



**OECD Development Centre and Development
Assistance Committee – Network on Governance**

International Seminar on

Informal Institutions and Development– What do we know and what can we do?

**Input Paper for Session A:
Gender**

INFORMAL INSTITUTIONS AND GENDER EQUALITY

by

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I. Introduction

Ever since the work of Ester Boserup (1970) over three decades ago, research and policy evidence has accumulated that both informal and formal institutions may sometimes be supportive of, but can often be inimical to gender equality¹. Anthropological and other research has detailed the varieties of women-unfriendly norms, practices and customs in different communities and societies (Behar and Gordon 1995; Bell, Caplan and Karim 1993; di Leonardo 1991; Etienne and Leacock 1980; Reiter 1975; Rosaldo and Lamphere 1974). While there is considerable variation across different regions, countries and communities, the norms that underpin practices cover a range that includes unequal access to and control over property, economic assets and inheritance; strongly defined gender-based divisions of labour within and outside the home; unequal participation in political institutions from village to international levels; unequal restrictions on physical mobility, reproduction and sexuality; sanctioned violation of women's and girls' bodily integrity; and accepted codes of social conduct that condone and even reward violence against women.²

It is important to note that these norms reflect and reproduce underlying gendered relations of power, and that is fundamentally what makes them difficult to alter or transform.³ It is also worth noting that gendered informal institutions cover the entire gamut of human interaction, from the most private sphere of sexuality to the public arenas of economic and political life. Consequently, they form a web of beliefs and practices whose different strands mutually reinforce each other. Cutting through these strands or replacing them with norms that are more gender equal can therefore be time-consuming and often frustrating. Policy change is more than a matter of rational choice and good information – education – communication (IEC), as changes may be opposed or subverted by power-holders in subtle and creative ways.

At the same time as the power of informal gender institutions has come to be recognised, we have also become more aware that gender blindness or gender discrimination in policy aims and in the creation of formal economic, political, legal and social institutions can lead to gender inequalities and serious inequities in policy outcomes. Such outcomes are usually but not exclusively detrimental to the well-being and human rights of women and girls. (Agarwal 1994; Bruce and Dwyer 1988; Buvinic, Lycette and McGreevey 1983; Elson 1991; Jahan 1995; Tinker 1990; Kabeer 1994; Moser 1993; Sen, Germain and Chen 1994; Sen and Grown 1987) Gender *blindness* refers to non-recognition of the ways in which control over productive assets, division of labour, decision-making, physical mobility among other factors, are biased against women. For example, requiring formal land titles as a precondition for getting agricultural credit or technological support can be gender blind since it can effectively shut women out if (as happens all too often) they do not possess land titles regardless of how much farm work they may do. Other examples are policies that attempt to increase secondary school enrolment without being aware that parents in some settings are reluctant to send girls long distances to school once they have reached menarche; or health programmes that expect significant unpaid labour from women carers at home without recognising the competing demands on their time or the burden of over-work from which they already suffer. Gender *discrimination* on the other hand refers to formal institutions that actively discriminate against women, e.g., differential minimum wages for women and men, or requiring the permission / signature of father or husband before a woman (even if

¹ We use the term 'gender equality' in this paper to cover both equality and equity. While there has been considerable debate about which of these is the appropriate norm when addressing women's rights, we do not tackle that question in this paper. We are concerned rather with the ways in which informal institutions fulfil or oppose such norms, and we therefore treat them together. For more on the distinction itself, see [Sen, George and Ostlin \(2002; pp 8-10\)](#).

² A recent source of cross-country information on a range of indicators is the OECD Development Centre's [Gender, Institutions and Development Data Base \(GID-DB\)](#)

³ An illustration for this point is the ease with which male dress codes change in most societies, while codes for 'proper' female attire continue to be enforced, and can be fought over bitterly. The former are simply a form of social behaviour, while the latter include sanctions that serve to define them as an informal institution. For further discussion of the distinction between informal institutions and informal behavioural regularities, see [Helmke and Levitsky \(2004; p 727\)](#).

she is a legal adult) can apply for a loan, for a development programme, for education, or a range of public services including health services (especially contraception or abortion).

The possibility that formal institutions may be gender-blind or gender-discriminatory means that, from the standpoint of gender equality, the interactions between formal and informal institutions may be more complex than is usually assumed by modernisation theories. Not all formal institutions are beneficial and not all informal ones are harmful.⁴ Furthermore, in addition to the type of examples given above, formal institutional support through gender-sensitive laws and changes in civil and criminal codes, and organisational mechanisms for their implementation (such as governmental machinery, public campaigns, and leadership for gender equality) may be weak or ineffective even when they exist on paper.

Although the larger literature on informal institutions in development recognises that they can be both constraints and supports, when it comes to gender equality policy makers and sometimes researchers tend to view them largely as constraints. This is especially so for those norms that are associated with long-standing cultural and social traditions.⁵ This paper questions that presumption, while affirming the universality of women's human rights and rejecting a culturally relativist position. Once we acknowledge that informal institutions (like formal ones) can have both positive and negative elements when viewed from the standpoint of gender equality and women's rights, we can better understand how women themselves attempt to adapt them to their needs wherever possible

This could be valuable for two reasons. *First*, because women often have greater presence in spaces where informal institutions abound, they may be able to use and even shape some of them to meet those needs. This can mean that women may themselves have a stake in the continuance of certain institutions and therefore be unwilling to give them up. There may also be trade-offs they have to make between institutions that meet different kinds of needs, which may translate into trade-offs between informal versus formal institutions. If women themselves are to become agents of change towards greater gender equality, recognising their own costs and benefits and the stakes they may have in retaining or changing the status quo is essential. *Second*, for policy-makers and programme implementers, a more variegated understanding of the relationships between informal institutions and gender equality may provide firmer analytical underpinnings. Such an analysis could help in developing nuanced and more effective approaches to social change and its sequencing – what can be done easily, what can be done early, what will have to be tackled more slowly and carefully, and what prerequisites will have to be met in which cases.

