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**Discriminatory
family codes**



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1. Introduction

Girls' capabilities and agency, or lack of, within the family determines much of their development and well-being as well as those of their own families and children. Lack of capabilities and agency leads to poverty, and can be maintained by discriminatory family codes. Addressing these discriminatory family codes entails many challenges, but there is extensive evidence that this can be achieved.

In line with the SIGI, family code is here taken to mean those formal and informal laws, norms and practices that influence the capabilities and related decision-making power of women and men, boys and girls in the household. Such laws, norms and practices may be captured in legal systems, or in customary law that also carries a nationally recognised authority, or in what are labelled 'traditions and cultural practices.' These social institutions are neither inherently good nor inherently bad, but their negative forms have significant impacts on girls.

In particular, they can result in: early (compulsory) marriage; the separation of girls from maternal presence, influence and authority; a lack of decision-making influence by girls themselves; a denial of vital material assets through ownership and inheritance; and, in some cases, physical harm, including female genital mutilation/cutting (FGM/C). The ensuing negative development outcomes include: reduced capabilities, educational attainment, employment potential and job quality; increased fertility and maternal and infant mortality rates; increased ill-health and physical harm; and increased poverty and potential for increased incidence of life-course and intergenerational poverty.

How these consequences come about as a result of laws, norms and practices related to the family is the subject of this chapter, which also explores experiences of positive change in relation to discriminatory family codes, as well as effects on the capabilities of girls and young women.

The *Family Code* sub index of the SIGI refers to the social institutions that influence the decision-making power of women in the household and includes four variables: *parental authority* measuring the right of women to be legal guardians of children during marriage, and their custody rights

over children after divorce; *inheritance* measuring formal inheritance rights of spouses and daughters; *early marriage* measuring the percentage of girls aged between 15 and 19 who are/were ever married; and *polygamy* measuring the acceptance of the practice in the population or its legality, wherever information on acceptance is not available in order to increase the number of countries included. In line with the SIGI, we consider here the same variables, however, we take a somewhat broader view to consider a wider age band for early marriage, and, in the case of polygamy, we redefine the parameter of analysis to a focus on the power imbalances typically experienced in polygamous marriages or other marriages with girls, which tend to exhibit large age differentials shown to be detrimental to girls' agency and the development of their capabilities.

2. Family codes and national legal systems

Family codes as captured in both formal and informal laws, norms and practices are not fixed or permanently embedded in national, religious or cultural codes. They are in flux to greater or lesser degrees, contested and shaped by human interaction (Rao and Walton, 2004). Maintaining the status quo may serve the interests of particular groups over others, and can result in inequitable and discriminatory family codes.

Family codes in nationally based legal systems relate to issues such as marriage, divorce, inheritance and ownership duties and rights regarding children. Although human rights conventions have an influence on such laws (for example, the internationally recognised age of first marriage), there is huge variety both in national law and in customary norms and practices.

Family law or codes exist within wider national legal systems which, in terms of political entities, can be generalised into five types:¹ civil law, common law, customary law, Muslim law and mixed law systems, the latter referring not to a single system but to a combination of systems. All of these also carry particular characteristics according to the territories and populations they serve. Within countries, regions and peoples may use a range of other systems, which may not feature as key in the national system but which carry authority, such as

aboriginal law. There are also legal systems based on religion,² but which have lost their character and distinct status, having been absorbed into customary or other national law and being accepted by people irrespective of faith. Muslim law is argued to be the exception, because of its permanent broad-based nature³ and direct links to religious faith (Glenn, 2000) (See Box 5).

Where customary and statutory legal systems exist, they often run in parallel. In Malaysia and Singapore, Sharia law applies to Islamic communities, for example allowing polygamy and affecting inheritance laws (Glenn, 2000).⁵ In Singapore, civil law grants equal inheritance rights to men and women, whereas Sharia favours male heirs. Differences between parallel legal systems can also be seen in the minimum legal age for marriage. For example, in Trinidad and Tobago national law states that men and women should be 18 to marry, whereas Sharia law sets the minimum age at 12 for women and 16 for men. Hindu law sets the minimum age for marriage at 14 for women and 18 for men; in communities in Orissa the minimum age is 16 for women and 18 for men; and Indian national law allows minors to marry with parental consent as long as the minimum age required by the community has been reached.⁶

Harmonisation of law

A major challenge has been the harmonisation of legislation to remove discriminatory practices and to enable accordance with human rights legislation. Most sub-Saharan African countries, for example, operate under a dual or tripartite system of law, with civil, traditional/customary and religious codes operating in parallel. For example, in Kenya, Nigeria, South Africa and Zambia, three forms of marriage exist – statutory, customary and religious – each of which condones different practices. However, the man is usually considered the head of the household – which can negatively impact women’s inheritance and ownership rights.⁷ In Algeria, although the Constitution guarantees the principle of equality between men and women, harmonisation of law within the family code is unclear, since the latter states clearly that men and women are not equal within marriage. It is ‘the duty of the wife [...] to obey her husband.’ Wives are considered minors under the authority of the husband and need a husband’s permission to work or travel, although this does not reflect reality, especially in urban areas. Men can divorce without any justification, but women only under certain conditions. Men who obtain divorce keep the house and can evict their wife and children. In these cases, men are required to pay child support – but this does not always happen. The husband retains control of children’s upbringing. Inheritance legally falls under Sharia law, with women inheriting half as much as men (OECD, 2009).

Enforcement of laws related to family codes is subject to much variance. This owes in part to: the continuous process

Box 5: Family code and Muslim law

Muslim law is not necessarily seen as monolithic, although in many Islamic countries it has remained the main reference in matters to do with the family and personal law⁴ (Marcotte, 2003). There is a tendency to allow Muslim law to dominate in family codes. Aslam and Kazmi (2009) argue that Islam has provided ‘clear cut strategies’ for empowering women, based on case study countries that practise Sharia of varying schools. Interpretations of religious codes also vary, however, and are argued to often fit pre-existing traditions or to suit existing inequitable power relations between men and women (Morrisson and Friedrich, 2004). The promotion of women’s rights through Islamic discourse is still emerging, and in every country across the Islamic world the role and status of women are contested. Among feminists, the merits of Islamic versus secular feminism are also widely debated (Coleman, 2010).

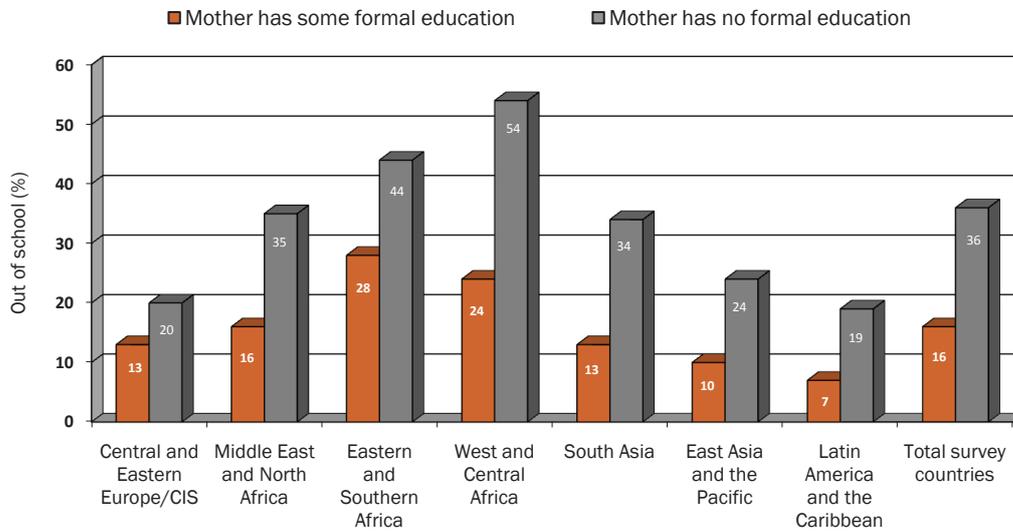
of harmonisation in mixed law systems; the bargaining power of women within the household and the wider community; and women’s education and knowledge of their legal rights, including their capacity to take action.

