



EQUALITY NOW

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Committee on the Elimination of Discrimination against Women
c/o Secretary of CEDAW
United Nations
1 United Plaza (DC-1)
Room 640 (6th floor)
New York, NY 10017

21 July 2008

Dear CEDAW Committee Member

On behalf of Equality Now, I enclose a representative sampling of discriminatory laws that are in force in some of the countries under review by the Committee at its 43rd session in January 2009, including Guatemala and Israel. We are also highlighting laws in Haiti and Libya, which we believe are still in force although we have not been able to confirm this with certainty at this time. We note that some of the laws have been taken from the report on discriminatory laws recently completed for the Office of the High Commissioner for Human Rights by Fareda Banda (http://www.ohchr.org/Documents/Publications/laws_that_discriminate_against_women.pdf). These are just a few of the many discriminatory laws in force. Unfortunately we do not have the capacity to document discriminatory laws comprehensively.

Equality Now is deeply concerned that despite the commitments made by these governments in ratifying the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and other international human rights treaties, discriminatory laws are still in force in these and many other countries around the world. Additionally, governments pledged to remove laws that discriminate against women in the Platform for Action adopted at the Beijing conference in 1995. In 2000, this commitment was renewed at the Beijing + 5 review with the establishment of a 2005 target date. We know that you may have already raised some of these laws in previous cycles of review, but we hope you will raise these laws again with the relevant government representatives.

We wish the Committee every success in its work and offer any further assistance we can provide. The few laws attached cover discrimination in divorce and in violence against women, including so called crimes of “honour”. As you know discriminatory laws are widespread and create a legal framework that is entirely incompatible with CEDAW and other human rights instruments. We would welcome a chance to discuss with you ways in which you feel the continuing and dedicated efforts of the Committee could be amplified and reinforced.

Yours faithfully

Jacqueline Hunt
Director, London Office

Equality Now submission
CEDAW Committee – 43rd session
Laws that Discriminate against Women
Guatemala

The Guatemalan Penal Code relating to rape effectively limits the number of prosecutions for rape because a conviction requires that sufficient violence was committed (in addition to the violence of rape). Women's groups in Guatemala have said to Equality Now that this means in practice a victim has to show that she did everything possible to fight back, even if that meant incurring additional physical harm. In addition, women's groups have expressed their concern that the Penal Code provisions on sexual violence still take into account consideration of what is deemed appropriate (or otherwise) behaviour of a girl when assessing whether a crime of statutory rape has been committed. It has been indicated to Equality Now that this view of how women should behave extends to prosecution of rape generally, for example, by the fact that a prostituted woman has never been able to prove that she was raped, although we have not been able independently to verify this information.

The relevant provisions are set out below (in the original language).

Guatemalan Penal Code on Sexual Violence (Articles 173-180)

ARTICULO 173. Comete delito o violación quien yaciere, con mujer, en cualquiera de los siguientes casos:

- 1o. Usando de violencia suficiente para conseguir su propósito.
 - 2o. Aprovechando las circunstancias, provocadas o no por el agente, de encontrarse la mujer privada de razón o de sentido o incapacitada para resistir.
 - 3o. En todo caso, si la mujer fuere menor de doce años.
- En los casos prescritos la pena a imponer será de seis a doce años.

AGRAVACIÓN DE LA PENA

ARTICULO 174. La pena a imponer será de ocho a veinte años de prisión en los siguientes casos:

- 1o. Cuando concurrieren en la ejecución del delito dos o más personas.
- 2o. Cuando el autor fuere pariente de la víctima, dentro de los grados de ley, o encargado de su educación, custodia o guarda.
- 3o. Cuando, como consecuencia del delito, se produjere grave daño a la víctima.

CAPITULO II
DEL ESTUPRO

ESTUPRO MEDIANTE INEXPERIENCIA O CONFIANZA

ARTICULO 176. El acceso carnal con mujer honesta, mayor de doce años y menor de catorce, aprovechando su inexperiencia u obteniendo su confianza, se sancionará con prisión de uno a dos años.

