

# DO OUR LAWS PROMOTE GENDER EQUALITY?

A HANDBOOK FOR CEDAW-BASED LEGAL REVIEWS

UNIFEM is the women's fund at the United Nations. It provides financial and technical assistance to innovative programmes and strategies that promote women's human rights, political participation and economic security. UNIFEM works in partnership with UN organisations, governments and nongovernmental organisations (NGOs) and networks to promote gender equality. It links women's issues and concerns to national, regional and global agendas by fostering collaboration and providing technical expertise on gender mainstreaming and women's empowerment strategies.

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***Do Our Laws Promote Gender Equality?  
A Handbook for CEDAW-Based Legal Reviews***  
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## FOREWORD

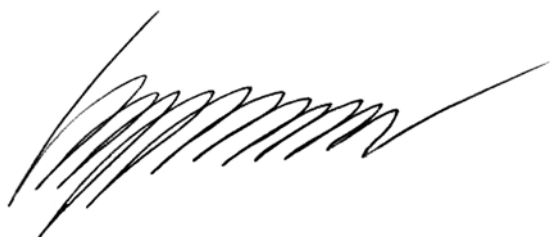
In the past three decades—since the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)—the nations of the East and Southeast Asia region have enacted many laws establishing gender-equality standards and guaranteeing gender equality and non-discrimination. Many discriminative provisions against women in laws have been removed, and new laws that advance women’s rights and combat various forms of gender-based violence, often in ground-breaking ways, have been adopted across the region.

Worldwide, UNIFEM has supported gender equality advocates in Governments and civil society organizations in conducting legal reviews of national laws for compliance with CEDAW and pursuing legal reforms that advance gender equality. In Southeast Asia alone, in the past five years, such reviews were supported through the CEDAW Southeast Asia Programme in Cambodia, Indonesia, the Philippines, Thailand and Viet Nam. These experiences have contributed to building a body of knowledge about the state of *de jure* gender equality. Even more importantly, they have also led, among many other measures, to the adoption of the Gender Equality Law in Viet Nam, the Magna Carta of Women in the Philippines, and amendment of both the Law on Political Parties and Law on General Elections in Indonesia and the Criminal and Civil Codes of Thailand.

Yet ample instances remain of laws that explicitly discriminate against women on the basis of their sex. Many Governments believe that gender-neutral laws benefit women and men equally, while in fact—due to deeply rooted structural, institutional, social, and cultural barriers for women—the opposite is often true. Failure to consider and address gender differences in laws perpetuates gender inequality. Therefore, advocates for gender equality must persist in their endeavour to identify legislation that is inconsistent with CEDAW, propose necessary corrections, and help create stronger legal frameworks for gender equality.

To assist in this compound task, UNIFEM has developed a handbook—*Do Our Laws Promote Gender Equality?*—for CEDAW-based legal reviews, providing practical, step-by-step guidance regarding critical review of national laws, and incorporating a set of indicators developed and tested through actual legal reviews.

It is our sincere hope that this handbook will provide a useful tool for women’s rights advocates in efforts to end discrimination against women in both law and daily life.



Moni Pizani  
Regional Programme Director  
UNIFEM East and Southeast Asia Regional Office

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The author is also thankful to the staff of UNIFEM China and participants in the “Training on Assessing Compliance of National laws with CEDAW” held on 28-30 April 2009, Beijing, China, whose comments contributed to further refining the assessment framework.

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**Rea Abada Chiongson**, February 2010

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Rea is a recognized expert on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and other international standards on gender equality and human rights, and their implementation at the national level. She worked as a consultant in several countries, including preparation of gender equality laws, drafting of State and NGO reports to CEDAW, crafting national strategies on gender equality, conducting gender assessment of laws and policies, incorporating gender into litigation and legal aid work, and training programmes on gender equality to governments, experts, NGOs and advocates. Presently, she works as a consultant with UNIFEM providing technical assistance in assessing compliance of national laws with CEDAW, preparing gender equality laws, and developing national capacity on gender equality in the Southeast Asian region.



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## INTRODUCTION

### Rationale

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) celebrated 30 years of existence in 2009, having been adopted by the General Assembly on 18 December 1979. As of 1 August 2009, 186 States had ratified CEDAW, reflecting the global consensus of States to take concrete measures to achieve gender equality and to eliminate discrimination in all its forms.

CEDAW provides a comprehensive framework for the promotion, protection and fulfillment of women's human rights. In particular, it obligates States to eliminate discrimination against women in all fields, without delay, and by all appropriate means, including legislation. However, despite obligations imposed by CEDAW, discrimination continues to exist in all fields, including in the area of law. Discriminatory laws continue to restrict, prohibit or nullify women's human rights and perpetuate impunity for violations. They deprive women the enjoyment of their human rights and full development of their persons.

The CEDAW Committee, in their recent Concluding Observations, urged States Parties to achieve compatibility and compliance of their laws with the Convention. It also strongly encouraged States to ensure that CEDAW is applicable in the domestic legal system and its provisions are fully incorporated in national law.

### Objective

This handbook was developed to guide practitioners in governments, NGOs, academic institutions, development agencies and women's groups to assess compliance of their national laws with CEDAW and provide appropriate recommendations for its compatibility through a CEDAW-based legal review. It does this by presenting a framework for assessing legal compliance (assessment framework). The assessment framework builds capacities of practitioners to identify obligations under CEDAW, craft legal indicators, identify discriminatory legal provisions, propose laws, revisions or amendments that promote gender equality, and provide other recommendations to ensure the compatibility of laws with the Convention. The handbook is primarily targeted for practitioners in Southeast Asia. However, it can also be used in other regions.

### Methodology

The assessment framework was developed in 2007 and used to review Vietnamese laws. The Vietnamese legal review identified a total of 117 indicators and 34 sub-indicators divided into these fields/areas:

1. Guarantee of equality and discrimination
2. Prohibition of discrimination
3. Legal protection of women
4. Institutions for implementation and monitoring
5. Incorporation and application of treaties
6. Gender-based violence
7. Temporary special measures
8. Social and cultural patterns of conduct
9. Trafficking and exploitation of prostitution
10. Political and public life
11. Nationality
12. Education
13. Employment
14. Health
15. Economic and social life
16. Rural women
17. Equality before the law
18. Marriage and family

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The assessment framework was refined from June 2008 to February 2009 through its use in the legal reviews of Indonesia and Cambodia which included four workshops<sup>1</sup> to provide expert support to local groups in drafting national legal reviews. Continuous technical support and ongoing discussions to facilitate the production of the legal reviews were also provided. The Indonesian review assessed the Marriage Law (Law No. 1 of 1974) of Indonesia. An inter-sectoral working group led by CEDAW Working Group Initiative (CWGI) is writing the review. The Cambodian legal review evaluated laws on domestic violence, trafficking and sexual exploitation, employment and domestic workers, and marriage. The Ministry of Justice of Cambodia is spearheading this initiative. Both legal reviews are still being finalized. The assessment framework was also further refined during the “Training on Assessing Compliance of National laws with CEDAW” held on 28-30 April 2009 in Beijing, China which was organized by the UN China Gender Facility.

This handbook also draws on a number of earlier initiatives on CEDAW and legislation including:

- a) a joint UNIFEM and UNDP-Pacific study from 2007 – *Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries* – which identified a set of 113 specific legislative indicators outlining requirements for national laws to fully comply with CEDAW;<sup>2</sup>
- b) a UNIFEM South Asia and Centre for Women’s Research (CENWOR) publication entitled *CEDAW Indicators for South Asia: An Initiative*<sup>3</sup> – which enumerated suggested indicators on law, education, employment, health and women in the rural sector; and
- c) a UNDP handbook called *Drafting Gender-Aware Legislation: How to Promote and Protect Gender Equality in Central and Eastern Europe and in the Commonwealth of Independent States*,<sup>4</sup> which provided guidance on integrating international standards into national law.

Although prepared specifically for their respective regions, these initiatives contributed to the development of this handbook.

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<sup>1</sup> The four workshops were as follows: a) Workshop on Assessing Compliance of Indonesia’s Laws on Marriage and Family with the Convention on the Elimination of All Forms of Discrimination against Women, Jakarta, Indonesia, 30 June-3 July 2008; (b) Validation Workshop on the Legal Review of Marriage Law No. 1/1974, Jakarta, Indonesia, 16-17 September 2008; (c) Assessing Compliance of Cambodia’s Laws with CEDAW, 8-12 September 2008, Siem Reap, Cambodia; and (d) Workshop on Dissemination of the Result of the research on National Law’s Compliance with CEDAW, Phnom Penh, Cambodia, 5 February 2009. The workshops in Cambodia were organized by the Ministry of Justice, while those in Indonesia were organized by the CEDAW Working Group Initiative (CWGI).

<sup>2</sup> UNIFEM and UNDP Pacific Centre. *Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries*, Suva, 2007.

<sup>3</sup> CENWOR and UNIFEM. *CEDAW Indicators for South Asia: An Initiative*, Sri Lanka, 2004.

<sup>4</sup> UNDP. *Drafting Gender-Aware Legislation: How to Promote and Protect Gender Equality in Central and Eastern Europe and in the Commonwealth of Independent States (CIS)*, Bratislava, UNDP, 2003.

PART ONE:

**CEDAW AND LEGAL REVIEWS**



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## PART ONE:

### CEDAW AND LEGAL REVIEWS

In this section:

- ✓ What is a legal review?
- ✓ CEDAW as a framework for legal reviews

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#### LEGAL REVIEWS

Legal reviews uncover gaps in specific laws and suggest ways that these gaps can be addressed. They provide recommendations for possible legal solutions such as amendments, revisions or repeals of existing laws or the creation of new laws.

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#### CEDAW AS A FRAMEWORK FOR LEGAL REVIEWS

A legal review that uses a CEDAW framework evaluates laws through the lens of an internationally accepted gender equality standard. CEDAW offers several advantages as a framework for legal reviews.

As a *human rights treaty*, it strongly advances a rights-based approach to claiming rights. It emphasizes the enjoyment of human rights. It also highlights the inter-relatedness and equal status of all human rights (whether civil, political, economic, social and cultural), as guaranteed by other human rights treaties.

As an *equality treaty*, CEDAW:

- takes into account the social construction of gender;
- provides for a comprehensive guarantee of equality in all fields – civil, political, economic, social, cultural and other fields;
- mandates not only equality in law but more importantly, equality of results (de facto or actual equality);
- provides for a definition of discrimination that addresses all its forms, especially indirect discrimination; and
- focuses on the obligations of States to ensure women’s human rights and equality.

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#### IMPORTANCE OF USING CEDAW AS A LEGAL REVIEW FRAMEWORK

Laws translate the principles of CEDAW into concrete legal provisions that can be easily accessed and enjoyed at the national level. A legal review that uses a CEDAW framework facilitates this process.

Specifically, the CEDAW framework:

- identifies gender discrimination in laws;
- highlights State obligations in particular fields of law;
- reveals gaps or weakness in law in achieving gender equality;
- point out the changes that need to occur to make gender-sensitive and responsive laws; and
- provides recommendations on how discrimination can be addressed.

### ***Purpose of a CEDAW-based Legal Review***

In most cases, a legal review that uses a CEDAW framework is conducted as a preliminary step towards law reform.

The immediate purposes for conducting the review may be to:

- Highlight **gender dimensions in particular fields of law**;
- Document **progress towards gender equality** (including stock-taking);
- Harmonize **inconsistencies in different areas of law** through the application of gender equality standards (e.g. in Vietnam, following the adoption of the Law on Gender Equality in 29 November 2006, a Directive on Gender Equality Law was issued on 3 May 2007. The directive stated that the government had to complete a review of existing legal normative documents to evaluate the need for amendments, revisions or repeal, or the issuance of new laws. To assist the government, an independent legal review was conducted);<sup>5</sup>
- Identify whether **laws, administrative regulations or socio-cultural practices undermine constitutional guarantees of equality and non-discrimination**;
- **Hold the State accountable** for ensuring equality;
- Identify **recommendations for gender-sensitive and responsive laws**;
- Compare **progress between and among States** (e.g. in the Pacific, two desk reviews were commissioned by UNIFEM Pacific and UNDP Pacific Centre to assess legislative compliance with CEDAW of nine Pacific countries:<sup>6</sup> Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Papua New Guinea, Samoa, Solomon Islands, Tuvalu and Vanuatu. The reviews used similar indicators and facilitated a comparison of the nine countries reviewed);
- Assess **compatibility of laws with international commitments**, including CEDAW;
- Initiate the **implementation of recommendations from international bodies on gender equality**, including the CEDAW Committee.

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<sup>5</sup> The legal review is entitled *CEDAW and the Law: A Gendered and Rights-based Review of Vietnamese Legal Documents through the Lens of CEDAW*. UNIFEM CEDAW SEAP, 2009.

<sup>6</sup> The report of the desk reviews was published as *Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries*.

## The CEDAW Committee and Legal Reviews

The CEDAW Committee recognizes legal reviews as an important tool for CEDAW compliance. It strongly encourages review of legislation in all countries to facilitate law reform and the implementation of CEDAW. The image below presents some examples of the CEDAW Committee's recommendations relating to legal reviews.

### **Thailand**

"The committee is concerned that not all discriminatory laws have been amended to ensure that the Convention and its provisions become fully applicable in the domestic legal system" (CEDAW Concluding Comments on Thailand, 2006, par. 13)

"The Committee recommends that the State Party systematically review all legislation so as to achieve full compliance with the provisions of the Convention. The Committee points out that it is the obligation of the State party to ensure that the Convention becomes fully applicable in the domestic legal system" (CEDAW Concluding Comments on Thailand, 2006, par. 14)

### **Cambodia**

"(The CEDAW Committee) encourages the State Party to take advantage of the ongoing legal reform process to achieve the full compatibility and compliance of all laws with the provisions of the Convention" (CEDAW Concluding Comments on Cambodia, 2006, par. 12)

### **Philippines**

"The Committee recommends that the State Party undertake a systematic review of all legislation and initiate all necessary revisions so as to achieve full compliance with the provisions of the Convention" (CEDAW Concluding Comments on Philippines, 2006, par. 12)

### **Indonesia**

"The Committee welcomes the Government's efforts to identify gender-biased laws and to initiate revisions to those laws....The Committee is concerned, however, that revisions have not been undertaken on all of the 21 laws that the Government has identified as discriminatory, and that some of the amendments, while demonstrating progress towards equality, are still discriminatory to wards women" (CEDAW Concluding Comments on Indonesia, 2007, par. 10)

"The Committee urges the State party to give high priority to its law reform process and to amend, without delay and within a clear time frame, discriminatory laws and regulations and bring them in line with the Convention" (CEDAW Concluding Comments on Indonesia, 2007, par. 11)

✓ See **Part 2. What You Should Know Before Doing a CEDAW-based Legal Review** for more information on the CEDAW Committee





**PART TWO:**

**WHAT YOU SHOULD KNOW BEFORE DOING A CEDAW-BASED LEGAL REVIEW**

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## PART TWO:

# WHAT YOU SHOULD KNOW BEFORE DOING A CEDAW-BASED LEGAL REVIEW

In this section:

- ✓ CEDAW and its key principles
- ✓ CEDAW articles 1-30
- ✓ De facto situation of woman and gender equality
- ✓ Law and law-making
- ✓ Frequently asked questions on law and law-making

CEDAW-based legal reviews are built on detailed knowledge and understanding of:

1. CEDAW;
2. De facto situation of women and gender equality; and
3. Law and law-making.

One must bear in mind that these three things are indispensable.

## CEDAW AND ITS KEY PRINCIPLES

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CEDAW seeks to eliminate discrimination against women in all its forms and manifestations – often it is referred to as the international bill of women’s human rights. It was adopted by the United Nations General Assembly on 18 December 1979 and put into force on 3 September 1981. CEDAW has 186 States Parties making it one of the most highly ratified international human rights treaties. It is made up of a Preamble and 30 articles.

### Principles of CEDAW

CEDAW has three key principles:

- Substantive equality;
- Non-discrimination; and
- State obligation.

These principles embody the conceptual framework behind CEDAW. Without an understanding of these principles, CEDAW cannot be properly applied. All three principles of CEDAW emphasize that equality must be enjoyed in reality, not just “on paper.” It is not enough to have laws and policies in place if women do not experience that equality day to day.

### Substantive Equality

CEDAW’s standard of equality is substantive equality. It is interpreted by the CEDAW Committee to mean de facto equality (equality in fact or actual equality) or equality of results. The achievement of substantive equality, however, entails that women are given equal opportunities, equal access to opportunities and an enabling environment to achieve equal results.

Substantive equality looks beyond legal guarantees of equal treatment, and inquires into the impact of interventions.

For example, a law may give equal opportunities for women and men to access credit if they can provide collateral (guarantee or security). But if in reality, women cannot control, manage or inherit property, then they are highly unlikely to be able to provide collateral and therefore cannot access credit. Without measures to secure the practical realization of equality, there can be no substantive equality.

Laws must result in substantive equality to comply with CEDAW.

### Challenges to Substantive Equality

Although the principle of equality is widely recognized in constitutions and laws, there are many examples of interpretations of equality that do not result in substantive equality.

- (a) *Formal equality.* Equality is often understood as providing similar treatment to similar people. This is formal equality. In this approach, men and women are seen as similar and therefore they will be provided with the same treatment. As a result, differences based on biology, such as pregnancy or maternity, are ignored. Social and cultural differences – social perceptions of women as weak, economically dependent, and housebound – and their impact on women are also disregarded. By ignoring these differences, the particular needs of women are not addressed.
- (b) *Protectionist approach.* A protectionist approach to equality assumes that women are weaker than men and therefore require protection. Women's choices are restricted and their rights are ignored to keep them safe. Examples of a protectionist approach include a ban on women working at night (e.g. Art. 130 of the Philippine Labor Code), or a prohibition on women working in dangerous occupations (e.g. Art. 113 of Vietnam's Labor Code and its supplementary legal provisions). In both of these cases, women are seen as the problem rather than the unsafe environment, which remains unaddressed. Women are blamed for their supposed inability to protect themselves rather than the failure of public order and security measures or the lack of appropriate occupational health and safety measures. Men, however, are seen as not requiring any protection from danger or dangerous occupations. In most of these cases, the environment is dangerous for both men and women. A protectionist approach penalizes women for their perceived weakness. Instead of addressing the dangerous environment and facilitating the movement towards equality, the protectionist approach reinforces the inferiority of women and hence fails to deliver actual equality.