Constantly evolving legal systems that influence the family code were illustrated in Kenyan case law from 2005 when, following the death of a male head of household, the sons claimed a greater share of the inheritance than the daughters, with the widow arguing that, according to Keiyo tradition (and customary law), girls have no right to the inheritance of their father’s estate. The court found that, where discrimination arises, the national Constitution and international human rights standards must prevail. This decision influenced the Kenyan High Court in 2008, which ruled that CEDAW and international human rights law took precedence and that women’s inheritance rights should be recognised.⁸

In Ghana, however, in a similar case in 2006, customary law held sway: the Supreme Court recognised that married daughters do not inherit their father’s estate and that this may be ‘injurious to personal well-being,’ but felt that it had no power to change customary law, which could be done only by ‘Parliament, the President and the people who practise the custom.’ The Supreme Court has since issued an editorial note stating that it does have the power to abolish customs.⁹

Women’s and girls’ decision-making power

Recognised legal systems play an important role in determining women’s and girls’ capabilities within the family. However, informal bargaining within the household is also very important. The Constitution of Uzbekistan, for example, prohibits all forms of discrimination and provides for equal rights for men and women. However, fewer than three-quarters

Figure 2: Primary school-age children out of school by mother's education and region, 1996–2003

Note: Data based on household surveys conducted in 80 countries
 Source: United Nations Educational, Scientific and Cultural Organization (UNESCO, 2005)

of Uzbek women believe that they have the same rights as men (OECD, 2009). Bargaining power within the household is influenced by generational and family status (including status related to polygamy and age differentials), control of income and assets, age at marriage, level of education (UNICEF, 2006) and informal norms and practices. Frequently, unquestioning submission to male authority is internalised and reproduced by mothers and daughters alike, as this young Hausa women explains:

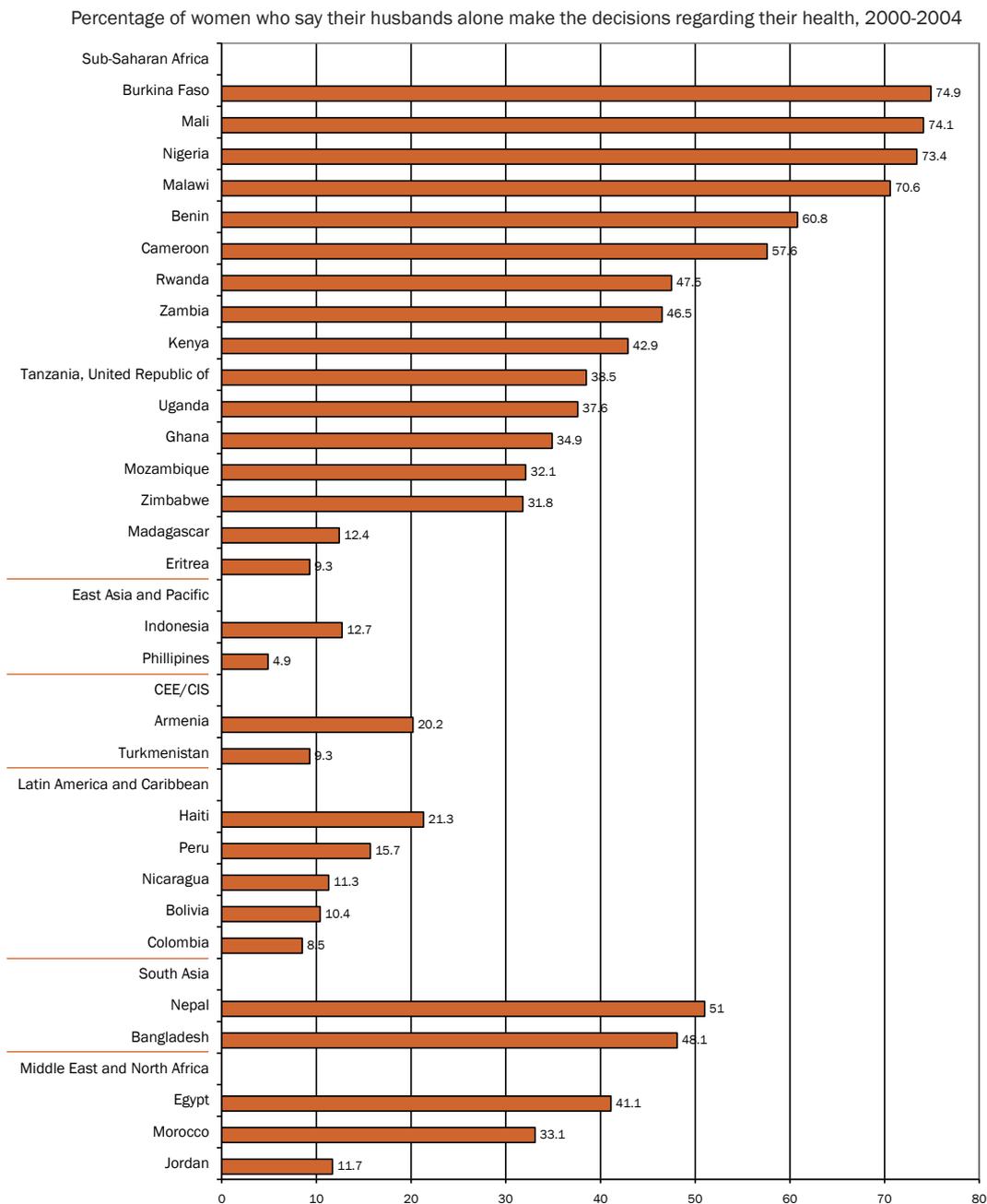
'It is very important to always obey your husband's instructions. This will go a long way to help them benefit from the marriage. Married women can only go to heaven on the heels of the husband. A married woman should not complain – only at the point of death – and even then you should exercise patience [...] So I just want to appeal to all that no matter what your husband asks you to do, please do it and you will be rewarded by Allah' (married woman, 22, married at 15, polygamous, pregnant with fourth child, Nigeria, in Erulkar and Bello, 2007).

Nevertheless, female bargaining power is vital in determining well-being outcomes for women and children, in particular girls, irrespective of formal legal systems.

