**UNWGDAW: Report on Good/Promising Practices in Ending Discrimination and Empowering Women**

**Concept Note/Research Project Overview**

**Working Title: The Making of a Good Law, or How Good Laws become Good Practices**

**Introduction**

The UN Working Group on the issue of discrimination against women in law and practice (WGDAW) was created by the Human Rights Council in 2010, and consists of five independent expert members from different regions of the world. The methods of work of the WGDAW involve receiving and issuing communications, country visits to investigate progress in implementation of women’s human rights commitments, and the production of annual thematic reports on issues related to the mandate, which are presented to the Human Rights Council. Built into the mandate of the group from its inception was the impetus to collect “best practices” and to prepare a “compendium of best practices” related to the elimination of discrimination against women in law and practice. This will be the topic of the 2017 annual report. This report will be coordinated by expert member Alda Facio, who will present the report as Chair of the Working Group to the Human Rights Council in June 2017.

In the initial report of the WGDAW (A/HRC/20/28), which establishes the conceptual framework and working methods of the group, the language of “best practices” was amended as follows: “The Working Group will use the term of “good” or “promising” practices rather than “best” practices to take into account the complex contextual framework of practices located in the wide spectrum of good to bad practices. This builds on existing work on this issue other special procedure mandate holders, which includes the preference towards using the terminology of “good practices.” Accordingly, this terminology will be used as both the title and to reflect the conceptual framework for the inquiry undertaken to produce the report.

While there has been work done within the Special Procedures of the Human Rights Council, other human rights bodies and UN agencies to gather “good practices” in the context of their work, there remains a lack of clarity on how to identify and investigate good practices meaningfully, particularly in the context of the elimination of discrimination against women. Building on the work that has been done in this area, the WGDAW seeks to utilize this 2017 report as an opportunity not only to share examples of “good” and “promising” practices in the form of a compendium but to also further the conversation on methodological understandings of “good practices” and/or “promising practices” in the context of ending discrimination against women in law and practice. In order to develop a nuanced and multifaceted understanding of what constitutes a “good practice” as well as to gather meaningful case studies, a consultation process with multiple stakeholders is required, including State consultation, consultation with other relevant UN bodies, Expert Group Meetings and CSO consultation.

To that end, Alda Facio has undertaken a research partnership with the Women’s Human Rights Education Institute, housed at the Centre for Women’s Studies in Education at the University of Toronto; The Due Diligence Project; JASS (Just Associates), the International Women’s Rights project (IWRP), and the Fundación Justicia y Género in order to broaden the consultation process and to promote wider participation in the WG’s formulation of this report.

It should be noted that an exhaustive research project on “good practices in ending discrimination against women” is a multi-year endeavour. To that end the initial research project and 2017 report is envisaged as a pilot to launch a multi-year research project to delve deeply into understanding “good practices” in the elimination of discrimination against women in law and practice and to enhance the work of the group in this area so as to meaningfully engage with States on how to fulfill their women’s human rights obligations.

**Conceptual Framework**

The mandate of the Working Group and the initial report (A/HRC/20/28) which set the working methods of the Group call for the promotion and exchange of views “on best practices related to the elimination of laws that discriminate against women or are discriminatory to women in terms of implementation or impact, and in that regard to prepare a compendium of good practices,” including an impetus to “make recommendations on the improvement of legislation and the implementation of the law.” Any investigation of good practices in this context of the WG’s mandate is undertaken within a human rights framework that understands good practices to be grounded in the provisions of the CEDAW Convention, the international legal framework for women’s human rights, and its core principles of substantive equality, non-discrimination, and state obligation, as well as other international human rights standards and conventions. The initial report of the Working Group also recalls the centrality of state obligation to respect, protect, and fulfill women’s human rights in all areas and fields, centering the principle of due diligence to address discrimination in law and practice at the heart of understanding good practices. Accordingly, the forthcoming good practices compendium will use the law as a focal point for consideration of meaningful change for women, by considering the processes by which good laws come into being and are implemented in ways that support women’s access to their human rights and fundamental freedoms.

The law is an essential mechanism for promoting women’s enjoyment of their human rights. While progress continues to be made worldwide to include equality provisions in national constitutions and to eliminate laws that are directly discriminatory towards women, challenges remain, in particular: certain areas of women’s human rights that continue to be widely contested and thus are restricted or absent from the law; recognizing and addressing the discriminatory *effects* of law on women, including those which appear neutral but are discriminatory in effect; the very narrow or even patriarchal interpretation of equality laws and the lack of operationalization and implementation of good laws that aim to end discrimination and promote substantive equality. When considering discrimination against women, additional challenges arise from the need to address intersectional discrimination that is specific to particular populations and/or contexts. Accordingly, as respecting, protecting and fulfilling women’s human rights must be context-specific and multi-faceted, this report will investigate and share good practices that integrate a multi-faceted, multi-stakeholder view of the law, its creation, interpretation and its implementation in particular contexts. In this report we are using the term “law” in its broadest sense to embrace international as well as domestic law, their principles, standards, rules and regulations, including customary law, legislation, jurisprudence, case law and human rights treaties and resolutions that deal directly with human rights, as well as municipal ordinances and executive decrees, among others.

