriage as settlement is possible where the offender is over 18 and the victim is over 15 years old if (i) the survivor “consented” to such offence at the time of the offence; and (ii) the court has granted permission for marriage.

In Tunisia attempted or actual sexual offences on those under 20 years old can be settled by marriage. The prosecution will re-open if, within 2 years of the marriage, a divorce is pronounced at the request of the husband.

SETTLEMENT

In Belgium the public prosecutor can decide to propose an amicable settlement to the perpetrator. For this to happen the perpetrator has to admit guilt. If he does, he can no longer be prosecuted for that particular offence, however the complainant can still lodge a civil claim for some damages. The public prosecutor may also start a procedure called “a mediation in criminal cases” which requires the consent of both the complainant and the perpetrator with the purpose of reaching an amicable settlement to repair material and moral damages.

In Kazakhstan there is a general exemption from punishment in the Criminal Code for a person who commits a misdemeanour or a crime of minor or medium degree. For this to apply, no death or grievous harm can have been caused by commission of the offence and there must be a reconciliation with the victim, which can include mediation. The offender should have “made good for the harm caused”. For certain categories of perpetrator including underage perpetrators and, in the case of rape or sexual assault, where it constituted a first time grave criminal offence which did not cause death or serious harm to an individual's health, the perpetrator may be released from criminal liability by a court if she has reconciled with the complainant through

mediation and “made good for the harm caused to the victim”. If released from all criminal liability, education measures are compulsory for an underage perpetrator. It is unclear whether in practice this provision is used in rape and sexual assault cases.

In Russia exemption from punishment due to settlement between the perpetrator and the complainant can occur if a crime of little or average gravity as classified by the Criminal Code is committed and it was the first time the perpetrator committed such a crime. The following crimes of sexual violence are regarded as crimes of little or average gravity: “sexual coercion”, “sexual intercourse and other actions of a sexual character with a person who has not reached the age of sixteen years” and “depraved actions”.⁹

In Singapore settlement is possible where the perpetrator “assaults or uses criminal force to any person, intending to outrage or knowing it to be likely that he will thereby outrage the modesty of that person”.

In Thailand sexual assault and “forced” sexual intercourse can be settled if: the survivor is over 15 years old; the survivor is not the offender’s descendant, a pupil under his or her care, a person under the control in the execution of his or her duty, or a person under his or her guardianship, custodianship or legal care; such offence did not occur in public; and such offence did not cause grievous bodily harm or death to the alleged survivor.

FORGIVENESS

In the Philippines, if the perpetrator is married to his victim, he can avoid punishment if his wife forgives him.

In Serbia, forgiveness of the perpetrator by the survivor is likely to encourage the public prosecutor to dismiss the case, at the request of the parties.

In Thailand some sexual assault and sexual violence cases can be withdrawn by the survivor. A public prosecutor, however, will pursue a case if it is particularly violent or offensive to the public.

In Turkey “offences where investigation and prosecution are subject to a complaint” will be discontinued if the survivor waives her right to justice, including by forgiving the

perpetrator. But a waiver given after a judgment is already final will not prevent enforcement of the penalty.

The survey responses for **Iraq, Lebanon, Palestine, Romania and Singapore** also indicate that forgiveness by the victim of the perpetrator will discontinue the case.

While there is no provision in law in **Afghanistan**, we understand that in practice it is not uncommon for a prosecution to be dropped if marriage is offered by the perpetrator/his family or if the perpetrator is forgiven. Further, we understand that the practice of “baad” (the act of marrying a girl or woman to someone as blood money for a murder, sexual assault etc for reconciliation among the families) may still be occurring.

Commentary

Laws which allow the perpetrator impunity:

- Deny justice to the complainant
- Send a signal that rape is not a serious crime and can be talked or bargained away
- Allow women to be traded as possessions between families
- Remove control of her choices and future from the survivor and risk her continuing abuse
- Perpetuate the stigma of shame attaching to the complainant rather than the perpetrator
- Exploit the situation of those with few resources, especially in relation to those with greater societal power

TAKE ACTION

The UN Women guidelines provide that legislation should include a prohibition on accepting financial settlement or marriage as settlement of claim of sexual assault. Equality Now has successfully campaigned for the revocation of laws that exempt a rapist from punishment if he marries or otherwise settles with his victim in Argentina, Costa Rica, Ethiopia, Guatemala, Peru and Uruguay. Our current public campaigns focus on Lebanon, Malta and Palestine. Please join us in advocating that these laws be amended without delay.



PROTECTION GAPS IN THE LAW: Laws framed in terms of morality rather than bodily integrity, perpetuating a cycle of violence and discrimination

CASE STUDY - ETHIOPIA

Makeda¹⁰ was 13 years old in 2001 when she was abducted and raped in Ethiopia by Aberew Negussie, a man who wanted to marry her. Such action was common in Ethiopia where the law previously exempted the perpetrator from rape if he married his victim. Normally the families come together and agree to the marriage to preserve the so-called honour of the girl and her family. Unusually, Makeda, with the support of her father, rejected the marriage. Aberew and his accomplices were tried. During the trial the prosecutor argued that since there was no evidence Makeda had been a virgin, no crime of rape had been committed even though virginity was, appropriately, not an element of the crime in Ethiopia. Makeda's case was appealed all the way to the highest court, but she was not able to achieve justice. Equality Now helped Makeda take her case to the African Commission on Human and Peoples' Rights. The decision of the African Commission, which became available in March 2016, was that Ethiopia was in breach of the African Charter for not having done enough to prevent the violation and not having responded adequately when it happened. The Commission requested that Ethiopia pay compensation to Makeda as well as accelerate efforts to address forced marriage by abduction and rape, diligently prosecute and punish offenders, and train judicial officers on handling cases of violence against women. As of this writing, the Ethiopian government has done nothing to implement any part of the judgment.

The behaviour of law enforcement officials in Makeda's case illustrates frequent lack of understanding in law and among law enforcers of the difference between sex and sexual violence, which impedes access to justice by suggesting some types of women and girls are either not worthy of protection from, or are not harmed by, sexual violence.

SURVEY FINDINGS

According to survey responses, several laws describe rape or sexual violence using language not based on a violation of bodily integrity or assault of a person but rather as one of a violation of morality or indecency committed against society. While the precise local context and interpretation of laws cannot be known from a survey alone, situating sexual assault as a moral crime rather than one of violence and assault of bodily integrity puts the focus as much on the complainant as on the perpetrator, ascribing to her values to be considered when judging him. Such a definition positions the woman or girl as the repository of the so-called honour of her community rather than putting the opprobrium squarely where it should lie - on the perpetrator.

The survey responses showed:

- **at least 15 jurisdiction using terminology of humiliation, outrage, honour, modesty, chastity or morality**¹¹
- **at least 24 jurisdictions using terminology of indecency, obscenity, lewdness or depraved actions**¹²
- **at least 5 jurisdictions providing loss of virginity as an aggravating factor in sentencing**¹³

There are also laws that permit the State to punish women if they are unable to meet a very high burden of proof in rape cases and so instead are suspected of having engaged in sexual relations in breach of societal norms. Survey responses indicated that in a number of jurisdictions the complainant of rape or sexual assault could herself be charged with fornication (if unmarried) or adultery (if married) if she is unable to prove the rape or sexual assault. Those jurisdictions are Afghanistan (not in law but in practice); Egypt (appears that a complainant of any crime could be charged with a crime related to the incident (so adultery if rape cannot be proven)); Indonesia (possible for a spouse to bring charges of adultery at any time); and Palestine (in rape cases involving close relatives, if a victim is over 18 she might be charged with "criminal participation" in incest if the case of rape is not proven). There was insufficient information from others to be able to draw a conclusion.

COMMENTARY

While we recognise the need in law to distinguish between rape and other acts of penetration that have no criminal or harmful intent, such as medical examinations, a legal definition of rape using terms which communicate a sense of sexual desire such as “lasciviousness” and “libidinous” add to a misunderstanding of rape being about sex rather than about violence. Rape and sexual assault are always about power, control and entitlement, not about sexual desire. Similar to a definition of rape which includes honour or morality, use of terms indicating sexual desire contributes to creation of an environment favouring the narrative of “normal” sexual behaviour of the perpetrator, effectively dismissing his crime of violence against the survivor. Note for example, the statement of the father of the Stanford university student describing the sexual assault by his son of an unconscious woman as “[20 minutes of action](#)”. Legislators should review their laws to make sure the nature of the crimes of rape and sexual assault are fully reflected and do not inadvertently undermine the serious message they seek to convey. At least 3 jurisdictions use terminology of lascivious intent or libidinous acts.¹⁴

It is not easy for any person to report rape. Many fear not being believed, humiliation by law enforcement, being blamed by their communities or lack of access to justice among other obstacles. In some jurisdictions, judges are allowed to pass sentences based on their own understanding of a case. In [Iran](#) among other places this has been used to pass sentence on what the judge considers to be “appropriate” female behaviour rather than proof of the crime. In a context where women’s lives and actions are heavily controlled, the scope of what a judge considers “appropriate” is likely very restrictive. So, for example, a woman raped by a (non-relative) man with whom she was out alone might not get justice but rather be charged with fornication or adultery.

Countries which have laws punishing free and consensual sexual relations make it doubly difficult for women¹⁵ to report rape and deter complainants from coming forward, fearing the consequences if they cannot prove their cases. This allows rapists to act with impunity, particularly since laws against fornication and adultery can be disproportionately used against women especially where any pregnancy resulting from rape acts as proof of penetration. The UN Women guidelines provide that legislation should include *a definition of sexual assault which is not framed as a crime of honour or morality*.

Introducing the concept of morality into the law can affect the number of cases reported, prosecuted and successfully convicted. In addition, it creates a climate that informs attitudes and similar laws. For example, so-called honour crimes, that is the murder of (overwhelmingly) a girl or woman thought to have brought shame on her family/

community sometimes by merely speaking to a male outside the family or by making her own sexual or partner choices, are sometimes excused by law with a much lower sentence and even negligible punishment than other forms of murder or manslaughter. Sometimes “honour” killings are committed to cover the crime of men who have committed incest against their female relatives which is then blamed on the victim for her “lack of chastity” and the subsequent shame her continuing to live would bring on the family.

Laws that focus on breach of honour rather than violence:

- Risk denial of justice to the complainant
- Risk creating a hierarchy of more or less “worthy” survivors
- Foster an environment supporting the control of women’s bodies and women’s lives
- Foster an environment which exonerates perpetrators of sexual and other violence against women and transfer the blame onto the complainant
- Perpetuate the notion of women as bearers of the “morality” of a society

An estimated 1000 so-called honour crimes are reported in Pakistan alone each year, including the highly publicised murder in July 2016 of Qandeel Baloch by her brother, Waseem Azeem, for breaking societal norms by making her own life choices¹⁶. Her highly publicised death and her brother’s total conviction of his justification in killing her prompted further debate in parliament and on 6 October 2016 the legislature passed a law mandating life imprisonment for so-called honour killings. However, reports indicate it is still up to the judge to decide whether the crime was in fact one of “honour”.

TAKE ACTION

Equality Now has successfully campaigned with partners to overturn laws which contained reduced penalties for so-called honour crimes in Haiti, Jordan and Morocco. Several laws however remain. They reinforce the notion that a woman is the property of her husband or family who are entitled to control her behaviour. Anecdotal information also suggests families sometimes encourage the underage brother of the woman or girl to carry out her murder on the basis that as a minor he will receive a lighter punishment. This also victimises the boy concerned.

Please Take Action to challenge laws that excuse murder in the name of so-called honour in [Egypt](#) and [Syria](#).





PROTECTION GAPS IN THE LAW: Laws that explicitly permit rape in marriage, even of children

CASE STUDY - SINGAPORE

"I never thought that what I had experienced should be classified under "marital rape". After all, my rapist was my husband and the father of my seven-year-old daughter. He was someone whom I loved and trusted....Sex was the last thing on earth I wanted at the time—I wasn't even sure exactly how many women he had been with. So I pushed him away. He tried again. And I pushed him away again.... I was helpless... about nine months after the first rape, he forced himself on me as usual...He turned violent and we fought.... At the hospital alone, I was treated for my bruises but nothing more. It was simply brushed off as a case of family violence. There was no mention of any medical examination to assess if I had been sexually assaulted."¹⁷

Under Singapore's law, there was no recourse for her.

SURVEY FINDINGS

We asked the survey participants whether marital rape is criminalised. From the responses, it appears that:

Marital rape is specifically characterised as not a crime i.e. explicitly permitted in at least 10 jurisdictions¹⁸

Marital rape is only explicitly criminalised if the parties are separated in at least 6 jurisdictions¹⁹

We also found that marital rape is explicitly permitted even where the marriage is in violation of a minimum age of marriage law provided a "wife" is above a certain minimum age in at least 4 jurisdictions.²⁰

In **Ghana** Section 42(g) of the Criminal Offences Act, 1960 (Act 29) (Use of Force in Case of Consent of the Person Against who it is Used) reads: "The use of force against a person may be justified on the ground of his consent, but...(g) a person may revoke any consent which he has given to the use of force against him and his consent when so revoked shall have no effect for justifying force; save that the consent given by husband or wife at marriage, for the purposes of marriage, cannot be revoked until the parties are divorced or separated by a judgment or degree of a Competent Court". However, Section 4 of the Domestic Violence Act indicates that the use of violence in the domestic setting is not justified on the basis of consent, so in theory a charge of marital rape could be brought even if the survivor and rapist are not divorced or separated

In **India**, Section 375 of the Indian Penal Code (IPC) provides that sexual intercourse or sexual acts by a man with his wife is not rape provided the wife is not under fifteen years of age. However, under Section 498A of the IPC, a husband can be charged with

subjecting a woman to cruelty. Section 376B of the Code provides that forced sexual intercourse by a man with his wife who is living separately (either under a decree of separation or otherwise) is a criminal offence. Confusion in the law impedes justice - it is critical to clarify the law to underscore that violence against women, including marital rape, is never permissible and will be punished to the full extent of the law.