### The CEDAW Committee stated in General Recommendation 25 that:

*"...a purely formal legal or programmatic approach is not sufficient to achieve women's de facto equality with men, which the Committee interprets as substantive equality. In addition, the Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences. Pursuit of the goal of substantive equality also calls for an effective strategy aimed at overcoming under-representation of women and a redistribution of resources and power between men and women."*

## Non-discrimination

Non-discrimination is a key principle of CEDAW. This is particularly emphasized in Article 1 of CEDAW, which defines what discrimination is. It states that discrimination against women “shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” It emphasizes that an action or omission is discriminatory if it has the “effect or purpose” of discriminating against women.

CEDAW prohibits these forms of discrimination:

- (a) *Direct discrimination.* This refers to an action or omission that has the “purpose” of discriminating against women, e.g. unequal retirement age, unequal inheritance rights, terminating employment on the basis of marriage or pregnancy and different ages of marriage for boys and girls.
- (b) *Indirect discrimination.* This refers to an action or omission that has the “effect” of discriminating against women, even if there was no intention of doing so. Women can face many obstacles sanctioned by culture and religious practices, or by entrenched male interests in key institutions such as political parties, trade unions, religious institutions and the courts. Because of these, an act or omission may appear to be neutral towards or even beneficial for women, but its effect or impact can be discriminatory.
- (c) *Multiple discriminations.* Gender discrimination may exist with other grounds of discrimination, such as on account of race, economic or social status, religion, disability or age. Interventions should take into account all forms of disadvantage to be able to address them appropriately. The CEDAW Committee emphasizes that “certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors. Such multiple discrimination may affect these groups of women primarily, or to a different degree or in different ways than men.”<sup>7</sup> Examples of women experiencing discrimination in addition to gender discrimination include rural women, women with disabilities, indigenous women, migrant women and elderly women.

### Gender-Neutral Provisions

One common manifestation of a formal equality approach is the *gender-neutral provision*. This is a provision that does not distinguish between men and women, which gives the perception of neutrality. However, it may be discriminatory if women and men do not equally enjoy its benefits.

For example, The Civil Procedure Code in Vietnam provides that someone who requests the courts to apply provisional measures (of attaching property of the other party in advance of a judgment) must deposit a sum of money or other valuable property or papers. This provision, although gender-neutral, may have a disproportionate impact on women because women are generally poorer than men, (i.e. they receive less pay than men and are less likely than men to have ownership, control or management of properties). Therefore, similar treatment, as provided in the law, cannot be said to result in equality. Other measures to enable better access by women must be put in place.

Formal equality neglects the impact of gender-neutral provisions and therefore, fails to bring about de facto equality.

<sup>7</sup> CEDAW General Recommendation 25, par. 12

With CEDAW's definition of "discrimination," it is clear that monitoring of impact and effect is critical. Putting measures in place, whether gender-neutral or pro-women, is not sufficient if it does not result in substantive equality.

### State Obligation

The third principle of CEDAW emphasizes that the duty-bearer according to the Convention is the State. This means that although the responsibility to ensure equality and eliminate discrimination must be observed by state and non-state actors, only the State is directly accountable to CEDAW.

The State refers to all instrumentalities or organs of the government and encompasses executive, legislative, judicial and administrative structures as well as local government units.

General State obligations are found in Articles 1-5 of CEDAW, while specific State Party obligations are stated in Articles 6-16 of CEDAW.

CEDAW puts in place an obligation of means and results. A State undertakes to comply with the specific means of implementation in CEDAW (obligation of means). It is also obligated to ensure that the measures chosen result in the elimination of discrimination (obligation of results).

## CEDAW FROM ARTICLES 1 TO 30

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### Substantive obligations under CEDAW (Articles 1-16)

Articles 1-5 contain the following general obligations of the State under CEDAW:

- (a) Article 1 provides a definition of discrimination.
- (b) Article 2 requires the State to:
  - Embody the principles of equality in national constitutions and laws (Art.2a);
  - Prohibit discrimination through legislation and other means (Art.2b);
  - Establish legal protection of women (Art.2c);
  - Refrain from discrimination (Art.2d);
  - Eliminate discrimination by any private actors, e.g. individuals, organizations and enterprises (Art.2e); and
  - Modify or abolish discriminatory laws, regulations, customs and practices (Art.2f).
- (c) Article 3 obliges the State to put in place all measures for the full development of women.
- (d) Article 4 points out that temporary special measures to accelerate the achievement of de facto equality (Art.4.1) and measures in favor of maternity (Art.4.2) shall not be considered discrimination.
- (e) Article 5 requires the State to modify social and cultural patterns of conduct that are based on inferiority or superiority of the sexes or on stereotyped roles.

Articles 6-16 refer to the following obligations of the State Party in specific areas:

- (a) *Trafficking and Exploitation of Prostitution.* Article 6 requires States to take appropriate measures to suppress traffic in women and exploitation of prostitution of women.
- (b) *Political and Public Life.* Article 7 requires States to eliminate discrimination against women in the area of political and public life. It states that women and men have equal rights to vote, to run for elections, to participate in the formulation and implementation of government

policy, to hold public office, to perform all public functions, and to participate in NGOs and public and political organizations. Article 8 states that women also have the equal right to represent the government at the international level and participate in international organizations.

- (c) *Nationality.* Article 9 provides that a woman has the right to acquire, change or retain her nationality. The nationality of a wife will not automatically change due to marriage to a foreign national or change of nationality by a husband. A woman can also transmit her nationality to her child on an equal basis as men.
- (d) *Education.* Article 10 provides that the State must ensure equal rights in the field of education. It provides that men and women must have the same conditions to access studies and achieve diplomas. This should be ensured in pre-school, general, alternative, technical, professional and higher technical education and vocational trainings.

It also states that women and men have access to the same curricula, exams, teaching staff, school premises and equipments. Women and girls must be given the same opportunities to benefit from scholarships and programmes of continuing education. It also urges efforts to reduce female student drop-out rates and to address girls who have left school prematurely.

Article 10 also highlights the need to eliminate stereotyped concepts in education, in particular by revising textbooks and school programmes.

- (e) *Employment.* Article 11 states that States must take all appropriate measures to eliminate discrimination in employment. Women and men have the same right to work and right to enjoy the same employment opportunities. It guarantees equal remuneration for work of equal value and equality of treatment in job evaluations. Article 11 also guarantees rights to free choice of employment, to a promotion and job security, to social security (in cases of retirement, unemployment, sickness, disability and old age), and to a healthy and safe work environment.

Discrimination on the grounds of marital status and maternity is prohibited. Article 11 requires sanctions for dismissals on account of marital status, pregnancy or maternity leave. It also requires maternity leave with pay without loss of benefits or seniority and support services for child care. Special protection from work harmful to pregnant women must be given. Protective legislation must be periodically reviewed.

- (f) *Health Care.* Article 12 states that the State must ensure equal access to health care services for both men and women. States must provide women appropriate services in connection to pregnancy and adequate nutrition during pregnancy and lactation.

***Difference between Temporary Special Measures (Art.4.1) and Special Measures in Favor of Maternity (Art.4.2)***

General Recommendation 25 states that:

Paragraph 15: There is a clear difference between the purpose of the “special measures” under article 4, paragraph 1, and those of paragraph 2. The purpose of article 4, paragraph 1, is to accelerate the improvement of the position of women to achieve their de facto or substantive equality with men, and to effect the structural, social and cultural changes necessary to correct past and current forms and effects of discrimination against women, as well as to provide them with compensation. These measures are of a temporary nature.

Paragraph 16: Article 4, paragraph 2, provides for non-identical treatment of women and men due to their biological differences. These measures are of a permanent nature, at least until such time as the scientific and technological knowledge referred to in article 11, paragraph 3, would warrant a review.

- (g) *Economic and Social Life*. Article 13 requires equality in all areas of economic and social life, including equal right to family benefits and loans or credits. It also requires the right to participate in recreational activities, sports and cultural life.
- (h) *Rural Women*. Article 14 highlights the need to ensure the application of CEDAW to rural women. It requires States to ensure the right of rural women to participate in and benefit from rural development. This includes participation in the elaboration and implementation of development planning as well as in community activities. This also means access to adequate health care facilities, education, agricultural credits and loans, marketing facilities and technology. Article 14 requires equal treatment in land and agrarian reform and resettlement schemes. Rural women must enjoy adequate living conditions.
- (i) *Equality before the Law*. Article 15 guarantees equality before the law. Women have the same legal capacity as men. They have the same right to conclude contracts, administer property, freedom of movement, and choose their domicile and residence. They shall be treated equally in courts and tribunals. Contracts that restrict women's legal capacity are void.
- (j) *Marriage and Family Life*. Article 16 requires the State to ensure equality in marriage and family relations. It guarantees the same right to enter into marriage, to freely choose a spouse, and to enter only with full consent. It prohibits child marriages and betrothals. Women and men enjoy the same rights and responsibilities during marriage and at its dissolution. They have the same rights as parents. They also have the same right to guardianship, wardship, trusteeship and adoption of children.

Women and men have the same right to decide on the number and spacing of their children. Spouses have the same right to choose a family name, profession or occupation. They exercise the same rights relating to ownership, acquisition, management, administration, enjoyment and disposition of property.

### **The CEDAW Committee, its functions and procedures (Articles 17-22)**

Implementation of CEDAW is monitored by the Committee on the Elimination of Discrimination Against Women (CEDAW Committee). It is composed of 23 experts from various regions who are nominated by their respective governments and elected by States Parties for four years. The experts serve independently and in their personal capacity. The committee:

- Requires States Parties to submit reports;
  - Engages in a constructive dialogue with State Parties;
  - Issues Concluding Observations; and
  - Drafts General Recommendations.
- (a) *Reporting Process*. States Parties to CEDAW are required to submit an initial report one year after ratification or accession and a periodic report every four years after. In assessing the State report, information such as reports from NGOs (also known as shadow or alternative reports), specialized agencies and independent national human rights commissions, is welcomed by the Committee.
- (b) *Dialogue with State Party*. After the submission of its report, a delegation of a State Party is invited to engage in a constructive dialogue with the CEDAW Committee to present the report, discuss its contents, exchange views on challenges to implementation and provide recommendations.



- (c) *Concluding Observations*. Concluding Observations are comments and recommendations issued by the CEDAW Committee after its consideration of State Party reports and the constructive dialogue with a State Party delegation. They are issued specific to a country. Prior to mid-2008, Concluding Observations were called Concluding Comments.
- (d) *General Recommendations*. General Recommendations are authoritative interpretations issued by the CEDAW Committee on specific articles of the treaty or contemporary or emerging issues.

### Administration, Interpretation and Other Matters (Articles 23-30)

The last articles of CEDAW provides for matters concerning administration and interpretation, including:

- (a) *Minimum standards*. CEDAW states in Article 23 that the Convention does not affect laws of a State Party or a treaty in force in a State that are more conducive to achieving equality. This emphasizes that CEDAW provides for minimum standards of gender equality.
- (b) *Reservations*. Article 28 states that a reservation incompatible with the object and purpose of CEDAW shall not be permitted. Reservations are statements of States Parties that limit the legal effect or application of the treaty in the reserving State.
- (c) *Arbitration*. It is provided in Article 29 that any dispute between States Parties on interpretation or application of the treaty may be submitted to the International Court of Justice for arbitration.

#### ***The CEDAW Committee and General Recommendations***

The CEDAW Committee has presently issued 26 General Recommendations:

1. Reporting by States Parties (1986)
2. Reporting by States Parties (1987)
3. Education and Public Information Campaigns (1987)
4. Reservations (1987)
5. Temporary Special Measures (1988)
6. Effective National Machinery and Publicity (1988)
7. Resources (1988)
8. Implementation of Article 8 of the Convention (1988)
9. Statistical Data concerning the Situation of Women (1989)
10. Tenth Anniversary of the Adoption of CEDAW (1989)
11. Technical Advisory Services for Reporting Obligations (1989)
12. Violence against Women (1989)
13. Equal Remuneration for Work of Equal Value (1989)
14. Female Circumcision (1990)
15. AIDS (1990)
16. Unpaid Women Workers in Rural and Urban Family Enterprises (1991)
17. Unremunerated Domestic Activities of Women (1991)
18. Disabled Women (1991)
19. Violence Against Women (1992)
20. Reservations (1992)
21. Equality in Marriage and Family Relations (1994)
22. Amending Article 20 (Meetings of the CEDAW Committee) (1995)
23. Political and Public Life (1997)
24. Women and Health (1999)
25. Temporary Special Measures (2004)
26. Women Migrant Workers (2008)

For the full text of General Recommendations:  
<http://www2.ohchr.org/english/bodies/CEDAW/comments.htm>

### Checklist

#### *Increasing Your Understanding of CEDAW*

- ✓ Be familiar with CEDAW documents. Read the text of CEDAW, its General Recommendations and its Concluding Observations for your own country.
- ✓ Know people or organizations that work with CEDAW. This may include those who received training on CEDAW, participated in the CEDAW reporting process, or monitor CEDAW implementation. Encourage them to share their knowledge and learn from their experiences.
- ✓ Find resources on CEDAW, especially experiences on how CEDAW is used to advance gender equality in your country and abroad. Read through them. (See **Annex III** for Recommended Resource Documents)
- ✓ Attend CEDAW sessions or training programmes to gain a deeper understanding of CEDAW, its features, principles, and domestic application.
- ✓ Request inclusion of CEDAW in workshops or training programmes on women's human rights, gender equality, human rights, and other issues relevant to women, such as on health, housing, or education.
- ✓ Identify other CEDAW-related activities or work in your country. Participate in them.
- ✓ Consult with national or international CEDAW experts.

## DE FACTO SITUATION OF WOMEN AND GENDER EQUALITY

CEDAW requires the State to enact laws to ensure the practical realization of the principle of equality. Hence, understanding of the de facto situation of women and gender equality is indispensable to a CEDAW-based legal review. This means knowing the following:

- (a) *The forms and manifestations of discrimination.* Discrimination can be manifested and experienced in many ways. It may involve disparity, disadvantage, restriction, exclusion, exploitation and even violence against women. It may even manifest itself in the failure to recognize, exercise, claim or sustain rights.
- (b) *Who is being discriminated?* This involves identifying the victim of discrimination. In doing so, it is not enough to simply identify women as the group being discriminated. It is important to identify the other factors and identities that contribute or aggravate the experience of discrimination. Special attention must always be given to whether disadvantaged groups of women are specifically targeted by discriminatory laws, policies, programmes and practices.
- (c) *Effect of discrimination.* This requires identifying the rights that have been violated and the impact of the violation. It also means knowing the effects of discrimination across various fields (e.g. women who have been deprived of inheritance rights are not only discriminated in the field of property, this may also lead to difficulties in accessing credit, starting a business, participating in political life or pursuing higher education) as well as institutions (women who

are discriminated in the family are also discriminated on the basis of the same social construct in the workplace and community).

- (d) *Causes and contributory factors.* These are factors that cause or contribute to discrimination against women. In many cases, factors are identified broadly, such as poverty, unemployment or globalization. Whenever possible, factors must be as specific as possible to enable better analysis.
- (e) *State interventions.* These include laws, policies, programmes, services and activities of the State and their effectiveness.
- (f) *Non-State intervention.* These refer to interventions by non-State actors and their effectiveness.

## LAW AND LAW-MAKING

### Definition of Law

Law is defined as a set of rules, obligatory in nature, enacted by a legitimate authority for common observance and benefit.<sup>8</sup> In a general sense, law may refer to:

- The Constitution;
- Enactments of the national legislature (Parliament, National Assembly or Congress) and local legislative bodies;
- Issuances by the executive branch (including the President, Prime Minister and ministries); and
- Decisions of the courts.

However, in most jurisdictions the term “law” refers solely to legislation, that is, issuance by the national legislature. Legislation can also be called statutes, codes, acts or legislative decree.

Each country determines what it considers law. For example, in Vietnam law or “legal documents” is defined in Article 1 of the Law on Legal Documents and covers:

- (a) Documents promulgated by the *National Assembly and its Standing Committee.*
- (b) *The Constitution, laws and resolutions of the National Assembly and ordinances and resolutions of the Standing Committee.*
- (c) Documents issued by *other competent State agencies at the central level.* Such as orders and decisions of the State President, decisions and directives of the Prime Minister, Resolutions and decrees of the Government, decisions, directives and circulars of Ministers and heads of agencies, resolutions of the Justice Council of the Supreme People’s Court, and decisions, directives and circulars of the Chairman of the Supreme People’s Procuracy.
- (d) *Documents promulgated by the People’s Councils and People’s Committees.* Such as resolutions of the People’s Councils and decisions and directives of the People’s Committees.

<sup>8</sup> Rufus Rodriguez, *Introduction to Law*, Manila, Rex Book Store, 2001. p.2

## Hierarchy of Laws

Some jurisdictions have specific rules governing the hierarchy of laws, others have none. However, in either case, they generally conform to legal principles that dictate the following hierarchy in relation to law:

- (a) *The Constitution is the highest or supreme law of the country.* It provides the general framework of organization of the State, the powers and functions of government, and in most cases the fundamental rights of its citizens. No law within the country can go against the Constitution. In other words, it is the standard by which other laws are measured.
- (b) *Legislation (i.e. laws enacted by the national legislature) elaborated within the Constitution.*<sup>9</sup> They must at all times comply with the Constitution, otherwise they can be declared unconstitutional.
- (c) *Issuances by the executive department, whether referred to as administrative, ministerial or department rules, regulations or decrees, provide details to legislation.* They must at all times comply with the Constitution and legislation.
- (d) *Enactments by the local legislature, sometimes referred to as ordinances, provide further details on the application of legislation within their designated territory.* They are enacted within the bounds of the powers and authority granted to them by the Constitution or legislation. As such, they must comply with the standards set by both the Constitution and by legislation.
- (e) *Court decisions, in some countries, are considered part of the law of the country.* As they are interpretations of law, they are read in conjunction with the legal provisions they interpret.
- (f) *Treaties, or international agreements concluded in writing between or among States, have varying relationship to national laws.* Their exact placement in the hierarchy of national laws varies from being superior to the Constitution, superior to legislation, or equal to legislation. In most cases though, treaties are not immediately enforceable unless translated or incorporated into legislation. Hence, their status in the hierarchy of laws is simply theoretical if they cannot be invoked and enforced directly. Once incorporated, they are considered as legislation and are enforced as such.

## Structure and Contents of Law

Generally, a law may have the following parts:

- (a) *Caption.* This reflects the enacting authority and session where the law was adopted.
- (b) *Law Number.* This is the number assigned to the law by the enacting authority.
- (c) *Title.* The title expresses the subject matter of the law.
- (d) *Explanatory Note or Preamble.* This discusses the rationale of the law and its objective.
- (e) *Enacting Clause.* This declares its enactment and also identifies by which authority the law is enacted.
- (f) *Body.* This is the main part of the law containing substantive, procedural and other provisions.
- (g) *Repealing Clause.* This part of the law expresses which existing laws are to be repealed.
- (h) *Effectivity Clause.* This announces the effective date of the law.