Education increases women's role in household decision-making and their control over family assets. It also influences investment decisions in relation to daughter's education, thereby also enhancing daughter's future potential negotiating power in the household (Agarwal, 1997; Lloyd and Young, 2009; Khandkar, 1998; Pitt and Khandkar, 1998). Girls who continue their education into the secondary years tend to delay both marriage and sexual initiation (Lloyd and Young, 2009; Mathur *et al.*, 2003; Morrison and Sabarwal, 2008). In

one study, it was found that young women with ten years of education were likely to marry up to six years later than their peers without schooling (Martin, 1995). Children with uneducated mothers in a sample of countries¹⁰ were found to be twice as likely to be out of primary school than children whose mothers attended primary school. A survey in 18 sub-Saharan African countries found that 73 percent of children with educated mothers were in school, compared with only 51 percent of children with uneducated mothers. In addition, children whose primary caregiver had received formal education were less likely to leave school early or to repeat a grade (UNICEF, 2006).

A survey in 30 developing countries (half in Latin America) revealed that in only ten of these countries do half or more women participate in all household decision making; according to relevant Demographic and Health Survey (DHS) data, in the other 20 countries women are not allowed to decide on (or are excluded from decisions about) their own health care, major household purchases and their visits with family or friends outside the household (UNICEF, 2006). In many South Asian and sub-Saharan African households, women have very limited participation in health-related decisions. In Burkina Faso, Mali and Nigeria, almost 75 percent of women said that their husbands alone decided on women's health care; in Bangladesh and Nepal, the rate was about 50 percent. Women's exclusion has negative implications not only for them but also for their family's health and well-being and especially their children. In Gujarat, India, almost 50 percent of interviewed women reported feeling unable to take their sick

Figure 3: Husbands making decisions about their wife's health

Note: Data refer to the most recent available during the period specified. All countries with available data are presented in the chart.
Source: United Nations Children's Fund (UNICEF, 2006)

child to a doctor without the approval of their husband or the responsible parent-in-law (*ibid*).

In seven out of 15 countries examined in sub-Saharan Africa (UNICEF, 2006) over 40 percent of women reported that husbands alone decided about daily household expenditures. Similarly, in the countries surveyed in North Africa, the Middle East and South Asia, around 30 percent of women said that they were excluded from the daily household management. Their husbands were also responsible for major household purchases. In Nigeria, 78 percent of women, in Egypt 60

percent and in Bangladesh and Nepal over 30 percent felt excluded from decisions on large expenditures. In contrast, in both the two countries examined in East Asia and the Pacific – Indonesia and the Philippines – less than 18 percent of women reported that their husbands had exclusive control over household expenditures, indicating greater female participation in decision-making processes.

It is clear that women's decision-making power is in some cases severely restricted, as this young Nigerian girl describes:

'[What is the difference between when you were unmarried and with your parents, and now that you are married?] There is a vast difference [...] at your husband's house, there is nobody apart from your husband. With your husband, you have to ask permission before you do anything at all' (married woman, 22, married at 15, polygamous, Nigeria, in Erklar and Bello, 2007).

Women's mobility can also be compromised, and such restrictions on movement also compromise their children's health and access to emergency care by preventing women from visiting pharmacies or hospitals alone and from contacting male health professionals. A third of Bangladeshi women reported that their husbands control all their movements outside the household. In Burkina Faso and Mali, almost 60 percent of women said that their visits to family and relatives depend totally on their husbands' decision (UNICEF, 2006). In Nicaragua, 18 percent of women need male permission to leave the home and visit friends or relatives. Importantly, it is increasingly being realised that fathers are centrally involved or make decisions regarding their children's health. Campaigns have tended to target women but are now starting to include men.

Indeed, according to a study conducted in three developing regions by the International Food Policy Research Institute (IFPRI) (Smith *et al.*, 2003), if men and women had equal status (or were equally involved in decision making), the rate of underweight children under three in South Asia would decline by approximately 12 percentage points, reducing the number of malnourished children by 13.4 million. In sub-Saharan Africa, child malnutrition would decline by almost 3 percentage points, resulting in 1.7 million fewer malnourished children under three years old.

3. Gendered dimensions of discriminatory family codes

The effect of formal and informal laws, norms and practices on girls' capabilities and well-being is determined by the realities of parental authority, inheritance and marriage choices. Other well-being outcomes are also determined in part by the family code, including practices of FGM/C, 'permitted' domestic violence, servitude and son preference, as well as civil liberties and asset rights, all of which are detailed in the following chapters. All are also related to the above-described informal bargaining power of women and girls within the household and community.

Parental authority and custody

Formal and informal laws, norms and practices regarding parental duties, authority and responsibilities determine decisions regarding children. Norms which favour sons or cause harm to girls can be reinforced by both mothers and fathers. This is discussed further in the Son Bias and Physical Insecurity chapters (Chapters 2 and 4). Here, we concentrate

on family codes and norms which give greater authority and custody to fathers and thus disempower women and girls in their choices and capabilities. This bias may be also codified in national law which is discriminatory.

In Senegal,¹¹ for example, Article 152 of the Family Code (1972) states that the husband is the head of the family, with authority over the household and children: 'During the marriage [parental authority] is exercised by the father as head of the family.' The husband has the choice of family residence; the wife is obliged to live there with him and he is obliged to take her in (Article 153). In Sierra Leone, the husband has custodial rights over children, who are handed over to the husband's family head on his death. Under Muslim law, the mother has the right to care for a boy child until the age of nine and a girl child until she comes of age (Human Rights Watch, 2003).

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- Smith *et al.* (2003)

Meanwhile, in Egypt, a husband can file a complaint against his wife under 'obedience laws.' A wife's obedience allows her to access basic necessities such as shelter, food and financial support from her husband. On

divorce, as Egyptian law limits a woman's right to adequate housing to the period for which she has the custody of the children, women without children or those who no longer have custody of their children face the risk of homelessness. By law, Egyptian women cannot obtain a share of, or legal title to, the marital house and, although a home must be provided for a mother while she has custody of the children, custody is transferred to the father when boys are aged 10 and girls reach 12. In fact, women with custody of the children are usually denied their right to live in the marital house, and husbands can also deny them any custody rights without legal proceedings (Human Rights Watch, 2004).

In Saudi Arabia, fathers always retain legal custody of the children and have the right to make all decisions for them. Both married and divorced women do not have the right to open a bank account for their children, enrol them in schools, access their school files or travel with them without first obtaining written permission from their father (Human Rights Watch, 2008). In Gabon, Kenya, Morocco, Pakistan and many other countries, fathers have greater or total parental authority (OECD, 2009).

Bias towards male parental authority very much affects the well-being of children. Girls in particular may be affected regarding decisions on their schooling, health care and

marriage, as detailed above regarding the lack of women's decision-making authority. This may be influenced by son preference.

This lack of authority is extended to pre and postnatal decisions. In Sierra Leone (Amnesty International, 2009; Ministry of Health and Sanitation Sierra Leone, 2008), 68 percent of mothers reported that the decision on where to deliver a child was usually made by the husband at the beginning of labour. The high incidence of maternal death is assumed to be 'normal or inevitable.' A widespread belief in rural areas is that obstructed labour (a cause of 15 percent of maternal deaths (UNICEF Sierra Leone, 2006)) is caused by a woman's infidelity, with time and energy often wasted in trying to obtain her confession.

Women are often reluctant to practise family planning because they are afraid of being abandoned or rejected by their families. In several cases, women stated that they did not want to tell their husband that they should not have another child and that, when they mentioned family

planning practices, their partner was not in favour and refused to use them. Discussions with men revealed that they were unaware of women's health risks resulting from repeated and frequent pregnancies.