In **Lesotho**, marital rape is only explicitly criminalised if the parties are separated, there is a judicial order of restraint against one of them, or the husband or wife uses abusive language, violence or threats in order to have sexual intercourse.

In **Nigeria**, under Article 282(2) of the Penal Code, "sexual intercourse" by a man with his own wife is not rape if she has attained puberty.

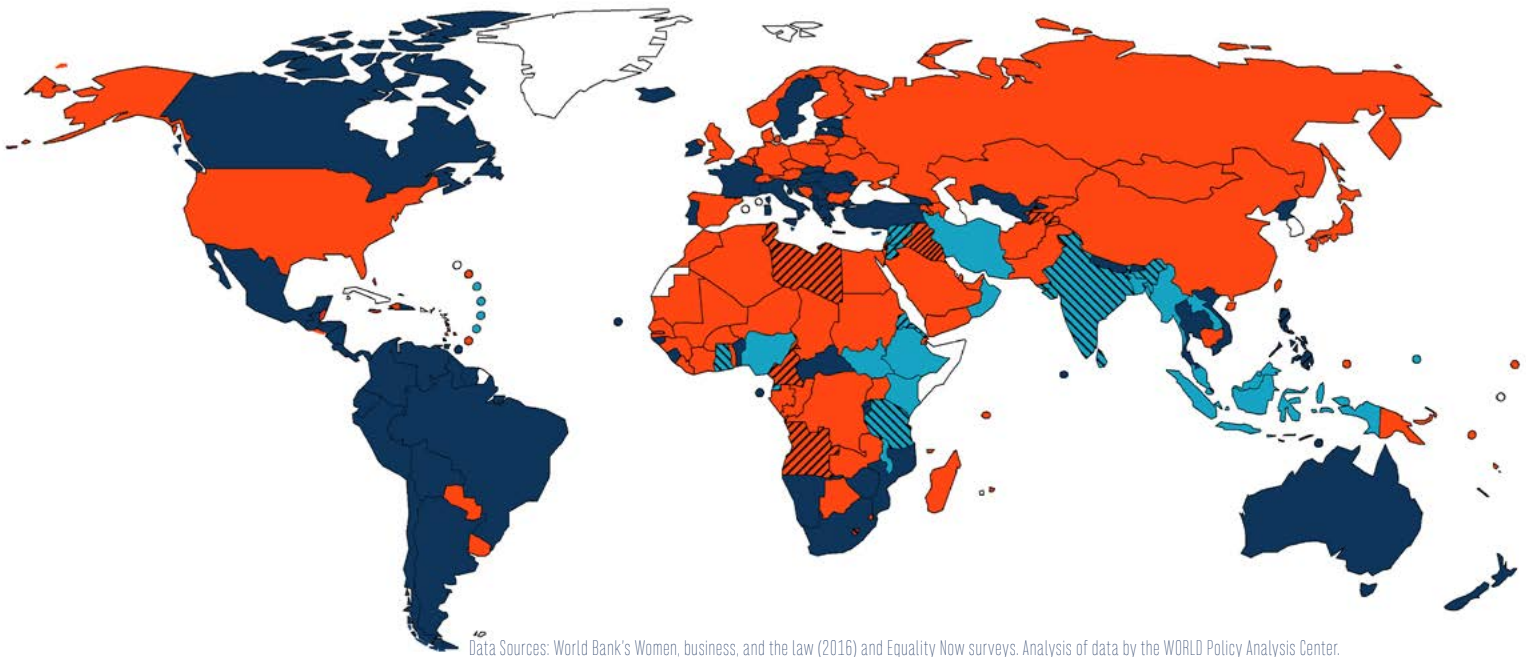
In **Singapore** under Section 375(4) of the Penal Code, a married man cannot commit the offence of rape against his wife unless she is under 13 years old or she was living apart from him and proceedings have commenced or been granted under an interim order for divorce, nullity or judicial separation.

Sri Lanka law says that a husband can only be found guilty of rape if he is judicially separated from his wife. He can, however, be charged with domestic violence under the Prevention of Domestic Violence Act 2005. According to the survey, Section 363(e) of the Penal Code states: "A man is said to commit rape who has sexual intercourse with or without her consent when she is under sixteen years of age, unless the woman is his wife who is over twelve years of age and is not judicially separated from him". (In Sri Lanka, Muslim girls are allowed to be married off at 12, although the minimum age of marriage is 18. There is no indication in this law that any child "bride", Muslim or otherwise, over the age of 12 is protected from rape by the Penal Code.))

In **Tanzania**, under Section 130(2) of the Penal Code, rape within a marriage is only a criminal offence if the marriage persists but the couple is separated. The legal age of marriage for girls in Tanzania is currently 15, and 14 with judicial consent.²¹

Note that In **Kosovo**, although it is unclear whether all marital rape is explicitly permitted or the law is silent on the issue, under the law rape is criminalised where "the perpetrator shares a domestic relationship with the person and such person is between the ages of sixteen (16) and eighteen (18) years."

COUNTRIES THAT PERMIT RAPE IN MARRIAGE AND/OR ALLOW RAPISTS TO MARRY THEIR VICTIMS TO AVOID PUNISHMENT



Marital rape is expressly decriminalised

Marital rape is explicitly criminalised

Rapist can marry their victim to avoid punishment

Legislation does not explicitly address marital rape as a crime

Marital rape only explicitly criminalised if parties separated

COMMENTARY

The UN Women guidelines state that there should be *criminalisation of sexual assault within an intimate relationship*. Several international and regional human rights instruments provide that every woman has the right to be free from violence in both the public and private spheres and place obligations on State parties to prevent as well as punish violence. These instruments include, for example, at the international level the Convention on the Elimination of All Forms of Discrimination against Women (through the CEDAW Committee's general recommendation on violence against women); and at the regional level the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará) in the Americas; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol); and the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) among others. Almost every country in the world has ratified at least one of these instruments, yet many countries do not specifically criminalise rape in marriage and could be said to be encouraging as well as excusing such violence by explicitly allowing it under law. Such laws:

- **Treat women as the property of their husbands to do with as they wish**
- **Send the broader signal that women are subordinate to their husbands and so set the scene for general legal and societal discrimination, positioning women at best as second class citizens without individual authority**
- **Provide impunity and even encouragement for sexual violence and potentially other forms of violence against women**

As noted above, the surveys indicated that in several jurisdictions the law expressly provides that a husband will not have committed a crime by raping his wife. This begins the narrative that not all rape is rape and so sews the seeds to allow the perpetrator to escape responsibility – in law or in practice – for his violence. Conversely, in including an express criminalisation of rape in marriage, legislatures are sending a strong signal of what is not acceptable in society. In turn, this can change attitudes of law enforcement personnel and of the broader public so that all sexual abusers of women and girls can be held accountable.

In many cases, the law is silent as to whether rape within marriage is a crime. The general law on rape and sexual assault can often and should be used to prosecute any form or manifestation of rape that is not explicitly criminalised, including marital rape and incest. Until all manifestations of rape are uniformly prosecuted, however, the articulation of specific violations is often required to underscore that a crime has taken place.

Punishment for sexual violence that applies regardless of the marital relationship is essential. In addition to making justice more accessible for all, it could be a force for change in public opinion by sending the signal that a woman always has a right to choose whether and with whom she has sexual relations. Such amendments to laws could easily be inserted.

Laws permitting marital rape even of children are especially outrageous. We found laws that allow rape in marriage of minor girls, even where other laws in the same jurisdiction forbid child, early and forced marriage and even where the law on statutory rape relating to unmarried girls of the same age would provide that consent to sexual relations is not possible. Governments must ensure that all laws protect all girls from sexual violence, including by passing and enforcing laws against child marriage with a minimum age of marriage set at 18 without exception.

Please join us in urging the governments of Singapore and India to amend their laws allowing rape in marriage at all.

CASE STUDY – PARAGUAY

In Paraguay sexual violence, particularly against girls, is widespread. Paraguay also has one of the highest rates of pregnancy in Latin America among adolescents aged 10-14 years. Abortion is illegal even where pregnancy is due to rape or incest and only permitted in law to save the mother's life, although even then in practice it is exceedingly difficult to obtain. The Paraguayan Ministry of Health reported that 684 girls between the ages of 10 and 14 gave birth in Paraguay in 2014 and there were reports of higher numbers in 2015. Ten-year-old Mainumby²² became pregnant after repeated sexual abuse, allegedly by her stepfather. At 21 weeks, when her pregnancy was finally confirmed, Mainumby weighed 34 kilogrammes (around 75 pounds), and there were concerns that her underdeveloped body would not be able to cope with a full-term pregnancy. Although Paraguayan law permits abortion when a woman or girl's life is at risk, her mother's request for Mainumby to have an abortion was denied. Several United Nations' human rights bodies expressed concern about the high rates of sexual violence and lack of access to justice in Paraguay, particularly for adolescents, as well as Paraguay's restrictions on abortion in cases of rape and when the mother's health is at risk. In August 2015, when Mainumby was just 11 years old, doctors performed a Caesarian section on her. She and the baby both survived. Mainumby is not yet a teenager, but already a mother. Paraguay has however failed to honour its commitments to provide housing and support for Mainumby and her family. Her

Even where marital rape is criminalised in relation to particularly young "married" girls, it would be difficult for such a girl to access the law and get justice. She is unlikely to have had the benefit of a proper education, may have little or no familial or social support, no knowledge of the law and be in a very unequal power relationship with her husband on whom she might well rely for everything for both herself and any children she may already have.

INTERSECTION OF LAWS

At the same time as reviewing and amending laws on rape, governments should look at intersecting laws, such as those on child "marriage" and those on abortion, including where pregnancy is a consequence of rape, to ensure removal of all discrimination against women and to give women control over their bodily integrity. Government and government-sanctioned male control over women's bodies, through discriminatory laws on rape, so-called honour crimes, reproductive rights and legalisation of prostitution is common across the world. All such provisions rob women of the right to live their lives free from violence and according to their own real choices. The situation in Paraguay illustrates very clearly how these issues intersect.

stepfather was arrested and jailed but as of this writing had not been prosecuted. The State continues to fail to protect girls from sexual assault and the enduring subsequent trauma. Instead, it is forcing them to continue their pregnancies, threatens criminal sanction if termination is attempted and provides no financial or other support to the girls or their babies on birth.

As a result of our call to investigate the human rights abuses against Mainumby and countless other victims in Paraguay, the Inter-American Commission on Human Rights (IACHR) sent Commissioner Paulo Vannuchi to visit the country on 17 August 2016. Meeting with Mainumby and our partner, CLADEM Paraguay, Commissioner Vannuchi heard first-hand how the state has still not met its obligations to Mainumby and her family. Equality Now is providing support to help Mainumby continue her education, but she is living in poverty and facing bullying and harassment at school.

Please Take Action to urge the Paraguayan government to put proper measures in place to ensure quick and effective responses to future cases of sexual abuse and to provide medical treatment, including abortions, for girls and women who have experienced sexual abuse.



PROTECTION GAPS IN THE LAW: Judicial discretion to reduce charges or define evidence based on stereotyped assessment of victim's behaviour

CASE STUDY - BOLIVIA

Punishment for rape in Bolivia is between 15 and 20 years but requires proof of physical violence, psychological violence, or intimidation. Seven out of ten women suffer sexual violence in Bolivia²³ and one in three girls and one in five boys suffer some form of sexual violence before the age of 18.²⁴

In Bolivia, there exists a crime of “having carnal access” to a person by means of seduction or deceit. This is known as estupro when the survivor is between 14 and 18 years of age. In contrast to rape of an adult, punishment for estupro ranges from only three to six years’ imprisonment. Local partners tell us the crime of estupro was created to convict a married man who engaged in consensual sex with a woman other than his spouse, based on the lie, i.e. deception, that he was single. Now, however, practice indicates that the estupro law is used to let rapists off the hook.

Equality Now’s partner, A Breeze of Hope, reports that judges **at their own discretion** are tending to reduce charges from rape to the lesser charge of estupro when adolescent girls are targeted, even if the evidence points to rape. In Bolivian culture, adolescent girls are said to be commonly portrayed as treacherously seductive and manipulative, preying on helpless adult men. Brisa de Angulo is a survivor of rape who was raped when she was 16 years old. The first trial of her perpetrator, in March 2003, focused on Brisa’s own character and personal history. During her testimony, one of the judges implied Brisa could not have been raped because she did not scream. The tribunal ruled that it was impossible for Brisa to have been raped because she had a strong personality.²⁵ While the defendant was convicted under the lesser estupro charge (rape by deception) rather than rape, this was overturned on appeal. A third trial was ordered but the defendant fled the country. Brisa has filed a complaint at the Inter-American Commission on Human Rights on the basis that her human right to be free from sexual violence, among other rights, was violated by Bolivia including by its failure to provide an effective remedy. Her case is pending. A Breeze of Hope is calling for the rape law to be amended to remove the requirement of additional physical violence, for the crime of estupro to be removed from the books and for the general law on rape to presume lack of consent of any complainant under the age of 18 if the defendant is over 18 and there is more than four years difference in age.