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<sup>9</sup> Note also that in certain cases the President or the Executive branch can be given the power to enact legislation in specific circumstances, such as in emergency situations or in situations of transition.

What can be a valid subject matter of the law may vary from country to country. However, unless restricted by the Constitution or a higher law, laws can take on any subject matter. Laws can provide a declaration of State policies. They can guarantee substantive rights. They can establish procedures and processes. They can create mechanisms and bodies and allocate responsibilities. They can provide remedies for grievances. They can impose sanctions.

### Adoption of Laws

Different countries have their own procedures for adopting laws. In order to conduct a legal review, you should be familiar with the processes of how various laws are adopted.

#### *Adopting laws in the Philippines*

In the Philippines, laws adopted by the national legislature usually undergo three readings on separate days in the two legislative chambers: the House of Representatives and the Senate. A brief description of the legislative process is as follows:

**Filing.** A bill is filed and given a number by the Secretariat. It is calendared for its first reading.

**First reading.** At the first reading, the bill is read by its number, title and author.

**Referral to appropriate committee.** After the first reading, the bill is referred to the appropriate committee for consideration. The assigned committee may schedule public hearings and consultations. It may choose to approve the bill with or without amendments, substitute a different version, consolidate it with similar bills, or not approve the bill. An approved bill by the committee is submitted to the Committee on Rules, which schedules it for second reading.

**Second reading.** The bill goes through general debate and amendments.

**Printing and distribution.** An approved bill is printed in its final form and distributed to all members of the chamber three days before the third reading.

**Third reading.** On the third reading, a nominal vote is taken on the bill.

**Referral to the other chamber.** The approved bill is sent to the other legislative chamber to undergo a similar process.

**Submission to a bicameral committee.** In case of conflicting provisions, a bicameral conference committee composed of members from the House of Representatives and Senate is constituted to reconcile the differences.

**Approval.** The approved bill is sent back to both chambers for approval.

**Submission to the President.** The bill is then sent to the president to sign it into law. Unless the president exercises her veto powers, the bill becomes law upon signing.

**Publication.** To be effective, it has to be published in two newspapers of general circulation.

*Source: Philippine Constitution, Sections 26-27 and De Leon, Hector, Textbook on the Philippine Constitution (2005), pp. 191-192.*

## FREQUENTLY ASKED QUESTIONS ON LAW AND LAW-MAKING

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You do not have to be a legal expert to conduct a CEDAW-based legal review but you do need to understand the basics of law-making in your country. If you are not familiar with the law-making process, you might have some questions that are obvious to lawyers, but not always clear to others. Below are some frequently asked questions from non-lawyers on legal reviews.

### ***Q. Is it true that future legislation must always conform to the existing ones?***

This is not true. One legislature cannot pass a law that cannot be repealed or amended. Otherwise, it restricts the law-making power of the next legislature. Therefore, future laws can amend, revise or repeal existing laws. It only has to conform to the constitution. However, future legislation may consider existing legislation to ensure consistency.

For example, in Vietnam, the Labour Code and Social Security Law provides unequal retirement age for women and men, whereby women retire five years earlier than men. The draft law on Gender Equality proposed equal retirement age for women and men. One of the objections raised was that the Law on Gender Equality must conform to the standards of the Labor Code and Social Security Law to ensure harmony of laws. However, the Law on Gender Equality, once adopted, can amend or revised the standards set in both laws.

### ***Q. If two laws of the same hierarchy cover the same topic, which law will prevail?***

This question is covered by a branch of law called statutory interpretation and construction. The general rules relating to conflicting laws (or conflicting legal provisions in different laws) where there is no express repeal is that whenever possible, laws must first be reconciled so as to give effect to both. For example, where one law deals with the subject matter generally and the other deals with it in a specific manner, the latter may operate as a specification, elaboration or exemption to the general law.

If this is not possible, then there are several aids to decide which law will prevail. Some of these are as follows:

- The latter law prevails over the earlier one;
- Special law prevails over general law;<sup>10</sup>
- Special provisions prevail over general ones (whether or not provisions are found in general or special laws and regardless of their dates of adoption); and
- Substantive law cannot be amended by procedural law.

### ***Q. What is an express repeal? Is it always necessary?***

Express repeal is the annulment of an earlier existing law by the enactment of a new law that declares the earlier existing law revoked. Implied repeal happens when a later law contains provisions contrary and irreconcilable with the earlier one so that only one law can stand. The general rule is usually against an implied repeal so any future ambiguity can be avoided. It is always preferred to have express repeals of legal provisions or laws.

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<sup>10</sup> A general law is one that affects the community at large, or one that relates to a subject of general nature, e.g. the Labor Code. A special law is one designated for a particular purpose (e.g. sexual harassment law), or a specific group of people.

An example of an express repeal can be found in Article 50 of the Cambodian Law on the Suppression of Human Trafficking and Sexual Exploitation (2008) which states:

*“Article 50: Repeal of Law. The Law on the Suppression of Kidnapping, Human Trafficking/Sale of a Human Being and Exploitation of a Human Being, which has been promulgated by Royal Kram No:cs/rkm/0296/01 shall be repealed by this law.”*

**Q. If the law is old, is it still valid?**

A law is valid unless it is repealed by another law or declared invalid by the appropriate authority (e.g. the judiciary). Therefore, even very old laws remain valid.

**Q. If the law is not being enforced, is it still a law?**

Yes, lack of enforcement does not invalidate a law. As pointed out above, a law is valid unless it is repealed or declared invalid by the appropriate authority.

**Q. In legal reform and advocacy, should I target constitutional reform, legislative reform, reform of executive enactments, or ordinance reform?**

The best answer is to target all discriminatory laws, whether it is the Constitution, legislation, executive enactments or ordinance. Based on opportunities, however, it is important to plan and make decisions as to which advocacy is more urgent, and more likely to work and achieve the required impact.

### Checklist

#### *Understanding how laws are made*

Use this checklist to improve your understanding of the challenges and obstacles to adopting or amending laws.

- ✓ Check constitutional and legislative provisions on the adoption of laws
- ✓ Consult a law-maker on the process of passing laws
- ✓ Be familiar with the structure and content of laws
- ✓ Attend a session of legislature or participate in public hearings and consultations on bills or proposed laws
- ✓ Understand the intervention points in the law-making process (i.e. how and when you can intervene in the process)
- ✓ Know the current law-making agenda (usually an agenda or programme of work is drafted by the legislatures and ministries)
- ✓ Know when laws relevant to your legal review have been adopted (if the relevant law has just been passed, it is less likely to be tabled for amendment or repeal)





PLANNING A CEDAW-BASED LEGAL REVIEW



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## PART THREE:

### PLANNING A CEDAW-BASED LEGAL REVIEW

In this section:

- ✓ Identifying the objectives, scope, limitations, target audience, methodology and timeframe of your CEDAW-based legal review
- ✓ Who is best placed to conduct a CEDAW-based legal review?

In the process of conducting a legal review, it helps to develop a clear plan before you get started. Consider the following points when planning your legal review:

- Objectives.** Identify the specific objectives of your legal review. The clearer the objectives, the better. It is important to know what you are trying to achieve with your legal review. (See **Part 1: Purpose of a CEDAW-Based Legal Review** for possible objectives).
- Scope (Area or Subject Matter of Coverage).** You need to decide whether your legal review will be comprehensive or focused. Comprehensive coverage means assessing compliance in all areas affecting gender equality, whether civil, political, economic, social or cultural. This means looking into all substantive provisions of CEDAW (Arts. 1-16). A focused coverage means assessing compliance within selected topics/areas (e.g. employment, marriage and family, or political participation) or CEDAW articles (e.g. Art. 12 on health).
- Scope (Relevant Laws).** You also need to decide which laws will be assessed in your legal review. Will the review assess only laws issued by the legislature, or all laws (i.e. laws issued by the legislative, executive and judicial branches)? Will it cover laws at all levels or only those at the national level? (See *Determining Scope of a Legal Review (Relevant Laws)* below for further guidance on this matter).
- Target Audience.** Know the target audience of your legal review. Is it for women advocates, academics, specialists, government officials, legislators or for the general public? Identifying the target audience helps you to decide the language and format of the review (e.g. will you use simple or specialized language?).
- Time Frame.** A legal review takes time to write. Identify a realistic time frame.
- Writers and Initiators.** A CEDAW-based legal review may be undertaken by a variety of people, such as government, NGOs, external agencies, or a group of people from different sectors. Whoever undertakes the review, it is essential that they have expertise on CEDAW, laws, and the de facto situation of gender equality and women. (See *Who is Best Suited to Undertake a CEDAW-based Legal Review* below).
- Limitations.** Law is only one of the measures to bring about CEDAW compliance. Some CEDAW obligations are more appropriately dealt with through policy measures, programmatic interventions, or through legislative enforcement. As such, legal reviews and law reform only address one form of intervention a State needs to put in place for it to eliminate gender discrimination.
- Methodology.** A legal review is mainly done as desk research. Workshops with people working on women's human rights to collectively determine key legal indicators and recommendations, and to validate the findings of the legal review, are a great addition to desk research. Their

expertise and experience will enrich the review. Consultations with women, especially those who will be affected by the recommendations of the review, are also recommended.

One of the challenges that need to be considered in identifying methodology is limited access to laws or inadequate data on impact of legal provisions. Where information is found, it may not be sex-disaggregated or no gender analysis is provided.

### Determining Scope of a Legal Review (Relevant Laws)

Take this quiz and consider the following factors when deciding on the scope of your legal review.

#### ***Area or Subject Matter of Coverage***

Q. Is your legal review of **a) comprehensive coverage**, or **b) focused coverage**.

- If you answered **a**, all laws must be assessed.
- If you answered **b**, only laws covering the selected area will be included in the legal review.

Example: In Vietnam, a comprehensive legal review was conducted. As a result, more than 200 laws covering 18 areas corresponding to each CEDAW article were evaluated.

#### ***Levels of Coverage***

Q. Is the purpose of the legal review to **a) assess national laws**, or **b) only assess local laws (e.g. provincial or village levels)**.

- If you answered **a**, only national laws must be included in the legal review.
- If you answered **b**, both national and local level laws must be included in the legal review.

#### ***Completeness of Legislation***

Q. Does legislation in your country **a) incorporate all standards so that they are complete in themselves**, or **b) are they completed or supplemented by executive or judicial enactments**.

- If you answered **a**, focusing only on legislation is sufficient for a legal review
- If you answered **b**, including executive or judicial enactments are necessary to provide a comprehensive picture

#### ***Weight of Laws***

Q. Do executive issuances have the same force and weight as legislative enactments?

- If you answered **yes**, including them in the legal review is recommended.

**Who is Best Suited to Undertake a CEDAW-based Legal Review?**

There are always discussions about who is best suited to do a CEDAW-based legal review. This may depend on the context in each country. However, it is important to know the benefits and limitations of one actor over another.

Below is a brief listing of the various actors who can undertake a CEDAW-based legal review, their advantages and disadvantages generally, and suggestions to address the disadvantages.

<p><b>Government</b> A CEDAW-based legal review can be officially conducted by government. In most cases, the Ministry of Justice or the national women's machinery leads or undertakes the process.</p>	
<p><b>Advantage</b> Since it is an initiative of the government, there is State ownership of the process. The State is likely to acknowledge the findings of the legal review and work towards implementing the recommendations.</p>	<p><b>Disadvantage</b> Although welcomed, these legal reviews are sometimes seen as partial, self-serving or 'soft' on government.</p>
<p><b>Suggestion</b> To address the disadvantage, the government can arrange for consultations with non-government stakeholders and incorporate their views into the legal review. They can also set up a multi-ectoral panel of advisers or experts to provide technical support and scrutiny.</p>	
<p><b>NGOs</b> NGOs, on their own initiative, may also undertake CEDAW-based legal reviews.</p>	
<p><b>Advantage</b> A CEDAW-based legal review by NGOs can affirm State initiatives or can look into issues that may have been overlooked by government. In many countries NGOs are more attuned to the de facto situation and can reflect this aspect well. NGOs may also be able to easily integrate advocacy in their programmes for the recommendations in the review.</p>	<p><b>Disadvantage</b> In countries where government and NGOs do not work well together, legal reviews undertaken by NGOs may be seen as biased or overly-critical. The government may refuse to acknowledge the results of the review. Furthermore, as government has no or minimal involvement in the process, there may be no State ownership of the review.</p>
<p><b>Suggestion</b> To address the disadvantage, government representatives can be informed of the process early and encouraged to share their information with the reviewers. They can also be invited to share their advice on how to build government ownership. It would also be useful to have joint activities on CEDAW, to enable understanding of the standards of the Convention, and operate as a confidence-building measure for both government and NGOs. If possible, NGOs must secure government commitment early to support the findings of the legal review.</p>	

**External Agencies**

CEDAW-based legal reviews can also be carried out by external groups, such as the UN and other international agencies.

**Advantage**

This operates as an external assessment. In some countries because of government restrictions, local groups such as NGOs are unable to give a critical analysis. Hence, their review can operate as ‘filling the gap’ by providing a legal reference on the situation in the country.

**Disadvantage**

Unless there is strong support by local partners, this may suffer from lack of ownership on the part of government and NGOs on the findings of the legal review.

**Suggestion**

To address the disadvantage, arrange consultations with government and non-government stakeholders on the CEDAW-based legal review. Welcome their suggestions and advice. If possible, secure their commitment to support the findings of the review.

**Mixed Group**

A CEDAW-based legal review can be of mixed composition. It can be undertaken by an inter-sectoral team composed of government, NGOs, experts, among others.

**Advantage**

This enables involvement of a range of groups represented in the team. As such, there is wide-ranging ownership of the process and findings of the CEDAW-based legal review.

**Disadvantage**

Depending on the dynamics among team members, this may lead to disagreements or compromises due to different priorities. If not handled properly, this will weaken the credibility and standards of the CEDAW-based legal review

**Suggestion**

See **Concerns on Assessing Compliance and Suggestions to Address Them**, in **Part 4, Step 6** to address the disadvantages listed here.

**FRAMEWORK FOR A CEDAW-BASED LEGAL REVIEW**



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## PART FOUR:

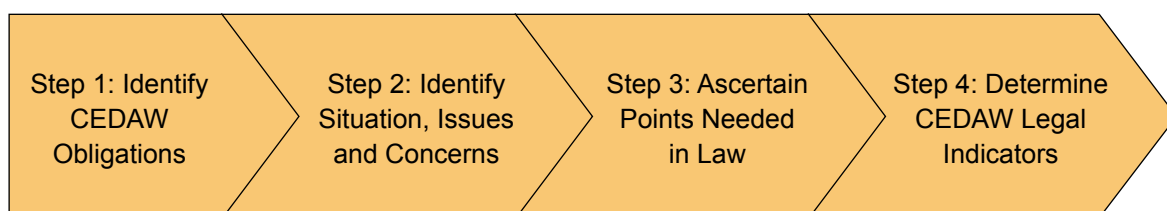
### FRAMEWORK FOR A CEDAW-BASED LEGAL REVIEW

In this section:

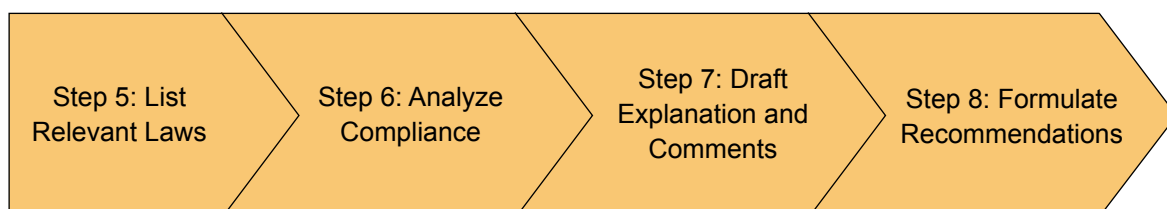
- ✓ CEDAW-based legal review framework (assessment framework)
- ✓ Developing CEDAW legal indicators
- ✓ Determining compliance and recommendations

After carefully planning your legal review, you can begin working on the legal review itself. The following are the two main steps of a legal review, each involving several sub-steps:

#### 1. Developing CEDAW Legal Indicators



#### 2. Determining Compliance and Recommendations



→ In this section, each step will be explained and demonstrated using examples. These examples are illustrative only and not intended to be prescriptive.

## CEDAW-BASED LEGAL REVIEW FRAMEWORK (ASSESSMENT FRAMEWORK)

Before starting you need to decide how to organize the information of the legal review. A legal review may be written

- (a) in a narrative form;
- (b) in a matrix form; or
- (c) in both narrative and matrix forms.

### **Option 1: Narrative Form**

The advantage of a narrative form is that it allows a lot of information to be included in the legal review. It also enables the legal review drafters to comprehensively show how the analysis was developed. A disadvantage though is that this form can be very lengthy and does not allow a quick way of scanning through the assessment framework.

### **Option 2: Matrix Form**

The advantage of a matrix form is that it clearly shows how each step relates to the next one. It also forces the legal review drafters to be concise. It provides the reader an easy way of going through the framework. A disadvantage of the matrix is that there tends to be less detail and explanation, which may be critical to the reader's understanding of the assessment and recommendations.

### **Option 3: Narrative and Matrix Form**

An advantage of this mixed form is that it optimizes the advantages of both narrative and matrix forms. A disadvantage is that it can be repetitive. It is common for a CEDAW-based legal review to use a narrative form with the results summarized in the matrix form. This is the best option if time permits.

Below is an illustration of the matrix form.

Developing CEDAW Legal Indicators				Determining Compliance and Recommendations			
Step 1 CEDAW obligations	Step 2 Situation, issues and concerns	Step 3 Points needed in law	Step 4 CEDAW legal indicators	Step 5 Relevant laws	Step 6 Compliance	Step 7 Explanation and comments	Step 8 Recommen- dations

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## CEDAW LEGAL INDICATORS

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### **What are Indicators?**

Indicators are tools of measurement. They measure compliance with a designated standard. They also measure progress towards a certain goal.

### **What are Legal Indicators?**

Legal indicators are indicators focused on measuring compliance of laws within an identified framework.