The next section of the paper examines the interactions between formal and informal institutions and develops a framework on which to base policies.

II. *Formal and informal institutions and their interactions*

We define informal institutions as social norms that represent evolved practices with stable rules of behaviour that are outside the formal system. Acceptable behaviour may be governed through a set of known sanctions or through powerful processes of internalisation without recourse to sanctions. When considering norms referring to gender, such processes of internalisation may be

⁴ For instance, informal credit institutions such as chit-funds and tontines serve women well in that they give them access to group savings and credit which are often out of their reach in the formal sector.

⁵ This has not always been so. The history of colonial rule in different countries provides evidence that those in power supported or opposed gendered traditions and customs depending on what suited their own economic or political interests (Oldenburg 2002).

as strong as actual sanctions, and can serve to recruit women themselves into norms of gender inequality as we discuss in the next section.⁶

Formal institutions, on the other hand, are those where norms, rules and sanctions are guaranteed through formal processes that are usually but not always official. We view formal institutions as those that are written and enforceable (possibly through legal recourse or arbitration). They can be associated therefore with organizations of the state, market, or civil society. They include economic and political institutions, legal systems, and cultural and social institutions with formal rules and procedures. As stated earlier, the growth of gender sensitivity in formal institutions in many developing countries has been uneven and slow. While the role of women in nationalist movements has led to their getting the vote in many countries, many of the other political, economic and social institutions of the post-colonial state have remained gender-blind, if not actively discriminating against women, as even official reviews report (UNIFEM 2000; UNIFEM 2003; UN Millennium Project Taskforce on Gender Equality 2005; UNRISD 2005; World Bank 2001) Universal norms of citizenship, accountability, equality of opportunity and equality of access may not be recognised, and the practices of formal institutions are often significantly wanting.

Legal redress for this situation has also been partial and far from adequate to change the environment within which both formal and informal institutions exist and interact. Since norms develop and evolve through the actual practices of the members of organisations and structures, formal institutions have themselves to favour gender equality before they can hope to influence informal institutions effectively. If the beam in the eye of formal institutions is their own gender-insensitive norms and practices, they can hardly point to the mote in the eye of traditional norms and behaviours! Policy makers and programme implementers charged with the responsibility for changing informal institutions towards greater gender equality are hardly likely to approach the task in effective ways if the (formal) institutions that shape their own behaviour are not themselves gender sensitive.

In such a context, the relationships between formal and informal institutions in different situations present a very mixed picture. This section of the paper modifies the useful general typology of informal political institutions in Helmke and Levitsky (2004; p 728; Figure 1) to distinguish among situations where formal institutional support for gender equality is strong, weak or doesn't exist. It provides a *framework for classifying informal institutions in terms of their relationship to formal norms*, and sets out a range of examples drawn from economics, politics, human development, and civil codes. In relation to formal institutions, informal institutions may be *complementary, accommodating, substitutive, competing, or dominant*. This framework lays the basis for developing more nuanced policies favouring gender equality in different contexts.

⁶ Our definition differs in this respect from Helmke and Levitsky's (2004) definition: "...socially shared rules, usually unwritten, that are created, communicated, and **enforced** (my emphasis) outside of officially sanctioned channels."(p 727)

Figure 1: Interactions between FIs and IIs

	FIs favouring gender equality exist		FIs favouring gender equality do not exist
	Strong FIs	Weak FIs	
IIs favour gender equality	1. <u>Complementary</u> e.g. pregnancy ceremonies and maternal health	3. <u>Substitutive</u> e.g. tontines, women's cooperatives, women's courts	5. <u>Dominant</u> e.g. tontines or chit funds
IIs oppose gender equality	2. <u>Accommodating</u> e.g. parent – youth relations, HIV peer education programmes, gendered division of labour, child marriage; political representation	4. <u>Competing</u> e.g. dowry demands, unequal educational access for girls versus boys, unequal access to health care and nutrition, bigamy, unequal wages; biased sex-selection, political representation	6. <u>Dominant</u> e.g. FGM, violence against women, treatment of widows, illegal or unsafe abortion, customary laws on inheritance, unequal work burdens, masculinity rituals

Note 1: FIs – formal institutions; IIs – informal institutions

Note 2: The examples given in Figure 1 do not inherently belong in a particular cell; the entries in particular cells represent actual cases from specific contexts.

A. When informal institutions oppose gender equality

We first explore those situations where informal institutions oppose gender equality – cells 6, 4 and 2 along the lower row of Figure 1 above – according to whether formal institutions exist at all, and if they do, whether they are weak or strong.

