

WORDS & DEEDS

Holding Governments Accountable to the Beijing +30 Review Process



Sex Discrimination in Marital Status Laws

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About Equality Now

Since 1992, Equality Now has worked to protect and promote the rights of women and girls around the world by combining grassroots activism with international, regional, and national legal advocacy. We campaign to achieve legal and systemic change that benefits all women and girls and work to ensure that governments enact and enforce laws and policies that uphold their rights. Our campaigns center on four program areas: Legal Equality, End Sexual Violence, End Harmful Practices, and End Sex Exploitation, with a cross-cutting focus on the unique needs of adolescent girls.

Our advocacy has resulted in the repeal of over 50 sex discriminatory laws, including recently in Syria, Switzerland, Lebanon, and Jordan. We have been instrumental in the enactment of laws against all forms of violence against women, including rape, sex trafficking, and harmful practices such as child marriage, “honor” crimes, and female genital mutilation. As a global organization, Equality Now has offices in the USA (New York), Africa (Nairobi), Europe (London), and MENA (Beirut), and partners and members all around the world.

 info@equalitynow.org

 equalitynow.org

 facebook.com/equalitynoworg

 instagram.com/equalitynoworg

 [@equalitynow](https://twitter.com/equalitynow)

About Words and Deeds

The 4th UN Conference on Women in 1995 was the birth of The Beijing Platform for Action, the most progressive blueprint ever for advancing women's rights. Governments around the world pledged to change or remove their existing unfair laws and make legal equality a reality. But that goal is far from being realized.

Only 12 out of 190 economies surveyed by the World Bank in 2022 had achieved legal equality and a typical economy only grants women 75% of the same rights as men.

Income inequality and gender inequality are intimately linked, and it's not an exaggeration to say that inequality kills. Sexist laws and gender stereotypes during the COVID-19 pandemic have perpetuated economic violence against women and exacerbated physical domestic violence. To stop COVID related inequality from killing women and other vulnerable people and instead put both gender and income equality first, States must get rid of all discriminatory laws.

Every five years since 1999 Equality Now has highlighted explicitly sex discriminatory laws that need to be reformed in our Words and Deeds report. As we approach 30 years since The Beijing Platform for Action, this first in a series of briefs explores the impact of sex discrimination in marital status law and what still needs to change.

MARITAL STATUS LAWS

What is the issue?

Sex discrimination in marital status laws renders women and girls subordinate in many aspects of family relations before, during, and after marriage.

According to the World Bank's Women, Business and the Law 2022 report:

- In **89** economies around the world, legal reforms are needed to strengthen women's agency and decision-making within marriage:
 - In **17** economies, a married woman is **required by law to obey her husband**.
 - In **28** economies, the husband is legally designated as the **head of household**.
 - **46** economies across the world still restrict a woman's **right to obtain a divorce**, and **two** economies still do not permit legal divorce (Eswatini and the Philippines).
 - **68** economies do not give women equal **rights to remarry**. Remarriage rights are restricted with waiting periods varying from 90 to 365 days before contracting a new marriage are imposed on women but not on men.



What is the impact on women and girls?

Sex discriminatory marital status laws can result in:

- **Girls being married off** at a younger age than boys and facing potentially lifelong harmful consequences.
- **Women in polygamous marriages facing severe losses**, including inheritance rights, and potentially fatal health problems such as HIV/AIDS due to their husband having multiple sexual partners.
- If women and girls are required under the law to **"obey"** their husbands and/or male guardians, they may be subjected to **violence, including marital rape, and be prevented from leaving the home, working, choosing where to live, making their own reproductive choices and be treated less equally by other family members**.
- If women and girls cannot divorce as easily as men, they may be **trapped in abusive marriages** and when they do divorce they **may face losing custody of their children**.
- Men may be designated the "head of household," subordinating women and unilaterally making decisions, determining, for example, where the family lives, how money is spent, the size of the family, etc.

The UN Working Group on discrimination against women and girls has highlighted that **failure to ensure the equality of women and girls within the family undermines any attempt to ensure their equality in all areas of society**. In its 2018 report to the Human Rights Council, the UN Working Group emphasized that "equality in the private domain — the family — remains one of the biggest hurdles to achieving gender equality."¹

What needs to change?