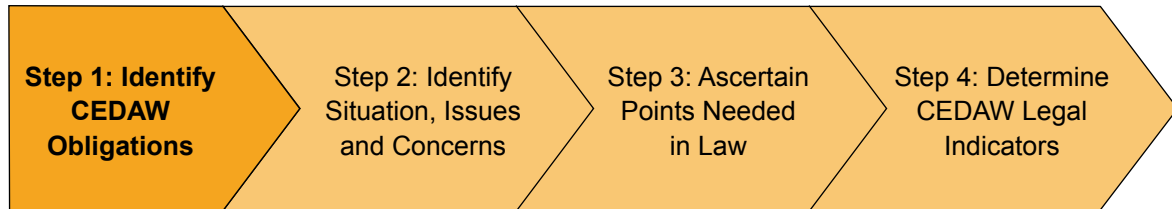
### **What are CEDAW Indicators?**

CEDAW Indicators are indicators that simply measure compliance of State action or inaction with CEDAW. These indicators use CEDAW as a framework to analyze whether State interventions adhere to CEDAW, its key principles (substantive equality, non-discrimination and State obligation), its General Recommendations and Concluding Observations.

### **What are CEDAW Legal Indicators?**

CEDAW legal indicators measure compliance of laws with CEDAW. Indicators are useful in legal reviews because they identify the standard upon which compliance or progress is measured.

## DEVELOPING CEDAW LEGAL INDICATORS



Now we are ready to start the legal review. The first step in developing CEDAW Legal Indicators is as follows:

### **1. Identify the obligations or undertakings required by CEDAW on the topic/s or article/s chosen.**

This is done by going through three main documents:

- CEDAW
- General Recommendations
- Concluding Observations (or Concluding Comments) of your country

These documents must be considered in relation to the key principles of substantive equality, non-discrimination and State obligation. Furthermore, Articles 6-16 of CEDAW must always be read together with the general obligations of the State in Articles 1-5 and 24.

### **2. Present the information in a structured manner.**

Depending on the purpose of the review, the information collated can be structured in three ways:

#### ***Option 1: Full Text***

This means citing the texts of CEDAW, the General Recommendations and Concluding Observations in full.

- Advantage: Readers can immediately see what the State obligations are without needing to access another material. It is also easy to point to the exact wordings of the provisions.
- Disadvantage: The listing of obligations can be very long and repetitive.

### **Option 2: Abbreviated Citation**

This means citing the texts of CEDAW, the General Recommendations and Concluding Observations in an abbreviated format. Instead of using the full text, only the citation of the specific article or paragraph is included, (e.g. Article 5 of CEDAW or paragraph 5 of General Recommendation 24). Relevant documents can be added as an appendix or annex.

- Advantage: This approach avoids long and repetitive texts.
- Disadvantage: The substantive content of CEDAW obligations is not available at first glance. Going back and forth between the legal review and the annexes may interrupt the flow of reading.

### **Option 3: Thematic Summary**

This means summarizing the main points of CEDAW, the General Recommendations and Concluding Observations into themes and citing the corresponding document.

- Advantage: Long and repetitive texts are avoided under this approach. In addition, readers can immediately see the main points of CEDAW obligations.
- Disadvantage: This approach requires more effort and time as the texts of CEDAW, the General Recommendations and Concluding Observations have to be synthesized.

The option or combination of options you choose depends on the purpose of the legal review and its intended audience. Consulting with the intended audience and experts will help to select the best option.

For example, in the drafting of the legal review on Vietnamese laws,<sup>11</sup> one of the early discussions was which option to use in presenting CEDAW obligations. Consultations with beneficiaries, mainly legal drafters in government ministries and parliament, highlighted their need to see for themselves what CEDAW, its General Recommendations and Concluding Comments stated in relation to a specific topic. They also pointed out that it would be easy for them to understand the obligations and convince other legal drafters if they can access exact texts immediately. Therefore, out of the three options, they preferred Option 1.

### **Illustrating Step 1**

Using **domestic violence** as the area of the CEDAW-based legal review, the following is an illustration of Step 1. See the next page for Example 1.

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<sup>11</sup> This review is entitled *CEDAW and the Law: A Gendered and Rights-based Review of Vietnamese Legal Documents through the Lens of CEDAW*.

### Example 1: Illustrating Various Options of Presenting Step 1 (Identify CEDAW Obligations) using Domestic Violence as the Area of Review

Option 1: Full Text	Option 2: Abbreviated Citation	Option 3: Thematic Summary
<p><b>Article 1</b> For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.</p> <p><b>Article 2</b> States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women.</p> <p><b>Article 5</b> States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.</p>	<p>CEDAW, Articles 1, 2, 5 and 16</p> <p>General Recommendation 19, pars. 1,6, 23 and 24 (b, c, f, i, k, r, s, t, u and v)</p> <p>Concluding Observations on the country, if applicable</p>	<p><b>Definition and Scope</b> Art. 1, 2 (b, c, d, e), 5 and 16; General Recommendation 19, pars. 1, 6, and 23; and Concluding Observations on the country, if applicable</p> <p>Gender-based violence is a form of discrimination that seriously inhibits a women’s ability to equally enjoy her rights and freedoms.</p> <p>Gender-based violence includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.</p> <p>Domestic violence is one form of gender-based violence, including battering, rape, other forms of sexual assault, mental and other forms of violence, lack of economic independence, and abrogation of family responsibilities.</p> <p><b>Protection and Support</b> Arts. 2 (b, c, d, e); General Recommendation 19, pars. 24 (b, f, i, k, o, q, r, and t); and Concluding Observations on the country, if applicable</p> <p>CEDAW requires the State to: (a) adopt sanctions to prohibit discrimination, including criminal penalties; (b) establish legal protection and ensure effective protection against discrimination; (c) ensure public authorities refrain from discrimination; (d) eliminate discrimination by any person, organization or enterprise; (e) effective complaints procedures and remedies including compensation; (f) provide appropriate protective and support services for victims, including refuges or shelters, specially trained health workers, rehabilitation and counseling;</p>

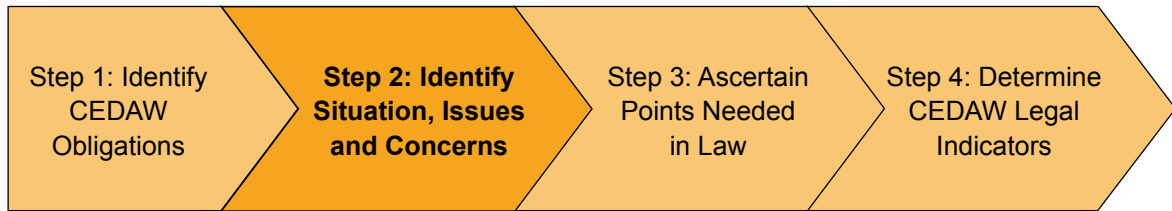
<p><b>Article 16</b></p> <p>1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women.</p> <p><b>General Recommendation 19</b></p> <p>1. Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.</p> <p>6. The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.</p> <p>23. Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality.</p> <p>24. In light of these comments, the Committee on the Elimination of Discrimination against Women recommends:</p> <p>(b) States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention;</p> <p>(c) States parties should encourage the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence;</p> <p>(f) Effective measures should be taken to overcome these attitudes and practices. States should introduce education and public information programmes to help eliminate prejudices which hinder women's equality (recommendation No. 3, 1987);</p> <p>(i) Effective complaints procedures and remedies, including compensation, should be provided;</p> <p>(k) States parties should establish or support services for victims of family violence, rape, sex assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counseling;</p>		<p>(g) provide rehabilitation programmes for perpetrators; and</p> <p>(h) support services for families where incest and sexual abuse has occurred;</p> <p><b>Institutional Arrangements</b></p> <p>Arts. 2 ( c, d, e) and 5; General Recommendation 19, pars. 24 (b, c, f, s, u and v); and Concluding Observations on the country, if applicable</p> <p>CEDAW requires States to:</p> <p>(a) establish legal protection and ensure effective protection against discrimination;</p> <p>(b) ensure public authorities refrain from discrimination;</p> <p>(c) eliminate discrimination by any person, organization or enterprise;</p> <p>(d) conduct gender-sensitive training of judicial and law enforcement officers and other public officials on implementation of CEDAW</p> <p>(e) compile statistics and research on domestic violence</p> <p>(f) set up measures to overcome attitudes and practices through education and public information programmes to eliminate discrimination.</p>
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- (o) States parties should ensure that services for victims of violence are accessible to rural women and that where necessary special services are provided to isolated communities;
- (q) States parties should report on the risks to rural women, the extent and nature of violence and abuse to which they are subject, their need for and access to support and other services and the effectiveness of measures to overcome violence;
- (r) Measures that are necessary to overcome family violence should include:  
 Criminal penalties where necessary and civil remedies in case of domestic violence;  
 Legislation to remove the defence of honour in regard to the assault or murder of a female family member;  
 Services to ensure the safety and security of victims of family violence, including refuges, counseling and rehabilitation programmes;  
 Rehabilitation programmes for perpetrators of domestic violence;  
 Support services for families where incest or sexual abuse has occurred;
- (s) States parties should report on the extent of domestic violence and sexual abuse, and on the preventive, punitive and remedial measures that have been taken;
- (t) That States parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia:  
 Effective legal measures, including penal sanctions, civil remedies compensatory provisions to protect women against all kinds of violence, including, inter alia, violence and abuse in the family, sexual assault and sexual harassment in the workplace;  
 Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;  
 Protective measures, including refuges, counseling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence;
- (u) That States parties should report on all forms of gender-based violence, and that such reports should include all available data on the incidence of each form of violence, and on the effects of such violence on the women who are victims;
- (v) That the reports of States parties should include information on the legal, preventive and protective measures that have been taken to overcome violence against women, and on the effectiveness of such measures.

**Concluding Observations on the country, if applicable**

→ See **Examples 3, 5 and 6** for further illustrations of Step 1





After you identify the obligations or undertakings required by CEDAW, you then determine the issues and concerns of women in your country for each CEDAW Obligation. To do this, you need to:

### 1. Research the de facto situation of women and gender equality

Knowledge of the real experiences of women and gender equality is essential for any CEDAW-based legal review.

### 2. Brainstorm issues and concerns of women and gender equality in the country.

Do this based on your knowledge of CEDAW obligations (Step 1) and the de facto situation. Determine the general issues first, and then get more specific.

### 3. Phrase the issues you have identified clearly and consistently.

There are various options on how to phrase issues and concerns.

#### ***Option 1: Neutral Language***

This option means using neutral language to highlight an issue.

- Advantage: This is especially useful for stocktaking purposes. Using neutral language allows the legal review drafters to address both positive and negative trends.
- Disadvantage: This approach may distract drafters from focusing on priority issues (usually manifested in negative trends).

#### ***Option 2: Problem-based Language***

This option means that when identifying an issue, the language emphasizes the problem.

- Advantage: Using this approach enables legal review drafters to identify issues that are problematic and need immediate attention.
- Disadvantage: This approach may lead to disregarding positive developments.

The option or combination of options to use depends on the purpose of the legal review and its intended beneficiaries. Consultations with the beneficiaries and experts are needed to ensure that the best option will be adopted for the legal review.

### 4. Choose and prioritize issues and concerns for the legal review.

There are numerous issues and concerns in any country that relate to CEDAW obligations. In many cases, prioritization is necessary to allow for a more focused legal review and advocacy. In other cases, time limitations dictate prioritization of issues and concerns.

**Illustrating Step 2**

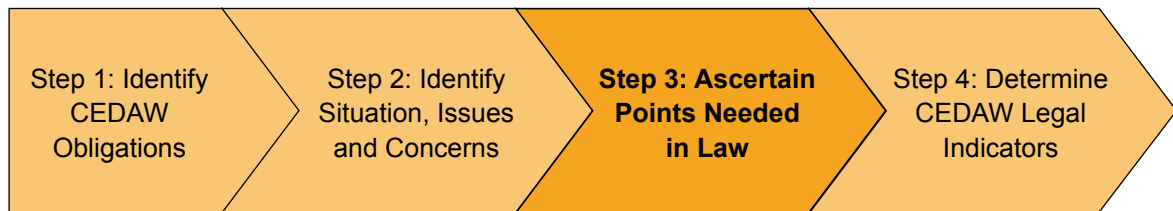
Using Entry into Marriage as the area of the review, the following is an illustration of Step 2.

**Example 2: Illustrating Various Options of Presenting Step 2 (Identify Issues and Concerns)**

<b>CEDAW Obligation</b>	<b>OPTION 1: Neutral Language*</b>	<b>OPTION 2: Problem-based Language*</b>
Entry into Marriage Art. 16.1(a and b); General Recommendation 21, pars.14-16, 25-39 and Concluding Observations on the country, if applicable	<ol style="list-style-type: none"> <li>1. Consent to Marry</li> <li>2. Age of Marriage</li> <li>3. Betrothals</li> <li>4. Registration of Marriage</li> <li>5. Registration of Birth</li> <li>6. Marriage of Widows</li> </ol>	<ol style="list-style-type: none"> <li>1. Marriage Without Personal Consent</li> <li>2. Early Marriage</li> <li>3. Betrothals below 18</li> <li>4. Non-registration of Marriages</li> <li>5. Non-registration of Births</li> <li>6. No remarriage for Widows</li> </ol>

\*Replies can be further broken down into sub-issues.

→ See **Examples 3, 5 and 6** for further illustrations of Step 2.



Once the de facto situation and issues and concerns of women and gender equality in the country are identified, then you can start thinking about legal requirements. Following are the steps.

### 1. Identify essential points for law to comply with CEDAW obligations.

On the basis of the situation, issues and concerns listed in Step 2 determine what essential points must be in a law for it to comply with CEDAW obligations (identified in Step 1).

For example, if early or child marriage is listed as an issue, to comply with CEDAW, it is essential for a country's law to:

- provide for a minimum age of marriage not lower than 18 years of age;
- set up birth and marriage registration;
- provide sanctions for violations; and
- ensure nullification of the marriage, among others.

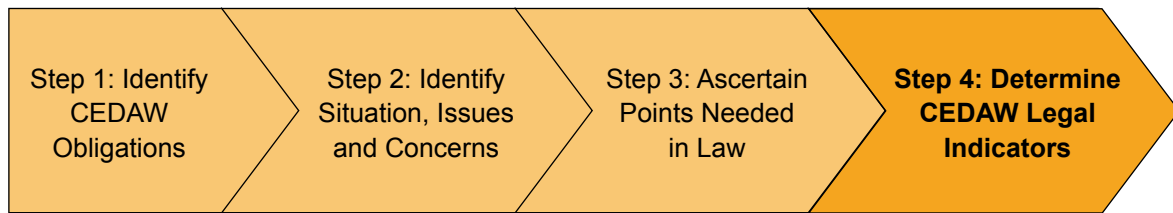
Step 3 should specifically be about points that must be in a law, and not about policy, programme and other interventions. The degree of specificity of items in Step 3 may vary based on the scope and priorities of the CEDAW-based legal review.

### 2. Ensure a corresponding entry.

Ensure that each issue and concern has corresponding entries in Step 3. In some cases, there may be more than one corresponding entry in Step 3 for an issue or concern in Step 2.

### Illustrating Step 3

→ See **Examples 3, 5 and 6** for an illustration of Step 3.



Now you are ready to identify indicators to measure legal compliance. To do this, you need to:

### 1. Refine the identified points in Step 3 into CEDAW legal indicators.

- Form the points into questions answerable by yes or no. (a “yes” answer means compliance while a “no” means non-compliance.)
- Ensure that the questions are phrased to inquire on the existence of or a requirement in a law or legal provision, rather than on a policy, plan or programme.

For example: The question, “Are there shelters for victims of domestic violence?” is an inquiry that targets programmatic interventions rather than law. It is better rephrased as “Is there a legal provision requiring the establishment of shelters by an appropriate government agency?” or “Does the law require the establishment of shelters for victims of domestic violence?”

### 2. Keep indicators specific, measurable, attainable and relevant.

CEDAW legal indicators have to be specific, measurable, attainable, and relevant.

- *Specific.* Specific indicators lead to direct answers. On the other hand, broad, vague or general indicators may lead to misinterpretation or questionable analyses and recommendations. If possible, ensure that there is only one way to answer an indicator. If the indicator requires multiple ways of answering, it becomes difficult to assess compliance.

For example, an indicator that asks: “Does law define domestic violence in accordance to the standards of CEDAW” is broad, general and requires multiple ways of replying. One can assess compliance by looking into acts considered as violence or into who can be considered as victims of violence. In this case, it is better to have two specific indicators: “Does law define domestic violence to include physical, mental, sexual and economic harm?” and “Does law define domestic violence to cover spouses, former spouses and those in intimate relationships?”

- *Measurable.* Craft indicators so that it is easy to measure compliance or progress. A CEDAW legal indicator should be answerable by “yes” or “no”, instead of a question that leads to debate. Specific indicators are easier to measure than broad or general indicators.

For example, an indicator that states: “What rights are provided to women during maternity?” is difficult to measure as compared to “Does the law provide for paid maternity leave for a reasonable period of time without loss of seniority or benefits?” and “Does the law prohibit dismissals on account of marriage, pregnancy, or maternity leave?” The latter indicators are answerable by “yes” or “no” which make it easier to measure compliance.

- *Attainable.* As CEDAW legal indicators strive for legal reform, the indicators must measure matters attainable by law.

For example, laws do not punish mere thoughts, but only acts and omissions. Hence, an indicator that states: “Does the law punish thoughts that discriminate against women?” is not a good one because it does not measure what is attainable by law. Rather, it can be redrafted as “Is there law that requires public information and education on gender discrimination?” The latter indicator inquires about a specific measure to enable changes in behavior and thoughts. Another way of redrafting is to inquire as to whether a discriminatory action or omission is punished, i.e. “Are there sanctions for actions or omissions that result in gender discrimination?”

- *Relevant.* Indicators must be relevant to the State. One of the things that result from copying indicators developed for other countries is that some indicators may not be relevant for the State whose laws are being reviewed.

For example, in a country where dowry is not a practice, an indicator on whether law prohibits dowry is not a priority and would perplex lawmakers on the need for such measurement.

Note however that you should be careful of immediately dismissing indicators as irrelevant. For example, where there is no information on a particular subject matter, research should be undertaken to uncover the de facto situation first before marking an issue as irrelevant. See also Politics of Selecting Indicators below for further discussion.

### 3. If needed, draft sub-indicators.

To make indicators as specific as possible, sub-indicators may be developed. Sub-indicators break down an indicator into its various components to give guidance in replying to the indicator.