Dominant (negative) institutions – cell 6:

Where formal institutions favouring gender equality have not even been created, informal institutions will be dominant, whether or not they favour gender equality. Many such informal institutions strongly oppose gender equality (*cell 6*) and cover a range of areas usually involving practices that control women's physical mobility and autonomy, and limit their rights to bodily integrity especially in matters related to sexuality and reproduction, as well as inheritance and property rights and rigid divisions of labour by sex. They can include practices such as FGM, violence against women often by close family members, restrictions over women's reproductive and sexual rights, abusive treatment of widows, honour killings, as well as limits to women's property ownership, customary and unequal inheritance, and greater work burdens for girls and women.

In many countries, such informal institutions are still dominant in that very little has been done to legislate against them, and the formal system may, due to political exigencies and the power of forces opposed to gender equality, even reinforce them. An example of the latter was the passing by President Zia ul Huq in Pakistan of the *Hudood* ordinance in 1979, requiring four adult male eye-witnesses for a woman to bring a charge of rape, failing which she could be punished for adultery by stoning or lashing (<http://www.gulfnews.com/world/Pakistan/10086204.html>). Another is the recent action by the Senate in Nicaragua to ban all abortion including in cases of rape or when the mother's life is in danger (<http://news.bbc.co.uk/2/hi/americas/6161396.stm>). Action for gender equality in such cases requires changing laws, rules and procedures so that the formal norms can change. This may need considerable preparatory work, and even so, it will be necessary but not sufficient to bring about substantive change, unless there is effective enforcement.

Competing informal institutions – cell 4:

When formal institutions exist but are weakly enforced, informal institutions that oppose gender equality compete with them for influence. Examples include norms of civil codes around marriage, the abolition of dowry, child marriage, sex selection biased against females, equal access to education, nutrition, or health care, unequal wage-rates to name a few. In many though not all developing countries, formal institutions exist in many of these areas in the form of laws banning bigamy, early marriage, dowry, etc or requiring non-discrimination in schools, health

facilities, nutrition centres, or labour markets. Yet, poor formulation of laws, ineffective implementation and lack of leadership or incentives to ensure that the formal institutions actually begin to take hold, results in informal norms continuing and even growing stronger. An example is the anti-dowry Act in India which has never been effectively enforced; in the meanwhile, the phenomenon of dowry has been expanding even into communities where it did not exist previously (Oldenburg 2002).

The 73rd Amendment to the Indian Constitution reserves a third of the seats in *panchayats* (village councils) for women. However, subversion of these processes has occurred in some instances where the Act has been weakly enforced. From the beginning, cases were documented where husbands or other male kin blatantly substituted for elected women in the functioning of some of the councils. Elected women have also been forced in some instances to resign and make way for the appointment of male representatives. More recently, stories have begun to emerge about creative forms of subversion in which the entire village plays a role. In Madurai district of Tamilnadu state, control over the office of the *panchayat* president is auctioned off to the highest bidder, usually a wealthy, higher caste man. The money goes to the village council, and the elected woman president is expected from then on to do the bidding of the winner. The village as a whole sanctions the entire process which is justified on the grounds of 'efficiency' – the winning bidder will 'help' the elected president who may be ignorant of procedures and may not have links to key officials and politicians, and the village council gains by way of funds! Even worse are reports from the state of Gujarat where the state government has been giving monetary incentives to villages that agreed to single (*samras*, i.e. unanimity) candidates for the president's seat, thereby doing away with elections altogether! This is justified on grounds of saving funds which can be used for village development; NGOs argue that it is a political ploy by the Hindu fundamentalist party that is in power to ensure that its candidates capture a large number of the local seats. Apparently this was already done in the 2001 elections (http://www.infochangeindia.org/Governanceltop.jsp?section_idv=20).

Accommodating informal institutions – cell 2:

Informal institutions that oppose gender equality may be forced to accommodate to formal institutions when the latter are strong. One example is the success of peer education programmes as well as empowerment and sensitisation programmes in dealing with adolescent sexuality in the context of HIV /Aids. Many such programmes are part of new formal institutions that challenge the traditional beliefs and practices around sexuality and norms of femininity and masculinity. An example is Girls' Power Initiative (GPI) in Calabar, Nigeria that equips adolescent girls with human rights, sexuality and reproductive health information for the express purpose of empowering them for leadership, healthy sexuality and social justice. (<http://www.gpinigeria.org/gpi.htm>). Using an innovative approach, GPI actively draws on parents and teachers in its programmes, ensuring thereby that their fears and concerns are openly addressed. The informal norms around adolescent sexuality, femininity and masculinity are changing. But equally important, informal norms around parent – child and teacher – student communication (that typically excluded explicit discussion about sexuality) have been forced to accommodate in the presence of a strong programme.

Violence against women is central to the peer-education programme of Profamilia, an NGO in the Dominican Republic. Actively challenging traditional attitudes that violence and submission to it are 'natural' attributes of masculinity and femininity respectively, the organisation has brought the issue to the centre of a major public debate. It has thereby forced latent anti-women attitudes into the open, promoted legal change and strengthened support services for women victims. (Goldberg 2006)

A different example is a project to reduce the burden of fuel collection in Mali, jointly supported by UNIDO and IFAD.(UN Millennium Project Taskforce on Gender Equality 2005) The project specifically empowers women by involving them in design and management of multifunctional energy platforms using diesel engines that can meet not only women's energy needs but also benefit men. Traditional norms that usually give control over such projects to village men have

been challenged and forced to accommodate to the realities of the project that give voice and power to women.