States should take immediate steps to end discrimination against women in family laws (sometimes contained in "personal status" laws) and practices to respect, protect and realize women's and girls' rights to equality in the family regardless of the source of family law, be it codified, religious or customary.

¹ Report of the UN Working Group on the issue of discrimination against women in law and in practice (2018); <https://undocs.org/A/HRC/38/46>



CHILD, EARLY & FORCED MARRIAGE

What is the issue?

Almost a quarter of the world, 24% of countries, allow girls to be legally married off at a younger age than boys with parental consent, as of January 2019, according to [WORLD Policy Analysis Center](#).² Forced marriage occurs when a spouse does not give free and full consent to it. It is sometimes even sanctioned by laws allowing male guardians to “consent” on behalf of the woman or girl.

Before the COVID pandemic, child marriage affected nearly **12 million girls each year**, with lifelong consequences. The pandemic has exacerbated this human rights violation, and now there is a risk of an estimated **10 million more child marriages over the next 10 years**.

What is the impact?

Being forced into marriage is being forced into sex and subjected to rape, possible forced pregnancy, and forced motherhood, often with long term physical consequences for girls’ young, under-developed bodies; consequences include reproductive health complications such as fistula that might lead to her being deemed unfit to be a wife, and discarded and abused. The mental anguish and effort to protect herself from rape, alongside the perception of her as property, too often lead to further physical and mental domestic violence.

What needs to change?

To help achieve an end to child marriage, States must implement the Beijing Platform for Action, particularly paragraphs 274(e) and 275(b), which call on States to “**enact and strictly enforce laws concerning...the minimum age for marriage and raise the minimum age for marriage where necessary**” and “generate social support for their enforcement.”

² World Policy Analysis Center, Is there a gender disparity in the legal age of marriage?; <https://www.worldpolicycenter.org/policies/is-there-a-gender-disparity-in-the-legal-age-of-marriage/is-there-a-gender-disparity-in-the-minimum-legal-age-of-marriage-with-parental-consent>

Discrimination in marital ages

Equality under the law means that adults should be allowed to **freely marry at the same age**, without regard to sex or gender. If there is a disparity in legal ages between girls and boys or men, it should be **leveled up to 18**, the definition of an adult under international law.

Prohibition

Laws prohibiting marriage under the age of 18, without exception, for both girls and boys are needed.

- Although the law alone will never be enough, [UN Women](#) and others have clearly shown a correlation between a higher minimum age of marriage and a lower prevalence rate of child marriage.
- [Research](#) from Sub-Saharan Africa shows, for example, that the prevalence of child marriage was 40% lower in countries with consistent laws against child marriage than in countries without such laws.
- Research in [Sri Lanka](#) has shown that when the general law was amended in 1995 to set the minimum age of marriage at 18 (which did not apply to the Muslim community), rates of child marriage dropped significantly for all communities in the country except Muslims, who were not protected by the law.

A law prohibiting child marriage need **not necessarily be focused on criminalization and prosecution** (and never of the child or children involved), but rather on making explicit the States' and societies' understanding that young people need time to understand their independent circumstances before entering into a lifelong contract that will affect many aspects of their lives. It protects young people from being forced into marriage, and for girls, from being married off to older men as a transfer of property, to settle scores, save the family "honor," or establish inter-family ties. As well-noted by the UNFPA-UNICEF Global Programme to End Child Marriage, a country's context must be considered when determining the [level of prohibition](#) so long as the rights of girls are protected and promoted above all. And no matter the type of prohibition in the law, effective implementation of the law is crucial to have an impact.

As a member of Girls Not Brides,³ Equality Now has consistently [called on governments](#) to raise the minimum age of marriage to 18 without exceptions.⁴ There should be **no exception for religion, custom, tradition, parental or judicial consent, pregnancy, or any other reason**. For example, in November 2019, Palestine raised the minimum age of marriage from 16 for boys and 15 for girls to 18 for both boys and girls. While this is great progress, the law still allows for exceptions to be authorized by a court. In practice, this means girls may still be married off at a young age - women's rights organizations in Palestine continue to work to change this.

Harmonization

In 2018, a UN General Assembly resolution urged States for the first time to adopt minimum age of marriage laws of 18 and to ensure "coherence of these laws and policies at the local level."⁵ This was also reflected in a [joint CEDAW/CRC General Comment](#) on harmful practices in 2019.