For example, an indicator that asks: “Does the law provide for an immediate protection measure for victims of domestic violence?” can be further broken down into sub-indicators as follows:

- Does the immediate protection measure prohibit the offender from committing further acts of violence?
- Does the immediate protection measure prohibit the offender from contacting or harassing the victim or her family members?
- Does this measure allow temporary removal of the offender from the dwelling of the victim, regardless of ownership of the dwelling?
- Does the immediate protection measure allow for a decision on temporary custody of a child?
- Does the immediate protection measure allow for payment of support for the victim?
- Does the measure allow temporary payment of medical expenses incurred due to the violence?
- Is the immediate protection measure valid for a sufficient time to allow the victim to ensure her own safety and protection?
- Is the immediate protection measure issued on the same day as the date of application for it?

- Is the immediate protection measure issued *ex parte*? (An *ex parte* decision is one decided by a judge without requiring all of the parties to the controversy to be present.)
- Is the immediate protection measure issued by easily accessible authorities?
- Does the law allow for the issuance of an immediate protection measure independent of the filing of a case?

#### 4. Select a Reasonable Number of Indicators.

Questions often arise as to how many CEDAW legal indicators should be identified. Consider the following to help you decide:

- *Scope of the review.* On the one hand, where a comprehensive review of CEDAW compliance is undertaken, more indicators are chosen. However, even if there are more indicators for the comprehensive review, it has fewer indicators on each issue or topic. On the other hand, a review of focused coverage may identify more indicators on that issue.

For example, a comprehensive review may identify 150 indicators, but for each issue (e.g. health, education, marriage and family), it may only have 10. Compare this to a review devoted solely on the issue of marriage and family, which can easily identify 50 indicators.

- *Priority given to the issue or sub-issue.* Issues of priority tend to have more indicators of a specific nature. Issues of less priority are given few indicators.
- *Time constraints.* Where there is limited time, to make the review manageable, priority indicators are chosen over those of lesser priority. There is also the tendency to limit the number of indicators.

#### 5. Ensure a corresponding entry.

Ensure that each entry in Step 3 (Ascertain Points Needed in Law) has a corresponding entry in Step 4 (Determine CEDAW Legal Indicators). In some cases, there may be more than one corresponding entry.

### Politics of Selecting Indicators

*“While measurement is often a technical exercise, the decision to measure progress, the process of deciding what aspects of gender equality to measure are political.”<sup>12</sup>*

Discussions as to which indicators should be prioritized, deleted, specified or generalized are subject to negotiations and bargaining. To ensure that CEDAW legal indicators reflect the priorities of women in your country and are not easily diluted by political bargaining, some useful suggestions are:

**Linkage.** Clearly show the linkage between a CEDAW obligation, the issues and concerns of women, and the indicator identified.

**Concluding Observations.** Issues raised in your country’s Concluding Observations are a good source of identifying priorities. Furthermore, as the State is expected to report on the implementation of these issues, including specific indicators relating to those issues is important.

**Workshops and Consultations.** Holding workshops and consultations with experts, specialists, practitioners, women’s advocates, women and other stakeholders on what they determine as priority issues and indicators for legal reform is useful in arguing for inclusion or exclusion of particular indicators.

**Writings and Presentations.** Writings, publications and presentations by experts, especially specialists on gender and law, and women advocates on the need to reform particular laws to achieve equality are also useful.

### Illustrating Step 4

See **Examples 3, 5 and 6** for illustrations of Step 4. For example of indicators from each Article of CEDAW, refer to Annex 1.

<sup>12</sup> Annalise Moser, *Gender and Indicators: Overview Report*, Bridge and UNDP, July 2007, page 9

### Illustrating Steps 1-4

Using Marriage as the subject under CEDAW-based legal review, the following is an example of how Steps 1-4 would appear in matrix form.

#### Example 3: Illustrating Steps 1-4 for Equal Rights in Marriage

Step 1 CEDAW Obligations*	Step 2 Situation, Issues and Concerns**	Step 3 Points Needed in Law	Step 4 CEDAW Legal Indicators
<p><b>Entry into Marriage</b> Art. 16.1(a and b); General Recommendation 21, pars. 14-16, 25-39 and Concluding Observations on the country, if applicable</p> <p>CEDAW requires the State to take all appropriate measures to ensure:</p> <ul style="list-style-type: none"> <li>- same right to enter into marriage</li> <li>- same right to freely choose a spouse</li> <li>- same right to enter into marriage only with free and full consent</li> <li>- minimum age of marriage and betrothal at 18 years of age</li> <li>- compulsory marriage registration</li> </ul>	<ul style="list-style-type: none"> <li>• Marriage without personal consent</li> <li>• Polygamy</li> <li>• Early/child marriages (Minimum age of marriage below 18)</li> <li>• Differential age of marriage (Men and women do not have the same age of marriage)</li> <li>• Betrothal of girls before 18 years of age</li> <li>• Inefficient system of marriage registration</li> <li>• Inefficient system of birth registration</li> <li>• Dowry</li> <li>• Prohibition of remarriage for widows</li> <li>• Mother's consent in not given equal weight in her child's marriage</li> </ul>	<ul style="list-style-type: none"> <li>• Marriage only with personal consent.</li> <li>• Prohibition of proxy marriages</li> <li>• Prohibition of polygamy</li> <li>• No valid marriages below 18 years of age</li> <li>• Same age of marriage for men and women</li> <li>• No betrothals below 18 years of age</li> <li>• Registration of birth, marriages and divorces required</li> <li>• Prohibition of dowry</li> <li>• No prohibition on remarriage of widows</li> <li>• Mother's consent is given equal weight in her child's marriage</li> </ul>	<ol style="list-style-type: none"> <li>1. Does law require personal consent of both spouses to a marriage?</li> <li>2. Is bigamy/ polygamy prohibited?</li> <li>3. Is there an equal minimum age of 18 years for marriage?</li> <li>4. Is registration of birth in an official registry required?</li> <li>5. Does legislation require registration of marriage in an official registry?</li> <li>6. Is the use of dowry as a condition for marriage prohibited?</li> <li>7. Is there absence of any restriction on remarriage of widows?</li> <li>8. Where parental advice or consent is needed, is the consent of both parents given equal weight?</li> </ol>



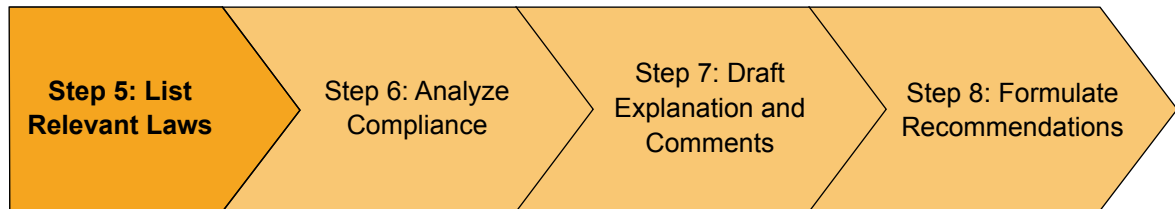
<p><b>Rights During and After Marriage</b> Art. 16.c, g and h, Art. 15; General Recommendation 21, pars. 17-18, 24-29 and Concluding Observations on the country, if applicable</p> <p><b>Personal Rights</b> CEDAW requires the State to take all appropriate measures to ensure:</p> <ul style="list-style-type: none"> <li>- same rights and responsibilities during marriage</li> <li>- same personal rights and responsibilities at its dissolution</li> </ul> <p>same personal rights as husband and wife to choose a family name,</p> <p><b>Property Rights</b> CEDAW requires the State to take all appropriate measures to ensure:</p> <ul style="list-style-type: none"> <li>- same rights as spouses in respect to ownership, acquisition, management, administration, enjoyment and disposition of property</li> <li>- same legal capacity and opportunities to exercise that capacity, including right to conclude contracts, profession and occupation</li> </ul>	<ul style="list-style-type: none"> <li>• Inability to initiate litigation without husband's consent</li> <li>• Husband's domicile is automatically considered as the wife's domicile.</li> <li>• Forced use of husband's surname</li> <li>• Inability to practice a profession without spousal or family authorization</li> <li>• Differential grounds for divorce (Men and women do not have the same grounds for divorce)</li> <li>• Limited rights to institute divorce proceedings</li> <li>• Unequal share in the marital property</li> <li>• No right to acquire, use, manage or dispose property</li> <li>• Wife's consent not needed in the disposition of marital property</li> <li>• Women's non-financial contributions is not considered in the division of marital property</li> <li>• Property registration laws only require the listing of the husband's name over marital property</li> <li>• Unequal inheritance rights</li> <li>• Women are only given limited or controlled rights over inherited property</li> <li>• Women's non-financial contributions of women in de facto unions are not recognized</li> </ul>	<ul style="list-style-type: none"> <li>• Equal right to initiate litigation</li> <li>• Equal right to choose domicile</li> <li>• Equal right to choose a surname</li> <li>• Equal right to practice a profession or occupation without need of spousal or family consent</li> <li>• Same grounds for divorce</li> <li>• Equal right to institute divorce proceedings</li> <li>• Equal share in the marital property</li> <li>• Ability to acquire, use, manage and dispose property regardless of marital status</li> <li>• Consent of both spouses required for disposition of marital property</li> <li>• Financial and non-financial contributions given equal weight in the division of marital property</li> <li>• Property registration laws require that marital property be registered in the name of both spouses</li> <li>• Equal rank as successors</li> <li>• Equal inheritance shares</li> <li>• Same rights over inherited property as successors</li> <li>• Equal weight provided to financial and non-financial contributions during the division of property acquired during the union</li> </ul>	<p>9. Do women and men have equal right to initiate litigation regardless of marital status?</p> <p>10. Does the law allow women to establish their own domicile regardless of marital status?</p> <p>11. Do men and women have equal right to the use surnames?</p> <p>12. Do spouses have equal rights to choose and practice their profession?</p> <p>13. Does law provide for equal division of property and income acquired during marriage, in particular giving equal weight to both financial and non-financial (e.g. housework and childcare) contributions to the household and family?</p> <p>14. Are both spouses (husband and wife) equal in the ownership, acquisition, management, administration, enjoyment and disposition of property?</p> <p>15. Does the law require the consent of both spouses for disposition of marital property?</p> <p>16. Does the law require marital property to be registered in the name of both spouses?</p> <p>17. Do women and men have equal rank as successors?</p> <p>18. Do women and men have equal inheritance shares?</p> <p>19. Do women and men have the same rights over inherited property?</p> <p>20. Does law provide for equal division of property and income acquired during a union without the benefit of marriage (de facto unions), giving equal weight provided to financial and non-financial contributions?</p> <p>21. Does the law provide for maintenance or support of a former spouse after divorce based on need, assets and earning capacity?</p>
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<p><b>Rights relating to Children</b>          Art. 16.d and f; General Recommendation 21, pars. 19-20 and Concluding Observations on the country, if applicable</p> <p>CEDAW requires the State to take all appropriate measures to ensure:</p> <ul style="list-style-type: none"> <li>- same rights and responsibilities as parents, regardless of marital status</li> <li>- same rights and responsibilities concerning guardianship, wardship, trusteeship, adoption</li> </ul>	<ul style="list-style-type: none"> <li>• No shared responsibility in the care, protection and maintenance of children</li> <li>• No joint guardianship over a common child (Father is the guardian of the child)</li> <li>• Inability to adopt a child (Women cannot adopt children.)</li> <li>• Child support is not provided after divorce.</li> </ul>	<ul style="list-style-type: none"> <li>• Shared responsibility in the care, protection and maintenance of children</li> <li>• Equal rights to guardianship</li> <li>• Women allowed to adopt children regardless of marital status</li> <li>• Child support is required</li> </ul>	<p>22. Does the law require both parents to support a common child, regardless of their marital status?</p> <p>23. Are custody and access and children based on best interest of the child, regardless of the marital status of parents?</p> <p>24. Do women and men have equal guardianship rights?</p> <p>25. Are women allowed to adopt children, regardless of marital status?</p> <p>26. Does the law provide for payment of child support after divorce?</p>
<p><b>Sexual and Reproductive Rights</b>          Art. 16.6; General Recommendation pars. 21-23</p> <p>CEDAW requires the State to take all appropriate measures to ensure:</p> <ul style="list-style-type: none"> <li>- same right of parents to decide freely and responsibly on the number and spacing of children</li> <li>- same right to have access to information, education and means to exercise the above right</li> </ul>	<ul style="list-style-type: none"> <li>• Forced sterilizations</li> <li>• Lack of information on sexual and reproductive rights</li> </ul>	<ul style="list-style-type: none"> <li>• Sanctions for forced sterilizations</li> <li>• Full information on sexual and reproductive rights required to be provided to health clients</li> <li>• Public information campaigns on sexual and reproductive rights</li> </ul>	<p>27. Is forced sterilization prohibited and punished?</p> <p>28. Does the law require health service providers to give adequate/ comprehensive information on sexual and reproductive rights?</p> <p>29. Does the law require public information campaigns on contraception to be undertaken by a designated public authority?</p>

\*In this illustration, Option 3 (Thematic Summary) for Step 1 was used.

\*\*In this illustration, Option 2 (Problem-based Language) for Step 2 was used.

## DETERMINING COMPLIANCE AND RECOMMENDATIONS



With CEDAW Legal Indicators in hand, you are now ready to enter the next steps to determine whether the relevant laws comply with the indicators.

### 1. Identify the laws that are relevant to each indicator.

What kind of laws will be identified depends on the decision done earlier as to the scope of the legal review. (See Part 3).

### 2. Present the law in a structured manner.

You may choose to write the (a) full text, (b) abbreviated citation, or (c) abbreviated citation with a summary of the content of the provision.

**Option 1: Full text.** This means presenting the full text of the law.

- Advantage: Readers can immediately see what the exact provisions of the law are without needing to access another material.
- Disadvantage: The provisions of the law may be lengthy or repetitive. In many instances, legal language is difficult to comprehend for those who are not familiar with it.

**Option 2: Abbreviated citation.** This means providing only a citation of the law and its specific article or section, e.g. Article 5 of the Constitution or Section 214 of the Criminal Procedure Code. Proponents of the second option point out that relevant documents can be added into the appendix or annex.

- Advantage: This approach avoids long and repetitive provisions. It saves space.
- Disadvantage: The provisions of the law are not available at first glance. This prevents a smooth reading of the laws. It also places the burden on the reader to look for the cited laws. This may be inconvenient for them if they do not have easy access to laws, or do not know how to access them.

**Option 3: Abbreviated citation and summary.** This means providing an abbreviated citation and a summary of the main points of the law.

This can be done in two ways: (a) an abbreviated citation first and then a brief summary of the cited provision or (b) a brief summary first and then the cited provision.

- **Advantage:** Long and repetitive texts are avoided when using this approach. In addition, readers can immediately see the main points of the law. This is also easily understandable to readers who are not familiar with legal language.
- **Disadvantage:** This approach requires more effort and time as the legal provisions have to be synthesized.

The option or combination of options you use depends on the purpose of the legal review and its intended beneficiaries. Consulting with beneficiaries and experts will help the process of selecting the best option for your legal review.

### **3. Look into both women or gender-specific laws and laws of general application.**

There is a tendency to focus on women or gender-specific laws, and disregard laws of general application. This should be avoided. In some cases, laws of general application may already afford adequate legal protection.<sup>13</sup> On the other hand, they may disregard women's actual situations.<sup>14</sup> Hence, bringing these laws into the analysis, in addition to women or gender-specific laws, is important. In cases where no relevant law applies, it should be reflected in Step 5.

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<sup>13</sup> For example, an indicator that states: "Are domestic violence victims entitled to compensation?" may require a reply that may not be found in the country's law on domestic violence. Rather, the answer may be in the Civil Code, Penal Code, or Codes of Civil and Criminal Procedures, which lay down the rules on compensation.

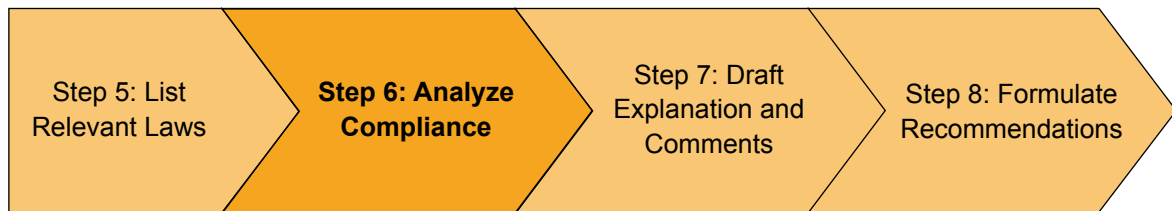
<sup>14</sup> For example, an indicator that inquires: "Do spouses have equal right to register common property in their own names?" requires one to look into registration or property laws, especially when women or gender-specific laws do not cover such topic. In many cases, registration or property laws may have general provisions on equal rights to register, but may disregard low number of properties registered jointly in the name of both spouses.

### Illustrating Step 5

#### Example 4: Illustrating Various Options of Presenting Step 5 (List Relevant Laws) using Cambodian Laws

Option 1: Full Text	Option 2: Abbreviated Citation	Option 3: Abbreviated Citation and Summary
<p><b>Article 31, Constitution.</b> "...Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, colour, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status. The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with the law."</p> <p><b>Article 12, Labour Law.</b> "Except for the provisions fully expressing under this law, or in any other legislative text or regulation protecting women and children, as well as provisions relating to the entry and stay of foreigners, no employer shall consider on account of:</p> <ul style="list-style-type: none"> <li>• race,</li> <li>• color,</li> <li>• sex,</li> <li>• creed,</li> <li>• religion,</li> <li>• political opinion,</li> <li>• birth,</li> <li>• social origin,</li> <li>• membership of workers' union or the exercise of union activities;</li> </ul> <p>To be the invocation in order to make a decision on:</p> <ul style="list-style-type: none"> <li>• hiring,</li> <li>• defining and assigning of work,</li> <li>• vocational training,</li> <li>• advancement,</li> <li>• promotion,</li> <li>• remuneration,</li> <li>• granting of social benefits,</li> <li>• discipline or termination of employment contract.</li> </ul> <p>Distinctions, rejections, or acceptances based on qualifications required for a specific job shall not be considered as discrimination.</p>	<p><b>Article 31, Constitution</b>  <b>Articles 12, Labour Law</b></p>	<p><b>Article 31, Constitution</b>            (It guarantees equal rights, freedom and obligation regardless of race, colour, sex, language, religious belief, political tendency, birth origin, social status, wealth and other status. Its exercise shall not adversely affect the rights of others.)</p> <p><b>Articles 12, Labour Law</b>            (Unless there is a law or regulation to the contrary, no employer shall consider race, color, sex, creed, religion, political opinion, birth, social origin, membership or exercise of membership in a union, in making a decision on hiring, work assignments, vocational training, advancement, promotion, remuneration, social benefits, disciplinary measures, or termination. However, distinctions, rejections or acceptances based on job-specific qualifications are not considered discrimination.)</p>

→ See Examples 5 and 6 for further illustrations of Step 5.