SURVEY FINDINGS

In Luxembourg, Morocco and Spain the standard of evidence required to prove rape is at the judge’s discretion. The survey responses for Japan and Russia both indicated there is no commonly agreed standard of proof from which it may be inferred that in these jurisdictions too it is at the discretion of the judge.

Judicial discretion regarding **evidence** is a separate issue from discretion in **sentencing** following conviction, which is not uncommon and may be appropriate in many cases based on the facts. What remains unacceptable is sentencing based not on the facts but on stereotypes and social inequalities such as was asserted in June 2016 following a sexual assault trial in California, USA. The judge gave the convicted rapist, at the time a student athlete at the prestigious Stanford University, an extremely light sentence,²⁶ despite having the relatively rare benefit of the testimony of two eye-witnesses to the assault. This caused uproar on publication of a letter from the survivor about how the sexual assault had affected her life in contrast to the judge’s reported reasoning that a heavy sentence would negatively impact the perpetrator’s future prospects. Survivors who have the courage to go through a trial which can be traumatic in itself for a range of reasons should be confident that, having secured a conviction, the appropriate penalty will be handed down. This would also serve to deter perpetrators and engender faith in the justice system by other women similarly affected.



COMMENTARY

WHO MAKES AND IMPLEMENTS THE LAW?

- According to the Inter-Parliamentary Union in 2016, parliaments around the world contained an average of 22.7% women and consequently 77.3% men.²⁷
- In Iran the percentage of women parliamentarians numbered only 5.9%.²⁸ Iran's Penal Code provides that in cases of adultery or other sexual activity where diya (financial compensation claims) is involved, the testimony of a woman is worth half that of a man. The United Nations states that in justice systems around the world in 2011, women accounted for only 27% of judges, 26% of prosecutors and 9% of police officers. **This means that 73% of judges and a large majority of the people interpreting and implementing our laws are men.**
- The United Nations states that in justice systems around the world in 2011, women accounted for only 27% of judges, 26% of prosecutors and 9% of police officers.²⁹ This means that 73% of judges and a large majority of the people interpreting and implementing our laws are men.

In global terms, this lack of female representation means that law enforcement and legislatures are not benefiting from the different life experiences of at least half their populations (not including any additional racial or ethnic discrimination) and so their view of the world and their own societies will be naturally limited. In short, around the world men are generally the ones making and implementing laws on sexual violence and women are generally suffering the consequences, not just of the sexual abuse, but also of bad laws and failing justice.

WHO CREATES AND SUSTAINS PUBLIC ATTITUDES AND DISCOURSE ON WOMEN?

Stereotypes around women and their sexual behaviour, including in the media, influence legislators, law enforcement personnel, medical staff and the general public, indeed all of those who will guide whether violence is recognised and how it will be dealt with. The UN Women guidelines call for *mandated training for law enforcement, judicial, medical and social service professionals*, which is essential in ensuring that stereotypes are discarded and proper standards are upheld.

Following a submission by Equality Now, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) expressed concern about the normalisation of sexual violence in Japan including the prevalence of pornographic video games and cartoons featuring rape, gang rape, stalking and sexual molestation of women and girls. The aim of one video game called RapeLay, for example, was for the player to repeatedly rape a mother and her daughters until they began to “enjoy” the experience. The Committee noted “the oversexualised depiction of women strengthens the existing stereotypes of women as sex objects and continues to generate girls’ low self-esteem”.³⁰ Partners of Equality Now told us that the myths portrayed transferred to the court room.

A UNESCO report containing data on women in the news media from 59 countries and 522 news media organisations found that women make up 35% of the total media workforce across the world, but only hold 27% of the jobs in top management and 26% of governance positions.³¹ Men therefore make up the significant majority of opinion formers in the world in terms of what gets reported and how.

Strategic objective J.2. of the Beijing Platform for Action, signed onto by 189 governments in 1995, is to “promote a balanced and non-stereotyped portrayal of women in the media”. Governments committed among other things to:

- Encourage the media to refrain from presenting women as inferior beings and exploiting them as sexual objects and commodities, rather than presenting them as creative human beings, key actors and contributors to and beneficiaries of the process of development³²
- Promote the concept that the sexist stereotypes displayed in the media are gender discriminatory, degrading in nature and offensive³³
- Take effective measures or institute such measures, including appropriate legislation against pornography and the projection of violence against women and children in the media³⁴

The media were encouraged to:

- Develop, consistent with freedom of expression, professional guidelines and codes of conduct and other forms of self-regulation to promote the presentation of non-stereotyped images of women³⁵
- Establish, consistent with freedom of expression, professional guidelines and codes of conduct that address violent, degrading or pornographic materials concerning women in the media, including advertising³⁶
- Develop a gender perspective on all issues of concern to communities, consumers and civil society³⁷

However, the UN Secretary-General in his review of achievements against this objective to date concluded that “[t]he persistence of gender stereotypes and discrimination in the media remains one of the major overall challenges to women’s empowerment and gender equality. Of particular concern to a broad range of governments are the persistent, degrading, discriminatory, objectified and hyper-sexualised representations of women and girls within the media, with a growing trend of misogynistic and violent images, including in social media, gaming and pornography. Easier access to these images through the Internet and mobile phones affects healthy social and emotional development, especially for youth, who are forming perceptions around sexuality, intimacy and relationships”.³⁸

A free press is essential to the strong functioning of a fair, equal and accountable society. The free speech of women and their consequent access to justice is, however, impeded when reporting is inaccurate, intrusive and misrepresents the context of violence against women and girls. As noted by the End Violence Against Women (EVAW) coalition in the UK, “[s]uch reporting on violence against women has both an immediate and a cumulative effect. It says to individual perpetrators that there is some justification for assaults on women. Over time it incrementally and subtly informs the way the whole community perceives certain crimes and whether in fact it is then possible to get justice for them. Rape myths for example – such as that ‘real rape’ is committed by a stranger with a weapon and is sometimes ‘provoked’ by women who are dressed in a certain manner or have had too much to drink - feed everyone’s view on who is seen as a ‘real’ victim, who is a perpetrator and consequently which cases are prosecuted and achieve a conviction, even which cases are ever reported in the first place”.³⁹

Editors’ codes for the press and broadcast media should set clear, professional standards that promote equality, non-discrimination and respect for all people.

Various NGOs, including Zero Tolerance in Scotland and Genderlinks in Southern Africa have guides and research that can aid good media reporting. UNESCO is also coordinating a Global Alliance on Media and Gender to promote gender equality in and through the media globally. Such initiatives need to be supported as a way also of fostering an environment of zero tolerance to sexual violence.







PROTECTION GAPS IN THE LAW: Laws that fail to recognise true consent is impossible in situations of dependency or extreme vulnerability

CASE STUDIES - SIERRA LEONE AND ZAMBIA

Women and girls are exploited in a range of circumstances. Not uncommon among these is the exploitation of girls by their teachers. Sexual abuse of girls is extremely widespread in **Sierra Leone**. As well as sexual violence being committed by teachers and others with impunity, girls are expected to “transact” sex for a variety of things such as getting school papers, better grades, rides to school etc. Punishment for all these acts is rare despite the law on sexual offences which states that persons below the age of 18 cannot give consent.

In Sierra Leone we are working with partners Women Against Violence and Exploitation (WAVES), Women's Partnership for Justice and Peace (WPJP), Graceland Sierra Leone, Child Welfare Society and the Education for All Coalition – Sierra Leone on addressing sexual violence against girls and in particular the issue of visibly pregnant school girls being prevented from going to school and taking exams.

“Samantha” was impregnated by her teacher when she was only 16. He would often ask her to carry water to his house in exchange for basic school supplies and good grades. Ultimately, the teacher molested and raped Samantha, who kept quiet because she was afraid of what he would do to her in retaliation. Despite her family's interventions, the teacher was allowed to continue working in the classroom—a classroom that Samantha was expelled from because of her pregnancy.

Like many girls in Sierra Leone, “Jeanne” lost both of her parents to the Ebola epidemic and is on her own at age 17. She hoped that getting an education would be her ticket to a better life. However, “biker boys” demanded sex from Jeanne in exchange for transportation to and from her job and school and, having no other options, she “complied”. Jeanne became pregnant and was devastated to find out she could no longer attend school or sit for public exams.

“Frances” was only 13 years old when she was exploited and became pregnant by a much older man who helped pay for her school fees “in exchange for sexual acts”. She too is no longer allowed to go to school. Frances' mother, a single mum without any support from relatives, despairs this injustice.

Sierra Leone, unfortunately, is not the only country where school girls are sexually assaulted by their school teachers with impunity. **Zambian** NGOs report that sexual abuse in Zambian schools is so prevalent that it constitutes a systemic problem for education. In February 2006, Mary⁴⁰ was raped by Edson Hakasenke when she went to his house to collect her school papers upon his request. Mr Hakasenke told her not to report the incident as she would be thrown out of school and he would lose his job. Mary did not report the rape until several weeks later following treatment for a sexually transmitted infection that she had contracted as a result of the assault. At that time her aunt/guardian filed a complaint with the headmaster. The school took no action and Mary felt compelled to change schools. Mary's aunt went to the authorities and Mr Hakasenke fled the country soon after the complaint was filed. On his return to Zambia, he was arrested by the police with assistance from Mary's aunt who transported him and the police to the police station. However, the police released him on the basis that too much time had elapsed between the incident and its reporting. In March 2006, Mary's aunt subsequently consulted a lawyer who took the case pro bono and, with assistance from Equality Now, instituted a civil suit against the teacher, the school, the Zambian Ministry of Education and the Attorney General. In the civil suit, Mary claimed damages from Edson Hakasenke for personal injury and emotional distress and requested that the school be held accountable and the Ministry of Education be held accountable for negligence and be required to set guidelines to prevent incidents of teacher rape in the future.

On 30 June 2008, Judge Phillip Musonda of the High Court of Zambia delivered his precedent-setting judgment, citing international as well as domestic law, and awarded Mary damages. He called the failure to prosecute Mr Hakasenke a “dereliction of duty” considering the weight of the evidence. The judge noted that the abuse amounted to “enduring psychological brutalisation”. He referred the case to the Director of Public Prosecution for possible criminal prosecution of Mr Hakasenke and called on the Ministry of Education to issue regulations which would “stem such acts in the future”. After this case reached the courts, Mary's lawyer received several calls from other girls and their families seeking help for cases of defilement or sexual assault. Girls have also approached Mary quietly for advice on their own situations of incest and teacher abuse, illustrating all too clearly that the government needs to address this issue urgently.

The government must act urgently to address sexual violence against girls in schools and in the community and must stop the ban on pregnant girls from attending mainstream education. Please join us in Taking Action.

From our work in Zambia, Sierra Leone and elsewhere we have learned that if girls face violence when they are trying to get an education:

- Their parents may withdraw them from school or they may feel they need to withdraw themselves, leaving them with little or no education
- Their education may be interrupted through trauma, fear and lack of self-esteem
- Their future prospects for work may be hampered
- There may be damaging sexual health and other consequences to the girl, for example from sexually transmitted infections or through pregnancy and a possible consequential ban from schooling

SURVEY FINDINGS

We asked survey participants to list any circumstances where consent is completely or always immaterial for sexual intercourse so that consent can never be given or used as a defence to rape.

Not everyone noted this or any exceptions to it in the survey, or if marked with an* in footnotes below, no lower age limit was specified in the country survey regarding any defence with respect to the crime of rape.

Many responses, though not all, noted the age below which consent generally becomes⁴¹ immaterial:

- **Consent is immaterial if the survivor is under 12 in at least 4 jurisdictions surveyed**⁴²
- **Consent is immaterial if the survivor is under 13 in at least 10 jurisdictions surveyed**⁴³
- **Consent is immaterial if the survivor is under 14 in at least 12 jurisdictions surveyed**⁴⁴
- **Consent is immaterial if the survivor is under 15 in at least 9 jurisdictions surveyed**⁴⁵
- **Consent is immaterial if the survivor is under 16 in at least 24 jurisdictions surveyed**⁴⁶
- **Consent is immaterial if the survivor is under 17 in at least 4 jurisdictions surveyed**⁴⁷
- **Consent is immaterial if the survivor is under 18 in at least 10 jurisdictions surveyed**⁴⁸
- **Consent is immaterial if the survivor is under 20 in at least 1 jurisdiction**⁴⁹
- **Consent is immaterial if the survivor is a “minor” or a “child” (definitions may vary) in at least 3 jurisdictions surveyed**⁵⁰

Many jurisdictions, including in the examples given below, provide that consent is immaterial where the perpetrator is in a position of authority over a person and so include provisions recognising this power imbalance, frequently by increasing the age of consent. This is especially true when the survivor is under a certain age, usually 18.

Some survey respondents noted consent is also immaterial when the survivor lacks the capacity to give consent because of her physical, mental or intellectual disability – for example, in the Philippines when the survivor is “demented” and in Oman when the survivor is physically or mentally disabled. Additionally, several jurisdictions provide explicitly that consent is immaterial when given as a result of deception, for example if sex with a condom were agreed, but the perpetrator then did not wear a condom.