Si la edad de la víctima estuviere comprendida entre los catorce y los diez y ocho años, la pena a imponerse será de seis meses a un año.

ESTUPRO MEDIANTE ENGAÑO

ARTICULO 177. El acceso carnal con mujer honesta, menor de edad, interviniendo engaño o mediante promesa falsa de matrimonio, se sancionará con prisión de uno a dos años, si la edad de la víctima estuviere comprendida entre los doce y los catorce y con prisión de seis meses a un año si la víctima fuere mayor de catorce años.

ESTUPRO AGRAVADO

ARTICULO 178. Cuando el autor fuere pariente, dentro de los grados de ley, de la estuprada o encargado de su educación, custodia o guarda, las sanciones señaladas en los artículos anteriores se aumentarán en sus dos terceras partes.

CAPITULO III DE LOS ABUSOS DESHONESTOS

ABUSOS DESHONESTOS VIOLENTOS

ARTICULO 179. Comete abuso deshonesto quien empleando los medios o valiéndose de las condiciones indicadas en los artículos 173, 174 y 175 de este Código, realiza en persona de su mismo o de diferente sexo, actos sexuales distintos al acceso carnal.

Los abusos deshonestos a que se refiere el presente artículo serán sancionados así:

1. Si ocurren las circunstancias previstas en el artículo 173 de este mismo cuerpo de ley, con prisión de seis a doce años.
2. Si concurrieren las circunstancias prescritas en el artículo 174 siguiente, con prisión de ocho a veinte años.
3. Si concurren las circunstancias previstas en el artículo 175, con prisión de veinte a treinta años.

ABUSOS DESHONESTOS AGRAVADOS

ARTICULO 180. Los abusos deshonestos cometidos en persona de uno u otro sexo mayor de doce años y menor de diez y ocho, en las circunstancias a que se refieren los artículos 176 y 177 de este Código, serán sancionados, respectivamente

1. Con prisión de dos a cuatro años
2. Con prisión de uno a dos años

En los del artículo 178

1. Con prisión de cuatro a seis años
2. Con prisión de dos a cuatro años.

Si los abusos deshonestos fueren cometidos en persona menor de doce años y mayor de diez, las penas anteriores se aumentarán en una tercera parte, y en dos terceras partes, si la víctima fuere menor de diez años.

As set out in the Guatemalan government's own report to CEDAW, the Guatemalan branch of the Latin American and Caribbean Committee for the Defence of Women's Rights (CLADEM Guatemala) has filed an action with the Constitutional Court alleging the unconstitutionality of various provisions of the Guatemalan Civil Code. These include Article 89, which provides for a marriagable age of 16 for males and 14 for females (subsection 2) and for a divorced woman (but not a man) to wait 300 days before she can remarry (subsection 3); Article 169, which provides that a divorced woman who is the non-guilty party in a divorce is entitled to alimony as long as she is well-behaved; and Article 299 which awards guardianship in the first instance to surviving

grandfathers. CLADEM Guatemala is also concerned about Articles 225/226 which stipulate that a victim of a sexual crime who then bears a child can be compensated for the harm done to her only if she did not lead a “disorderly life” or did not have sexual intercourse with another man around the time of conception.

The relevant provisions are set out below (in the original language).

Civil code provisions

Ilicitud del matrimonio

ARTÍCULO 89. No podrá ser autorizado el matrimonio:

- 1°. Del menor de dieciocho años, sin el consentimiento expreso de sus padres o del tutor.
- 2°. Del varón menor de dieciséis años o de la mujer menor de catorce años cumplidos, salvo que antes de esa edad hubiere concebido la mujer y presten su consentimiento las personas que ejerzan la patria potestad o la tutela.
- 3°. De la mujer antes de que transcurran trescientos días contados desde la disolución del anterior matrimonio, o de la unión de hecho, o desde que se declare nulo el matrimonio, a menos que haya habido parto dentro de este término, o que uno de los cónyuges haya estado materialmente separado del otro o ausente por el término indicado. Si la nulidad del matrimonio hubiere sido declarada por impotencia del marido, la mujer podrá contraer nuevo matrimonio sin espera de termino alguno.
- 4°. Del tutor y del protutor o de sus descendientes, con la persona que esté bajo su tutela o protutela.
- 5°. Del tutor o del protutor o de sus descendientes, con la persona que haya estado bajo sututela, sino después de aprobadas y canceladas las cuentas de su administración.
- 6°. Del que teniendo hijos bajo su patria potestad, no hiciere inventario judicial de los bienes de aquéllos, ni garantizare su manejo, salvo que la administración pasare a otra persona; y
- 7°. Del adoptante con el adoptado, mientras dure la adopción.