In some countries, there is no federal or uniform law on marriage that applies to all. In the United States, for example, there is no **federal law** on child marriage, and the minimum age of marriage is left to each of the 50 states to decide, 43 of which have ages below 18 or allow for exceptions to the age of 18. In addition, several US states allow girls to be married off at a younger age than boys.

In many countries, the minimum age of marriage under the law applies only to civil marriages, not to customary or religious marriages. Family, personal, customary, and religious laws or practices often condone child marriage, leaving girls unprotected. As noted by the joint [ACHPR/ACERWC General Comment](#), the prohibition of marriage under 18 should be without exceptions and should apply to all forms of marriage. For instance, in [Zimbabwe](#), the [new Marriages Act passed in 2022](#) prohibits the marriage of children under 18 years of age in civil marriages and unions as well as customary law unions.

³ <https://www.girlsnotbrides.org/>

⁴ Equality Now, *Protecting the Girl Child: Using the Law to end Child, Early and Forced Marriage and related human rights violations*; https://www.equalitynow.org/protecting_the_girl_child_using_the_law_to_end_child_early_and_forced_marriage_and_related_human_rights_violations

⁵ United Nations General Assembly, Resolution adopted by the General Assembly on 17 December 2018; https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/153

Informal Unions

In some regions like Latin America and the Caribbean, children may enter into informal unions (characterized by cohabitation without legal registration of marriage). Girls in informal unions face similar consequences and impacts as those in child marriages and may also be excluded from certain legal rights available through marriage, such as property rights, birth registration for any children, food allowance, and social support.⁶ It is crucial that national policy responses utilize a multi-sectoral approach to address and prevent both child marriage and informal unions of children under 18 and include measures to improve access to education, sexual and reproductive health support, access to justice for sexual violence, access to services, and programs against sexual violence, etc. for girls and to address systemic causes which lead to child marriage and early unions.

Consent to sex

Equality Now believes that, consistent with international and regional law, the minimum age of marriage should be 18, no exception. A child cannot consent to marriage; it is essentially a contract (whether under codified, religious or customary law) with many human rights and legal ramifications. An adult (often a male guardian), including a judge, should never be able to “consent” on behalf of a child, or a grown woman, for marriage. Consistent with international law, “free and full consent” must be given by both parties to marriage.

However, the minimum age of consent to sex should not be conflated with the minimum age of marriage, as these need not necessarily be aligned. Pegging the minimum age of consent to sex at 18 without exceptions for consensual sexual activity between peers may be counter-productive, limit the agency of adolescent girls, and negatively affect adolescent health and wellbeing and efforts to attain gender equality.⁷ As recommended by the Committee on the Rights of the Child’s General Comment on adolescence, **States should not criminalize adolescents of similar ages for consensual, non-coercive and non-exploitative sexual activity.** Children should have access to comprehensive sexuality and relationship education and reproductive rights and services.

A Comprehensive Approach

A comprehensive, multi-sectoral approach to ending child marriage, including in the law itself, is key.

Essential components of a comprehensive legislative and policy approach to child marriage include:

- clear prohibition of marriage of children under 18 applicable equally to boys and girls, with no exceptions, that is harmonized across constitutional, civil, family, and customary law and applicable across communities;
- right to services and health, including sexual and reproductive health and rights, comprehensive sexuality education, access to safe shelters, and psychosocial support
- right to education (including equal access for pregnant girls);
- right to information, expression, privacy, and confidentiality;
- access to justice, and effective implementation of legal prohibitions of child marriage through a multi-sectoral approach of engagement and coordination of key state and non-state actors,
- protection from violence and exploitation;
- mandatory civil registration of births and marriages;
- awareness-raising and education campaigns using a human rights and gender approach, and
- child- and gender-responsive budgeting, include adequate allocation of resources to address child marriage and economic empowerment programs.⁸

⁶ Girls Not Brides, Child, Early and Forced Marriages and Unions in Latin America and the Caribbean, July 2020, <https://www.girlsnotbrides.org/documents/947/Child-early-and-forced-marriages-and-unions-in-LAC.pdf>

⁷ See Suzanne Petroni, Madhumita Das, Susan M Sawyer, Protection versus rights: age of marriage versus age of sexual consent, 2019, [https://www.thelancet.com/journals/lanchi/article/PIIS2352-4642\(18\)30336-5/fulltext](https://www.thelancet.com/journals/lanchi/article/PIIS2352-4642(18)30336-5/fulltext)

⁸ See UNICEF, *Child Marriage and the Law*, Technical Note from the UNFPA-UNICEF Joint Programme to End Child Marriage, <https://www.unicef.org/documents/child-marriage-and-law>; Report of the United Nations High Commissioner for Human Rights, *Progress, gaps and challenges in addressing child, early and forced marriage, and measures to ensure accountability at the community and national levels, including for women and girls at risk of and those subjected to this harmful practice*, A/HRC/50, May 2022.