In South Australia when the perpetrator is in a position of authority in relation to a person under 18 years old, consent will be immaterial. This is in addition to consent being immaterial for any person under 17 years old, or a person who is intellectually disabled or unable to understand the nature or consequences of the sexual intercourse.

In Denmark, consent is immaterial if the survivor is under 18 and (i) is the accused’s child, step-child or student or (ii) is involved in prostitution or if the survivor is in one of “certain patient, detainee, employee” relationships.

In El Salvador, consent is immaterial for anyone under 15. This is also the case where the survivor is aged between 15 and 18 and the accused has “taken unfair advantage of the authority originating in any relationship”.

English law also provides as a strict liability offence an abuse of trust where sexual activity is with a victim under 18 (and the perpetrator does not reasonably believe the person is 18), including sexual activities with a child family member and sexual activity by a care worker with a person with mental disorder.

Consent is immaterial under **Italian** law if the offence is committed by a relation or another person in a position of trust and the survivor is under 16 years old.

In Serbia, consent is less likely to be believed if the survivor is mentally or physical disabled and “incapable of resistance” or the perpetrator has abused a position of power.

Where the accused is the guardian or legal custodian of the child is a factor in the statutory rape law of **Thailand** (and other countries).

In Belgium, consent is immaterial where violence, coercion or ruse is used or in the case of physical or mental disability of the survivor.

In Nigeria, rape includes "unlawful carnal knowledge" with or without her consent if she is between thirteen and sixteen or a woman or girl of unsound mind. It is a defence for the accused who had carnal knowledge of an "idiot or an imbecile" if he did not know the woman was an "idiot or an imbecile", he was under 21 years of age at the time and had not been previously charged with such offence.

There were positive examples from the surveys showing many jurisdictions seem to provide additional penalties for those who abuse their positions of power. These include care workers, medical professionals, prison guards, employers and also parents, guardians or other relations.

DEFENCES AS TO AGE

In some jurisdictions the accused may have a defence if he reasonably thought the survivor was over a certain age even if she was actually under the age of consent. Here some real examples highlight a gap in the law with respect to particularly vulnerable girls whose situation may be analogous to those exploited by people in a position of power, trust or authority. Governments should look again at this group of girls at risk. For example, a 57-year-old man living in the UK was in January 2016 exonerated of "[sexual activity with a child, causing a child to engage in sexual activity and paying for sexual services](#)" of a 13-year-old girl he met through a purported "sugar daddy" website. Under English law, rape and sexual assault or sexual activity with a child is a strict liability offence only if the child is under 13, despite the age of consent being 16. Sexual activity with (as opposed to sexual assault of) a child aged between 13 and 16 years is not an offence as long as the person accused reasonably believes the child to be over 16.

In a not dissimilar case in Sweden in March 2015, a 27-year-old man was cleared on appeal of raping a 13-year-old girl whom he reportedly met in a park after she ran away from her foster home. She had no money, mobile phone or place to stay and he invited her home for a drink. He at first denied sex took place, but forensic evidence showed otherwise. The age of consent in Sweden is 15, but again there is no crime unless the accused knew or ought to have known the girl was under that age. Judges hearing the appeal are [reported](#) to have decided from

video evidence that the girl's "well-developed" body and general demeanour made the accused's assertion that the girl was over 15 a reasonable one. In neither case was the vulnerability of the girl or any exploitation of her situation a factor considered in the law.

Our survey asked if the law provides for any circumstance or category of victim (eg people in prostitution) where bringing a case of rape/sexual assault is not possible because the law will always assume that consent to sexual activity will have been given. No one answered that to be the case, but several respondents suggested that either the law will in some cases allow evidence of the woman's prior sexual history (see in section 6 below) or that in reality those considered to be somehow "immoral" would not be viewed as a true victim and therefore would find it harder to get justice.

These instances of where the law appears to offer lesser protections to women and girls with a more active sexual history than to those who more easily fit the stereotype of "victim" led us to compare laws in similar circumstances. Were punishments greater, lesser or the same for raping a child below the age when s/he can legally give consent to sex compared with buying sex from a minor? While the information in the surveys was not always definitive and more research needs to be carried out, it appears that a few jurisdictions, such as the **Republic of Korea**, recognise the greater exploitation and provide for a stronger range of penalties. We found, however, that there are appear to be some cases, for example in **Tunisia**, where punishments are less for paying for sex with a prostituted girl, even where the general law provides for greater punishment to someone exploiting a position of power or vulnerability of a girl. In other jurisdictions, such as in **Serbia**, there appears to be some overlap in the penalties but they would generally result in a lesser punishment for paying for sex with a minor, than for the punishment for other forms of abuse of trust or exploitation of a position of vulnerability. In Indonesia, for example, there is only a small overlap in penalties, ie up to 15 years' imprisonment for statutory rape and only up to 5 years' for buying sex from a minor of the same age. More research needs to be done to determine the extent of the discrepancies in punishment and the reasons for it. One explanation for variations in penalties could be that girls selling sex are seen as less worthy or less harmed than those not exploited in prostitution but more analysis is needed.

Some jurisdictions go further and actively punish prostituted girls. **California** State law for example recognises that children under the age of 18 cannot consent to sex. However, numerous counties are arresting vulnerable children – overwhelmingly girls – for prostitution and leaving them with criminal records. If, for example, a 13 year-old-runaway from an abusive home in Los Angeles county with nowhere to turn falls into the sex trade to support herself, even though she is a minor, instead of being helped she might be arrested and prosecuted resulting in a criminal record that would make the rest of her life even more difficult. However, just five hours north in Alameda county, policy would require the police to treat her as a trafficking victim and alert child protective services to intervene. Because both of these approaches result from policy decisions and are not mandated by legislation they can be changed unilaterally at any time. In order to provide equal justice to all prostituted children in California, Equality Now campaigned successfully in 2016 for bill SB 1322 which prohibits the arrest of minors for prostitution everywhere in California.

When respondents were asked whether the penalties for paying for sex from an adult woman found by law to have been trafficked or forced into prostitution were the same as for rape, not enough survey responses were clear on the issue to draw a solid conclusion. Yet, by definition if the law has already found a woman to have been trafficked or forced she cannot have freely consented to sex.

COMMENTARY

The age of a minor should be defined as 18 in the law on buying sex from a minor and the age of consent in statutory rape laws should be raised to 18 where there is abuse of trust and exploitation of position of vulnerability⁵¹. If a child is reasonably considered not to be able to consent in law then this should apply whatever the circumstances, including if the child is being exploited in prostitution. The penalties should be equivalent.

If exploiters of women and girls are not subject to the full force of the law:

- **A signal is sent that women and girls and, of these, particularly the most marginalised in society, are of lesser worth**
- **A signal is sent that such exploitation can occur with impunity, enabling more not less sexual violence and making vulnerable women and girls ever more vulnerable**

UN Women guidelines propose that laws should make *provision for a broad range of circumstances in which consent is immaterial, such as sexual assault by an individual in a position of authority such as in a school setting.*







PROTECTION GAPS IN THE LAW: Laws or practices inhibiting investigation and prosecution of sexual assault

CASE STUDY - KENYA

While walking home from her grandfather's funeral in Busia County in June 2013, 16-year-old Liz was brutally gang-raped by six men and dumped unconscious into a pit latrine. Liz was rescued and the attack was reported. The Inspector General of Police, however, questioned the legitimacy of Liz's story, stating that the time span between Liz's screams and the response time for villagers was "too short for six assailants to have gang-raped her". He also attacked Liz's credibility by questioning the timeframe it took for Liz to tell her family and medical professionals that she had been raped. Though three of the suspects were apprehended, they were initially only charged with assault rather than sexual assault and as a result they faced a lesser punishment. They were tasked with cutting the grass outside the police station as their punishment and then released from custody. In response to law enforcement's inaction, together with our partners COVAW, FIDA-Kenya, FEMNET, Fahamu and IPAS through the Solidarity for African Women's Rights Coalition, we called for justice for Liz and for all survivors of sexual violence in Kenya. In April 2015, after two years of grassroots advocacy and public pressure, Liz finally got justice - Kenyan courts convicted her attackers of gang-rape and causing grievous harm and sentenced them to prison.

During the course of our campaign, we and our partners brought 70 additional rape cases to the attention of the Director of Public Prosecutions. Despite international pressure and local advocacy directed at the Office of the Director of Public Prosecutions (ODPP) and the National Gender Equality Commission (NGEC), young girls continue to be sexually violated almost every day. Most of these girls have no recourse owing to numerous challenges, the least of which is an onerous filing fee to lodge a simple police report. We continue to push for safe environments for girls, where sexual violence is not tolerated and perpetrators are punished to the fullest extent of the law. We continue to consider further avenues for advocacy and to meet with the ODPP and the NGEC.

Even where there are good laws, they are not always well implemented. Liz's case highlights a response by the Kenyan authorities that is all too common to crimes of sexual violence:

- Not taking crimes of sexual violence seriously
- Victim-blaming and attacking the credibility of survivors of sexual violence
- Ignoring the traumatic impact sexual violence can have on survivors and the scientific evidence that PTSD affects cognitive functioning
- Ignoring the many factors a survivor considers, including shame and fear of being blamed, in deciding whether to report
- Delaying or denying justice to victims of sexual violence

SURVEY FINDINGS

Survey participants were asked three questions about the decision to prosecute cases of rape and sexual assault:

a) Who decides whether to prosecute?

In all jurisdictions surveyed, the survey responses suggest that the usual prosecuting authority is responsible for initiating a prosecution of rape or sexual assault. These offences are treated as other criminal offences.

b) Can the case go ahead if the survivor has withdrawn the complaint?

In at least 11 of the jurisdictions surveyed⁵², sometimes subject to certain restrictions, the prosecution cannot proceed if the survivor has withdrawn her/his case. In at least 6 of these jurisdictions⁵³, once the survivor withdraws her complaint, the case is terminated. Apart from provisions which exempt a perpetrator from punishment if he marries his victim (discussed above) other criteria contained in law that influence the decision on whether or not to prosecute a particular case include the following examples:

Brazil – the law treats the victim differently depending on whether the victim is over or under 18 years old. In the case of a survivor of over 18 years of age, the case will only terminate if the survivor withdraws her/his complaint before any formal accusation. If the survivor is under 18 years of age, the case will continue with or without the consent of the survivor

Indonesia – for statutory and marital rape there is a time limit of 3 months from filing the complaint within which the case will terminate if the survivor or his/her family withdraws the complaint.

Italy – a complaint is not necessary at all and the Public Prosecutor can prosecute ex officio if the offence is committed: (A) against an underage child; (B) by an ascendant, parent, legal guardian or by a cohabitant; (C) by a public official or person acting on behalf of a public official; or (D) together with other indictable offences.

Sweden – if the perpetrator is a minor a waiver from prosecution may be authorised if the perpetrator is subject to such action as those outlined below and it can reasonably be concluded that the action taken is appropriate for the perpetrator: (A) care or other measures under Social Services; (B) care or other action under the Act with special arrangements for the care of the perpetrator; or (C) another measure which means that the perpetrator may obtain help or support. Waiver of prosecution may not be determined if any significant public or private interest thereby impinged upon.

Thailand – withdrawal of the complaint by the survivor will terminate the case if originally was filed by the survivor and the prosecutor hasn't taken it up. (This depends on whether the offence has been categorised as "compoundable" or "non compoundable". Compoundable offences, which can include rape and sexual assault, are those in which a complaint can be filed by the relevant injured person).

C) Is the decision to prosecute subject to any criteria such as age, character and sexual history?

CASE STUDY - SUDAN

In August 2013, while house hunting in Omdurman, Sudan, a 19-year-old pregnant and divorced Ethiopian woman was lured to an empty property and brutally gang-raped by a group of seven men, aged 19 to 22. Immediately following the attack, a police officer found the victim, but didn't file a formal complaint of rape because it was a public holiday and the police station was closed. The rapists had filmed the attack, which surfaced via social media in January 2014. After learning of the film, the authorities ultimately arrested everyone involved, including the survivor. Sudan's Attorney General – without legal basis – consistently blocked her from filing a rape complaint on the basis that she was under investigation for the criminal offence of offending public morality. [She even faced a sentence of death by stoning](#) for adultery, as the prosecutor debated her marital status before confirming that she was divorced. Thanks to the combined efforts of Equality Now's campaign and supporters in Sudan, the case against the young woman was dropped by the government. She has attained necessary legal immigration status in Sudan and is raising a healthy son.

Using knowledge applied from a similar and successful campaign on rape and public order laws in Pakistan, Equality Now was instrumental in supporting Sudanese groups' push for change. The Sudanese Criminal Code of 1991 was reported amended in February 2015 so that survivors of rape could no longer be

charged with adultery (zina) and/or committing "immoral acts" and it might now be possible to prosecute for rape in marriage. While many of the changes are welcome, lack of clarity in the law might still deter women from coming forward with allegations of rape and might still prevent justice if they did.⁵⁴ The new definition of rape should result in different, less onerous evidentiary rules being applied. Advocates recommend that the Evidence Act should, however also be amended to establish clear and reasonable evidentiary standards in cases of sexual violence

SURVEY FINDINGS

The survey responses to the question as to whether the decision to prosecute is influenced by factors such as age, character and sexual history of the victim and relationship between the victim and perpetrator fell into three categories: (i) no provision in law for such criteria to be considered; (ii) there are factors which may influence a decision to prosecute or not; and (iii) responses indicating that prosecution is not influenced in law, but subsequent punishment is.