Pensión a la mujer

ARTÍCULO 169. La mujer inculpable gozará de la pensión alimenticia a que se refiere el Inciso 3° del artículo 163, la cual será fijada por el juez, si no lo hicieren los cónyuges, teniendo en cuenta las posibilidades de quien debe prestarla y las necesidades de quien ha de recibirla.

La mujer gozará de la pensión mientras observe buena conducta y no contraiga nuevo matrimonio; y el marido inculpable tendrá el mismo derecho, sólo cuando esté imposibilitado para dedicarse a trabajos que le proporcionen medio de subsistencia y no contraiga nuevo matrimonio.

Casos en que puede ser declarada la paternidad

ARTÍCULO 221. La paternidad puede ser judicialmente declarada:

- 1°. Cuando existan cartas, escritos o documentos en que se reconozca;
- 2°. Cuando el pretensor se halle en posesión notoria de estado de hijo del presunto padre;
- 3°. En los casos de violación, estupro o rapto, cuando la época del delito coincida con la de la concepción; y
- 4°. Cuando el presunto padre haya vivido maridablemente con la madre durante la época de la concepción.

Indemnización a la madre

ARTÍCULO 225. La madre tiene derecho a ser indemnizada del daño moral en los casos de acceso carnal delictuoso, o de minoridad al tiempo de la concepción.

Improcedencia de la acción

ARTÍCULO 226. La acción concedida en el artículo anterior y la declaratoria a que se refieren los incisos 3° y 4° del artículo 221 no proceden en los casos siguientes:

1°. Si durante la época de la concepción, la madre llevó una vida notoriamente desarreglada, o tuvo comercio carnal con persona distinta del presunto padre; y

2°. Si durante la época de la concepción fue manifiestamente imposible al demandado tener acceso carnal con la madre.

Legítima

ARTÍCULO 299. La tutela legítima de los menores corresponde en el orden siguiente:

1°. Al abuelo paterno;

2°. Al abuelo materno;

3°. A la abuela paterna;

4°. A la abuela materna; y

5°. A los hermanos sin distinción de sexo, siendo preferido los que procedan de ambas líneas y entre éstos el de mayor edad y capacidad. La Línea materna será preferida a la paterna para la tutela de los hijos fuera de matrimonio. Sin embargo, mediando motivos justificados para variar la precedencia, puede el juez nombrar tutor al pariente que reúna las mejores condiciones de conocimiento y familiaridad con el menor, solvencia, idoneidad y preparación, que constituya una garantía para el desempeño satisfactorio de su cargo.

Equality Now submission
CEDAW Committee – 43rd session
Laws that Discriminate against Women
Haiti

The Penal Code:

Article 269. The murder committed by one spouse on another spouse is not excusable, if the life of the spouse who committed the murder was not being threatened at the actual moment that the murder took place. Nevertheless, in the case of adultery as provided for in Article 284, the murder by a husband of his wife and/or her partner, immediately upon discovering them in flagrante delicto in the conjugal abode, is to be pardoned.

...

Article 284. The adultery of a wife can only be denounced by her husband: even this entitlement will cease, if the case is as provided for in Article 287.

...

Article 287. A husband who has kept a mistress in the conjugal abode, and who has been convicted upon the complaint of his wife, will be sentenced to pay a fine of 100 - 400 gourdes.