Yet another example is the way in which the workers in a formal women's empowerment programme in Karnataka adapted the traditional practice of early marriage to meet the formal legal requirement that a girl's marriage cannot be arranged before she is at least 18 years old. (Pers. Comm. 2006a) The workers were very concerned to be good role models for the villagers with whom they work. At the same time, they were worried that their own daughters might become too old to be acceptable in marriage if they waited until the legal age. They came up with the innovative idea of creating their own marriage bureau where all their children could find partners among each other. Thus the informal institution of early marriage was made to accommodate to the formal norm, without doing away with the practice of arranging marriages.

B. When informal institutions favour gender equality

Dominant (positive) institutions – cell 5:

While many informal institutions may be harmful, not all are. In the absence of formal support women have to make do with their own resources, but these resources are often pooled to support each other to tide over risk and uncertainty, as well as unanticipated crises. The best examples are institutions for mutual lending in the absence of formal credit institutions, which can increase women's access to and control over economic resources. Less well known are other informal pooling mechanisms among women that involve sharing of labour resources, mutual help with child-care and care of the sick and old, and mutual help with such essential activities as water and fuel collection⁷. Such support is usually cemented through informal ties of reciprocity and mutual obligations.

Substitutive informal institutions – cell 3:

There are also positive examples of informal institutions that substitute for weak formal institutions in economic and legal areas. *Tontines* operate on the basis of well-known informal norms to ensure access to credit and savings for women who are excluded by gender-blind or biased formal credit norms. A different example is the case of women in the state of Gujarat in India who, when they found themselves treated as second-class citizens by the textile trade unions, formed their own cooperative, the Self Employed Women's Association (SEWA). Started in 1972, SEWA is a membership organisation for women who work in the informal sector, and currently has close to a million members. It provides collective bargaining services, health care, child care, banking, insurance and training to its members. While it is arguable that, at this point, with its clearly specified rules and large membership, SEWA's methods of functioning and the rules by which it operates are no longer informal, however the organisation has had a major impact in gaining normative recognition for women's informal work, their need for child care, the possibility of lending to poor women, and providing them with health and life insurance (<http://www.sewa.org/>).

Yet another example is the *nari adalats* or women's courts in different states in India. When they found that they could not get justice from the male-dominated village *panchayats* (councils), village women created these courts with their own rules, procedures for investigation and evidence in order to provide justice to women in cases of domestic violence, land disputes, dowry, rape and murder. These have become a respected and powerful way by which poor rural women are able to obtain recourse to justice which was otherwise out of their reach. (<http://www.icrw.org/docs/indiainfobulletin.pdf>)

Complementary informal institutions – cell 1:

⁷ This insight has been obtained from field activists in various development programmes over the years.

While finding examples for this scenario is not easy, they do exist. A recent example is the use made of a traditional norm by a gender and health equity programme to improve maternal health in the state of Karnataka in India (Pers. Comm. 2006b). The traditional norm requires that a special social ceremony be performed for pregnant women at the start of the third trimester. Generally viewed as a positive cultural practice, it neatly complements formal maternal health programmes that attempt to raise families' and the communities' concern for the health of pregnant women. In the programme, moreover, the traditional ceremony, usually viewed as a women's ceremony, has been modified so that men are included and take part in honouring their pregnant wives. This has become a way by which men publicly acknowledge their responsibility for the health of the pregnant woman.

Summing up this section, the relationships between formal and informal institutions show considerable variation depending on whether formal institutions exist at all, and if they do, whether they are weak or strong. Strong formal institutions are those where norms are well formulated and clearly specified, and which are backed up by effective organisational mechanisms for implementation, strong leadership, and a favourable structure of incentives to support behavioural change. Real change may also require creative public and media campaigns, and space for women's advocates to play a role.

The nature of the relationship between informal and formal institutions also depends on whether the informal institutions themselves are favourable to or oppose gender equality. While some cultural practices may in fact be supportive of women, many informal norms are harmful. This is particularly so in areas related to physical mobility, bodily integrity, sexuality and reproduction, as well as in norms related to marriage, inheritance and property. On the other hand, women's own informal economic and mutual support institutions and their creativity in developing new institutions where none existed before also generate situations where informal institutions can complement or substitute for formal ones. Policies towards informal institutions must clearly take this variability into account and devise methods that will build on the best, while challenging the harmful. But, in this process, an important prior question that must be answered is why women themselves support informal institutions.

III. *Policy nuancing: women's attitudes to informal institutions*

It is easy enough to understand why women may be strongly supportive of informal institutions that actually meet some of their needs, especially when formal institutions fail to do so, or do so weakly. But why do women sometimes support informal norms that appear to work against them? Women sometimes do so even when such institutions limit their mobility, reduce their life chances, stigmatise and violate them, and subordinate them within power relations.

A number of reasons can be adduced.

1. Women may simply give in if they have no choice because sanctions are too strong, and submission may buy peace or even survival. This may be especially true in areas involving physical mobility, sexuality or reproduction.
2. Women may themselves reproduce informal institutions because this gives them status despite being painful or dangerous. Danger and even degradation may be in the eyes of the beholder, not women themselves. This has been discovered to be true for female genital mutilation where women's beliefs are around cleanliness and purity rather than mutilation and disfigurement.
3. Women may tolerate loss of control and agency because they trade this off against economic support especially if their 'fallback position' (Sen 1990) is weak.
4. Women submit to negative norms because it assures their integration into social networks that may be crucial to their own survival and that of their children.