In most jurisdictions, there is no provision in law for criteria such as age, character and sexual history of the victim to be taken into account when a decision is made as to whether or not to prosecute.

- **Surveys from at least 15 jurisdictions identified provisions in law that explicitly disallow (although some statutes have exceptions) the introduction of a complainant's previous sexual history being raised in court or provide that, if introduced, it be ignored.⁵⁵**
- **A few surveys indicated evidence of sexual history or sexual behaviour could be considered if the probative value of such evidence outweighs possible prejudice or harm.⁵⁶ In such instances, leave to hear such evidence is frequently heard in private.**

The absence of a provision in law specifically disallowing introduction of a complainant's sexual history means that such history may be taken into account.



CASE STUDY – ETHIOPIA

In his decision reversing the original verdict in Makeda's case described in Section 2 above, appeals court Judge Biyo Ube stated that “the evidence suggests that the act was consensual”, without citing any particular evidence contradicting the account of forcible abduction and rape that led to the conviction of the defendants following their trial. According to an article in The Washington Post dated 7 June 2004, Judge Ube believed Makeda was not raped or abducted 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”. Prosecutor Tolcha reportedly echoed the Judge's reasoning, further stating, “I think [Makeda] was like, ‘Please rape me.’” The Ethiopian Penal Code in defining the crime of rape does not mention virginity or in any other way limit the crime to one that can be perpetrated only on virgins.

The majority of responses from the surveys identified the factors that are taken into account in the decision-making process as to punishment, rather than prosecution. In Lebanon, for example, at the discretion of the judge, the survivor's sexual history may influence punishment although there are no explicit provisions in law for this. While it is rare in law that a woman's sexual history is admissible into evidence, anecdotal evidence suggests in practice this is frequently taken into consideration at all stages of the case – when deciding to prosecute, during the trial and in handing down a sentence. The survey response from Afghanistan indicated that all the criteria listed are in practice taken into account by the Attorney's Office (prosecutorial authority).

Where the law provides that cases can be dropped if a survivor withdraws her complaint, this:

- Sends the signal that rape is not a serious crime
- Denies justice to the complainant
- Gives the perpetrator immunity
- Fosters an environment that supports a woman keeping quiet about her rape or sexual assault because she fears not being believed or after succumbing to familial or societal pressure
- Allows rapists to rape again

COMMENTARY

A focus on past sexual history seriously risks deterring survivors from coming forward when they have been raped. As indicated in the Makeda case, the narrative of only deeming a complainant worthy of justice if she is chaste in the eyes of judge or jury, ignoring the behaviour of the accused, means that rapists will continue to go unpunished. All criteria in law that prevent prosecutions or reduce punishment on the basis of the survivor's character or situation should be removed. In addition, governments should undertake more thorough training and public information campaigns to ensure no bias enters into the law enforcement process which automatically transfers blame onto the complainant for factors unrelated to the case in hand.

The UN Women guidelines call for a *prohibition of introduction of survivor's sexual history as evidence at all phases of civil or criminal trial where it is unrelated to the case.*

While prosecution is clearly more difficult without the cooperation of the survivor, law enforcement should be doing all it can to provide support to the complainant, including by use of specialist units which could (1) encourage survivors to report the crimes; (2) ensure the survivors are properly supported at the prosecution stage; (3) fast-track the prosecution process; (4) ensure factors such as sexual history and relationship status with the perpetrator are not considered in the decision-making process; (5) collect forensic evidence in a survivor-centred way through trained and sensitive first responders. Prosecution of a crime of sexual violence should not automatically discontinue if the survivor withdraws her complaint. The investigation should continue to determine if there is enough evidence to go to trial. The UN Women guidelines provide that laws should make *provision for mandatory investigation of sexual assault.*





PROTECTION GAPS IN THE LAW: Laws requiring witness corroboration and overly burdensome evidence

CASE STUDY - PAKISTAN

Until 2006, women in Pakistan who were raped often ended up in prison themselves because of the law.⁵⁷ Previously, to prove a crime of rape, the law required either the confession of the accused or the testimony of four Muslim adult witnesses. This meant women were reluctant to bring cases since it was almost impossible to get a conviction. If they failed to obtain justice they could be tried for adultery and fornication, with any pregnancy resulting from the rape instant “proof” of such behaviour. Following years of advocacy by women's rights organisations, including by Equality Now and local partners, Pakistan reformed the law so that these unrealistic and unjust requirements are no longer needed to prove rape. However, adultery and fornication are still crimes in Pakistan.

Anecdotal testimony at the IBA Annual Meeting in October 2015 suggested that in cases of child defilement in Nigeria poor families particularly tend to accept an informal financial settlement from the perpetrator on the basis they have no means to pursue a case where they feel they are unlikely to be able to obtain justice anyway. In the US, justice looked a dim prospect against a perpetrator with large financial backing and significant public support—he was a sports star—until an experienced counsel stepped in pro bono for the complainant. Stories of court and so-called justice systems around the world favouring those with greater financial resource are legion.

SURVEY FINDINGS

Our survey asked which jurisdictions had express requirement in law for medical evidence and/or eye witness testimony in order to secure a conviction. From the responses there are at least six jurisdictions in which, in addition to any other required elements, either medical evidence or both medical evidence and eye witness testimony are required by law. No survey response indicated that there was a requirement only for eye witness testimony in the law of the particular jurisdiction. The jurisdictions requiring both medical evidence and eye witness testimony are Lebanon and Yemen.

Some survey participants provided detail as to the requirements under law and, where there are no provisions set out in law, some others provided information as to what is required in practice. These examples are set out below:

a) Jurisdictions in which medical evidence is absolutely required under law

- In **Lebanon**, evidence required includes a medical examiner's report
- In **Malawi**, medical evidence of penetration is needed
- In **Pakistan**, a statement by the complainant which “inspires confidence” and is supported by medical evidence/examination is required⁵⁸
- In **Panama**, medical tests are needed to prove penetration
- In **Peru**, assessment by a physician who is also a legal expert is required to enable the prosecution to discharge the burden of proof
- In **Yemen**, both witness evidence and medical evidence are required in order for the prosecution to discharge the burden of proof

(b) Jurisdictions in which there is no clear provision in law about requiring medical evidence

- In **Afghanistan**, while the law does not mandate medical evidence, in the experience of those who contributed the courts will often require medical confirmation or eye witness corroboration or a confession from the perpetrator.
- A survey response received from **El Salvador** suggested that medical evidence (for example from DNA or a forensic medical examination) as well as testimonial evidence will be necessary to secure a conviction.

(c) Medical examinations

We asked whether medical examinations must be undertaken by designated or accredited medical personnel whether in the view of the survey respondent there is a sufficient number of such personnel in all locations available to carry out the tests and whether the tests are free.

- Of the 43 jurisdictions in which a medical examination must be performed by designated or accredited personnel, this examination is free in 20, but there is a fee in 16.⁵⁹ There was insufficient information from the remaining 6 surveys.
- Of the jurisdictions in which a medical examination need not be carried out by designated or accredited personnel, an examination is nonetheless available free of charge in 14 jurisdictions, but there is a fee in 21.⁶⁰ There was insufficient information from the remaining 3.
- In relation to the six jurisdictions in which medical evidence is necessary under the law for a conviction to be secured, the medical examination must be carried out by designated or accredited medical personnel in all of these jurisdictions except possibly Malawi. In only 2 of the 5 jurisdictions, Lebanon and Pakistan, is the required test free. The majority indicated there was insufficient personnel to carry out the required examinations.

COMMENTARY

The law should allow for a sufficient range of appropriate actual and circumstantial evidence to try a case ensuring justice for the perpetrator and the complainant. The UN Women guidelines provide that law should have a *prohibition of requirement of corroboration of survivor's evidence*. Corroboration of a complainant's evidence is often difficult. Perpetrators of all crimes seek to commit their offences away from witnesses. An absolute legal requirement for such witness corroboration therefore discriminates against the complainant, making it more difficult to secure a conviction. Complainants should also have access to affordable legal representation, something harder to procure particularly for poorer women and with the curtailing of legal aid in some countries. More must be done to ensure not just that the law is fair, but that access to justice is available to everyone, including to people unable to afford the direct and indirect costs of a prosecution, such as good legal representation and loss of income while attending court.

In addition, laws that require use of a specific doctor in a specific location have a discriminatory impact on those unable to pay travelling expenses and those less mobile, either physically or because of their social situations. This discrimination continues where there is insufficiency of medical, law enforcement and other facilities or where there is a requirement to pay for medical and other services. SDG target 16.3 requires governments around the world to promote the rule of law at the national and international levels and ensure equal access to justice for all. SDG 10 addresses reduction of poverty within and between countries. Target 10.2 states that by 2030 governments should empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status and under SDG 10.3 they must ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard. Governments must look at the issue of poverty and literacy among other socio-economic factors and broader issues of discrimination and disadvantage, including disability, to ensure true access to justice for all. They must also provide enough resources for a proper functioning legal system, which should include provision for specialist law enforcement units, legal aid and specialised care services for survivors.

CONCLUSION

By highlighting the way sexual violence laws are framed against the UN expert group's framework, this report illustrates that governments still have a long way to go to transform their laws, policies and practices into instruments that are going to a) prevent sexual violence b) provide better access to justice for complainants (including specialised services) and c) punish sexual violence adequately. In 2008, the UN Secretary-General launched a multi-year global campaign called UNiTE to End Violence against Women. He appealed to all partners to join forces to eliminate this scourge. One of the campaign's five key goals was for all countries to adopt and enforce, by 2015, national laws that address and punish all forms of such violence, in line with international human rights standards. This report gives us the basis for a comprehensive conversation on laws on and practices towards sexual violence specifically moving forward.

Presented here is information from only 82 jurisdictions around the world. It does not purport to represent the current state of the law in any given country. In addition, much hinges critically on how the law is implemented, which is only anecdotally addressed here. What it does show, however, is that across geographical regions and legal regimes a lot more work needs to be done to ensure that laws and policies give women true protection from sexual violence and access to real justice if violence is perpetrated.

We need to address this intolerable situation urgently. Governments need to engage in an honest and committed conversation with survivors of sexual violence, civil society groups, law enforcement and service providers. They must redouble their efforts to put systems in place to prevent sexual violence and, at a minimum, amend laws to close the seven key identified gaps:

- Laws allowing the perpetrator to walk free on reaching some form of “settlement”, including by marryin the victim
- Laws framed in terms of morality rather than bodily integrity, thereby perpetuating a cycle of violence and discrimination
- Laws that explicitly permit rape in marriage, even of children
- Laws permitting judicial discretion to reduce charges or define evidence based on stereotyped assessment of the complainant's behaviour
- Laws that fail to recognise true consent is impossible in situations of dependency or extreme vulnerability
- Laws or practices inhibiting investigation or prosecution of sexual assault
- Laws requiring witness corroboration and other overly burdensome evidence

Amending these laws will send a strong signal that rape and sexual violence will not be tolerated and, if they occur, will be prosecuted as the serious crimes of violence they are to the full extent of the law.



WHAT

YOU

CAN

DO

1.

Take action on our country campaigns, including on Egypt, India, Lebanon, Malta, Palestine, Paraguay, Sierra Leone, Singapore and Syria.

2.

Add your name to the call to make equality reality! Please sign our petition which will be delivered to the governments listed in this report before the June 2017 UN Human Rights Council meeting.

3.

Join the conversation online using **#theworldsshame**.

4.

Support Legal Equality, **donate to Equality Now today**.

GLOBAL PETITION

Sexual violence against women and girls is endemic. It does incredible physical, psychological and consequential harm, preventing women and girls from realising their full potential. Laws and legal systems around the world need to be amended to prevent sexual violence, to ensure justice if it happens and to promote equality.

We call on your government to comprehensively review and amend, in consultation with survivors and women's rights organisations, all laws, policies and procedures relating to rape and sexual assault. Such policies and procedures must be survivor-centred, non-discriminatory and sufficiently resourced to ensure women and girls' access to justice.

We also call on your government to comprehensively review all its laws and policies to ensure removal of all remaining sex discrimination. Legal equality gives women and girls a level playing field from which to make their own choices, build their capabilities and achieve their hopes and dreams. This positively affects the whole of society as recognised in the Sustainable Development Goals (SDGs) adopted by governments at the UN in 2015.

TAKE ACTION AT [EQUALITYNOW.ORG](https://equalitynow.org)







ACKNOWLEDGEMENTS

The generous responses received to the survey helped build a picture of the legal landscape in relation to sexual violence and are testament to the very many people who want this violence to end. By shedding light on the way laws are framed, legal professionals and activists are helping to highlight what still has to be achieved to ensure the law does its job; not just in providing legal protection and recourse, but also supporting changes in attitudes to sexual violence and encouraging collective and determined action to end it. This would not have been possible without their help and solidarity.

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Indonesia	Lawyers: Ratih Nawangsari (Managing Partner), Dewi Sawitri (Senior Associate), Natasha Djamin (Senior Associate), Dwi Ayunda Sahar (Associate), Ayu Katarina Kusnadi (Trainee Associate)	OENTOENG SURIA & PARTNERS (In association with ASHURST)
Iraq	Iman Abdul Rahman	Attorney, Executive Director of the Baghdad Women's Association
Ireland	Fiona Breen	Law student, B.Corp Law, LLM and currently studying LL.B at University College Cork, Ireland.