The Southern African Development Community (SADC) has developed a comprehensive *Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage*, specifically intended to “trigger policy reforms and development of substantive laws” based on international human rights standards and research on best practices. It includes strong sections on **prohibition** of betrothals and child marriage, measures and interventions to **prevent** child marriage and mitigate the effects of child marriage, and general provisions on offenses and **enforcement**. Though the SADC Model law has led to a review of child marriage legislation in a number of countries, a lot more needs to be done to ensure full domestication and adoption of the law by SADC member states.

Legal provisions on many intersecting issues, including bride price/dowry; statutory rape laws that are circumvented through marriage; availability of child protection services when escaping child marriage; nationality laws; laws on GBV, sex trafficking, and female genital mutilation; legal requirements for registration of birth and/or marriage; and, schooling for girls must also be examined so that all are laws and policies are aligned and working in unison to benefit girls and to prevent child marriage.

Together, we must ensure that no child, anywhere, becomes a bride or groom under legal contract, resigned to a life in bondage, including under customary or religious law or social contract, no matter what the age of consent to sex may be.

SURVIVOR STORIES

Child, early, and forced marriages can have severe life-long consequences for girls forced into such marriages. Explore these first-hand narratives from survivors of child marriage to hear their voices and understand their experiences:

Kesane's Story, Georgia

Equality Now & Goga Khatiashvili, *Courage: Survivors of child marriage share their stories*

Kesane was 15 years old when her boyfriend of two months kidnapped her. Her family did not report this to the police. Although her parents brought her back home, she was still forced to marry this man to save her "honor." After the marriage, Kesane's husband forced her to give up her studies and social life and abused her physically.

"Even in jails, prisoners do not have the conditions that my husband had created for me. If the house had caught on fire, no one would have ever been able to rescue me."

Carol's Story, United States

Unchained at Last, Survivor Stories

Carol was just 14 when she was threatened and coerced into marrying the 20-year-old man who stalked, raped, and impregnated her.

"We stood before a judge, and he married us. The two secretaries were my witnesses, and no one questioned the 14-year-old crying profusely. When we left, my then-husband said, "Now for sure, you are mine!" On the way home, he took me to my school and told me to go inside and quit. I was a married woman now, so no need for school. That was the longest walk of my life. Crying, I went in all by myself to withdraw, and no one questioned it."

A Bride with a Doll, Jordan

Arab Women Organisation (with support from Equality Now), *A Bride with a Doll*

This video tells an emotional story about child marriage from the perspective of a 14-year-old child bride from Jordan.

*"My body couldn't take it; he would force me. I got sick a lot and didn't know why. I was confused. I didn't understand what marriage was or what was happening. I didn't know this is how we come into this world. **They told me I was carrying a baby while I was still carrying this doll.**"*

Ngalali's Story, Tanzania

When Ngalali, a member of the Massai people in Tanzania, was 13, she made a decision that saved her life. Thanks to the enforcement of Tanzania's law, which still needs amendment to prevent child marriage of all girls under 18, Ngalali was spared a very different future than the one she envisioned for herself.

"The night they came to negotiate my bride price, my father said to my mother, "Why don't you convince her to marry that man?" I went to bed. At six o'clock the next morning, I ran away... Eventually, my father agreed to pay for my education and let me choose who I married. But I was scared that if I went home, he would beat me... My father was scared because he knew there was a law against child marriage and that the police could take action if he was caught."

DISCRIMINATORY MARITAL STATUS LAWS - RIPE FOR REFORM

Below are **examples** of laws that must be amended or repealed, as highlighted in our 2020 report, *Words and Deeds: Holding Governments Accountable in the Beijing +25 Review Process*, and a few examples of progress made since 2020.