The next step is to analyze the relevant laws against the CEDAW Legal Indicators.

### **1. Analyze whether the relevant law complies with the indicator.**

Options to indicate the level of compliance can range from:

- Full compliance;
- Partial compliance; to
- No compliance.

The following are some guidelines on deciding whether there is full, partial or no compliance:

- No compliance means the absence of a legal provision responding to the indicator. It can also mean the existence of a law contrary to the indicator or an inappropriate law.
- Partial compliance means that a legal provision exists but it is inadequate. Indications of inadequacy may mean that there is a good law that is not effectively implemented or that the de facto situation requires further legal guarantees.
- Full compliance means the existence of a legal provision responding to the indicator and no further legal provisions are needed for compliance.

### **2. Be prepared for possible conflicts and concerns that may arise during compliance discussions.**

The following particular concerns usually surface during compliance discussions:

#### ***Concern No. 1: Lack of expertise on CEDAW and de facto situation of women***

Some drafters conduct a legal review without having good knowledge of CEDAW and the de facto situation of women. As a result, their analysis is insufficient and irrelevant.

For example, in reply to the indicator, “Do laws guarantee equal inheritance rights?”, there is a tendency to respond “full compliance” if there is a gender-neutral provision that only provides for general guarantee of equal inheritance rights. This assessment may disregard the de facto situation where women cannot access such rights due to a tradition, custom and lack of State enforcement. This shows that there is both a lack of understanding of the standards of CEDAW and the requirements of substantive equality, and a lack of knowledge of the de facto situation. A proper reply is “partial compliance” as there is a legal provision of equal rights, however, there are no other legal guarantees to ensure its enforcement amidst tradition or customs to the contrary.

**Concern No. 2: Lack of knowledge on law and law-making**

Using the same indicator above, another tendency for replying “full compliance” is the lack of understanding on law and law-making, especially on what can be possible contents of the law. In most cases, the argument provided is that the law is good, but enforcement is the problem. In this case, there is a need to look into whether the law is sufficient to require effective enforcement. Are appropriate details given in the law to ensure enjoyment of equal inheritance rights? If not, then there is only partial compliance as further legal provisions are needed to enable full enjoyment of the right.

**Addressing Concerns 1 and 2:** Ensure that the needed expertise and materials are available before starting the legal review. Expertise on CEDAW, the de facto situation of women, and law and law-making are indispensable to drafting a CEDAW legal review. Where expertise is not immediately available, invite experts to be part of the drafting team or to provide technical assistance. Where materials are not easily accessible, engage in research to uncover them.

**Concern No. 3: Inadequate data to measure de facto application of the law**

Without adequate data to measure the de facto application of a law, assessing its impact and effectiveness is difficult.

**Addressing Concern No. 3:** Seek out data that measures de facto application of the law early in the process. In many countries, this is not readily available. Early research into this will allow sufficient time to reveal the needed information or initiate new data gathering or collation.

**Concern No. 4: The need to appear balanced**

Some drafters of legal reviews believe that for a legal review to be taken constructively and to garner wide-spread support (e.g. from government or opposing groups), they have to create an “appearance of fairness”, i.e. having a good balance of full compliance and no compliance responses.

**Concern No. 5: Tendency to soften the legal review or to avoid “no compliance” answers**

There can be a tendency to avoid “no compliance” answers as it is embarrassing for or likely to anger the government. For example, government officials in a particular country were involved in the legal review. They requested that the assessment be toned down because it might not be received well by superiors and lead to disapproval of the legal review instead of cooperation.

**Concern No. 6: Compromises**

When the drafting team for the legal review is composed of individuals or groups with varied interests and advocacy, arriving at a consensus may be difficult on sensitive issues. Therefore assessment of compliance may be a product of compromise rather than analysis.

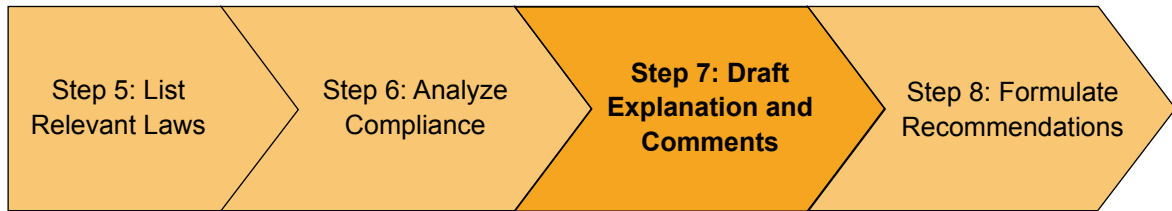
**Addressing Concerns No. 4, 5 and 6:** Remain true to CEDAW. Political considerations and negotiations are likely to be part of most CEDAW-based legal review processes. However, appearing balanced and courting wide-based support should not veer you away from the standards set forth by CEDAW. To be prepared for political negotiations and discussions, these steps may be useful:

- Seek the support and cooperation of relevant sectors prior to beginning the legal review.
- Establish clearly the use of CEDAW as the framework for the review and what it would entail. This must be explained to all relevant sectors, especially those whose support is being sought. Explain that there is a likelihood that the assessment may be negative, but recommendations will be provided to give guidance for progress. Explain also that softening the findings of the assessment may be counter-productive as it results in lowering the quality of the review and going below the standards of CEDAW. Highlight that it is better for the legal review to have identified the problems with the law, so that processes to change it can begin.
- Do the research on facts and laws well and make access to it easy. In most cases, objections to your assessment will claim that it failed to consider specific information or relied on old data. Make sure that all relevant facts and laws were considered. Have these evident and readily accessible.
- Demonstrate clearly how the assessment was arrived at by going through Steps 1 to 6 of the framework in a precise manner.
- Build Capacity on CEDAW. In many sectors, there is unfamiliarity of what CEDAW requires. This may lead to assessments being viewed with distrust or hostility. Complement the legal review with capacity building on CEDAW. Build capacity of people working on gender and CEDAW, especially in relevant sectors (e.g. government officials) to understand CEDAW and defend its standards before their superiors, their constituencies and others.

**Illustrating Step 6**

→ See **Examples 5 and 6** for an illustration of Step 6 (Analyze Compliance).





In addition to stating whether the law is fully, partially or non-compliant to CEDAW, you need to provide an explanation as to why the relevant laws comply or not with the indicator.

### 1. Explain your response to Step 6 (Analyze Compliance).

Depending on your response to Step 6, the contents under Step 7 may vary.

- If your reply is “no compliance,” Step 7 will state the absence of a legal provision responding to the indicator, existence of a law contrary to the indicator, or an inappropriate law as the reason for the reply. It must provide further explanations on why the law in question is contrary or inappropriate.
- If your reply is “partial compliance,” Step 7 will provide comments on why the law is inadequate, which may include comments on weak implementation.
- If your reply is “full compliance,” Step 7 will state the existence of a legal provision responding to the indicator and that no further legal provisions are needed for compliance.
- In some cases, the explanation is self-evident so that no explanations or comments are needed.

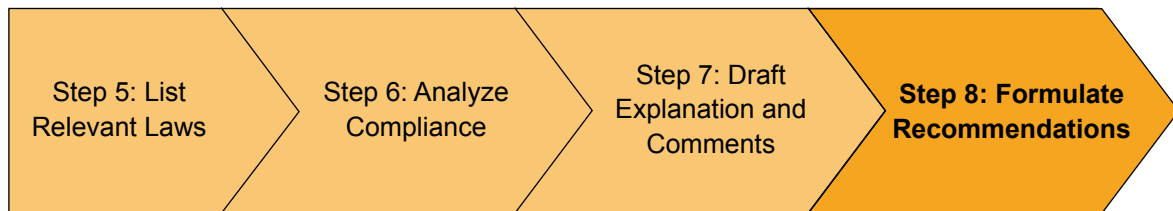
### 2. Include other information that influenced your response to Step 6 (Analyze Compliance).

Other information which may be useful to include in Step 7 are:

- Analysis undertaken in deciding compliance with the indicator;
- Concrete data or information to support the assessment;
- Gaps, limitations and challenges relating to implementation and enforcement; and
- Effects or impact of the law on the de facto situation of women.

### Illustrating Step 7

→ See **Examples 5 and 6** for an illustration of Step 7.



Finally, you need to formulate recommendations, keeping the following in mind.

**1. Offer recommendations on what the law should be if there is non-compliance or partial compliance (legal recommendations).**

These recommendations should focus on legal reform, in particular:

- Amending an existing provision;
- Adding or deleting a provision of law;
- Repeal of a law; or
- Issuance of a new law.

**2. Be specific.**

When making recommendations, you must be specific. For example, it is not enough to point out that an amendment or new law is necessary. You should specify the main features of the amendment or law.

**3. As an option, suggest supplementary measures.**

It is useful to include recommendations that are supplementary to the proper implementation of the gender equality provisions. If there is already compliance, these measures further guarantee implementation and enforcement. If there is partial or non-compliance, these measures in addition to assisting in implementation and enforcement, will also support the legal recommendations made. These recommendations must be grouped separately from legal recommendations.

**Illustrating Step 8**

→ See **Examples 5 and 6** for an illustration of Step 8.

### Illustrating Steps 1-8

#### Example 5: Illustrating Steps 1 to 8 for Minimum Age of Marriage

Using Minimum Age of Marriage as the area of focus of the CEDAW-based legal review and one indicator only, the following is an example of how the legal review framework works. The list is illustrative and not intended to be prescriptive. Replies may vary depending on the country situation and priorities.

Developing CEDAW Legal Indicators			Determining Compliance and Recommendations				
Step 1 CEDAW Obligations	Step 2 Situation, Issues and Concerns	Step 3 Points Needed in Law	Step 4 CEDAW Legal Indicators	Step 5 Relevant Laws	Step 6 Compliance	Step 7 Explanation and Comments	Step 8 Recommen- dations
<ul style="list-style-type: none"> <li>Minimum Age of Marriage</li> <li>Art. 16.2</li> <li>General Recommendation 21 pars. 36-39</li> <li>Concluding Observations on the country, if applicable</li> </ul>	<ul style="list-style-type: none"> <li>minimum marriageable age is 16 for women</li> <li>age of marriage is not the same for women and men</li> </ul>	<ul style="list-style-type: none"> <li>designated minimum age of marriage not below 18 years of age</li> <li>women and men must have the same minimum age of marriage</li> </ul>	Is there an equal minimum marriage age of 18 for women and men?	<ul style="list-style-type: none"> <li>Art. 7 of the Marriage Law (man must be at least 18 years old and the woman at least 16 years old to enter into marriage)</li> </ul>	No Compliance	There is non-compliance because (a) the marriage age for women is below 18 and (b) the age of marriage between man and woman is not the same.	Amend the law to provide a minimum marriage age of 18 for both woman and man.

### Example 6: Illustrating Steps 1 to 8 for Nationality

Using Nationality as the area of the CEDAW-based legal review, the following is an example of how the legal review framework works. The list is illustrative and not intended to be prescriptive. Replies may vary depending on the country situation and priorities.

Developing CEDAW Legal Indicators			Determining Compliance and Recommendations				
Step 1 CEDAW Obligations	Step 2 Situation, Issues and Concerns	Step 3 Points Needed in Law	Step 4 CEDAW Legal Indicators	Step 5 Relevant Laws	Step 6 Compliance	Step 7 Explanation and Comments	Step 8 Recommen- dations
<ul style="list-style-type: none"> <li>• Art. 9, CEDAW</li> <li>• General Recommendation 21, par. 6</li> <li>• Concluding Observations on the country, if applicable</li> </ul>	Retention of citizenship (A women can retain her citizenship, despite marriage to a non-national or change in her husband's nationality)	Women and men can retain their citizenship regardless of marriage or change of nationality of one's spouse.	Does the law allow a woman to retain her nationality, even if there is marriage to a non-national or a change in her husband's nationality?	<ul style="list-style-type: none"> <li>• Art. 9 of the Law on Nationality (marriage, divorce or annulment between a national and foreigner does not alter the citizenship of the national)</li> <li>• Art. 10 of the Law on Nationality (loss of citizenship by one spouse does not alter the citizenship of the other spouse)</li> </ul>	Full Compliance	The law requires uniform application whether the national is a man or a woman. Implementation of the law is also uniform. No disparities exist between women and men in accessing and enjoying this right.	None

	<p>Equal right for a mother to transmit her nationality to her child</p>	<p>Women must have equal right to transmit their nationality to their children, regardless of marriage.</p>	<p>Do women and men have equal right to transmit their nationality to their children?</p>	<ul style="list-style-type: none"> <li>• Art. 17 of the Law on Nationality (a child born to a national and a foreigner may acquire the national's citizenship if agreed upon in writing by both parents at the time of the birth registration)</li> </ul>	<p>No Compliance</p>	<p>The law disproportionately impacts on women because: There is a prevalence of relationships without marriage where the foreign father leaves the country, is unable to be found, or refuses to enter into an agreement as to the nationality of the child. This deprives the child of the national's citizenship.</p> <p>There are many cases of trafficking, where a child is born outside the country to a father who is a foreigner and a mother who is a national. In this case, Art. 12 may operate to render the child stateless.</p> <p>Rural women do not know their rights under the law, and thus, they neglect to register their children as citizens, even if with agreement from the father.</p>	<p>Amend the law so that nationals can transmit their citizenship to their child, without need of agreement from the other parent</p> <p>The above recommendation must be supplemented by:</p> <p>Increased awareness of citizens, especially women, on the right to transmit citizenship to a child born to a national and a foreigner</p> <p>Increased awareness of relevant government officials on the right of nationals to transmit citizenship to a child born to a national and a foreigner</p>
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## PART FOUR:

### FRAMEWORK FOR A CEDAW-BASED LEGAL REVIEW

	<p>Equal right to acquire citizenship</p>	<p>Women and men have the same grounds or conditions to acquire citizenship.</p>	<p>Do women and men have equal right to acquire citizenship?</p>	<ul style="list-style-type: none"> <li>• Art. 35 of the Law on Nationality (Foreign spouses of citizens have the same grounds and conditions for acquiring citizenship. Details to be provided by the immigration authority.)</li> </ul>	<p>Partial Compliance</p>	<p>Although the law complies with the indicator, it is inadequate. In practice, foreign wives from particular "high risk" countries are required by the immigration authority to present additional requirements, such as proof of good moral character, prolonged residency with the husband, and viable profession or income, when applying for citizenship. This is not required for foreign husbands. Additional legal provisions are needed so that no discretion is given to the immigration authority in the implementation of Art. 35.</p>	<p>Supplement Art. 35 to state clearly that the imposition of additional requirements on the basis of one's gender is prohibited</p> <p>Supplement the law to require information dissemination programs to the public and notice to applicants of the prohibition mentioned above</p>
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USING CEDAW-BASED LEGAL REVIEWS



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## PART FIVE:

### USING CEDAW-BASED LEGAL REVIEWS

In this section:

- ✓ From review to reform
- ✓ How to use your CEDAW-based legal reviews to engender change

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#### FROM REVIEW TO REFORM

CEDAW-based legal reviews are important tools to transform the legal system into one that recognizes and guarantees equality and non-discrimination. In many cases, this does not happen automatically. Legal advocacy needs to occur to ensure that the findings of the legal review lead to actual law reform.

This entails a combination of complementary strategies including:<sup>15</sup>

##### **Alliance and Network Building**

Identify individuals and groups to help in legal advocacy. This is important because legal advocacy work is a difficult undertaking. This strategy requires a lot of time, effort, commitment and skills.

##### **Mapping legal advocacy**

Define entry points for intervention in each step of the law-making process. Identify target individuals or groups to be influenced and their likely allies or opposition. Determine the skills and tasks required for the whole undertaking as well as the roles to be performed by each individual or group.

##### **Defining the legal proposal**

Based on the findings of the CEDAW-based legal review, draft the essential elements of the legal proposal. Increase awareness of all allies on these elements. Know which elements are non-negotiable. Anticipate arguments against these elements and prepare to counter them.

##### **Information and Research**

Law-makers look for data, analysis and other information to convince themselves and others of the merits of the legal proposal. Put together this information and disseminate to allies, law-makers and other stakeholders. If done well, the CEDAW-based legal review, which is an extensive research itself, should have all the required information. If not, make sure that additional research is conducted to supplement the legal review.

##### **Lobbying**

In legal advocacy, lobbying is the process of influencing law-makers to promote or block the adoption of a legal proposal. Familiarize yourself with the lobbying practices in your country or community. This also means identifying which groups within your alliance or network have experience and skills in lobbying and making full use of their expertise.

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<sup>15</sup> See also Women's Legal Bureau. *A Legislative Advocacy Manual for Women*, Quezon City, 2001.

### **Public education**

Raising awareness and sensitivity of the public to the legal proposal is important as public officials and law-makers are sensitive to public and media opinion. Using the media, including TV, radio, print and internet, is seen as an effective way of reaching out to more people. Public education creates new allies and supporters for advocacy.

## **USING CEDAW-BASED LEGAL REVIEWS**

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CEDAW-based legal reviews are used to facilitate reform of laws. They have many other uses as well, including:

### **As a common platform for advocacy**

A legal review of the Marriage Law (Law No. 1 of 1974) of Indonesia is presently being undertaken by the CEDAW Working Group Initiative (CWGI), a coalition of NGOs monitoring CEDAW implementation, with technical support from UNIFEM.

- **Uses:** The review will be used as a common platform for advocacy for the amendment of the Marriage Law or for the drafting of a new one. To facilitate this, the review has identified a set of CEDAW legal indicators for marriage, provided recommendations for reform, and proposed alternative texts to the Marriage Law.

### **As a way of measuring progress**

The Government of Cambodia, under the leadership of the Ministry of Justice and with support from UNIFEM, is undertaking a legal review of its laws on marriage, trafficking, domestic violence and employment of domestic workers, to ensure compliance with its obligation under CEDAW.

- **Uses:** The review was conducted to measure the country's progress towards compliance with CEDAW, especially in the light of new and forthcoming legislation. The Government is also working to address areas where there is non-compliance, e.g. to remedy particular legal provisions immediately where possible and to incorporate the others into its law or rule-making agenda.

### **As an aid to law-making**

A legal survey using CEDAW as a framework will be conducted in Timor Leste by the Women's Caucus in parliament and its Gender Resource Center. The survey will highlight achievements and gaps in legislation.

- **Uses:** The result of the legal survey is intended to input into the drafting of a gender equality law. It will assist drafters in identifying issues to be prioritized and attended to in the forthcoming legislation.