5. Some informal institutions, such as segregation during menstruation or post-partum, may actually give them much needed rest, although to outside observers they may appear to be stigmatising.
6. Women may themselves internalise and believe in the norms that relegate them to secondary and subordinate status; especially if they hold a promise of improvement in status with age.
7. Women may support negative norms as an expression of defiance against the larger society or in solidarity with the community, as in the case of the *hijab* or *niqab* in Europe today.

This range of reasons why women themselves may support negative informal institutions emphasises the need for caution in designing policies to bring about change. Other things being equal, nuanced policies that acknowledge and work with or around these are more likely to be effective.

IV. *Toward more effective policies*

Drawing on the previous sections, it appears that different types of policies to support gender equality may be needed depending on the particular context. Where informal institutions are inimical to gender equality, strong formal institutions will be needed to counter them. If formal institutions do not exist, they have to be created; if they exist but are weak, the effort should be made their implementation more effective. Where informal institutions are not inimical to gender equality, a set of complementary processes should be considered. In all cases, women's own perceptions and needs should be kept in focus; it is important that 'outsiders' not barge into women's lives without checking what women themselves want and why. In what follows, we elaborate on these points with examples drawn from practice.

- i. ***Creating alternative formal institutions***⁸: When informal institutions are harmful to gender equality and women's human rights, the first requirement is to create alternative norms through laws along with international and regional agreements that challenge gender inequality and violations of women's human rights. This may be easier said than done, especially if there is powerful organised opposition to gender equality.

Through a combination of rising labour market participation, the contraceptive technology revolution, and growing democratisation, combined with advocacy by women's organisations, strong global norms to protect and promote women's rights have been created in recent decades. The UN conferences of the 1990s (in particular the Vienna conference on human rights, the Cairo conference on population and development, and the Beijing conference on women) led to the recognition of women's human rights, going in some key instances (such as violence against women) beyond the articles of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). (Antrobus and Sen 2006)

At the same time, a backlash against these advances has also emerged in the form of powerful alliances at global and national levels (Sen 2005). The strongest and most committed forces countering such a backlash at both national and international levels are women's movements alone or in alliance with others (Sen 2006). However, the challenges they face include having to negotiate complex trade-offs when making alliances. Those countries in the North that support women's human rights (in the sense of personal freedoms) most vociferously at the international level do not equally support women's economic and social rights (Sen and Correa 1999). Nevertheless, advances can be made provided women's movements have the strength and capacity to do so, and are supported by their governments.

⁸ This discussion applies especially to the kind of situations in cell 6 of Figure 1 above.

What can policy makers do in such complex situations characterised by cultural and religious beliefs, and multiple actors, and compounded by difficult economic and political circumstances? The cardinal rule is that there must be local groups of advocates who can play a strong role. In many situations women's organisations or human rights groups can do so. Others, especially external actors and agencies, can only follow their lead while providing support of different kinds – financial, technological and moral. Usually, reform will take a long period of preparation especially if there is an organised conservative opposition that can use the threat of reform as a way to mobilise atavistic fears on cultural, religious or masculinist grounds. Support should be provided to local organisations for the long haul. In the meantime, capacity building among government officials, judges and parliamentarians can be valuable against the day when change can happen. With patience, change happens even in the most difficult circumstances as the examples below illustrate.

Example: FGM in Egypt

FGM is generally agreed by researchers to be a social custom, not a religious practice per se, and has probably been performed for at least 1,400 years if not longer. The Koran and the Old and New Testaments of the Bible are silent on it. However a number of fatwas supporting the practice have been issued by the influential Egyptian Fatwa Committee since as far back as 1949. But the pressure for progressive change has also been strong. This gained momentum from the 1970's onwards, and particularly around the International Conference on Population and Development (ICPD) held in Cairo in 1994. Mohammed Tantawi, the head of the prestigious Al-Azhar Islamic Institute declared the practice to be un-Islamic. Following this, the Egyptian Health Minister banned FGM in July 1996, and this was upheld by a junior administrative court in Cairo. In June 1997 an Egyptian court overturned the ban on a petition by a group of Islamic scholars and doctors that it overstepped the government's authority and violated the rights of doctors. The government then appealed the case to Egypt's Supreme Administrative Court which ruled that the operation is not required by Islam, and that "female circumcision is not a personal right according to the rules of Islamic Sharia (law)." The government prohibited the procedure but allowed gynecologists to approve the surgery if it is needed for health reasons!. (http://www.religioustolerance.org/fem_cirm.htm) This has been criticised by activists as medicalising the practice without really eliminating it. Infections following such an operation, often carried out in unhygienic circumstances, are common and can lead to sterility, severe dysmenorrhoea and complications during childbirth, and this can be used to justify having it done by doctors. But loss of pleasure during sex as well as many of the other complications result from the operation regardless of the conditions under which it is done.

According to the 1995 Egyptian Demographic and Health Survey, 97% of married Egyptian women had been circumcised and 82% supported the practice. How to make even an inadequate law work effectively in the face of such a pervasive social norm? Anti-FGM activists have attempted to mobilise as many allies as possible, and this has received support from different quarters.