Girls' well-being and their capabilities are thus influenced directly and indirectly by the type of parental authority experienced. Health care in particular can be compromised where maternal influence is lacking. Educational and marriage choices may be reinforced by both mothers and fathers, or by other kin. However, where women have more control over parental decisions, there is good evidence that educated women will choose education for their daughters. The links to poverty descents occur through parental decision making which does not optimise the potential for girls to develop capabilities. As such, maternal influence, especially when women have some education, enhances girls' capabilities.

Inheritance

We are concerned here with the inheritance rights of girls related to their family status. Discussion of land and other property ownership is to be found in Chapter 3 (Limited Resource Rights and Entitlements). Although an inheritance transfer is in principle determined by the asset holder, if assets are not owned by women¹² (even if they have contributed

'Children have the right to be protected from prematurely assuming the responsibilities of adulthood, especially marriage and childbearing.'

- IAC (1993)

to them) they have no say on their transfer. Additionally, if discriminatory practice is codified in national or customary laws, this sets a precedent for unfair asset transfer.

Authority over assets in the household is determined by formal and informal laws, norms and practices pertaining to assets and inheritance rights, and also by the married status of women and girls and the effect on their rights as acquired through the transfer of assets on marriage. Widowed and divorced women and orphaned girls acquire very variable asset rights, as do girls after marriage and within their natal families. When a girl marries, the widespread practice of bride price and dowry payments, involving the transfer of assets between families, is regarded as important to their status and the way they are received by their husband's family. For many girls, especially in South Asia, the majority of assets they receive are acquired on marriage, even if they do not necessarily have control over them. There is evidence from Bangladesh that, when a woman's share of pre-wedding assets is higher than that of her husband, her influence in household decisions is greater and levels of sickness among her daughters decrease (UNICEF, 2006).

It is argued, however, that in general these payments are small compared with the value of assets and capabilities potentially to be gained from inheritance or from education (Quisumbing, 2008), which are assets and capabilities often denied to women and girls. Although bride price and dowry remain common across societies, and men and women alike profess to the value that they confer on women and girls, there have been many calls to end the practices, not least because of the family violence that they engender in disputes over payments.¹³ In India, it is estimated that 25,000 brides are killed or maimed each year as a result of dowry disputes.¹⁴ South African women who testified at hearings on violence against women stated that bride price, especially when delivered in cash, constituted 'buying a wife.'

Human rights declarations, conventions and charters are clear on non-discrimination in relation to inheritance rights,¹⁵ although these are not necessarily legally binding. The African Charter on Human and Peoples' Rights on the Rights of Women in Africa is the only treaty that protects girls' inheritance rights: 'Women and men shall have the right to inherit, in equitable shares, their parents' properties' (Article 21(2)). Despite these provisions, girls and women in many countries do not have equal inheritance rights to boys and men. For example, in Algeria and Pakistan, under Sharia law women inherit half as much as men; in Morocco, girls inherit half as much as boys (OECD, 2009). A 2009 CEDAW recommendation (Halperin-Kaddari, 2009) notes that changing laws around property and inheritance has happened very slowly. Unsurprisingly, there are many court cases challenging inheritance practice and examples of evolving law as a result.



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India, Jharkhand. Shanti Kumar, 16, a bride-to-be from the Santhal Adivasi tribe, sweeps the courtyard of her house, in Jorakath village.

Very little research has been devoted to children's inheritance rights (Cooper, 2008). Children have particularly insecure property rights, which are usually subsumed under the mother's rights. Some countries, including Lesotho, Malawi, South Africa and Zambia, provide children with a proportion of the estate in the event that a person dies without a will (Cooper, 2010), and important law harmonisation efforts in Rwanda (1992) gave girls the right to inherit property, enshrining equal rights to inheritance and succession in 2001 (Plan International, 2009). However, the intersection of customary, national and other law most frequently holds sway to deny children and women inheritance.

For example, although Zambian statutory law partially protects women's inheritance and property rights, such protection is being undermined by a failure to prevent discriminatory customary law taking precedence over statutory law. A widow should receive 20 percent of her husband's estate (according to the Intestate Succession Act), but the right to inherit is customarily with the deceased husband's family of birth. The inability of women and girls to enforce their property rights in the area of inheritance can also

be seen in the case of HIV-positive widows: in-laws sometimes threaten women who insist on keeping the property that they will not care for the children if the mother falls sick or dies¹⁷ (Human Rights Watch, 2007).

Inheritance assets, alongside important capabilities such as education, are noted to play a role in preventing descent into poverty (Quisumbing, 2008). The effect of denied inheritance is seen most acutely in the more highly profiled situations, where HIV/AIDS widows and orphans are denied assets by relatives and left destitute (Cooper, 2008; Nakray, 2010).

Early marriage

The Inter-African Committee on Traditional Practices Affecting the Health of Women and Children (IAC) defines child marriage as 'any marriage carried out below the age of 18 years, before the girl is physically, physiologically, and psychologically ready to shoulder the responsibilities of marriage and childbearing.' An array of international instruments – including the 1948 Universal Declaration of Human Rights, 1979's CEDAW and the 1990 African Charter on the Rights and Welfare of the Child – echoes the perspective

Early marriage thus becomes considered a norm, as one young Hausa girl describes:

'Every parent would like to see the daughter married. It's normal practice among the Hausa that, at the age of 15 or so, one should get married. This reduces the burden on the family and brings peace to the family' (married woman, 22, married at 15, polygamous, Nigeria, in Erulkar and Bello, 2007).

These characteristics of early marriage, along with lack of inheritance, lead to poor development, lack of agency and, sometimes, in the case of adolescent widows or daughters, destitution.

Most countries have declared 18 as the minimum legal age of marriage. Despite the sanctions on child marriage, and a slowly declining trend, more than 100 million girls are expected to marry between 2005 and 2015.¹⁹ Recent UNICEF data indicate that, in 34 of 55 countries with comparable data, there has been no significant change in the percentage of women aged 20 to 24 married by 18, and only five countries have experienced a decrease of more than 10 percent (UNICEF, 2007). Other reports similarly stress that, even in areas that have seen a decline, there are regions and/or sub-regions where high rates of child marriage are resistant to change (Levine *et al.*, 2009). Regional averages (UNFPA, 2004) for young women (aged 15 to 24) who were married before the age of 18 are significant.²⁰ In Southern Asia, 48 percent of young women (nearly 10 million) are married before the age of 18, in Africa 42 percent and in Latin America and the Caribbean 29 percent, although regional averages often mask wide variations among countries (see Figure 6).