Child, Early & Forced Marriage



CUBA: AMENDED! Article 3 of Cuba's Family Code provides that girls may be married off as young as 14 years old while requiring a boy to be at least 16 years old. On 25 September 2022, a successful referendum was held on progressive amendments to the Family Code, including eliminating exceptions to the minimum age of marriage of 18.



DOMINICAN REPUBLIC: AMENDED! Article 144 of the Dominican Republic's Civil Code allowed girls as young as 15 years old to be married off but protected boys younger than 18 from entering into marriage. On January 6, 2021, President Luis Abinader enacted and published a law and issued a decree banning marriage below the age of 18. We hope that the government will take further measures to discourage informal unions between adults and children, which are also common in the Dominican Republic. [More information in Spanish can be found here.](#)



TANZANIA: Sections 10(2), 13(1), and 15 of Tanzania's Law of Marriage Act of 1971 allow men to contract polygamous marriages and permit the marriage of 15-year-old girls, while the minimum age of marriage for boys is 18.

UPDATE: On October 23, 2019, the Tanzania Court of Appeal [upheld the landmark 2016 ruling](#) by the High Court against child marriage. The High Court ruled that marriage under the age of 18 was illegal and directed the government to raise the minimum age of marriage to 18 for both boys and girls within one year. We must continue to apply pressure to ensure that the Government of Tanzania complies with this important ruling and truly puts an end to child marriage in the country.



MISSISSIPPI: Section 93-1-5 of the Mississippi Code 1972 allows girls as young as 15 years old to be married with parental consent, while prohibiting the marriage of boys under the age of 17. **A judge may waive the minimum age requirement altogether** under certain conditions.

The Mississippi Code applies only to the State of Mississippi. There is **no federal law** applicable to the entire country which prescribes the minimum age of marriage for all persons within the United States.

Although Section 1 of the 14th Amendment to the United States Constitution theoretically provides every person "equal protection of the laws," the US Constitution **does not explicitly prohibit discrimination on the basis of sex**. The **Equal Rights Amendment (ERA)**, which prohibits the denial of equality of rights under the law on account of sex was passed by the United States Congress in 1972 and ratified by the requisite number of states in 2020 but is yet to be incorporated into the Constitution. [Learn more about the potential effect of the ERA on child marriage in the United States.](#)



ZAMBIA: Sections 17 and 34 of Zambia's Marriage Act read together exempt all marriages under any African **customary law** from the minimum age of marriage requirements (normally 21 years) under the law. There is no minimum age of consent to marry under Zambian customary law, as current customary practice allows any girl who attains puberty to get married.

Marriage, Divorce, Polygamy & Wife Obedience

Apart from child, early, and forced marriage, other marital status issues violating the right to equality and non-discrimination in the law itself are highlighted below.

Below are examples of laws that must be amended or repealed.



AFGHANISTAN: Article 123 of Afghanistan's Shia Personal Status Law of 2009 provides that the household's supervision is solely the right of the husband and restricts a wife's right to leave the home.



ALGERIA: Articles 8, 11, 30, 48, 53, and 54 of Algeria's Family Code of 1984 restrict women's rights in marriage by permitting polygamy, requiring a male marriage guardian, barring Muslim women from marrying non-Muslim men, and restricting grounds for divorce for women.



BURUNDI: Article 122 of Burundi's Code of Persons and the Family provides that the husband is head of the family.



DRC: Article 444 of the Democratic Republic of Congo's Family Code of 1987 provides that a husband is head of the household. Laws which allow the man to be designated as the head of the household allow the husband to unilaterally make decisions that may affect the rest of the family, including, for example, where the family lives.



INDIA: Section 6 of India's Hindu Minority and Guardianship Act, 1956, provides that the natural guardian of a Hindu minor boy or unmarried girl is the father, and only after him, the mother. It also provides that the guardian of a married minor girl is her husband.

UPDATE: In August 2022, the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, in its report on 'Review of Guardianship and Adoption Laws' noted the preference given to the father in section 6 of the Hindu Minority and Guardianship Act violates the rights to non-discrimination and equality under Articles 14 and 15 of the Indian Constitution; and recommended urgent amendment of the law to remove the discrimination.



INDONESIA: Article 3(1) of Indonesia's Law No. 1 of 1974 on Marriage permits a man to have more than one wife, polygamy. Women in polygamous marriages may face severe financial loss, including inheritance rights, and potentially fatal health problems such as HIV/AIDS due to their husband having multiple sexual partners.