Given the centrality of law as a mechanism to address discrimination against women to the mandate of the WG, this compendium will seek to consider what is a “good law” for women, and, once defined, to situate good laws within the wider context of their development and implementation, looking to understand what processes go into the creation of a good law and what processes allow for the meaningful implementation of that law. Law and practice will be understood as a circular continuum, that requires the participation of multiple stakeholders to ensure effective progress in the development of law and in implementation of the law. The compendium will thus explore the process by which a good law, grounded in human rights principles, is developed, adopted, and promulgated, and the processes by which this law is operationalized to have a de facto impact on women’s lives. In this way, the report seeks to identify the processes, factors and actors that need to be associated with any endeavour undertaken by States to adopt, reform, or implement laws aimed at promoting equality eliminate discrimination against women or groups of women and/or empowering women exploring both concrete examples and general principles. The report will serve to provide conceptual guidance to States on how to develop and implement good laws, and to share inspiring concrete examples with transferrable elements, looking at all forms of law, including legislation, case law, municipal ordinances, executive decrees and UN resolutions and conventions, among others. The focus on process and methodology in mapping out how a good/promising practice related to the law came into being will provide a useful framework to support States in understanding how to create an ameliorating environment to enable meaningful change for women in the elimination of discrimination against women and fulfillment of their human rights. It will also allow for the capture of a larger picture of both development and impact in relation to the law, bringing to light both intended and unintended consequences and outcomes of the process, and emphasizing the connections between laws, and between law and policy, budgeting, social movements, scholarly research, and more.

**Working Framework for Understanding “Good Practices”**

One of the goals of this study is to bring greater understanding to the question of how a good law becomes a good practice in the context of women’s human rights implementation, and the principles that help define a promising or good practice in the context of ending discrimination and empowering women. Through the process of the research project, the full criteria and framework will be collaboratively explored and articulated in the final report. The study begins with a working framework that will help to guide explorations and submissions of information based on understandings of good practices as currently articulated and via the experience of the WG itself.

The entry point of the study will be a law (legislation or case law) that can be understood to be, in intention at least, a good law for women. A “good law” for women is understood to be one that has incorporated a gender perspective throughout or has as its purpose or goal the elimination of some form of discrimination against women, and/or the promotion of substantive equality. When a good or potentially good law is identified, the research methodology will consist of looking at how the law came into being, to look at the provisions of that law, to look at the impact it has had, whether the impact is as intended, and/or how the law has been meaningfully implemented. This will necessitate identifying the multiple actors involved in its formulation and implementation, or in the case of jurisprudence or case law, the actors that brought a case to court, the manner in which it was dealt with by the judiciary, and how the good decision was promulgated and implemented. Because sometimes laws are framed with good intentions but have negative outcomes, or appear to support women but are protectionist in nature rather than promoting substantive equality, the study will naturally also consider laws that are bad for women, undermine their rights, or that have negative or unfulfilled outcomes, looking at how these came about and how they can be avoided.

The study begins with the recognition that naming a “good practice” is a complex process that has political implications. It also recognizes that while human rights are universal, the implementation of human rights is particular to contexts and must reflect the aspirations and different visions of diverse stakeholders. Frameworks of analysis thus require flexibility and creativity. That said, this study begins from the understanding that any “good practice” is one that represents a holistic approach to women’s human rights implementation, and that has the outcome of changing women’s lived experiences such that they are better able to enjoy their human rights.

Although it will be expanded upon and adjusted through what is learned through the process of the research for the report, the initial working framework for evaluating good practices in the context of ending discrimination against women includes a consideration of: a) the elements of the law that make it a possible contributor to a “good practice,” and b) the principles of a “good practice” that relate to the development and implementation of that law. The study does not have a primary focus on legal analysis, but the law itself forms an essential part of a good practice for the purpose of this study and the mandate of the Working Group.