Country	Name of individual(s) if provided	Occupation & Firm/Company/University at time of survey completion
Italy	Daniele D'Alvia	Teaching assistant and PhD student in capital markets, Birckbeck University
Italy	Andrea Russo	Lawyer, Pirola Pennuto Zei & Associati
Italy	Diego Antonino Cimino	Student, University of Catania
Italy	Carmen Andreuccioli, Luciana Delfini, Caterina Flick, Mikaela Hillerstrom, Paola Anna La Corte	Lawyers, ADGI – Roma Associazione Donne Giuriste Italia, Sez. Roma, members of the International Federation of Women in Legal Careers.
Japan	Naota Suzuki (Supervised by Kensuke Inoue)	Lawyer, Ashurst Horitsu Jimusho Gaikokuho Kyodo Jigyo
Jersey	Stephen Baker	Advocate and Crown Advocate (occupation), Baker & Partners (firm)
Jordan	Hala Qutteineh and Sultan AlFayez	Lawyers, Ali Sharif Zu'bi Advocates & Legal Consultants
Kazakhstan		White & Case Kazakhstan LLP
Kenya	Nyamodi Ochieng - Nyamogo	Private Legal Practitioner, Nyamogo and Nyamogo Advocates
Republic of Korea	Joon Tae Park	Student, Hanyang University Law school
Replublic of Korea	Hea Young Park	Student, Inha law school
Kosovo		White & Case LLP
Kuwait	Abdullah Humaid Ali Alanzy (Interview conducted by the Kuwaiti Human Rights Society)	Lawyer, Kuwait University- Faculty of Law
Lebanon	Maysa Chandar	Lawyer, The Lebanese Council To Resist Violence Against Woman
Lesotho	Itumeleng Shale	Lecturer, National University of Lesotho
Luxembourg	Mélinda Perera, Natalie Blanc	Lawywer, Linklaters LLP Luxembourg
Malawi	Jean Kayira	Magistrate, Malawi Judiciary
Malawi	Zione Ntaba	Judge, Malawi Judiciary
Malaysia	Sherilyn Ooi Su Ying	Chambering student, Zul Rafique & Partners
Montenegro		Associate, White & Case
Morocco	Anonymous	
Netherlands	Richard Korver with Lisanne Adam	Attorney, Richard Korver Advocaten
Nigeria	Dr Livinus Uzoukwu (San)	Legal practitioner (senior advocate of Nigeria), Livy Uzoukwu (san) & co
Nigeria	Gloria Ngozi Mbanefo	Gloubar Solicitors
Nigeria	Olufunmi Oluyede	Legal practitioner, TRLPLAW
Nigeria	Victor Nonso Enebeli	Student/Legal Academic

Country	Name of individual(s) if provided	Occupation & Firm/Company/University at time of survey completion
Norway	Gunhild Vehusheia	Attorney, Attorney firm Salomon-Johansen AS
Oman	Mo'az Ben Khamis Ben Rashid Al-Mukhainy	Lawyer
Pakistan	Khalid A. Rehman	Advocate of Supreme Court and Partner of Surridge & Beecheno
Pakistan	Myra Khan and Shujaat Umar Pirzada	Lawyers, Hassan & Hassan (Advocates)
Palestine	Hanady Hameedat	Lawyer, Women's Legal and Social Consultation Center
Panama	María Eugenia Crespo Ramos	Law student, Morgan & Morgan LLP/ Universidad Santa María La Antigua
Papua New Guinea		Ashurst PNG
Peru	Torrejón Bazán Graciela Virginia	Attorney, Palacios & Torrejon Abogados
Philippines	Banuar Reuben A. Falcon	Attorney, Commission on Human Rights of the Philippines
Poland	Małgorzata Judkiewicz	LLM Candidate, Geneva Master in International Dispute Settlement (MIDS)
Poland	Lukasz Zygmunt & Danuta Zietek-Zygmunt	Prosecutor/Judge, District Prosecutor's Office in Garwolin/District Court in Chelm
Poland	Dominika Stepińska-Duch	Adwokat and partner, Wardyński & Partners
Romania	Oana Coanda, Amalia Musat , Alexandru Arjoca	Oana Coanda - Junior Associate, Amalia Musat - Associate, Alexandru Arjoca- Counsel, DLA PIPER DINU SCA
Russia	Ekaterina Logvinova, Natalia Tsimbalova, Elena Kilimnik	Lawyers, White & Case, LLC
Rwanda	Tom Mulisa	Advocate and Executive Director of Great Lakes Initiative for Human Rights and Development (GLIHD)
Scotland	Prefessor Pamela R. Ferguson	Professor of Scots Law, University of Dundee
Serbia		Attorney, White & Case
Singapore	Tang Shangwei	Lawyer, Wong Partnership LLP
South Africa	Sanja Bornman	Attorney, Women's Legal Center
Spain	Elena de Luis García	PhD student, University of Valencia
Spain	Nayra Prado Marrero / Satoria Ortega Félix	Lawyers, Fernando Scornik Gerstein
Sri Lanka	Ruwani Dantanarayana and John Wilson	(occupation) Attorney-at-Law; (firm) John Wilson Partners, Attorneys-at-Law & Notaries Public
Sudan	Muna Eltayeb Mohamed Eltayeb	Lawyer, Head of legal department (occupation), Al Jazeera Sudanese Jordanian Bank (firm)
Sweden	Sarah Helaoui	Secretary of the Board, The Swedish Bar Association

Country	Name of individual(s) if provided	Occupation & Firm/Company/University at time of survey completion
Sweden	Carla Pantzar	Lawyer, Advokatfirman Salomonsson & Jovicic AB
Sweden	Hedwig Westerberg	Researcher, Swedish prison and probation services (Solna trial court until December-14)
Switzerland	Andreas Fankhauser / Patrick Bischoff	Attorneys-at-law, Baumgartner Mächler Attorneys-at-law Ltd.
Switzerland	Rhiana L. Spring, Nicola Hofer and Christa Stuenzi	Rhiana L. Spring: Legal Research Assistant at the London School of Economics and Political Science/ Nicola Hofer: Legal Research Assistant at the University of Bern/ Christa Stuenzi: Legal research and Teaching Assistant at the University of Bern
Taiwan	Michael Warner, Ding-Yah Wu, Cindy Bi	Lawyer, Criminal Division Chief Judge, Eiger and Taiwan Taipei District Court
Tajikistan	Kahramon Sanginov	Lawyer, International Bar Association Human Rights Institute
Tanzania	Rwezaula Kaijage L.	Assistant Lecturer, Ruaha University College
Tanzania	Nora A.B. Pendaeli	Private Legal Practitioner, NABP Law Chambers
Thailand	Angela Nobthai	Lawyer, Clifford Chance (Thailand) Limited
Trinidad and Tobago	Rafiya Shahzadi Karim	Student, The University of Nottingham
Tunisia	Sarah Ben Behia	Trainee lawyer, Ferchiou & Associés Avocats et Conseils Juridiques
Turkey	Kübra Ünal	Student, T.C Maltepe University-Faculty of Law
Uganda	Rita Elizabeth Mutyaba	Lawyer, Law and Advocacy for Women in Uganda
USA (all)	Michele Goodwin	Professor, Center for Biotechnology and Global Health Policy, University of California, Irvine School of Law
USA (California)	Kastle A. Lund-Turner	Law student, University of the Pacific, McGeorge School of Law
USA (New York)	Natasha Arnpriester	Law student, International Human Rights Advocates, University of Pennsylvania Law School
USA (Pennsylvania)	Catherine Yun, Ariana Watson, Marika Mikuriya, William Evarts (checked by Kathy Nguyen & Natasha Arnpriester)	Law students, International Human Rights Advocates, University of Pennsylvania Law School
USA (Texas)	Adria Moshe, Sarah Tufano, Joshua Roberts, Natasha Arnpriester	Law students, International Human Rights Advocates, University of Pennsylvania Law School
USA (Texas)	Emily Patterson	Lawyer
Venezuela		Lawyer, Estudio Antequera Parilli & Rodriguez
Yemen	Najla El-lisany	Manager of legal department in executive office of Yemeni Women Union
Zimbabwe	Roselyn F.R. Mhlanga	Lawyer, Kanokanga and Partners

ANNEXES

Annex A.

Provision for support services such as counseling and medical treatment to survivors at all stages of process - Esther De Raymaeker

Annex B.

Ashurst Burden of Proof Chart

Visit www.equalitynow.org/ANNEXB

Annex C.

Ashurst Master Chart

Visit www.equalitynow.org/ANNEXC

ANNEX A

Support to survivors of sexual violence at all stages of the legal process

The survey asked generally whether there are procedural rules to support a complainant through the judicial process, such as the ability to testify *in camera*, the ability to have her/his identity protected from the public, access to a dedicated lawyer etc. It also asked whether there are procedural rules that particularly support minor victims of rape or sexual assault.

(a) Jurisdictions in which there were no protections

- The responses received indicate that in only a handful of countries are there no procedural rules which protect victims of sexual assault or rape at all. These are **Ghana, Kuwait, Peru and Sudan**.
- The response received from Sudan noted further that, "Victims and witnesses of sexual abuses rarely receive adequate protection, the ability to testify in camera and counselling because of the lack of effective legal mechanism. The legal framework to protect women of sexual violence in **Sudan** is not easily accessible."
- In **Jordan** and **Uganda** the surveys revealed that there are protections in place for minor victims of sexual assault or rape but not for victims over the age of majority (18, in both jurisdictions).

(b) General comments about jurisdictions where protections are in place

- Respondents from 12 jurisdictions noted that there were protections, but not all gave further details.⁶¹
- 10 jurisdictions are stated not to have specific protections for victims of sexual offences, but in those cases the survey respondents noted that victims benefit from the usual criminal protections.⁶²

Where possible we have analysed these protections below.

In relation to minors, as shown below, in 31 jurisdictions there were no specific protections for minor victims of sexual offences but there are laws in place to protect any type of minor victim; in 17 there are specific protections for minor victims of sexual offences; and in 7 there are protections but no further detail was provided.

Jurisdiction – general criminal protections apply

Australia (Western)	India	Romania
Belgium	Indonesia	Scotland
Brazil	Jersey	Singapore
China	Jordan	Sweden
Denmark	Kazakhstan	Switzerland
El Salvador	Kosovo	Turkey
France	Lebanon	Uganda
Germany	Montenegro	USA (New York)
Greece	Morocco	USA (Pennsylvania)
Hong Kong	Netherlands	Zimbabwe
	Nigeria	

Jurisdiction – specific protections for sexual offences

England and Wales	Guinea	Taiwan
Italy	Philippines	Tanzania
Lesotho	Poland	Thailand
Malaysia	Republic of Korea	Trinidad and Tobago
Pakistan	Rwanda	USA (Texas)
Papua New	South Africa	Venezuela

Jurisdiction – protections, but no further details provided

Kenya	Russia	USA (California)
Luxembourg	Tajikistan	
Palestine	Tunisia	

(c) The ability to testify *in camera* (ie in private rather than open court)

- This protection exists explicitly in 23 jurisdictions.⁶³
- Other surveys gave information in this regard without reference to specific legal provisions.

(d) The ability of the complainant to have identity protected

- This protection was stated to exist in 22 jurisdictions⁶⁴
- In **USA** (Pennsylvania), the complainant has no right to anonymity during the proceedings.

(e) Access to a dedicated lawyer

- This protection exists in 11 jurisdictions.⁶⁵

(f) Other protections

Twenty five surveys gave examples of various protections available for complainants.⁶⁶ In **Pakistan**, for example, there is relatively recent case law on the issue of a range of procedural protections. In *Salman Akram Raja v Government of Punjab 2013 SCMR 203* (Supreme Court), the petitioner, Mr Raja submitted that:

- trials for rape cases should be conducted in camera, by female judges, where possible, and after regular court hours, to allow the victim to make her statements free from psychological distress and trauma. He referred to the provisions of the Indian Code of Criminal Procedure which provides that in camera trials should be conducted by a woman judge or magistrate;
- a screen or some other arrangement should be made so that the victims and vulnerable witnesses do not have to face the accused; and
- questions put in cross-examination on behalf of the accused should be given in writing to the Presiding Officer of the Court who should put them to the victim or the witnesses in a clear and non-degrading manner; and
- the evidence of rape victims should be recorded through video conferencing so that the victims need not be present in court.

Furthermore, the Supreme Court of Pakistan considered guidelines to police, hospitals/doctors, child welfare committees, sessions courts, magistrate courts, prosecutors and other concerned authority, prepared by the Delhi Commission of Women in the case *Delhi Commission of Women v Delhi Police (WP No 696/2008)*. Although such recommendations were submitted, they are still under the consideration of the concerned authorities and are yet to be incorporated into the legislation.

The surveys revealed the following common protections:

- i. The use of video links for evidence⁶⁷
- ii. The use of screens to separate the victim from the perpetrator⁶⁸
- iii. The use of recorded testimony⁶⁹
- iv. The provision of information relating to the perpetrator/case to the victim⁷⁰
- v. Access to a support person during proceedings, including, variously, a psychologist or psychiatrist or relative or friend⁷¹
- vi. Access to a safe home/protective centre during proceedings⁷²

Esther De Raymaeker, former Senior Legal Adviser at the International Bar Association, as part of this work also looked at best practice guidelines based on the UN Handbook for Legislation on Violence against Women which specify in more detail recommendations from civil society experts. Her review of the surveys in that context is set out below.