In 2005, "in a symbolic attack on the widespread practice of female genital mutilation (FGM) in Egypt, religious leaders and gender activists ... signed a public declaration calling for an end to FGM, in the hamlet of Abou Shawareb, near Aswan in southern Egypt...UNDP was a sponsor of the signing ceremony...The anti-FGM declaration was part of a programme called "The FGM free Village Model." The campaign was established in 2003 by the National Council for Childhood and Motherhood (NCCM), UNDP and various other donors. The purpose was to counteract community and cultural pressures that led to FGM and to eliminate the practice in 60 villages within the six governorates of Assuit, Aswan, Beni Suef, Minya, Quena and Sohag in Upper Egypt. After two years, the project's use of various education and training approaches reaching out to families, health workers and religious leaders, has made inroads. According to UNDP, the community of Abou Shawareb was able to overcome cultural pressure and convince families not to circumcise their girls and symbolically declare themselves an FGM-free village...Since the mid 1990s, the government has actively campaigned to end the practice of FGM with information and education campaigns and the incorporation of the topic into school curricula. In 2003, the Egyptian First Lady, Suzanne Mubarak, threw her weight behind the issue by launching the "Egyptian Girl" campaign, which sought to end all forms of violence and abuse, including FGM, aimed at young girls. On a larger scale, the FGM free village model project has established a mechanism to coordinate a national movement against the practice under the umbrella of the NCCM and to incorporate hundreds of Egyptian volunteers working to end FGM."

http://www.irinnews.org/report.asp?ReportID=47824&SelectRegion=Middle_East&SelectCountry=EGYPT)

Example: Change in Pakistan's Hudood Ordinance

According to the Human Rights Commission of Pakistan, there is a rape every two hours and a gang rape every eight hours in the country. The promulgation of the Hudood Ordinance in 1979, as mentioned earlier, has to be seen in this context, and is generally recognised as a political ploy by President Zia ul Huq to win the favour of the fast-growing conservative political parties. The small but articulate women's movement together with the human rights movement in Pakistan has been struggling for change in a political situation made increasingly complicated by the wars in Afghanistan and Iraq. Their efforts have recently borne fruit with the passing by the National Assembly and the Upper House of the 2006 Protection of Women Bill, which transfers the jurisdiction over rape cases from sharia to civil courts. It also makes it easier for a woman to prove a rape allegation without being charged for adultery. Although consideration of the Bill had to be postponed earlier because of Islamist opposition, spearheaded by the Muttahida Majlis-e-Amal (MMA), an alliance of six fundamentalist parties, it is now expected that President Musharraf will sign it into law.

It is not clear how far the government is genuinely committed to Ataturk-style reform, and how much it is bending to American pressure to reduce the role of Islam in government. However the government itself sees this as only a beginning and there is hope therein for women's groups who demand full repeal of the Hudood laws. On the other hand, the story is far from over with a number of clerics denouncing the new Bill as "un-Islamic, immoral and unconstitutional"

<http://www.gulfnews.com/world/Pakistan/10086204.html>

Example: Abortion Law Reform in Nepal and Colombia

Despite the recent action in Nicaragua, there has been a worldwide trend towards liberalisation of abortion legislation. In March 2002, after a seven year long campaign by NGOs and government officials, Nepal's parliament legalised abortion up to 12 weeks of pregnancy and as late as 18 weeks in cases of rape or incest. Abortion had been banned completely for any reason in Nepal, and an illegal abortion was a criminal act, as a result of which a number of women have been imprisoned over the years for long prison terms. At the time of the new legislation, illegal abortion accounted for around half the very high maternal mortality in the country. Furthermore, the new law is linked to provisions banning child marriage and polygamy and granting some property rights to women.

<http://www.guttmacher.org/pubs/tgr/05/2/gr050213.html>

Abortion law reform has been near the top of the agenda of Latin American women's organizations for a number of years. Colombia was until recently a country where abortion could not be performed under any circumstances and an illegal abortion could land both the woman and the provider in prison for up to four years. Considerable public sympathy was generated by the case of a pregnant woman who could not start cancer therapy for ovarian cancer because she was not allowed to have an abortion. Public interest litigation resulted in a historic decision by the country's Constitutional Court in favour of decriminalizing abortion when a woman's life or health is in danger and in cases of rape or fetal abnormality incompatible with life outside the womb.

<http://www.reddesalud.org/english/sitio/info.asp>

In each of the successful examples above, there was virulent opposition to the change in the norms. In every case, women's organisations and their allies had to prepare the

ground over many years, and even then, the results were not certain and there were many flip-flops. In each case the government had to step in on the side of reforms, either through a powerful leader or through action by a superior court. The motivation of leaders may be ambivalent, but this may be inevitable since a politician will always have to consider the political benefits and costs of any action. What is critical, given such contexts, is the tenacity of women's organisations, and their ability to build alliances. The policy lesson in such cases is to create the space for them to play this role, and to support them to be able to function effectively. Sensitisation and training of government personnel including judges and politicians can also be essential.