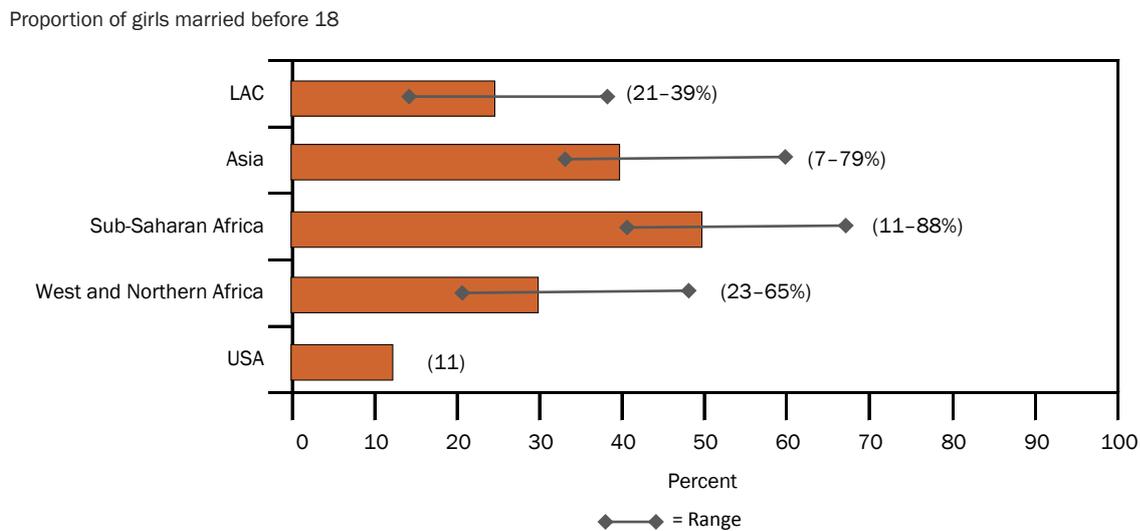
Box 6: The pain of early marriage: voices of young Hausa girls in Africa

'They [co-wives] give me very little food and warn me not to tell our husband. Whatever I want, I have to ask for it from home [parents' house] and even right now I am sick with headaches and if I ask for money or medicine they will say they don't have any'.

'The first time I had sex with my husband, I felt serious pains and was bleeding. I had to tell my auntie and she gave me some medicine then I told her that I will never allow him to do that to me again. My auntie told me that if I stop after the first time, the wound will never heal. At that time my husband was a stubborn man and anytime he came to have sex with me, I just started crying. He would tell me that Allah is blessing and rewarding me so I should not be crying' (married girl, 14, married at 13, two pregnancies, first child died, two co-wives, Nigeria, in Erulkar and Bello, 2007).

In some countries, more than half of all girls under 18 are married. Specifically, the percentage of girls (aged 15 to 19) married by age 18 is 76 percent in Niger, 74 percent in the Democratic Republic of Congo (DRC), 54 percent in Afghanistan, 51 percent in Bangladesh and 50 percent in India (UNFPA, 2004). Although age at marriage is generally increasing, it is not uncommon to find girls married before the

Figure 5: Child marriage – substantial variation within regions



Source: United Nations Population Fund (UNFPA, 2004)

age of 15. In Ethiopia and some areas of West Africa, some girls get married as early as age seven.²¹ In Bangladesh, 45 percent of young women between 25 and 29 were married by age 15.²² A 1998 survey in the Indian state of Madhya Pradesh found that nearly 14 percent of girls were married between the ages of 10 and 14.²³ And in Kebbi state of northern Nigeria, the average age of marriage for girls is just over 11 years, compared with the national average of 17.²⁴

According to UNFPA (2004), married adolescents are typified by: large spousal age gaps; limited social support as a result of social isolation; limited educational attainment and no schooling options; intense pressure to become pregnant; increased risk of maternal and infant mortality; increased vulnerability to HIV and other sexually transmitted infections (STIs); restricted social mobility/freedom of movement; little access to modern media (TV, radio, newspapers); and lack of skills for the labour market. Additionally, gendered social norms of duty, obedience and altruism may result in girls disinheriting themselves (Brickell and Chant, 2010). All of these factors reduce girls' capabilities and development. This is exacerbated by both their physical immaturity and their lack of relative power and autonomy, leading to the potential for abuse and exploitation and physical and emotional distress (see Box 6).

Between the ages of 15 and 21 or so, young people are still maturing biologically. Neurological development continues during adolescence and into early adulthood (World Bank, 2006). Girls continue to develop and gain body strength, and nutrition is especially important if girls are to become pregnant. These processes of maturation are one reason why childbearing is very hazardous for young women under 20,

and why maternal mortality rates in this age group are so much higher than for women aged 20 to 39 (Marcus and Gavrillovic, 2010; Temin *et al.*, 2010) and why health complications are also more prevalent (Canning *et al.*, 2009, in Temin *et al.*, 2010).

Pregnancy-related mortality is a leading cause of death for girls aged 15 to 19 (WHO *et al.*, 2003). Women under 20 giving birth face double the risk of dying in childbirth compared with women over 20, and girls under age 15 are five times as likely to die as those in their 20s.²⁵ This leads to 60,000 to 70,000 girls aged 15 to 19 dying from complications of pregnancy and childbirth every year (WHO, 2008d, in Temin *et al.*, 2010). For each woman who dies, about 20 women survive but suffer from serious disease, disability or physical damage caused by complications of pregnancy or childbirth. Thus, adolescents account for just over 10 percent of births but 23 percent of the

burden of disease from maternal conditions.²⁶ Compounding the reproductive problems they face, married adolescents have been neglected from the global adolescent reproductive health agenda because of the incorrect assumption that their married status ensures them a safe passage to adulthood.

Meanwhile, a million or more children are left motherless each year as a result of maternal mortality. These children are three to ten times more likely to die within two years than children who live with both parents.²⁷

Also of significance for girls are the mortality and health implications of abortion. In Mexico, early pregnancy is a significant problem, and there are considerable risks to girls' and adolescents' health in the absence of adequate reproductive health care and the illegality of abortions. Because of this, there are over 500,000 illegal abortions every year in Mexico, putting women's health at considerable risk. Fostering a national debate about the role of the state in preventing early and unwanted pregnancy has often been actively opposed by the Catholic Church. This has been a political issue that has been left unresolved, despite increases in political pluralism and growing awareness surrounding abortion. Although there has been no policy change in Mexico, the government has made improvements to the provision of contraceptives and post-abortion care, which has reduced health risks and abortion incidence (Kulczycki, 2007).

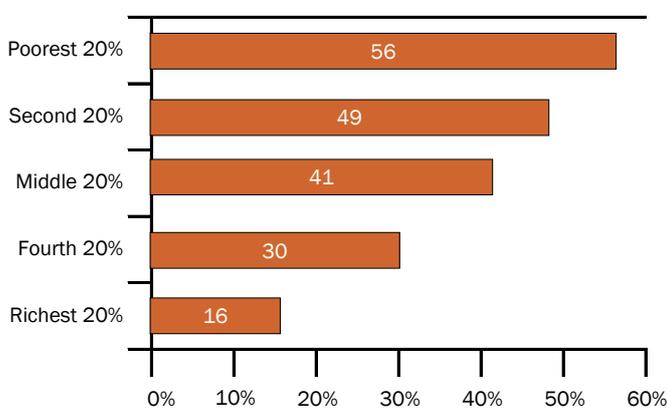
These deprivations, which affect young mothers and also their infants and children as they grow to adulthood, have

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- www.wpf.org

Figure 6: Likelihood of child marriage by wealth quintile

Percentage of women aged 20-24 who were married or in union before age 18, by wealth index quintile (1987-2006).



Source: UNICEF global databases (2007) based on data from MICS, DHS and other national surveys



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Malawi, Dickson village, Nr. Kasiya. Zeneti Julius (22) at home with her son; she moved to her husband's village after they married, to discover that she had become his second wife.

intergenerational implications, with social and economic costs. The links to poverty are clear. Child marriage is most common among the poorest 20 percent of the population (UNICEF, 2005). Maternal mortality rates are around 20 to 50 percent higher for the poorest 20 percent of households than for the richest quintile (UNICEF, 2009).