ILLUSTRATED BEST PRACTICE RECOMMENDATIONS TO PREVENT SECONDARY VICTIMISATION IN LEGAL PROCEEDINGS

BASED ON THE UN HANDBOOK FOR LEGISLATION ON VIOLENCE AGAINST WOMEN

Secondary victimisation or secondary trauma happens as a consequence of the negative experiences a rape victim may have when seeking justice. This can include the legal proceedings themselves, which may be traumatic when a victim does not feel protected and empowered by the legal process.

In its Handbook for Legislation on Violence against Women ('UN Handbook'), the United Nations set out a number of recommendations to guarantee the rights of the complainant/survivor during legal proceedings.⁷³ These recommendations are bolded below.

This paper seeks to illustrate these recommendations with a selection of promising practices identified from the data collected. Reference to a piece of legislation or an aspect of practice in this paper does not imply that the legislation or practice is considered in its entirety to be a good example or a promising practice.

These recommendations focus on practical arrangements and adjustments that can be made in the courtroom to reduce potential trauma for the victim and should be read in conjunction with the other core elements of legislation on sexual violence as set out in the UN Handbook and the Virtual Knowledge Centre to End Violence Against Women and Girls developed by UN Women.⁷⁴

LEGISLATION SHOULD GUARANTEE, THROUGHOUT THE LEGAL PROCESS, THE COMPLAINANT/SURVIVOR'S RIGHT TO:

I. Decide whether or not to appear in court or to submit evidence by alternative means, including drafting a sworn statement/affidavit, requesting that the prosecutor present relevant information on her behalf, and/or submitting taped testimony

In **Sweden**, it is considered inappropriate for children under the age of 15 to be exposed to the rigours of a court trial. The principal rule is therefore that the child should not be present at the trial and in accordance with Chapter 36, Section 4 **Swedish** Code of Judicial Procedure (application by analogy) a video recording of the child's police interview is presented instead. Similarly, **Denmark's** Administration of Justice Act notes in Section 872 that children under the age of 12 will usually give testimony by way of a pre-recorded interview.

In **Belgium** and **Luxembourg**, in accordance with their respective Codes of Criminal Procedure (Articles 92 and 112ter for **Belgium** and Articles 48-1.(3) and 79-1 for Luxembourg) minors will nearly always give evidence by way of an audio or video recording, unless it is felt there are good reasons for doing otherwise. In both jurisdictions the prosecutor can also decide on this measure for adult victims.

In **Korea**, victims under the age of 16 or those with mental impairments will give evidence by video recording in accordance with Article 26 of the Act No 11162 of 17 January 2012. The victim or his/her legal representative may however decide this isn't necessary. The court can allow adult victims to give evidence in this way as well but in that case the public prosecutor, the accused or his lawyer will be asked to weigh in.

In accordance with article 706-52 of the **French** Code of Criminal Procedure the interview of a minor will be filmed and played in court. It is possible for this recording to be audio only if that is thought to be in the minor's best interest.

In **India**, the Code of Criminal Procedure 1973 allows magistrates the discretion to record a statement at the home of a minor. When the statement is made in court, it is general practice for a magistrate to record the evidence in his or her personal chambers rather than in open court.

In **England and Wales**, special measures directions, which can include admitting a video recording as evidence, are available for vulnerable and intimidated witnesses in accordance with the Youth Justice and Criminal Evidence Act 1999. This includes witnesses who are under the age of 18 at the time of the hearing, witnesses suffering from a mental impairment or any other significant impairment of intelligence and social functioning and witnesses suffering from fear or distress that would likely diminish the quality of their evidence. The complainant in respect of a sexual offence is considered to automatically fall in this last category, unless the complainant decides to opt out. The court still needs to grant the application for special measures for eligible witnesses, they will not be granted automatically.

In **Poland**, Section 185a of the Code of Criminal Procedure provides that a child below the age of 15 will give evidence by having an interview transcript read out in court. The court may extend this measure to older minors if it considers the victim's mental health might be negatively affected by being present in court. Article 226A of the Greek Code of Criminal Procedure provides that the testimony of a minor will be presented by a written statement and an audio-visual recording whenever possible.

II. When appearing in court, give evidence in a manner that does not require the complainant/ survivor to confront the defendant, including through the use of in-camera proceedings, witness protection boxes, closed circuit television, and video links

Many jurisdictions, including **England and Wales, Malaysia, the Philippines, Scotland, Switzerland** and **Trinidad and Tobago**, offer the option of a screen that shields the complainant from seeing the accused. Usually the screen will be arranged in such a way that the complainant is still able to see and be seen by the judge, jury and legal representatives. A variation on this measure is the use of a one-way mirror, as provided for by Section 71A of the Criminal Procedure and Evidence Code of **Malawi** and Section 498 of the Italian Code of Criminal Procedure. Additionally, Article 149 of the **Swiss** Code of Criminal Procedure provides for the possibility of altering the appearance or the voice of the witness. In theory this could involve the use of wigs, dark sun glasses, make-up, talking through a cloth or artificial distortion of the voice. Such measures are however rarely used. In practice, the measure would usually be implemented by the use of two rooms separated by a one-way mirror.

In **Kenya**, a complainant can be allowed to give evidence from a witness protection box in accordance with Section 31 Sexual Offences Act 2012. In the **Philippines**, Sections 13-22 of the Rules on Examination of a Child Witness (A.M. No. 004-07-SC, November 21, 2000) provide that a child witness can be allowed to testify from a place other than the witness chair or to turn the witness chair, as long as the accused and his counsel still have at least a profile view of the child. The child will not be required to look at the accused.

An alternative measure is the use of a closed circuit television system or a live video link. This allows the witness to be outside of the court and communicate with those inside of the court without needing to face the accused. In **South Africa** the National Policy Guidelines for Victims of Sexual Offences (1998) clarify that when children testify, prosecutors should generally apply to the court for permission to make use of the closed circuit camera system to protect the child from direct confrontation with the accused. The Guidelines empower the child by stipulating that ultimately the decision to apply for this measure should be one for the child and the prosecutor should assist the child to make an informed decision. It is the court that makes the final decision whether to grant this application. Courts that do not have their own closed circuit camera systems can make use of mobile closed circuit camera units.

In the **Netherlands**, Article 51e of the Code of Criminal Procedure stipulates that in certain circumstances a complainant can have someone speak in their stead in court.

In **Germany** in accordance with Section 247 of the Code of Criminal Proceedings the court may in certain circumstances order that the accused leave the court room during a witness examination. Similarly, in **Denmark**, as per Section 856 Administration of Justice Act, the court can decide that the defendant has to leave the courtroom while the complainant is being questioned or that what the complainant says shall remain unknown to the defendant. Also, in **Switzerland**, Article 149 of the Code of Criminal Procedure stipulates it is possible to conduct an examination while excluding one of the parties.

III. Protection within the court structure, including separate waiting areas for complainants and defendants, separate entrances and exits, police escorts, and staggered arrival and departure times;

In **South Africa** the National Policy Guidelines for Victims of Sexual Offences (1998) state that victims of sexual offences should not be exposed to the accused, his family or his friends outside the courtroom. The complainant should have an office or a waiting room available to ensure their privacy. **South Africa** is currently also in the process of reintroducing the specialised Sexual Offences Courts, which were introduced in 1993 and despite their success in reducing secondary victimisation were gradually phased out in 2005.

Similarly in **Brazil**, Article 201 of the Criminal Procedure Code provides that before and during the hearing the complainant will be kept in a location away from the accused.

Sections 13-22 of the Rules on Examination of a Child Witness (A.M. No. 004-07-SC, November 21, 2000) in the **Philippines** note that to create a more comfortable environment for the child, the court may direct and supervise the location and movements of all persons in the courtroom.

Article 333 of the Criminal Procedure Code of **Panama** provides the theoretical framework of a unique system where the accused could be ordered to wear an electronic device monitored by the complainant for the duration of the trial and is prevented by a restraining order from coming within 200 meters of the complainant. Should the accused fail to comply with the restraining order the complainant would receive an alert and the accused could be remanded in temporary custody for up to 30 days. As of September 2015, the system is not being implemented, due to cost and organisational challenges.

IV. Testify only as many times as is necessary

In **England and Wales** the judge has a general responsibility to safeguard the vulnerable witness' wellbeing during cross-examination, which extends to ensuring 'tenor, tone, language and duration of the questioning is developmentally appropriate to the particular child' and to 'prevent questioning that is irrelevant, repetitive, oppressive or intimidating' as per Wills [2011] EWCA Crim 1938. We have seen earlier that a complainant in respect of a sexual offence will automatically be eligible for assistance.

In **China**, Article 14 of the Notice regarding the Opinion on Prosecuting the Crime of Sexual Abuse of Minors (Supreme People's Court, Supreme People's Procuratorate and the Ministry of Justice) stipulates that any questions relating to rape or sexual assault have to be asked 'comprehensively' to avoid repeat inquiries. **Korea's** Article 26 of the Act No 11162 of 17 January 2012 requires creation of an environment in which the survivor can give testimony in a relaxed state and provides that the number of investigations will be limited to what is minimally necessary.

In **Poland**, Article 185a of the Criminal Procedure Code determines that complainants under the age of 15 will testify only once, unless important circumstances justify a second interview or unless it is requested by the defendant who was not represented by legal counsel at the time of the first interview. Article 154 of the **Swiss** Code of Criminal Procedure determines that a child may not normally be interviewed more than twice during the entire proceedings. A second interview should only take place if it is considered essential and if possible, the child should be questioned by the same person who conducted the first interview. Section 133bis of the **Thai** Code of Criminal Procedure, states that a child should not be asked repetitive questions without good reason.

The **Swedish** Sections 2a, 17 and 18 Decree on Preliminary Investigations (1947:948), state that hearings with minors should not be held more times than is necessary. Similarly, Article 226A of the **Greek** Code of Criminal Procedure determines that the testimony of a complainant who is a minor should take place without undue delay and only for a limited number of times.

ANNEX B AND C CAN BE FOUND AT:

www.equalitynow.org/ANNEXB

www.equalitynow.org/ANNEXC

V. Request closure of the courtroom during proceedings, where constitutionally possible

In **Tanzania**, Section 186 of the Criminal Procedure Act states that all evidence in every trial involving sexual offences will be heard by the court in camera. Similarly, in **Colombia**, as per Article 111 of the Criminal Procedure Code, all procedures regarding sexual violence will be held in camera. In **Trinidad and Tobago** Section 29 of the Sexual Offences Act 1986 directs that all offences of rape, sexual assault and any offence involving children will be heard in camera.

In **Lesotho** the court will direct as per Article 23 of the Sexual Offences Act that any person whose presence is not necessary should not be present, though the complainant and the accused can request otherwise. If the parties do not agree, the court decides.

Article 306 of the **French** Code of Criminal Procedure determines that proceedings are necessarily held behind closed doors when this is requested by a victim of rape. They may be held behind closed doors when requested by a victim of sexual assault.

Section 156 of the Child's Right Act in **Nigeria** determines that the case will always be held behind closed doors if it concerns a child victim. The same applies in **Italy** as per Article 472 Procedural Criminal Code. In **India**, trials held in the special courts provided for in the Protection of Children from Sexual Offences Act are held behind closed doors as per Chapter 8 of this Act. Other trials of rape will also be conducted in camera, but the judge can decide to allow any particular person in according to Section 327 Code of Criminal Procedure.

VI. A gag on all publicity regarding individuals involved in the case, with applicable remedies for non-compliance

In **England and Wales**, as per the Sexual Offences Act, as soon as an allegation of a sexual offence is made, publication of material likely to identify the victim is prohibited. This means that publication of the victim's name, address, place of education or work or any still or moving picture which may identify the victim is prohibited.

Article 106 of the Criminal Procedure Code in **El Salvador** determines that complainants who are minors have the right to have their privacy protected to avoid the spread of information that could lead to them or their family being identified.

In **Nigeria**, Section 156(d) Child's Right Act prohibits members of the press to attend any proceedings where there is a child victim.

In **China**, the People's Supreme Court and others Notice with Comments on the Punishment of the Crime of Sexual Abuse of Minors stipulates that the identity of any minors involved in the case needs to be kept confidential as well as the details of the rape or the assault.

In **Jersey**, Article 3 of the Criminal Justice (Anonymity in Sexual Offence Cases) (Jersey) Law 2002 provides that where an allegation has been made that a sexual offence has been committed against a person, nothing relating to that person which may lead members of the public to identify this person as the complainant can be publicised during that person's lifetime.

In **Spain**, as per Article 3 of the Organic Law 19/1994 of 23 December on the protection of witnesses and experts in criminal procedures, members of the security forces, prosecutors and the court actively take care to prevent photos are taken of witnesses and experts. If anyone goes against these orders, the photographic, cinematographic, videographic or any other material is taken away from them. The material will be returned after checking that there are no shots in which the witnesses or experts appear.