ISRAEL: Paragraphs 1 and 2 of Israel's Rabbinical Courts Jurisdiction (Marriage and Divorce) Law (5713-1953) cede jurisdiction over marriage to a sex discriminatory religious law, which provides that divorce depends solely on the will of the husband.



JAPAN: Article 733 of Japan's Civil Code prohibits women, but not men, from remarrying for 100 days after the dissolution or annulment of a marriage.

Articles 772 and 774 state that a child conceived by a woman born 200 days after marriage or within 300 days of the end of a marriage shall be presumed to have been conceived during marriage, which may only be rebutted by the husband. These provisions deny a mother the right to have a say in the designation of the child's father in cases when the presumption of paternity is incorrect. In many such cases, women do not obtain a birth certificate for their children due to this provision (as they would be forced to list the "legal father" of the child as opposed to the biological one), and consequently, the child is denied their right to identity.



KENYA: Sections 2, 3, and 6 of Kenya's Marriage Act No. 4 of 2014 allow a man to have more than one wife. Women in polygamous marriages may face severe financial loss, including inheritance rights, and potentially fatal health problems such as HIV/AIDS due to their husband having multiple sexual partners.



LEBANON: Articles 123, 124, and 125 of Lebanon's Personal Status Law of the Catholic Sects, 1949 provide that the rights and duties of parental authority (apart from breastfeeding) are confined to the father and that a mother loses custody of her child upon re-marriage while the same restriction does not apply to the father.

Laws that give preferential right of custody or guardianship over children to the father over the mother discriminate against women and are based on a sex stereotype that views men as superior to women. These laws also limit a mother's ability to make decisions about the upbringing of her own child.



MALAYSIA: Articles 14 and 23 of Malaysia's Islamic Family Law (Federal Territories) Act 1984 allow a man to have more than one wife. Women in polygamous marriages may face severe financial loss, including inheritance rights, and potentially fatal health problems such as HIV/AIDS due to their husband having multiple sexual partners.



MALI: Articles 307, 316, 319, 366, and 373 of Mali's Law No. 2011-087 Relating to the Code of Persons and Family allow polygamy; mandate wife obedience; establish the man as head of the household, and give him by law the sole right to determine the family residence; and prohibit women, but not men, from remarrying for at least three months after the dissolution of a marriage by divorce or death.



SUDAN: Sections 25(c), 33, 34, 40(3), 51, 52, 91, and 92 of the Muslim Personal Law Act of Sudan, 1991 provide that the contract of marriage for a woman shall be concluded by a male guardian, confer different rights in marriage for men and women, and mandate wife obedience.

Impact: In 2021, Noura Hussein, a young Sudanese woman who was sentenced to death for defending herself against her rapist, was finally released from prison. At 17, Noura was forcibly married off against her will to a man who raped her with the aid of three male relatives. When he attempted to rape her again, Noura defended herself. The man died in the ensuing struggle, and Noura was sentenced to death by a Sudanese court. However, the laws in Sudan which allow forced marriage of girls and women continue to remain in effect and need to be amended to prohibit child marriage and ensure women only enter into marriages with full, free, and independent consent.



YEMEN: Article 23 of the Personal Status Act also requires express consent to marriage only if the woman has been previously married. For previously unmarried women (considered 'virgin'), silence is sufficient to indicate consent to marriage. This makes women and girls vulnerable to being forced into marriage.

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AMERICAS OFFICE

NEW YORK | USA

PO Box 7160
New York, 10008-7160
USA
Phone: +1-212-586-0906
Fax: +1-212-586-1611
Email: info@equalitynow.org

AFRICA OFFICE

NAIROBI | KENYA

Bishops Garden Towers, 1st Floor
Bishops Road, Nairobi
KENYA
Phone: +254-20-271-9913/9832
Fax: +254-20-271-9868
Email: equalitynownairobi@equalitynow.org

EUROPE/EURASIA OFFICE

LONDON | UK

PO Box 560
DARTFORD, DA1 9WP
United Kingdom
Phone: +44 (0)7445 699 371
Email: ukinfo@equalitynow.org

MENA OFFICE

BEIRUT | LEBANON

Qubic Square Business Center, Sin el Fil
Daoud Ammoun Street, Office 5 E
Beirut
LEBANON
Phone: 00961-81-405 346
Email: menainfo@equalitynow.org