- ii. ***Making existing formal institutions more effective***⁹: While creating alternative formal norms may be the necessary first step, this may not be sufficient in a number of circumstances. Many of the cases cited in the discussion of cell 4 of Figure 1 above belong to this category. Formal norms exist but they are either poorly framed or badly implemented. Indeed, in many contexts, passing formal laws may be easier than ensuring that they are implemented effectively. In democratic environments, political parties and public actors have sometimes to take progressive positions on gender equality and women's rights for historical cum political reasons, but they may do so without real commitment. Such positions, whether they take the form of public statements or actual laws, can sometimes come about even without the participation or advocacy of civil society organisations or activists. At other times, the formal passing of laws is a way for the government to appear to be doing something without taking any real action. India, for instance, has a number of examples of such laws favouring women and gender equality. The first gap is usually one of poor formulation of the law itself, such that it becomes difficult to implement in a meaningful way.

Example: Domestic Violence Bill in India

An example of poor formulation of a formal norm was the early draft in 2002 of India's Domestic Violence Bill, which left many loopholes including lack of recourse for a woman who may be thrown out onto the streets by a violent husband if she dares to challenge him using the law. As a result of strong lobbying by women's groups, and effective re-drafting by feminist lawyers, the draft was changed, and a considerably improved Act has recently come into force as the Protection of Women from Domestic Violence Act 2005. Both physical and verbal abuse can lead to charges, and the rules also ban husbands from harassing their wives for larger dowry payments. The Act uses a broad definition of violence to include beating, slapping, punching, forced sex, insults or name-calling. Preventing wives from taking up a job or forcing them to leave are also covered.

The Act allows abused women to complain directly to judges instead of police, who usually side with men and rarely act on complaints. Now, when a woman files a complaint the onus is on the man to prove that he did not abuse his wife. The law also ensures the woman's right to stay in the family home, regardless of whether or not she has any title in the household.

The Act covers not only wives and live-in partners, but sisters, mothers, mothers-in-law or any other female relation living with a violent man. As such, it is one of the most progressive pieces of legislation on this subject to date.

http://www.combatlaw.org/information.php?issue_id=25&article_id=633

⁹ This discussion applies to the situations in cells 4 and 2 of Figure 1.

In addition to poor formulation, there can also be other reasons for poor implementation. In a perspicacious essay on implementation failures, Kabeer and Subrahmanian (1999; pp 340-351) argue that,

“...a particular source of failure results from the ways in which policies are often perceived, both in the communities in which they are implemented as well as by those responsible for designing and implementing them...(A) major source of ‘misbehaviour’ ...is linked to the gender dynamics within the implementing agency itself...The experience of the past decades suggests that while considerable progress has been made in winning policy commitment to gender issues by those in the central decision-making core, this has not necessarily resulted in gender-equitable outcomes lower down the policy process...There are (similar) examples...of implementation failure from the experience of international agencies as well...(F)ailure to carry out the realignment between goals, on the one hand, and rules and practices, on the other, considerably slowed down the ability of these organisations to implement their commitment to integrating gender concerns into their activities....However, even where appropriate rules and adequate resources are in place, this will not necessarily guarantee the success of gender-related policy. What is critical is also the beliefs and values of the people responsible for implementation. Power may be officially concentrated within the central policy-making core of an organisation but staff located at mid and lower levels can ignore, dilute or alter the spirit of its policies and systematically make or break implementation...What is specific to the resistance to gender-redistributive policies is the fact that both policy makers and implementers in these organisations tend to be predominantly men...Gender-redistributive policies thus impinge directly on the personal beliefs and values, relationships and identities of those who formulate and implement policies to a degree that no other transformatory strategy does...When policies which seek to redress culturally-sanctioned inequalities have to be implemented by individuals who themselves have been beneficiaries of these inequalities, then implementers are critical stakeholders in the policy process along with members of the community that will be affected”.

Any organisation can be peopled by what Lotherington et al (1991) call *innovators, loyal bureaucrats, hesitators and hardliners*, and the direction of implementation may well depend on the numbers and strengths of each group. Resistance to gender-equal policies may take the form of trivialisation, dilution, subversion or outright resistance. (Kabeer and Subrahmanian, 1999 pp 349-350) An important counter to this can be strong monitoring indicators that include women’s own assessment of the impact on their well-being. This can help foster better understanding by outsiders of how women themselves view the process of change, and allow them to become agents themselves of that process. In doing so, women can begin to shape the speed and direction of change, and thereby, the issues raised in the previous section on **Policy Nuancing** can be addressed. Well-crafted gender-aware indicators can fulfil multiple functions, as “*signal* to all actors involved in the intervention, as *constant reminder* during the life of the intervention, as *measure of performance* in the achievement of gender-aware goals and objectives, and as a *tool* for analysing shortfalls” (Kabeer and Subrahmanian, 1999, p 352).

In addition to indicators, however, the resistance identified above means that the task of awareness raising needs to focus as much if not more on policy implementers, and male power holders as it tends to do on women. Indeed, despite what was said earlier about the reasons for resistance from women, the real resistance often comes from the former. At least one view of the resistance to reform on FGM in Egypt argues, contrary to a popular perception that women are the ones who both perpetrate, value and sanction the

practice, that greater attention should be paid to the role of men.¹⁰ In recent years, and especially as a consequence of the highlighting of male responsibility in reproductive and sexual health programmes, involving men in programmes for gender equality has become fashionable. Yet this has itself sometimes been ‘sanitised’ by programme implementers to mean focusing on male condoms and no-scalpel vasectomy, rather than addressing the power men exercise over the social norms that govern women’s lives and choices!

Despite these forms of resistance, persistent efforts can move an initiative forward towards better implementation.