END NOTES

¹ Afghanistan, Australia - NSW, Australia - South, Australia - Victoria, Australia - Western, Azerbaijan, Bahrain, Belgium, Bolivia, Bosnia & Herzegovina, Brazil, Canada, China, Colombia, Croatia, Denmark, Egypt, El Salvador, England and Wales, France, Germany, Ghana, Greece, Hong Kong, India, Indonesia, Iraq, Ireland, Italy, Japan, Jersey, Jordan, Kazakhstan, Kenya, Kosovo, Kuwait, Lebanon, Lesotho, Luxembourg, Malawi, Malaysia, Montenegro, Morocco, Netherlands, Nigeria, Norway, Oman, Pakistan, Palestine, Panama, Papua New Guinea, Peru, Philippines, Poland, Republic of Korea, Romania, Russia, Rwanda, Scotland, Serbia, Singapore, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Taiwan, Tajikistan, Tanzania, Thailand, Trinidad & Tobago, Tunisia, Turkey, Uganda, USA - California, USA - New York, USA - Pennsylvania, USA - Texas, Venezuela, Yemen, Zimbabwe

² UN Women's Virtual Knowledge Centre legislation module on sexual assault available at <http://endvawnow.org/en/articles/450-core-elements-of-legislation-on-sexual-assault.html?next=451>

³ <http://edition.cnn.com/2016/01/19/europe/germany-cologne-attacks/> accessed March 2016; <https://www.nytimes.com/2016/03/10/world/europe/cologne-police-detain-2-suspects-in-new-years-eve-attacks.html> accessed March 2016; <http://www.bbc.com/news/world-europe-35277249> accessed March 2016.

⁴ <http://www.telegraph.co.uk/news/worldnews/europe/germany/12187994/Police-release-photos-of-Cologne-New-Years-Eve-sexual-assault-suspects.html> accessed March 2016; <http://www.bbc.co.uk/news/world-europe-35652718> accessed March 2016.

⁵ <http://www.bbc.co.uk/news/world-europe-35291377> accessed 12 January 2016

⁶ Bahrain, Iraq, Jordan, Kuwait, Lebanon, Palestine, Philippines, Tajikistan and Tunisia

⁷ Belgium, Croatia, Iraq, Jordan, Kazakhstan, Lebanon, Nigeria, Palestine, Romania, Russia, Singapore and Thailand. Note, however, that this finding was reported in only 1 of 2 surveys received from Belgium and 1 of 4 surveys received from Nigeria.

⁸ Iraq, Jordan, Philippines, Romania, Serbia, Singapore, Thailand and Turkey

⁹ Sexual coercion is a distinct crime from rape under the Criminal Code despite including the concept of exploiting the "dependence of the victim" in its definition. Depraved actions are defined as "The commission of lecherous actions without using violence by a person who has reached eighteen years of age in respect of a person who has not reached sixteen years of age."

¹⁰ Not her real name

¹¹ Afghanistan, Belgium (references the "collective consciousness"), China, India, Indonesia, Jordan, Luxembourg, Netherlands, Nigeria, Pakistan, Palestine, Peru, Singapore, Taiwan, Yemen

¹² Australia (New South Wales, South, Victoria, Western), Azerbaijan, Denmark, Ghana, Greece, Hong Kong, Ireland, Japan, Jersey, Lebanon, Malawi, Malaysia, Netherlands, Republic of Korea, Rwanda, Sudan, Taiwan, Thailand, Uganda, USA (Pennsylvania), Zimbabwe

¹³ Bahrain, Iraq, Morocco, Palestine, Singapore

¹⁴ Bolivia, Bosnia and Herzegovina, Brazil

¹⁵ And for male survivors of male rape

¹⁶ Human Rights Commission of Pakistan available at <http://hrcp-web.org/hrcpweb/campaigns/>

¹⁷ "My husband raped me," her world, November 2009, p.141 – 144; See also CNA Feature on Marital Rape in Singapore (2 of 3) video – available at <https://www.youtube.com/watch?v=7vjW5myPqLY> courtesy of AWARE (Association for Action and Research)

¹⁸ Ghana, India, Indonesia (marital rape seems to be covered under a 2004 anti-domestic violence law but not by the Criminal Code), Jordan (only anal and oral rape of a wife is criminalised), Lesotho, Nigeria, Oman, Singapore, Sri Lanka, Tanzania. (We note in Thailand's law there is a possibility of no penalty or a reduction, particularly if the relationship continues.)

¹⁹ Ghana, India, Lesotho (other conditions also provide for criminalisation, eg if partner had sexually transmissible or life-threatening disease), Singapore, Sri Lanka, Tanzania

²⁰ India, Nigeria, Singapore, Sri Lanka

²¹ On 8 July 2016, the High Court of Tanzania took steps to end child marriage for Tanzanian girls. In its decision, the High Court ruled that Sections 13 and 17 of the Law of Marriage Act were unconstitutional and directed the government to change the law within one year to bring the minimum age of marriage for girls up to 18 years -- the same as for Tanzanian boys.

²² Not her real name

²³ Siete de cada 10 mujeres en Bolivia sufrieron alguna vez abuso sexual, LOS TIEMPOS (July 31, 2013)

²⁴ Brisa De Angulo, Child Sexual Abuse and the Conspiracy of Silence (2009). These statistics were corroborated by the Bolivian Ministry of Health.

²⁵ Petition to the Inter-American Commission on Human Rights, submitted on behalf of Brisa Liliana de Angulo against Plurinational State of Bolivia, 18 Jan. 2012, on file at Equality Now.

²⁶ <http://www.cnn.com/2016/06/07/opinions/stanford-rape-case-letter-robbins/>

²⁷ <http://www.ipu.org/wmn-e/world.htm>

²⁸ <http://www.ipu.org/wmn-e/classif.htm>

²⁹ Report of the Secretary-General, E/CN.6/2015/3, ¶ 206, (Dec. 2014) available at <http://www.unwomen.org/-/media/headquarters/attachments/sections/csw/59/ecn620153.pdf>

³⁰ CEDAW/C/JPN/CO/6, ¶29

³¹ United Nations Educational, Scientific and Cultural Organisation, World Trends in Freedom of Expression and Media Development (Paris, 2014)

³² Beijing Platform for Action ¶243(d)

³³ Id. at ¶243(e)

³⁴ Id. at ¶243(f)

³⁵ Id. at ¶ 244(a)

³⁶ Id. at ¶ 244(b)

³⁷ Id. at ¶244 (c)

³⁸ Review and appraisal of the implementation of the Beijing Declaration and Platform for Action and the outcomes of the twenty-third special session of the General Assembly, Report of the Secretary-General, E/CN.6/2015/3, ¶301, Dec. 2014.

³⁹ The End Violence Against Women (EVAW) coalition testimony to the Leveson Inquiry on the relationship of the press and public in the United Kingdom in 2012

⁴⁰ Not her real name

⁴¹ In some countries there are exceptions for minors close in age who have sexual relations with each other and are in a form of relationship.

⁴² Australia Victoria, Lesotho, Philippines, South Africa

⁴³ Western Australia, England and Wales, Japan*, Malawi, Nigeria, Republic of Korea, Romania, Scotland*, Sweden, Venezuela

⁴⁴ Bolivia, Bosnia & Herzegovina, Brazil, China*, Colombia, Italy, Montenegro, Panama, Pennsylvania (USA), Peru (18 if deception), Serbia, Trinidad and Tobago (statutory rape of a female below 14; statutory rape of a male below 16)

⁴⁵ Denmark, El Salvador, France, Indonesia*, Oman, Palestine, Poland, Thailand, Turkey

⁴⁶ Australia NSW, Azerbaijan, Bahrain, Belgium, Canada, Ghana, Germany, Hong Kong, Jersey*, Kazakhstan*, Kosovo*, Luxembourg, Malaysia, Netherlands, Norway, Pakistan, Papua New Guinea*, Russia, Singapore, Spain, Sri Lanka, Switzerland, Tajikistan, Zimbabwe

⁴⁷ Australia South, Ireland, New York (USA), Texas (USA)

⁴⁸ Afghanistan, Kenya*, India, Iraq, Lebanon (possibly), Morocco, Rwanda, Tanzania, Uganda, California (USA)*

⁴⁹ Tunisia

⁵⁰ Egypt, Greece, Jordan

⁵¹ See Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickinginPersons.aspx>

⁵² Afghanistan, Brazil, Ghana, Indonesia, Jordan, Kazakhstan, Kuwait, Lebanon, Romania, Taiwan, Thailand

⁵³ Afghanistan, Ghana, Jordan, Kuwait, Romania, Taiwan and possibly Kazakhstan

⁵⁴ African Centre for Justice and Peace Studies, "Sudan's new law on rape and sexual harassment – One step forward, two steps back" (March 2016) available at <http://www.acjps.org/wp-content/uploads/2016/03/Sudan-s-new-law-on-rape-and-sexual-harassment-One-step-forward-two-steps-back-.pdf>

⁵⁵ Australia (NSW), Australia (Western), Bosnia and Herzegovina, Canada, Croatia, Denmark, England and Wales, Hong Kong, India, Italy, Malaysia, Nigeria, Pakistan, Trinidad and Tobago and Pennsylvania (USA). In Nigeria for example, Section 211 of the Evidence Act allows that in limited circumstances the victim may be questioned to show she is of "immoral character". This should be irrelevant in a trial of the perpetrator's actions.

⁵⁶ Australia (Western), Canada, England and Wales, Italy, Pennsylvania (USA), Trinidad & Tobago. In the *Ched Evans* case decided in October 2016 in England, the court on appeal allowed testimony of previous sexual history of the complainant which led to exoneration of the accused on the rape charge for which he had previously been convicted. After public outcry that inclusion of previous sexual history could deter survivors from reporting attacks for fear such testimony might be used against them, the UK government announced a review of the Youth Justice & Criminal Evidence Act 1999.

⁵⁷ See Human Rights Commission of Pakistan

⁵⁸ *Abdul Waheed v Dai*, 2012 YLR 2701 (Karachi)

⁵⁹ Colombia, El Salvador, Germany, Greece, Hong Kong, Kenya, Panama, Romania, Serbia, Sudan, Switzerland, Tajikistan, Tunisia, Turkey, Uganda and Yemen

⁶⁰ Australia (New South Wales), Australia (Victoria), Australia (Western Australia), Bosnia and Herzegovina, Canada, France, Ireland, Italy, Japan, Jersey, Jordan, Kosovo, Malaysia, Netherlands, Nigeria, Philippines, Singapore, Spain, Tanzania, Thailand and Zimbabwe

⁶¹ Australia (South), Azerbaijan, Columbia, Germany, Kenya, Kosovo, Lebanon, Luxembourg, Papua New Guinea, Tajikistan, Turkey and Zimbabwe

⁶² Brazil, China, El Salvador, Japan, Netherlands, Oman, Romania, Serbia, Tunisia and Venezuela

⁶³ Bosnia, Croatia, Denmark, India, Italy, Nigeria, Trinidad and Tobago USA (Pennsylvania), Belgium, Bolivia, Egypt, France, Jordan, Kazakhstan, Lesotho, Malawi, Morocco, Palestine Poland, Republic of Korea, Russia, Rwanda and Thailand

⁶⁴ Bosnia, Croatia, Denmark, India, Trinidad and Tobago, Belgium, Lesotho, Poland, Republic of Korea, Russia, Rwanda, Canada, England and Wales, Pakistan, Afghanistan, Greece, Indonesia, Jersey, Sweden, USA (California), USA (New York) and USA (Texas)

⁶⁵ Denmark, Russia, Pakistan, Afghanistan, Sweden, Egypt, Palestine, Iraq, Norway, Sri Lanka and Yemen

⁶⁶ Afghanistan, Australia (NSW), Australia (Western), Belgium, Bosnia, Denmark, England and Wales, Greece, Hong Kong, India, Malawi, Montenegro, Pakistan, Panama, Poland, Republic of Korea, Russia, Scotland, Singapore, South Africa, Spain, Switzerland, Taiwan, USA (New York) and USA (Texas)

⁶⁷ Australia (NSW), Belgium, Brazil, El Salvador, England and Wales, Hong Kong, Jersey, Kazakhstan, Republic of Korea, Russia, Scotland, Singapore, Spain, Taiwan, USA (NY)

⁶⁸ Australia (NSW), England and Wales, Malawi, Malaysia (for minors), Scotland, Trinidad and Tobago (for minors)

⁶⁹ Australia (NSW), Australia (Western)(for minors), Bosnia (obligatory for affected minors under 16), England and Wales (presumption for children), Hong Kong, Jersey, Pakistan, Papua New Guinea, Republic of Korea

⁷⁰ Brazil (entry/exit of accused to/from prison), USA (Texas)

⁷¹ Australia (Western)(for minors), Malawi, Greece, Japan, Papua New Guinea, Republic of Korea, Sweden, USA (NY)(for minors)

⁷² Afghanistan, Brazil (minor if incest case), Panama

⁷³ United Nations Department of Economic and Social Affairs/Division for the Advancement of Women, Handbook for Legislation on Violence against Women (United Nations publication, 2009), s. 3.9.4., p. 40 <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf> accessed 28 August 2015

⁷⁴ The Advocates for Human Rights, 'Developing Legislation on Violence Against Women and Girls', (UN Women, Virtual Knowledge Centre to End Violence Against Women and Girls, May 2011) <<http://www.endvawnow.org/en/articles/450-core-elements-of-legislation-on-sexual-assault-.html?next=451>> accessed 28 August 2015

⁷⁵ September 2015



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