Equality Now submission
CEDAW Committee – 43rd session
Laws that Discriminate against Women
Israel

A Jewish woman is not able to divorce a Jewish man without his consent

Rabbinical Courts Jurisdiction (Marriage and Divorce) Law (5713-1953):

- 1. Matters of marriage and divorce of Jews in Israel, being nationals or residents of the State, shall be under the exclusive jurisdiction of rabbinical courts.*
- 2. Marriages and divorces of Jews shall be performed in Israel in accordance with Jewish religious law.*

“Plonit v. Ploni”, The High Rabbinic Court, 1995:

*“...even if it is true that she despises him there is no basis on which to **force him to divorce her** as it is written in the Shulchran Aruch [Medieval Compilation of Jewish law] section 37 page 2 ‘if the husband wants to divorce her,’ but there is not anything to obligate him and the authorities specified and it appears in the decrees of the rabbis that even **to obligate him to divorce**, without force, it **is not allowed** and this is from the language of the Shulchran Aruch which says ‘if he wants,’ that **the matter depends only on what he wants**, and we should therefore grant his appeal.”*

“Plonit v. Ploni”, The Supreme Court of Israel, 1997:

“...there is no basis for us to intervene, within the confines of this court’s supervisory role, into the decisions of the religious courts. That is to say, we do not sit as a level of appeal for those courts...One must add that, according to Section 2 of the Rabbinical Courts Jurisdiction (Marriage and Divorce) Law 5713-1953, the law that the rabbinical courts should apply with regard to matters of marriage and divorce is the law of the torah [religious law]. The petitioner’s lawyer does not dispute that the rabbinical court did so [applied the religious law], and because the court did so, even if petitioner’s lawyer believes this law is not appropriate, there is no basis for us to intervene.”

From Israel’s State Party Report

Article 15 - Equality before the Law and in Civil Matters
Religious Courts

391. Overall, religious Courts have an exclusive jurisdiction over all matters of marriage and divorce, except when the couple is not affiliated to any religion or of different religions. Regarding

these exceptions, in matters relating to divorce, the jurisdiction is granted to the Family Courts or to the Religious Courts, upon the decision of the President of the Supreme Court. In Matters concerning women's and children's alimony, property issues, child maintenance, guardianship, violence and in the case of Muslims, also parental matters, Family Courts and the Religious Courts have a parallel jurisdiction, with certain differences between the various religious communities.

Article 16 - Equality in Marriage and Family Life

General

394. Israel upholds its reservation to article 16 regarding personal status laws due to commitments to religious communities in Israel. This reservation stems from Israel's constitutional system and respect for religious pluralism, as well as its granting autonomy to religious communities in matters of personal status.

Legal Developments

396. The legislator has recently extended the powers granted to the Rabbinical Court when dealing with a husband reluctant to give his wife a "Get" (divorce decree), thus preventing her from re-marrying. The *Rabbinical Courts Law (Upholding a Divorce Decree), 5755-1995 ("Rabbinical Courts Law (Upholding a Divorce Decree)")* (Amendment no. 5 from 2004) enables the Court to order the reluctant husband to remain in isolation for an initial period of 14 days (previously 5 days) and for continuous periods thereafter, pursuant to certain limitations.

Previous CEDAW Committee comment

Israel's compliance with CEDAW was reviewed by the CEDAW Committee at its 33rd session in 2005. In its concluding comments, the Committee called on Israel to withdraw its reservations to Articles 7(b) and 16 of CEDAW, because its failure to do so is "contrary to the object and purpose of the Convention." The Committee expressed a particular concern with the government's position that laws based on religious values cannot be reformed.

Equality Now submission
CEDAW Committee – 43rd session
Laws that Discriminate against Women
Libya

Penal Code Article 375.

Whosoever surprises his wife, daughter, sister or mother in the act of adultery (*in flagrante delicto*) or in illegitimate sexual intercourse and immediately kills her or her partner or both in reponse to the assault that has affected his honour (*sharaf*) or the honour of his family, shall be punished by a prison sentence. If the act leads to grave or serious injury of the said persons, the penalty shall be prison for not more than two years. Mere beating or light injury in such circumstances shall not be penalised.