### **As an aid to drafting strategies, plans, programmes of action and reports**

### As a tool to highlight priorities

After the adoption of the Vietnam Law on Gender Equality in 29 November 2006, the Directive on Gender Equality Law was issued on 3 May 2007 mandating a review of existing legal normative documents to be completed by the government. To assist the government review in accordance with the Directive on Gender Equality, a legal review entitled “CEDAW and the Law: A Gendered and Rights-based Review of Vietnamese Legal Documents through the Lens of CEDAW” was undertaken by UNIFEM Vietnam on 18 thematic areas and an estimated 200 legal normative documents. The legal review was discussed with 55 focal points from various Ministries, the Communist Party and mass organizations, among others.

- **Uses:** The legal review was intended to assist government in reviewing laws to comply with CEDAW and the Law on Gender Equality. It served to highlight areas that needed immediate State attention. The state implementing agency highlighted the legal review’s contribution as an important resource to: (a) the review of the State on the National Strategy for the Advancement of Women till 2010, (b) the development of the National Strategy for Gender Equality for 2011-2020 and the National Target Programme of Action on Gender Equality for 2011-2020, (c) the preparation for the next CEDAW State report in early 2011, and (d) comprehensive amendment and revision of the Labour Code, among others.

### As a means to forge similar or collective undertakings

In the Pacific, two desk reviews were commissioned by UNIFEM Pacific Regional Office and UNDP Pacific Centre to assess legislative compliance with CEDAW of nine Pacific countries: Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Papua New Guinea, Samoa, Solomon Islands, Tuvalu and Vanuatu. The review was for the purpose of thorough stock-taking of the laws of these countries. It applied 113 CEDAW legislative indicators similarly to all nine countries. The report of the desk review was published as “Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries”.

- **Uses:** After the reviews were conducted, Pacific governments committed to prioritize in their legislative agenda compliance with the indicators identified in the reviews. Committing to similar or collective undertakings was facilitated by the legal review as it used the same indicators to all nine countries.



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## ANNEX I: LIST OF CEDAW LEGAL INDICATORS

The following is a list of sample CEDAW legal indicators for each issue. Individual indicators have to be evaluated in terms of their relevance to the actual situation of gender equality in your country. This list aims to assist in the identification of relevant indicators for each country. This is not an exhaustive list.

As to issues relating to Articles 6-16, the column on CEDAW Obligations only identified and focused on the main CEDAW article. However, as Articles 1-5 refer to general obligations of the State, they can be included as CEDAW obligations for those issues.

Articles 1-5: General Undertakings to Eliminate Discrimination and Ensure Equality	
CEDAW Obligations	CEDAW Legal Indicators
<ul style="list-style-type: none"> <li>• Articles 1-5</li> <li>• General Recommendation 19</li> <li>• General Recommendation 25</li> <li>• Concluding Observations on the country, if applicable</li> </ul>	<p><i>Guarantee of Equality and Non-Discrimination</i></p> <ul style="list-style-type: none"> <li>- Does the Constitution guarantee equality and non-discrimination on the basis of sex or gender?</li> <li>- Does the Constitution guarantee equality and non-discrimination on the basis of race, age, disability, ethnicity, economic and social status, sexual orientation and other similar grounds?</li> <li>- Is there a definition of equality between men and women or gender equality and does it conform to substantive equality?</li> <li>- Is there a definition of discrimination/non-discrimination on the basis of sex/gender and does it conform to Article 1 of CEDAW?</li> </ul> <p><i>Prohibition of Discrimination</i></p> <ul style="list-style-type: none"> <li>- Is there a law that clearly prohibits gender discrimination by public authorities?</li> <li>- Is there a law that prohibits gender discrimination by private persons, enterprises and organizations?</li> <li>- Are there sanctions in place for actions or omissions that result in discrimination?</li> <li>- Are sanctions heavier if the discriminatory act is committed by a public official?</li> <li>- Does law prohibit discrimination by foreigners and foreign-owned and/or controlled entities?</li> </ul> <p><i>Legal Protection of Women</i></p> <ul style="list-style-type: none"> <li>- Is there a right to seek redress in cases of discrimination?</li> <li>- Is there a guarantee of legal aid for cases of discrimination?</li> <li>- Is there a guarantee of legal aid for women?</li> <li>- Is protection against gender discrimination extended to foreigners?</li> </ul> <p><i>Institutions and Mechanisms for Implementation and Monitoring</i></p> <ul style="list-style-type: none"> <li>- Does the law designate a specific agency to be responsible for gender equality?</li> <li>- Is the agency designated for gender equality provided with appropriate mandates, powers and resources?</li> <li>- Does law require State agencies to incorporate gender equality in their operations?</li> <li>- Does law require systematic collection of sex-disaggregated data, and gender analysis?</li> <li>- Does law require that strategies and plans be put in place to ensure promotion and protection of gender equality?</li> <li>- Is there an independent commission (e.g. women's commission, human rights commission) that monitors State compliance with gender equality and/or CEDAW?</li> </ul> <p><i>Incorporation and Application of Treaties</i></p> <ul style="list-style-type: none"> <li>- Is CEDAW considered law in the national legal framework?</li> <li>- Can CEDAW's provisions be invoked directly in judicial or quasi-judicial proceedings as a source of an actionable right?</li> <li>- In case of conflict between CEDAW and domestic law, does CEDAW prevail, unless the domestic law is more conducive to the achievement of equality?</li> </ul> <p><i>Temporary Special Measures</i></p> <ul style="list-style-type: none"> <li>- Does law require the setting of temporary special measures to accelerate de facto equality?</li> <li>- Is there a procedure for the implementation of temporary special measures?</li> </ul>

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Articles 1 and 2: Gender-Based Violence	
CEDAW Obligations	CEDAW Legal Indicators
<ul style="list-style-type: none"> <li>• Articles 1-2 and 5</li> <li>• General Recommendation 19</li> <li>• Concluding Observations on the country, if applicable</li> </ul>	<p><i>Domestic Violence</i></p> <ul style="list-style-type: none"> <li>- Is domestic violence defined by law to include all forms of violence (physical, mental, economic and sexual harm and abuse)?</li> <li>- Does the definition of domestic violence include marital rape?</li> <li>- Does the definition of domestic violence include all forms of coercion and deprivations of liberty?</li> <li>- Is protection from domestic violence extended to spouses, former spouses, persons with a common child, persons living together, and other persons in intimate relationships?</li> <li>- Does law provide for an immediate protection measure for victims of domestic violence?               <ul style="list-style-type: none"> <li>▪ Does this measure prohibit the offender from committing further acts of violence?</li> <li>▪ Does this measure prohibit the offender from contacting or harassing the victim or her family members?</li> <li>▪ Does this measure allow temporary removal the offender from the dwelling of the victim, regardless of ownership of the dwelling?</li> <li>▪ Does this measure allow for a decision on temporary custody of a child?</li> <li>▪ Does this measure allow for payment of support to the victim?</li> <li>▪ Does this measure allow for payment of medical expenses incurred due to the violence?</li> </ul> </li> <li>- Is domestic violence prohibited?</li> <li>- Are immediate protection measures valid for sufficient time to enable the victim to ensure her safety and protection?</li> <li>- Does the law allow for the issuance of immediate protection measures independent of the filing of a case (or whether or not the victim pursues litigation)?</li> <li>- Are immediate protection measures issued by easily accessible authorities?</li> <li>- Are immediate protection measures issued ex parte?</li> <li>- Are immediate protection measures issued on the same day as the date of application for it?</li> <li>- Does the law provide for rehabilitation services for domestic violence offenders?</li> <li>- Does law require provision of counseling services to victims of domestic violence and their families?</li> <li>- Does the law require provision of free or affordable legal assistance to victims of domestic violence?</li> <li>- Does law require free or affordable medical services to victims of domestic violence?</li> <li>- Does law identify the appropriate agencies to provide support services to victims of domestic violence?</li> <li>- Does the law require the establishment of refuges or shelters for victims of violence?</li> <li>- Is domestic violence punishable by a penalty commensurate to the gravity of the offense?</li> <li>- Does the law require mandatory reporting of domestic violence to local authorities by health service providers, social workers, village officials and other appropriate public officials?</li> <li>- Does desistance of the victim operate to discontinue the prosecution of a criminal case of domestic violence?</li> <li>- Are domestic violence victims entitled to compensation?</li> <li>- Are domestic violence cases not subjected to mediation?</li> <li>- Does the law provide clear designation of responsibilities among State agencies in addressing domestic violence?</li> <li>- Does the law mandate inter-agency cooperation in addressing domestic violence?</li> <li>- Does law require the training of judicial and law enforcement officials, social workers and health providers on domestic violence?</li> <li>- Does the law mandate dissemination of information on domestic violence by a particular agency?</li> <li>- Does law require the gathering of data and research on domestic violence?</li> </ul> <p><i>Rape and other Forms of Sexual Assault</i></p> <ul style="list-style-type: none"> <li>- Are rape and other forms of sexual assault prohibited?</li> </ul>



	<ul style="list-style-type: none"> <li>- Does the definition of rape or sexual assault include insertion of the penis into the oral or anal openings of another?</li> <li>- Does the definition of rape or sexual assault include insertion of objects into another's genitalia?</li> <li>- Does law allow prosecution for rape even if there is no consent of the victim?</li> <li>- Is prosecution for rape discontinued if there is desistance from the victim?</li> <li>- Is marital rape an offense?</li> <li>- Does the law allow the discontinuance of a criminal proceeding for marital rape if there is desistance or forgiveness by the spouse?</li> <li>- Is there a prohibition of the use of prior sexual conduct to establish consent to sexual intercourse?</li> <li>- Is there no legal requirement for a high degree of physical resistance by the victim to establish rape?</li> <li>- Is there no legal requirement of corroboration of a victim's testimony to successfully prosecute rape?</li> <li>- Does the law require the provision of services for the physical, psychological and social recovery of the victim?</li> <li>- Does the law provide free or affordable legal aid to victims of rape?</li> <li>- Are rape victims entitled to compensation?</li> <li>- Does the law protect the identity and privacy of the victims of rape and sexual assault?</li> <li>- Does law require courts to set up arrangements for non-face to face proceedings, such as video conferencing, in cases where the victim's safety or health is at risk?</li> <li>- Does law provide for procedures for the protection of victims of rape and witnesses from potential retaliation or intimidation, e.g. victim or witness protection programmes?</li> <li>- Does law require the training of judicial and law enforcement officials, social workers and health providers on rape and sexual assault, including on gender-sensitive ways of handling such cases?</li> </ul>
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#### Article 6: Trafficking and Exploitation of Prostitution of Others

CEDAW Obligations	CEDAW Legal Indicators
<ul style="list-style-type: none"> <li>• Article 6</li> <li>• General Recommendation 19, pars. 13-16 and 24</li> <li>• Concluding Observations on the country, if applicable</li> </ul>	<p><i>Trafficking</i></p> <ul style="list-style-type: none"> <li>- Is trafficking of persons prohibited?</li> <li>- Does law define trafficking to include all acts that may constitute trafficking, including recruitment, transportation, transfer, harboring or receipt of persons?</li> <li>- Does law identify all means for the commission of the crime of trafficking, including threat, use of force, other forms of coercion, abduction, fraud, deception, abuse of power, abuse of position of vulnerability, giving or receiving payment or benefit to achieve consent of a person having control over another person?</li> <li>- Does law define the purpose of trafficking to include various forms of exploitation, including exploitation of prostitution and other forms of sexual exploitation, forced labor, slavery and slavery-like practices, and removal of organs?</li> <li>- Does law establish jurisdiction over trafficking offenses committed within the territory of the State and those outside its territory, when committed by or against its nationals?</li> <li>- Are trafficked persons exempt from prosecution?</li> <li>- Is a complaint on trafficking dismissed automatically if the trafficked person desists from continuing with the case?</li> <li>- Are trafficked persons entitled to claim for compensation for damages suffered?</li> <li>- Does law protect the identity and privacy of the trafficked persons?</li> <li>- Does law require courts to set up arrangements for non-face to face proceedings, such as video conferencing, in cases where the trafficked person's safety or health is at risk?</li> <li>- Does law provide for procedures for the protection of trafficked persons and witnesses from potential retaliation or intimidation, e.g. victim or witness protection programmes?</li> <li>- Is trafficking an extraditable offense?</li> </ul>

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	<ul style="list-style-type: none"> <li>- Is trafficking punishable by a penalty commensurate to the gravity of the offense?</li> <li>- Does a law require rehabilitation/ recovery and reintegration services for trafficked persons?</li> <li>- Does law require provision of counseling services to trafficked persons?</li> <li>- Does a law require provision of free or affordable legal assistance to trafficked persons?</li> <li>- Does law require free or affordable medical services to trafficked persons?</li> <li>- Does law identify the appropriate agencies to provide support services to trafficked persons?</li> <li>- Does the law require the establishment of refuges or shelters for trafficked persons?</li> <li>- Does the law provide clear designation of responsibilities among State agencies in addressing trafficking?</li> <li>- Does the law require training of judicial and law enforcement officials, immigration officials, social workers and health providers on trafficking, including appropriate handling of such cases?</li> <li>- Does the law mandate dissemination of information on trafficking by a particular agency?</li> </ul> <p><i>Exploitation of Prostitution</i></p> <ul style="list-style-type: none"> <li>- Are women in prostitution exempt from prosecution or any form of involuntary detention?</li> <li>- Is the act of procuring persons for prostitution, penalized?</li> <li>- Is the act of knowingly benefiting from the prostitution of others penalized?</li> <li>- Does law provide for the protection of the identity and privacy of victims of exploitation of prostitution?</li> <li>- Does law identify the appropriate agencies to provide support services to victims of exploitation of prostitution?</li> <li>- Does the law require the establishment of refuges or shelters for victims of exploitation of prostitution?</li> <li>- Does the law mandate clearly the responsibilities of State agencies in addressing prostitution?</li> <li>- Is good moral character or virginity not an element to rape and other forms of sexual assault?</li> </ul>
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Articles 7-8: Political and Public Life	
CEDAW Obligations	CEDAW Legal Indicators
<ul style="list-style-type: none"> <li>• Articles 7-8</li> <li>• General Recommendation 23</li> <li>• Concluding Observations on the country, if applicable</li> </ul>	<ul style="list-style-type: none"> <li>- Is the equal right to vote guaranteed by the Constitution or law?</li> <li>- Is there equal eligibility for election for all publicly elected bodies?</li> <li>- Are there legal provisions for temporary special measures to enable women to occupy 30% of the legislative bodies?</li> <li>- Is there equal eligibility for appointment to public positions?</li> <li>- Is there legal provision for temporary special measures to enable women to occupy 30% of appointed public positions?</li> <li>- Are there no restrictions in law to women's freedom of movement?</li> <li>- Do women have an equal right to participate in mass organizations, NGOs and other civil society groups?</li> <li>- Is there a law regulating registration and mobilization of NGOs to promote the advancement of women?</li> <li>- Does law guarantee the same criteria for recruitment of female and male diplomats?</li> <li>- Does the law guarantee equal benefits and opportunities for female and male diplomats?</li> </ul>

<b>Article 9: Nationality</b>	
<b>CEDAW Obligations</b>	<b>CEDAW Legal Indicators</b>
<ul style="list-style-type: none"> <li>• Article 9</li> <li>• General Recommendation 21, par. 6</li> <li>• Concluding Observations on the country, if applicable</li> </ul>	<ul style="list-style-type: none"> <li>- Do women have an equal right to acquire or change their nationality?</li> <li>- Do women have the right to retain their nationality, even if there is marriage to a non-national or a change of husband's nationality?</li> <li>- Do women have equal right to transmit their nationality to their children?</li> <li>- Do women have an equal right to transmit their nationality to their husbands?</li> </ul>
<b>Article 10: Education</b>	
<b>CEDAW Obligations</b>	<b>CEDAW Legal Indicators</b>
<ul style="list-style-type: none"> <li>• Article 10</li> <li>• Concluding Observations on the country, if applicable</li> </ul>	<ul style="list-style-type: none"> <li>- Is there a guarantee of equality and non-discrimination in education?</li> <li>- Does law prohibit discrimination in the recruitment, selection and enrolment of students?</li> <li>- Is there a legal prohibition against non-enrolment or expulsion from school based on pregnancy and maternity?</li> <li>- Does the law guarantee access to the same curricula, examinations, teaching staff, and school equipments?</li> <li>- Does the law prohibit discrimination on the basis of sex/ gender in the provision of scholarships and study grants?</li> <li>- Is there law on ensuring access to education of disadvantaged groups of women, including indigenous women and girls and women and girls with disabilities?</li> <li>- Are there legal documents ensuring that school administrators, personnel and teachers do not discriminate on the basis of sex/ gender?</li> <li>- Is sexual harassment by school administrators, personnel, teachers and schoolmates prohibited?</li> <li>- Does the definition of sexual harassment include physical, mental, verbal and visual forms of harassment?</li> </ul>
<b>Article 11: Employment</b>	
<b>CEDAW Obligations</b>	<b>CEDAW Legal Indicators</b>
<ul style="list-style-type: none"> <li>• CEDAW, Art. 11</li> <li>• General Recommendation 13</li> <li>• General Recommendation 16</li> <li>• General Recommendation 17</li> <li>• General Recommendation 19, pars. 17, 18 24 (j and p)</li> <li>• Concluding Observations on the country, if applicable</li> </ul>	<ul style="list-style-type: none"> <li>- Is there an explicit guarantee of equality and non-discrimination in employment on the grounds of sex, race, ethnicity, economic and social status, sexual orientation, and other similar grounds?</li> <li>- Do women have the same employment opportunities as men? (Are there no restrictions on women's choice of employment?)</li> <li>- Does the law prohibit the use of different recruitment and selection criteria for women and men?</li> <li>- Does the law prohibit job advertisements that restrict job applicants to a particular sex? (unless it is in the nature of a temporary special measure)</li> <li>- Does the law provide for temporary special measures to ensure entry of women into male-dominated work?</li> <li>- Does the law prohibit dismissal on account of one's gender?</li> <li>- Does the law contain provisions on equal conditions for termination of employment?</li> <li>- Is there a legal provision on equal pay for equal work and for work of equal value?</li> <li>- Does law require the same criteria women and men for promotions?</li> <li>- Does law provide for temporary special measures to ensure equal access by women and men to leadership positions?</li> <li>- Does the law require same selection criteria for women and men in relation to access to training and other capacity development activities?</li> </ul>