Early marriage is thus intimately linked to a lack of girls' agency and capabilities. Girls' powerlessness to make a choice regarding age of marriage leads to early pregnancy, deprives them of education and can leave them vulnerable to exploitation and abuse. Lack of agency also contributes to their assetlessness both within and after marriage.

4. Addressing discriminatory family codes: Initiatives and challenges

In order to tackle discriminatory family codes, a combination of approaches is necessary, focusing on reforming formal and informal legal codes alongside efforts to promote legal literacy among a wide range of state and non-state actors. Complementary initiatives to empower girls and young

women, and to raise awareness among their male counterparts of the potentially harmful effects of unequal family codes, are also essential.

Harmonising laws

As already discussed, legal harmonisation efforts are in process in multiple countries to address discrimination within family codes. Changing and harmonising law is a vital first step. In Sierra Leone, for example, in 2007, Parliament passed the Registration of Customary Marriages and Divorce Act, the Domestic Violence Act and the Devolution of Estates Act. These acts address inequalities in family relations, inheritance and ownership, and bring customary law closer towards alignment with international human rights standards. The laws entitle women to acquire and dispose of property in their own name. The minimum age for customary marriages is raised to 18, and consent is now required by both parties. Customary marriages and divorces have to be registered with the state. Dowries do not need to be returned on divorce and mothers are able to apply for child maintenance when a father

Box 7: Girls' education as a tool to counter discriminatory family codes

The Female Stipend Programme (FSP) in Bangladesh was launched nationwide in 1994. It targets rural girls aged 11 to 14 with a stipend that is conditional on 75 percent attendance and a 45 percent score in end-of-year tests, as well as on the girls remaining unmarried until sitting the Secondary School Certificate or reaching the age of 18. The project originally aimed to keep girls in school in order to delay marriage and motherhood; over time, the objectives have shifted to include access to paid employment and broader empowerment of women.

The annual stipend ranges from \$12 for Grade 6 to \$36 for Grade 10 and is awarded directly to the girls through their own bank account. This feature aims to teach girls about banking practices and to teach them saving habits. Each recipient is allowed to withdraw cash from the bank independently. In addition to covering full tuition, exam costs, text books, school supplies, uniforms and transport for the girls, programme measures have: 1) increased the number of female teachers in secondary schools; 2) educated communities on the importance of girls' education and encouraged parents to get involved through parent education committees; 3) improved school infrastructure; and 4) reformed curricula, adding occupational skills training for immediate application in labour markets.

Impacts have been significant. In 1991/92, only 27 percent of girls were enrolled in secondary school and only 5 percent of those completed the cycle. In 2002, girls accounted for 54 percent of all secondary school enrolments in the programme areas, with attendance (91 percent) and achievement (89 percent) surpassing those of boys. Overall, the programme claims to have tripled female enrolments in secondary school: 3.9 million girls were enrolled in secondary schools in 2005 compared with 1.1 million in 1995. Meanwhile, between 1994 and 2000, the proportion of married girls dropped from 29 to 14 percent among girls aged 13 to 15 and from 72 to 64 percent among girls aged 16 to 19.

The number of girls receiving scholarships has steadily increased. Some 875,858 girls were receiving scholarships by 1999, and the programme has reached 121 of Bangladesh's 507 sub-districts. The programme is funded by multiple donors, with a focus also on providing teacher training and performance incentives to schools and improving facilities, especially latrines for girls. A rigorous impact evaluation is being planned for the second phase of activities to more clearly determine causal attribution for observed changes.

Source: Grown (2006); Herz and Sperling (2004); World Bank (2003; 2006)

is not forthcoming on this. Under the Devolution of Estates Act, wives and children under customary law as well as co-habiting partners have a legal right to inheritance. When a husband dies intestate, the majority of the estate will revert to the wife and children instead of the parents and brothers.²⁸ CEDAW has played a hugely important role in supporting these and other changes in many countries.²⁹ Actual implementation takes time but equitable law is a necessary first step.

Legal harmonisation efforts sometimes meet opposition. In Mali, a new Family Code was adopted in 2009, setting the legal minimum age for marriage at 18, recognising only secular marriages and expanding inheritance rights to girls. Muslims appeared divided on the issue.³⁰ Nevertheless, according to the secretary of Mali's highest ruling Islamic Council, the latter was going to block its enforcement: 'This code is a shame, treason [for Muslims] [...] We are not against the spirit of the code, but we want a code appropriate for Mali that is adapted to its societal values. We will fight with all our resources so that this code is not promulgated or enacted' (IRIN, 2010). The secretary went on to say that Parliament ignored religious leaders' suggestions and bowed to donor wishes. By contrast, the president of a national women's association of non-governmental organisations (NGOs) said that the Family Code was 'a constitutional and democratic demand' that promotes social justice (ibid).

Promoting legal literacy among officials and communities

After legal reforms have been secured, supporting officials and communities to effectively utilise these new legal tools is the next critical challenge. As such, a range of legal literacy programmes have been developed. One key example is the work by the Commonwealth Secretariat which, drawing on the Commonwealth Plan of Action for Gender Equality 2005 to 2015, aims to create active dialogue between national women's machineries, law ministries, the judiciary, legal practitioners, academics, traditional chiefs, religious and community leaders and adjudicators of customary law and practices. This has been achieved through a series of regional colloquia that aim to provide training and raise awareness, as well as to equip key actors with the information and skills they need to facilitate change.

In Kenya, for instance, legal literacy efforts undertaken by the Umoja Uaso Women's Group in Samburu have focused on facilitating women's understanding of their land rights in both statutory and customary law, in the context of grazing land for cattle and owning land and livestock in their own name for social protection. Similarly, in India, the United States Agency for International Development (USAID) funds the training of lawyers and counsellors in two Indian states on various women's issues, including the legal age of marriage.

Within networks of women's self-help groups, these legal professionals also conduct workshops for local police and religious leaders on the issue of child marriage. The network also successfully encouraged the government of one Indian state to amend its Child Marriage Restraint Act and to create a provision to appoint child marriage prevention officers (USAID, n.d.).

Empowerment and awareness-raising programmes for girls

There are, however, significant gaps between law and actual practice, and changes in law need to be reinforced by a wide variety of other actions. These include supporting girls' education, which is linked to improving girls' and women's power in the household and improving their income-earning potential. There is good evidence that girls' and women's increased income generation and waged employment can lead to positive changes in their lives, such as improved bargaining power within the household, increased access to information and support networks and increased self-confidence (Salway *et al.*, 2005). Evidence from Bangladesh shows much greater mobility and intra-household bargaining power among women with independent incomes, although violence is high and women and girls still carry high levels of unwaged domestic labour alongside waged labour (*ibid*), an issue which is discussed further in Chapter 2 on Son Bias. Women's waged labour additionally needs much better conditions in terms of opportunities, wage equity and value, and safety.