Example: India’s 73rd Constitutional Amendment – Quotas for Women

The 73rd Amendment to the Indian Constitution, as mentioned earlier, reserves a third of village council seats for women. Where this has been weakly implemented, subversion of the intent of the process has occurred as mentioned before. However, where it has been strongly implemented, and where civil society engagement has been active, this measure has been rightly lauded as one of the strongest reform measures to change the pre-existing norm whereby women were not expected to exercise political power, and therefore had very little representation in political bodies. Women’s organizations have been active in training elected women to play their roles more effectively. Over a million elected women representatives have been learning to run village councils, exercise authority over budgets, and set priorities (Vyasulu and Vyasulu 1999).

iii. **Supporting complementary or substitutive informal institutions¹¹**

As discussed earlier, there may be situations where informal institutions favour women but are far from being formalised. In recent times, we know of at least two important examples where efforts that started within civil society have been picked up and become part of the formal system. The most well-known of these is the micro-credit revolution that built from the work of organisations like the Grameen Bank in Bangladesh that challenged the existing norms that held women as unworthy of credit, and showed a new way forward, by using the idea of group-guaranteed credit to create new norms. The other example is less well-known but led to the formulation of an ILO Convention.

¹⁰ The Egyptian FGM Task Force conducted a set of interviews with a cross-section of men to explore “men’s understandings of masculinity, femininity, sexuality, marriage, and human relationships revealed profound miscommunication between men and women...Men possess limited knowledge about FGM but hold strong opinions about whether or not their social dependents (sister, wife, daughter) should be circumcised- *men are the principal decision-makers in the question of whether or not to circumcise their children (my emphasis)*; most respondents favoured circumcision... men’s main reason for supporting circumcision was that it would diminish women’s overwhelming sexual desire which threatens male status” (WIN News 2001).

¹¹ This addresses the issues relevant to cells 3 and 5 in Figure 1.

Example: ILO Convention 177 on Home (Based) Work

Years of exhaustive preparation and advocacy spearheaded by the Self Employed Women's Association (SEWA) led to the adoption in 1996 of ILO Convention 177 on home based work. This was the first comprehensive international standard in favour of homeworkers, a growing and often invisible workforce that is largely unrecognized in labour statistics and unprotected by legislation. A new norm was thus formalized acknowledging as work the labour of the overwhelming majority of women workers. "The Convention obliges any ratifying member State to "adopt, implement and periodically review a national policy on home work aimed at improving the situation of homeworkers." The policy is to be developed in consultation with employers and worker organizations and other organizations concerned with homeworkers. The national policy on home work shall seek to "promote equality of treatment between homeworkers and other wage earners" in such areas as the right to organize, protection against discrimination, remuneration, occupational safety and health, social security and maternity protection, and training.

However, home work is an activity that largely escapes administrative control. The ranks of the low-paid and frequently clandestine force of homeworkers are growing in developing and industrialized countries alike. Women account for the vast majority of homeworkers (as much as 95%) and child labour is often associated with home work. The ILO Convention also calls on governments to include homeworkers in labour statistics and labour inspection systems. An ILO Convention, once ratified by a member State, creates a binding international obligation.

The Convention on Home work is supplemented by a Recommendation, which sets out specific internationally agreed provisions designed to serve as guidelines as to how the national policy on home work should be implemented. The provisions in the proposed Recommendation call for equal treatment and registration of homeworkers. Collection of data on homeworkers and employers of homeworkers, are mainly intended to provide a basis for the national policy on home work. Finally, member States are called upon to promote and support programmes, which provide direct assistance to homeworkers. A whole range of such programmes are enumerated and they cover a wide range of means to improve the social and economic situation of homeworkers." (<http://www.ilo.org/public/english/bureau/inf/pr/1996/22.htm>)

Sadly, the Convention, which came into force in 2000, has only been ratified by five countries to date – Albania, Argentina, Finland, Ireland and the Netherlands. This is in many ways a classic case where governments have not followed up pronouncements with action.

The example given above suggests a policy direction that involves supporting the formalisation of gender equality enhancing norms that originate in the NGO sector.¹² But this can be a slow and uncertain process. Might it be appropriate to support substitutive informal institutions in situations where formal institutions for gender equality are unlikely to develop in the short or even medium term? Further questions are raised by this. Might support for substitutive informal institutions delay or even prevent the development of formal ones? Will such policies let the state and policy-makers off the hook? What risks might this entail? Could such accommodation result in enshrining informal norms and practices that have only limited potential for gender equality? Where should the line be drawn? These questions are still open ones and need to be debated more intensively.

Many of the examples above provide illustrations for how policy actions can be taken. The broad lines include challenging negative informal institutions by creating alternative formal norms, and making their implementation effective, as well as supporting the transformation of positive informal institutions into formal ones. However, in addition, the core requirements for policy

¹² Although our definition of formal norms earlier had indicated that formality has to do with formal rules and procedures rather than the locus of the organisation (state, market or civil society), it is nonetheless true that there exist degrees of formalisation. Ultimately, recognition by the nation state or official international bodies provides the final stamp for formalisation.

effectiveness remain the same as in other situations - changing the public discourse, support through incentives and sanctions, appropriate funding, institutional placement, and enforcement of accountability. Without these, no policy action can be effective. At the same time, caution must be exercised in remembering that gender norms are very closely woven into women's own lives and their needs and responses must be central in whatever actions are taken.

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