Part A: Elements of a good law for women

1. Complies with international human rights norms and standards and is appropriate to local context
2. Is grounded in the international women’s human rights framework and CEDAW’s core principles of a) substantive equality, b) non-discrimination and c) state obligation to respect, protect and fulfill women’s human rights
3. Is embedded within a guarantee of constitutional equality or within the framework of other legislation that promotes equality
4. Has an intersectional approach; it takes into account intersectional or multiple forms of discrimination against women
5. Is drafted in a way which facilitates legal literacy and ensures the correct interpretation of the law to promote women’s substantive equality
6. Contains measures for supporting a significant achievement in terms of eliminating discrimination and promoting de facto gender equality, at least in some area of women’s/a group of women´s lives.
7. Includes comprehensive implementation mechanisms, including: sufficient budget; protocols and procedures to ensure impact and responsivity, including mechanisms for monitoring, revision or modification as needed to ensure impact and effectiveness
8. Includes comprehensive measures and gender-sensitive mechanisms to support redress in case of violation or lack of due diligence in implementation, including reparation, restitution, rehabilitation and reintegration, symbolic recognition, and guarantees of non-repetition.[[1]](#footnote-1)

Part B: Principles of good practice in the process of development and implementation of a law

1. Responsive: Responds to a problem or issue that is understood by women´s CSOs and/or experts in the field of women´s human rights as causing or aggravating discrimination against all women or specific groups of women.
2. Context-appropriate: Takes into account regional and cultural diversity, intersectional discrimination and diversity amongst women, as well the historical and structural context of discrimination
3. Participatory

* Meaningfully involves multiple stakeholders (scholars, gender experts, NHRIs, civil society/women´s organizations, the subjects of the law, government officials, etc.) in the entire process of development, implementation and evaluation of the law.
* Engages non-government stakeholders without transferring responsibility for implementation onto civil society or private actors

1. Educational: Includes training, education and awareness-raising to ensure comprehension of the law and the attendant rights and responsibilities of: (1) state actors, with a special focus on those in charge of implementation; (2) rights-holders; and (3) the general public
2. Impactful: has had a demonstrable impact on the elimination of discrimination against women and the promotion of de facto gender equality, at least in some area of women’s/a group of women´s lives.
3. Adaptable: monitoring mechanisms allow for adjustments in implementation needed as result of changing contexts and/or feedback on the impacts or lack thereof
4. Sustainable: Implementation of law must have sustainable structural or institutionalized mechanisms to ensure ongoing impact
5. Transferable: Has transferable elements or principles relevant to cultivating good practices in other contexts, or can be seen to be partially or fully replicable in other contexts

Implementation mechanisms will be detailed more fully once the research has begun and we learn of diverse ways in which laws have become good practices.

**Research and Consultation Plans**

The project will be undertaken in several phases, involving consultation with a wide array of stakeholders. Through the research project, we aim to:

a) Identify, in consultation with multiple stakeholders, good or promising practices in the development, adoption and implementation of laws/jurisprudence that aim to end discrimination and promote the equality and empowerment of women;

b) Investigate the key actors and circumstances that shaped the processes that led to that important legal change and/or a change in women’s enjoyment of their rights linked to that law.

In this way, the research project seeks not only to identify meaningful case studies that exemplify a “good practice” but also to develop a robust analysis of the myriad factors that support the genesis and sustainability of a “good practice.”

**Research Phases**

Research will be undertaken on the conceptual frame for understanding good/promising practices, and to identify possible good practices to explore in further depth, drawn from:

1) Literature review of relevant scholarly literature, reports of the UNWGDAW to date, as well as reports of other UN Human Rights bodies and experts and other relevant UN agencies, reports of regional human rights systems and CSOs. A team of researchers and student researchers has been gathered for this aspect of the study.

2) Expert Group meetings:

* July 2016 EGM on “good practices” in ending discrimination and empowering women, organized by the Due Diligence Project and the Global Women’s Institute of the George Washington University, with the WG members and 15 invited experts from multiple regions
* July 2016 EGM on “good practices” in the implementation of Belem do Para, the Inter-American Convention on VAW, hosted by the Mexican National Commission for the Prevention and Eradication of Violence Against Women (CONAVIM), the Mexican Ministry of Foreign Affairs, and attended by the expert group that monitors the Convention, MESECVI;

3) CSO/Non-State Consultations

* Online survey soliciting “good practices” submissions from CSOs, academics and other relevant non-State actors
* September 2016 AWID (Association for Women’s Rights in Development) Forum – panel to engage with women’s organizations on theme and examples of ‘good practices’ has already been approved, as well as support for interviews and other focus groups with participants of this 1200 person+ event for feminist activists
* Interviews of relevant actors as required to further elaborate on processes related to the development of good/promising practices identified through research and consultation processes
* Solicitation of information from CSOs, NHRIs and other relevant bodies via the OHCHR Secretariat

4) State Consultations

* A survey will be sent to States via the OHCHR Secretariat

5) Consultation with UN Agencies

* Survey on GPs and fact-checking of practices identified in research process, outreach to solicit information and submissions of case studies

6) Development of GP case studies based on input from above bodies and coordinated by research teams under WHRI coordinator team guidance.

1. Elements of the right to remedy as articulated in the report of the Special Rapporteur on VAW on reparations: A/HRC/14/22 [↑](#footnote-ref-1)