Actions to empower girls through education also have the intention of delaying marriage and are another promising approach to addressing discriminatory family codes. In Ethiopia, for instance, girls' advisory committees have been established in more than 3,700 public schools in eight regions of the country, to prevent child marriages and encourage both unmarried and married girls to attend school. The committees communicate with parents, teachers and religious leaders about the dangers of child marriage and the importance of girls continuing their education. They have been responsible for stopping more than 4,000 child marriages and keeping many more girls in school (USAID, n.d.) (see also Box 7).

Ethiopia's Berhane Hewan ('Light for Eve') programme also seeks to delay marriage for girls by incentivising families to keep girls in school. Run by the Ethiopian Ministry of Youth and Sport and Amhara Regional Bureau of Youth and Sport, the programme targets unmarried girls between 10 and 19. Parents agree that daughters will not be married for two years in exchange for the benefits of formal or informal education. On completion, a goat is presented to the family. Alongside this, community dialogues are held every two weeks with elder members of the community to discuss harmful practices and their effects. The full impact of the programme is not clear, but an endline survey found that significantly more girls

were in school (96 percent compared with 89 percent at the project start); none of the Mosebo girls had got married in the previous year; girls' knowledge of STIs had improved; and girls were more likely to use contraceptives (three-quarters of sexually experienced girls in Mosebo had used a method of contraception by the end of the study). Girls from Mosebo were much less likely than girls at the control site to have married, suggesting that the programme may have delayed marriage (Erulkar and Muthengi, 2009).

In the Gambia, Mothers Clubs aim at supporting girls' education and thereby delaying marriage. In some poor regions, girls account for only 19 percent of students in primary schools. Supported by UNICEF and the Forum for African Women Educationalists, mothers undertake a range of income-generating activities and have been provided with labour-saving devices to release girls from work and pay for educational costs. Since the programme's inception, women have established 65 Mothers Clubs in three regions of the Gambia. The movement is having a visible impact on girls' education. Girls' enrolment rates have increased by on average 34 percent, and incidence of girls withdrawing from school owing to early marriage has diminished sharply (UNICEF, 2006).

Other programmes focus on reproductive health information provision and services. In India, for instance, the Population Council is piloting an initiative to strengthen the reproductive health of adolescent married girls. The project provides health information to adolescent married girls, young husbands and influential family members as well as setting up a network among adolescents. Through these networks, girls establish groups to deal with certain issues, such as savings funds for health costs, etc. Initial evaluations have shown positive results in improving reproductive health and practice and girls' autonomy and relationships (Haberland, 2007). Similarly, the Mères-Educatrices Project in Burkina Faso involves raising awareness on reproductive health and sex education among married adolescent girls. Girls are visited by young mothers who have been trained by the project to provide information and discuss issues of reproductive health and pregnancy. Additionally, they provide vitamin A and iron supplements. The project has expanded its outreach and increased married adolescent girls' access to community resources as well as raising awareness on reproductive health, HIV/AIDS and FGM/C (Haberland, 2007).

In Yemen, where approximately half of all girls are married by age 17 and 14 percent are married by age 14, USAID supports the Ministry of Health to increase the age of marriage in the rural Amran governorate. Trained male and female outreach educators inform community members about the negative health and social consequences of child marriage. Activities include mobile clinics, community awareness sessions in schools involving teachers and parents and engagement of religious leaders. The Ministry of Religious Affairs in Amran

Box 8: Engaging with men around family planning

In Mali, with funding from USAID, an initiative of the Ministry of Health engages Malian authorities and religious leaders to promote family planning, birth spacing and a focus on men in family planning decisions, since men are the primary decision makers on the use of family planning methods. The engagement of religious leaders who are respected and influential is crucial. Subsequent to their training, religious leaders have started speaking openly in public and in mosques about the importance of dialogue between husbands and wives and men's engagement to increase women's access to family planning services (USAID, 2005; 2008). Also in Mali, the Network of Religious Leaders in West Africa, supported by the UN Development Fund for Women (UNIFEM), has sent a message that women's participation in politics is not contrary to Islam. In the communal elections in 2009, there was a 4.3 percent increase in the number of female candidates and a 1.7 percent increase in the number of seats won by women (UNIFEM, 2010). In Cameroon, traditional chiefs were provided with UNIFEM-supported training on women's human rights based on CEDAW. In 2009, 25 tribal chiefdoms abolished harmful widowhood rites. In another part of the country, 16 tribal chiefs banned discriminatory practices through a signed declaration that ensures that women can inherit property and that women have greater flexibility in their interactions with family members after widowhood. In a few chiefdoms, women have also been included in the traditional councils (ibid).

has issued a directive that all religious leaders publicly address the negative social and health consequences of child marriage in Friday sermons. Momentum generated by this project has also contributed to the Parliament putting forth a policy to increase the legal age of marriage to 17, which is now awaiting the President's signature (USAID, n.d.).

Involving men

Legal and educational initiatives (both girls' schooling and education of communities in relation to harmful practices) are making progress in changing discriminatory family codes, through improving women's capabilities and earning capacity. However, there is a need also to address the incentives for change among those who have vested interests in the status quo. Development agencies are increasingly targeting men as part of the problem and as an important part of its solution: they are involved in income-generating activities, in anti-FGM/C campaigns, in anti-violence and in improved sexual and reproductive health initiatives. Indeed, there is a growing body of research and action on socialisation processes and the versions of manhood they produce, and serious interest in promoting less aggressive masculinities in regions with a high prevalence of public and domestic violence, with a particular focus on young males and male peer cultures (Bannon and Correia, 2006). Actions related to family codes include clinic-based efforts to engage men in primary health care and specialised sexual health clinics. There is also growing emphasis on men's role as fathers (Barker and Ricardo, 2006) (see also Box 8). Engaging men more fully in promoting the health and development of their children is pursued through educational sessions, group discussions and support groups for adult and adolescent fathers. There are also media campaigns to promote more positive images of men through their active involvement in their children's lives. Also, many HIV/AIDS programmes in sub-Saharan Africa are engaging men to prevent mother-

to-child transmission of the disease. Some NGOs also target HIV-positive fathers to provide them with medical care and encourage them to support their partners and children.

These actions are part of wider strategies providing alternative positive masculine models to young men (Barker, 2006a). It is clear that education on gendered roles and fatherhood needs to begin in schools and men and boys need to be part of sexual and reproductive health programmes typically aimed at girls and women. Importantly, though, boys and young men also need positive roles in communities, and this is typically linked to gainful employment to improve male identity and behaviour. Issues of gender equality should be included in the workplace and in workforce training, and a focus should be on changing peer group and community norms and making gender visible to young men, not limiting it to women and girls (Barker, 2006b).

In Maputo, Mozambique, in September 2009, at Machava Soccer Stadium, where Mozambique competed against Kenya for World Cup qualification, the REDE HOPEM (Men for Change Network) marched wearing T-shirts and carrying banners with anti-violence messages such as 'kick the ball, NOT the women.' This network is the first male network in the country to work on violence prevention and HIV/AIDS, by organising public debates and training sessions on masculinities and rights with UNIFEM support. UNIFEM also sponsored the Global Symposium on Engaging Men and Boys, which urged UN agencies, NGOs and governments to increase their efforts and resources to engage boys and men in overcoming gender inequalities.