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	<ul style="list-style-type: none"> <li>- Does the law provide for temporary special measures to ensure equal access by women and men to training and capacity development opportunities?</li> <li>- Does law require equal criteria in job evaluations?</li> <li>- Does the law provide for equal age and conditions for retirement?</li> <li>- Does the law provide for equal conditions for the enjoyment of social security benefits (such as for sickness, disability or unemployment)?</li> <li>- Is sexual harassment by employers and co-employees prohibited?</li> <li>- Does the definition of sexual harassment include physical, mental, verbal and visual forms of harassment?</li> <li>- Does the law provide for equal protection of women and men from occupational hazards?</li> <li>- Does the law provide equal right to collectively organize or join unions?</li> <li>- Does the law prohibit restrictions on the kinds of work women can perform in the course of her employment?</li> <li>- Does the law allow both men and women to work safely at night?</li> <li>- Does the law prohibit dismissal on account of marital status, pregnancy and maternity?</li> <li>- Does the law provide for paid maternity leave for a reasonable period of time without loss of seniority or benefits?</li> <li>- Does the law require the provision of childcare facilities in the workplace or childcare allowance?</li> <li>- Does the law allow for reasonable nursing time during work hours?</li> <li>- Does the law provide protection for women from doing heavy work or work proved harmful to her and her fetus' health during the period of her pregnancy?</li> <li>- Is there paid paternity leave for a reasonable period of time?</li> <li>- Does the law designate an institution to monitor compliance with gender equality provision in employment?</li> <li>- Does the law designate an institution to enforce compliance with gender equality provision in employment?</li> <li>- Are there remedies available against designated monitoring or enforcement institution for failure to perform its monitoring and enforcement functions?</li> <li>- Are there sanctions for gender discrimination in employment?</li> <li>- Are victims of discrimination in employment provided compensation for damages suffered?</li> </ul>
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<b>Article 12: Health</b>	
<b>CEDAW Obligations</b>	<b>CEDAW Legal Indicators</b>
<ul style="list-style-type: none"> <li>• Article 12</li> <li>• General Recommendation 19, pars. 19-20</li> <li>• General Recommendation 24</li> <li>• Concluding Observations on the country, if applicable</li> </ul>	<ul style="list-style-type: none"> <li>- Does law guarantee non-discrimination and equal access to health care on the basis of sex/gender?</li> <li>- Is there a specific guarantee of sexual and reproductive health care for women?</li> <li>- Is there a law ensuring access by women to appropriate health-care services relating to pregnancy and maternity?</li> <li>- Is there a law that requires free or affordable health-care services for poor women, indigenous women and other disadvantaged groups of women?</li> <li>- Is abortion decriminalized?</li> <li>- Are sex-selective abortion and prenatal sex-selection prohibited?</li> <li>- Is there an absence of a law that restricts family size?</li> <li>- Is there no requirement for spousal or family authorization for women to access health care services?</li> <li>- Is there a law that prohibits discrimination in accessing sexual and reproductive health services on account of marital status?</li> <li>- Is there a law that guarantees the right to free and informed choice in family planning?</li> <li>- Is there a law that prohibits coercion, intimidation or undue influence in family planning programmes?</li> <li>- Is there a law that guarantees access to affordable, effective and wide-ranging range of family planning methods?</li> </ul>

	<ul style="list-style-type: none"> <li>- Is there a law requiring prevention and management of reproductive tract infections, including sexually transmitted infections, HIV/AIDS, reproductive tract cancers, and other gynecological conditions and cancers?</li> <li>- Is there a law prohibiting discrimination against persons, including women, living with HIV/AIDS and other sexually transmitted infections?</li> <li>- Is sexual harassment by health professionals prohibited?</li> <li>- Does the definition of sexual harassment include physical, mental, verbal and visual forms of harassment?</li> <li>- Does the law protect the identity and privacy of patients?</li> <li>- Is there a law requiring the dissemination of information on health care, including sexual and reproductive health care?</li> <li>- Does the law require the teaching of sexual and reproduction rights for children and adolescents?</li> <li>- Does law require gender-sensitive courses on women's health and gender-based violence in the curricula of health workers?</li> <li>- Does the law require establishment of measures to improve skills of traditional healers and midwives to enable them to provide safe, efficient and affordable health services?</li> </ul>
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#### Article 13: Economic and Social Life

CEDAW Obligations	CEDAW Legal Indicators
<ul style="list-style-type: none"> <li>• Article 13</li> <li>• Concluding Observations on the country, if applicable</li> </ul>	<ul style="list-style-type: none"> <li>- Is there a guarantee for women's equal participation in business?</li> <li>- Do women have equal right to access credit, loans and funds?</li> <li>- Are there temporary special measures to enable a percentage of women to access credit, loans and funds?</li> <li>- Does law guarantee non-discrimination in sports scholarships and grants?</li> <li>- Are there no restrictions in law on women's participation in sports events and competitions?</li> </ul>

#### Article 14: Rural Women

CEDAW Obligations	CEDAW Legal Indicators
<ul style="list-style-type: none"> <li>• Art. 14</li> <li>• General Recommendation 19, par. 21</li> <li>• General Recommendation 24, par. 28</li> <li>• Concluding Observations on the country, if applicable</li> </ul>	<ul style="list-style-type: none"> <li>- Are there temporary special measures in law to enable a percentage of rural, indigenous and ethnic minority women to access all levels and kinds of education?</li> <li>- Are there temporary special measures in law to enable a percentage of rural, indigenous and ethnic minority women to access health care services?</li> <li>- Does the law allow a women's property to be registered in her own name?</li> <li>- Are there no restrictions to a women's right to use, encumber or dispose her property, e.g. family authorization?</li> <li>- Does the law allow women to hold community property/ land?</li> <li>- Does the law ensure women's participation in the design, formulation and implementation of land, agrarian, infrastructure and other development policies?</li> <li>- Does the law provide for social security benefits for rural, indigenous and ethnic minority women?</li> <li>- Is there a law to ensure the representation of indigenous and ethnic minority women in publicly elected bodies?</li> </ul>

#### Article 15: Equality before the Law

CEDAW Obligations	CEDAW Legal Indicators
<ul style="list-style-type: none"> <li>• Article 15</li> <li>• General Recommendation 21, par. 7-10</li> </ul>	<ul style="list-style-type: none"> <li>- Does the Constitution guarantee equality before the law?</li> <li>- Do women have the same legal capacity and capacity to act as men in all civil matters?</li> <li>- Do women (regardless of marital status) have an equal right to conclude contracts? (Are there any legal restrictions to women entering and concluding contracts?)</li> </ul>

## ANNEX I:

### LIST OF CEDAW LEGAL INDICATORS

<ul style="list-style-type: none"> <li>• Concluding Observations on the country, if applicable</li> </ul>	<ul style="list-style-type: none"> <li>- Do women have an equal right to be executors or administrators of estates?</li> <li>- Do women have the same right with respect to ownership, acquisition, management, administration, enjoyment and disposition of property, including land? (Are there no restrictions to women's right to own, acquire, manage, administer, enjoy or dispose her property, e.g. family authorization?)</li> <li>- Does the law enable a women's property to be registered in her own name?</li> <li>- Can women file cases in court on her own behalf?</li> <li>- In law, is the testimony of a woman given the same weight as a man?</li> <li>- Do women have equal right to freedom of movement?</li> <li>- Do women have the same right as men to choose her own residence and domicile, regardless of marital status?</li> </ul>
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Article 16: Marriage and Family	
CEDAW Obligations	CEDAW Legal Indicators
<ul style="list-style-type: none"> <li>• Article 16</li> <li>• General Recommendation 19, pars. 22-24</li> <li>• General Recommendation 21</li> <li>• Concluding Observations on the country, if applicable</li> </ul>	<ul style="list-style-type: none"> <li>- Is there a legal guarantee of gender equality in the family and marriage?</li> <li>- Does the law guarantee the same right to women and men to enter into marriage?</li> <li>- Is there an equal minimum age of 18 years for marriage?</li> <li>- Is registration of birth in an official registry required?</li> <li>- Does law require personal consent of both spouses to a marriage?</li> <li>- Where parental advice or consent is needed, is the consent of both parents given equal weight?</li> <li>- Is bigamy/ polygamy prohibited?</li> <li>- Is the use of dowry as a condition for marriage prohibited?</li> <li>- Is there absence of any restriction on remarriage of widows?</li> <li>- Does the law require registration of marriage in an official registry?</li> <li>- Are both spouses (husband and wife) equal in the ownership, acquisition, management, administration, enjoyment and disposition of property?</li> <li>- Is there absence of any restriction requiring spousal authorization for contraception or abortion?</li> <li>- Do spouses have equal rights to choose and practice their profession?</li> <li>- Do women and men have the same grounds and conditions for filing a case of legal separation, annulment or nullification of marriage or divorce?</li> <li>- Does law provide for equal division of property and income acquired during marriage, in particular giving equal weigh to both financial and non-financial (e.g. housework and childcare) contributions to the household and family?</li> <li>- Does law provide for equal division of property and income acquired during a union without the benefit of marriage (de facto unions)?</li> <li>- Does the law provide for payment of child support after divorce?</li> <li>- Does the law provide for maintenance or support of a former spouse after divorce based on need, assets and earning capacity?</li> <li>- Is marital property registered in the name of both spouses?</li> <li>- Does the law require the consent of both spouses on all transactions encumbering or disposing marital property?</li> <li>- Are custody and access and children based on best interest of the child, regardless of the marital status of parents?</li> <li>- Does the law require both parents to support, care and educate the child, regardless of their marital status?</li> <li>- Does the law provide for equal guardian?</li> <li>- Does law provide for equal rights and conditions for women and men to adopt a child?</li> <li>- Do women and men have equal inheritance rights?</li> </ul>

**ANNEX II:****CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)**

Adopted and opened for signature, ratification and accession

By General Assembly resolution 34/180 of 18 December 1979, entry into force 3 September 1981, in accordance with article 27(1)

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

## **PART I**

### **Article 1**

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

### **Article 2**

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.



**Article 3**

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

**Article 4**

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

**Article 5**

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

**Article 6**

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

**PART II****Article 7**

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

**Article 8**

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

**Article 9**

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon

her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

### **PART III**

#### **Article 10**

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student dropout rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same Opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

#### **Article 11**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

#### **Article 12**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

#### **Article 13**

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

#### **Article 14**

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counseling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;

- (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
- (f) To participate in all community activities;
- (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

**PART IV****Article 15**

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

**Article 16**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
  - (a) The same right to enter into marriage;
  - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
  - (c) The same rights and responsibilities during marriage and at its dissolution;
  - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
  - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
  - (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
  - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
  - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

**PART V****Article 17**

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

**Article 18**

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned;

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfillment of obligations under the present Convention.

**Article 19**

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.

**Article 20**

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.
2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

**Article 21**

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.
2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

**Article 22**

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

**PART VI****Article 23**

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a State Party; or
- (b) In any other international convention, treaty or agreement in force for that State.

**Article 24**

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

**Article 25**

1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

**Article 26**

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

**Article 27**

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

**Article 28**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

**Article 29**

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.
3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

**Article 30**

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

## ANNEX III: SUGGESTED CEDAW RESOURCES

There are numerous resources on CEDAW available, including the selected resources below. Preference was given to resources that are available online and therefore easier to access.

### 1. CEDAW Documents

- *CEDAW Text: Office of the High Commissioner for Human Rights (OHCHR)*. <http://www2.ohchr.org/english/law/CEDAW.htm>
- *CEDAW General Recommendations: Office of the High Commissioner for Human Rights (OHCHR)*. <http://www2.ohchr.org/english/bodies/CEDAW/comments.htm>
- *CEDAW Concluding Observations/Comments: The United Nations Human Rights Treaties*. <http://www.bayefsky.com/docs.php/area/conclobs/node/2/treaty/CEDAW/opt/0>

The Office of the High Commissioner for Human Rights is the secretariat of the CEDAW Committee. Websites listed under 3.1 also contain the CEDAW documents.

### 2. Publications

#### 2.1 General Information on CEDAW and its Application

- American Bar Association, Central and East European Law Initiative (ABA CEELI). *CEDAW Assessment Tool*, 2002. [http://www.abanet.org/rol/publications/CEDAW\\_assessment\\_tool.shtml](http://www.abanet.org/rol/publications/CEDAW_assessment_tool.shtml)
- GTZ and United Nations Development Fund for Women (UNIFEM). *Pathway to Gender Equality: CEDAW, Beijing and the MDGs*, 2004. [http://www.unifem.org/materials/item\\_detail.php?ProductID=20](http://www.unifem.org/materials/item_detail.php?ProductID=20)
- Partners for Law in Development and UNIFEM. *CEDAW: Restoring Rights to Women*. New Delhi, 2004. <http://www.unifem.org.in/CEDAW.pdf>
- UNIFEM. *Bringing Equality Home: Implementing the Convention on the Elimination of All Forms of Discrimination against Women*, New York, 1998. [http://www.unifem.org/attachments/products/BringingEqualityHome\\_eng.pdf](http://www.unifem.org/attachments/products/BringingEqualityHome_eng.pdf)
- UNIFEM. *CEDAW Briefing Kit*, 2008. [http://CEDAW-seasia.org/docs/general/CEDAW\\_Briefing\\_Kit.pdf](http://CEDAW-seasia.org/docs/general/CEDAW_Briefing_Kit.pdf)

#### 2.2 CEDAW, Legal Indicators and Legal Reviews

- Cambodian Committee of Women. *Violence against Women: How Cambodian Laws Discriminate against Women: A Cambow Report*, 2007. [http://CEDAW-seasia.org/docs/cambodia/ViolenceWomenReport2007\\_ENG.pdf](http://CEDAW-seasia.org/docs/cambodia/ViolenceWomenReport2007_ENG.pdf)
- CENWOR and UNIFEM. *CEDAW Indicators for South Asia: An Initiative*. Sri Lanka, 2004. [http://www.unifem.org.in/PDF/CEDAW\\_Indicators.pdf](http://www.unifem.org.in/PDF/CEDAW_Indicators.pdf)
- UNIFEM. *CEDAW and the Law: A Gendered and Rights-Based Review of Vietnamese Legal Documents through the Lens of CEDAW*. Bangkok, 2009. [http://CEDAW-seasia.org/docs/general/CEDAWandVietnamese\\_Law.pdf](http://CEDAW-seasia.org/docs/general/CEDAWandVietnamese_Law.pdf)



- UNIFEM. *Domestic Violence Legislation and its Implementation: An Analysis for ASEAN countries based on international standards and good practices*. Bangkok, 2009.  
<http://CEDAW-seasia.org/docs/DomesticViolenceLegislation.pdf>
- UNIFEM. *Gender Equality Laws: Global Good Practice and Review of Five Southeast Asian Countries*. Bangkok, 2009.  
[http://CEDAW-seasia.org/resource\\_documents.html#gel\\_global](http://CEDAW-seasia.org/resource_documents.html#gel_global)
- UNDP Regional Bureau for Europe and the CIS. *Drafting Gender-Aware Legislation: How to Promote and Protect Gender Equality in Central and Eastern Europe and in the Commonwealth of Independent States (CIS)*, Bratislava, 2003.  
<http://europeandcis.undp.org/gender/show/67CA99C8-F203-1EE9-B3D3B9C542E18404>
- UNIFEM and UNDP Pacific Centre. *Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries*, Suva, 2007.  
<http://pacific.unifem.org/documents/TranslatingCEDAWIntoLaw.pdf>

### 2.3. CEDAW Application for Specific Issues

- Chiongson, Rea Abada. *The Right to Decide If, When and Whom to Marry: Obligations of the State under CEDAW and other International Human Rights Instrument*. Kuala Lumpur, IWRAP Asia Pacific, 2005.  
[http://www.iwraw-ap.org/aboutus/pdf/OPS\\_VI.pdf](http://www.iwraw-ap.org/aboutus/pdf/OPS_VI.pdf)
- Ramaseshan, Geeta. *Addressing Rape as a Human Rights Violation: The Role of International Human Rights Norms and Instruments*, Kuala Lumpur, IWRAP Asia Pacific, 2007.  
[http://www.iwraw-ap.org/aboutus/pdf/OPS10\\_Final\\_Publication\\_Version\\_Dec\\_18.pdf](http://www.iwraw-ap.org/aboutus/pdf/OPS10_Final_Publication_Version_Dec_18.pdf)
- UNIFEM. *Turning the Tide: CEDAW and the Gender Dimensions of the HIV/AIDS Pandemic*, New York, 2001.  
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## ANNEX III:

### SUGGESTED CEDAW RESOURCES

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- UNIFEM. *Time for Action: Implementing CEDAW in Southeast Asia*, Bangkok, 2009. [http://CEDAW-seasia.org/resource\\_documents.html](http://CEDAW-seasia.org/resource_documents.html)

### 3. Websites

#### 3.1 General

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- Office of the High Commissioner for Human Rights (OHCHR). <http://www2.ohchr.org/english/law/CEDAW.htm>
- United Nations Development Fund for Women (UNIFEM). [http://www.unifem.org/gender\\_issues/human\\_rights/](http://www.unifem.org/gender_issues/human_rights/)
- United Nations Human Rights Treaties. <http://www.bayefsky.com/treaties/CEDAW.php>
- University of Minnesota Human Rights Library. <http://www1.umn.edu/humanrts/CEDAW/CEDAW-page.htm>

#### 3.2 Southeast Asia

- Cambodian National Council for Women. <http://cncw.gov.kh/page.php?menu=5>
- CEDAW in Action in Southeast Asia. [http://CEDAW-seasia.org/resource\\_documents.html#gel\\_global](http://CEDAW-seasia.org/resource_documents.html#gel_global)
- CEDAW-Watch Philippines. <http://www.CEDAW-watch.org/resources.htm>
- CEDAW Working Group Initiative (Indonesia). <http://cwgi.wordpress.com/>
- National Commission for the Advancement of Women in Vietnam. <http://www.ubphunu-ncfaw.gov.vn/?lang=E&func=news&catid=191&MN=173>
- UNIFEM CEDAW Southeast Asia Programme. [http://www.unifem-eseasia.org/CEDAW\\_and\\_Human\\_Rights/in\\_action.html](http://www.unifem-eseasia.org/CEDAW_and_Human_Rights/in_action.html)
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United Nations Development Fund for Women



Do Our Laws Promote Gender Equality? A Handbook for CEDAW-Based Legal Reviews is a user-friendly guide for reviewing laws to identify whether they discriminate against women. Using the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) as a framework, this handbook specially developed from experience in Southeast Asia, but applicable globally, takes you step-by-step through the process of measuring CEDAW compliance in national laws. From planning to carrying out a legal review, with advice to maximize your success along the way, this handbook shows government, NGOs, academics and practitioners working towards gender equality how to formulate CEDAW-based legal indicators, identify discriminatory provisions and gaps using these indicators, develop recommendations and use your CEDAW-based legal review to advocate for changes in law for gender equality.