5. Lessons learnt and policy implications

A 2009 CEDAW recommendation (Halperin-Kaddari, 2009) notes that changing laws around property and inheritance has happened very slowly and that: 'inequality in the family is the most damaging of all forces in women's lives, underlying

all other aspects of discrimination and disadvantage, and is sheltered by ideologies and cultures' (ibid). It also notes that there has been 'limited engagement by state parties with the issue of family law, and many measures which have been taken fall short in addressing discriminatory family laws, traditional or customary patterns of marriage and marital behaviour, courts and tribunals that deal with the family' (ibid).

Discriminatory family codes are changing, however, in part as a result of political leadership and a wide range of policy and programme initiatives intended to improve women's and girls' capabilities. The success of reforms depends very much on the willingness of governments and communities to challenge longstanding traditions. Where they make this commitment, change follows. The challenges cannot be underestimated, not least those that lie in changing existing vested interests and harmful male attitudes. But a growing number of examples exist of programmes and policies that do make this change a reality. These include:

- Initiatives which promote the harmonisation of customary and formal legal codes so as to eradicate discriminatory family code provisions;

- Legal literacy programmes for officials, especially judicial personnel, and communities which aim to sensitise a range of state and non-state actors as to gender-sensitive family code reforms;
- Complementary empowerment and awareness-raising programmes for girls, including those that promote their retention in school, prevent early marriage and enable access to reproductive health education and services and economic empowerment initiatives;
- Initiatives which engage with men to promote more gender-egalitarian family planning decision-making processes and parenting practices.

The results for girls and young women are: later marriage; decreased fertility; far fewer maternal and infant deaths; improved health of girls; reductions in physical harm against girls and in linked poverty and health costs; increased educational attainment and linked capabilities; increased asset accumulation; and increased income-earning potential. This all leads to gains in terms of poverty status and reductions in life-course and intergenerational poverty transfers. Non-discriminatory family codes are ultimately a win-win situation for all in the household, men and women, boys and girls alike.

Notes

- 1 There are many ways to classify global legal systems. This suggestion is taken from JuriGlobe, based at the University of Ottawa (www.juriglobe.ca/eng/sys-juri/intro.php).
- 2 Much of this law is based on Judeo-Christian law.
- 3 www.juriglobe.ca/eng/sys-juri/intro.php.
- 4 Most newly created Islamic states have turned to European codes of law, retaining Muslim law for family and personal matters (Marcotte, 2003).
- 5 See also www.juriglobe.ca/eng/sys-juri/intro.php.
- 6 www.juriglobe.ca/eng/sys-juri/intro.php.
- 7 www.juriglobe.ca/eng/sys-juri/intro.php and Atlas of Gender and Development (OECD, 2009).
- 8 www.unifem.org/cedaw30/success_stories; www.kenyalawreports.or.ke/family/case_download.php?go=29580681357579819795393; www.kenyalaw.org/Downloads_FreeCases/SUCCESSION_CAUSE_No_1263%20OF%202000.pdf.
- 9 www.interights.org/showdoc/index.htm?keywords=Mami&dir=databases&refid=3253.
- 10 In a United Nations Children's Fund (UNICEF) survey of selected countries across Latin America and the Caribbean, South Asia and sub-Saharan Africa including Cameroon, Côte d'Ivoire, Eritrea, Guinea-Bissau, Guyana, India and Suriname.
- 11 http://africa4womensrights.org/public/Dossier_of_Claims/SenegalENG.pdf.
- 12 Despite global activism, women's landholding remains low, at 1 to 2 percent of titled land worldwide (USAID, 2003, in Cooper, 2010).
- 13 Evidence from Bangladesh suggests that marriages without dowry arrangements in fact see reduced incidence of violence: 'Paying no dowry is just as protective, if not more so, in terms of preventing abuse, as the largest dowry payments' (IRIN, 2005).
- 14 In 1999, by the founder of the International Society against Dowry and Bride Burning in India.
- 15 The Universal Declaration of Human Rights states that: 'Everyone has the right to own property alone as well as in association with others' (Article 17(1)), but this is not legally binding. The International Convention on Civil and Political Rights is clear that every child has a right to protection without discrimination based on sex (Article 24(1)) and the Human Rights Committee has stated that this protection must include measures to remove discrimination in inheritance. The UN Committee on the Rights of the Child asserts (2003) that: 'State parties are particularly reminded to ensure that both law and practice support the inheritance and property rights of orphans, with particular attention to underlying gender-based discrimination as it may interfere with the fulfillment of these rights.'
- 16 India outlawed the modern dowry system in 1961.
- 17 In-laws can also insist that a widow should undergo sexual 'cleansing' from her deceased husband's evil spirits by having sexual intercourse with a male of lower social status chosen by them. In order to avoid the practice, widows decide to give up all their legal rights to property (Human Rights Watch, 2007).
- 18 Early marriage is also seen to protect girls against HIV, although this assumption is erroneous. In India, 75 percent of people living with HIV are married. Married couples exhibit low condom use and low safe sex practices. See www.childinfo.org/marriage.html.
- 19 Based on girls aged 10 to 19 in developing countries, excluding China, projected to marry before their 18th birthday (Clark, 2004, in www.unfpa.org/swp/2005/presskit/factsheets/facts_child_marriage.htm).
- 20 www.unfpa.org/swp/2005/presskit/factsheets/facts_child_marriage.htm#ftn4.
- 21 www.unfpa.org/swp/2005/presskit/factsheets/facts_child_marriage.htm#ftn6.
- 22 www.unfpa.org/swp/2005/presskit/factsheets/facts_child_marriage.htm#ftn7.
- 23 www.unfpa.org/swp/2005/presskit/factsheets/facts_child_marriage.htm#ftn8.

- 24 www.unfpa.org/swp/2005/presskit/factsheets/facts_child_marriage.htm#ftn9.
- 25 www.wpf.org/reproductive_rights_article/facts.
- 26 The social norms and practices that result in early marriage also influence other aspects of girls' choices, or lack of them, outside of the institution of marriage. Because of social stigma (and illegality in some countries), women having unsafe abortions in much of the world are predominantly young and unmarried. In sub-Saharan Africa, 60 percent of women who have unsafe abortions are 15 to 24 years old; in Latin America and the Caribbean, the corresponding figure is 43 percent (World Bank, 2006).
- 27 www.wpf.org/reproductive_rights_article/facts.
- 28 www.unifem.org/news/story_detail.php?StoryID=606 and www.unifem.org/cedaw30/success_stories/.
- 29 These bills were before Parliament at the time of Sierra Leone's last report to the CEDAW Committee on the Elimination of Discrimination Against Women (2007), which urged the state to place the highest priority on the enactment of these bills (Para 11). The committee remained concerned about provisions in the Constitution which mean that the principle of equal rights does not apply to matters of family law, and urged the repeal of this section of the Constitution (Para 13).
- 30 One stated: 'We cannot ban traditional marriages' and asked followers to 'curse government officials who voted yes to the family code.' One of five Parliament members who voted against the code said that he could not risk upsetting his constituents: 'I cannot go before my voters and tell them that religious marriages are not legal [...] that a woman should no longer obey her husband and that they should respect one another equally [...] If I do this, voters will punish me in the next elections.' Yet another Muslim leader, based in the capital, said that the code contained necessary changes: 'Women have always been considered second rank here, which is not normal. We are all equal. I do not see any problem with the article that women and men should have mutual respect. If women have the money to contribute to family finances, I would not be against that' (IRIN, 2010). The reaction was similar in Uganda.