

# GENDER EQUALITY LAWS

GLOBAL GOOD PRACTICE  
AND A REVIEW OF  
FIVE SOUTHEAST ASIAN  
COUNTRIES

United Nations Development Fund for Women



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### ***GLOBAL GOOD PRACTICE AND A REVIEW OF FIVE SOUTHEAST ASIAN COUNTRIES***

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**Christine Forster and Vedna Jivan**

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Christine Forster and Vedna Jivan,  
March 2009

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Christine and Vedna are co-authors of the publication *Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Countries*, UNDP Pacific and UNIFEM-Pacific, Suva, 2007 and *CEDAW Legislative Compliance in the Cook Islands*, UNDP Pacific and UNIFEM-Pacific, Suva, 2008. Their other publications in the field of CEDAW and gender equality include “Public Interest Litigation and Human Rights Implementation: The Indian and Australian Experience” (2008) Vol 3 *Asian Journal of Comparative Law: A Digest of Case Law on the Human Rights of Women* (Asia Pacific), Asia Pacific Forum on Women, Law and Development (with Imrana Jalal and Madhu Mehra) (2005); “Opportunity Lost: In Search of Justice for Victims of Sexual Assault” (2005) Vol 28 *University of New South Wales Law Journal*, and “What Would Gandhi Say? Reconciling Universalism, Cultural Relativism and Feminism through Women’s Use of CEDAW” (2005) Vol 9 *Singapore Yearbook of International Law*.

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# ACRONYMS

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BPFA	Beijing Platform for Action (1995)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women(1979)
CRC	Convention on the Rights of the Child (1989)
DEVAW	Declaration on the Elimination of Violence against Women (1993)
GAD	Gender and Development
GR	General Recommendation
GEC	Gender Equality Council
GEL	Gender Equality Law
HREOC	Human Rights and Equal Opportunities Commission (now Australian Human Rights Commission, or HRC)
ICFTU	International Confederation of Free Trade Unions
ILO	International Labour Organisation
ICESCR	International Covenant on Economic, Social and Cultural Rights (1966)
Lao PDR	Lao Peoples Democratic Republic
NGO	Non-Government Organisation
OGE	Opportunity and Gender Equality Commission
OWAFD	Office of Women's Affairs and Family Development
para	paragraph
RGD	Ruling Commission on Gender Discrimination
SA	South Africa
SEA	Southeast Asia
UDHR	Universal Declaration of Human Rights (1948)
UN	United Nations
UNIFEM	United Nations Development Fund for Women

# FOREWORD

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Discrimination against women and the pursuit of gender equality remains one of the most pressing challenges for the global community in the 21st century. The Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW), known as the international bill of rights for women and the second most ratified treaty in the world, seeks the redress of past discriminations as well as the elimination of both *de jure* and *de facto* gender discrimination in domestic laws, policies and practice in all areas of women's lives. There are many ways a State party can address these challenges and one response that is gaining increasing popularity internationally is the enactment of gender equality laws. A gender equality law or GEL, is a single piece of national legislation that reflects the norms of CEDAW. Gender equality laws, as confirmed by the research conducted in this study is not a homogeneous body of law but comprises a complex and diverse range of models that is not always capable of transmission to the legal systems of other States parties. Thus, whilst the diversity of models of GEL enacted around the world presents States parties and advocates of gender equality with a plethora of potential choices, it can concomitantly be a daunting task to identify what constitutes good practice from a CEDAW informed perspective.

The publication of GENDER EQUALITY LAWS: GLOBAL GOOD PRACTICE AND A REVIEW OF FIVE SOUTHEAST ASIAN COUNTRIES, in part a response to the call from States parties for a resource establishing good practice guiding principles, is therefore a timely and important resource to assist actors, public and private, government and non government, in both the development of new gender equality laws as well as the implementation of existing gender equality laws. This publication examines and analyses gender equality laws from around the world, identifying those provisions that represent good practice from a CEDAW informed perspective - practices that are recognised for having worked in their respective contexts but are not intended however to be held as prescriptive measures for other countries. Rather, they serve as guiding principles for similar initiatives. This publication also provides a detailed analysis of five draft and enacted GEL in Southeast Asia, a region where governments and civil society are working together to ensure that a State party's ratification of CEDAW leads to actual reform of law and policy in all the areas of women's lives where discrimination is experienced.

CEDAW as a human rights tool provides the normative content for GEL by articulating the substantive legal rights and obligations that should be reflected in the provisions of a GEL. It is equally important that effective implementation and monitoring mechanisms are also incorporated into a GEL to ensure its sustained effectiveness. The benefits of such an approach, which combines both substantive law and implementation in a GEL are manifold. A GEL can provide a straightforward initial response to a State party's *de jure* obligation under CEDAW circumventing the lengthy and resource intensive process of amending numerous pieces of legislation, state accountability is more easily monitored and a GEL is able to delineate official accountability and the penalty for failure to deliver both *de jure* and *de facto* obligations outlined in CEDAW.

The publication of this book marks an important development in our understanding of gender equality laws and the role such laws can play in the pursuit of the elimination of discrimination and achieving gender equality in our societies. This book serves as a guide for gender advocates lobbying for gender equality measures in their respective spheres of influence, by providing clear commentary and analysis on what constitutes good practice benchmarks for evaluating the effectiveness of measures undertaken by State parties' in satisfying their obligations under CEDAW. UNIFEM hopes this publication will provide valuable assistance to both the countries that have enacted GEL and those that are considering it in the future.

A handwritten signature in black ink that reads "Jean D'Cunha". The script is fluid and cursive, with the first letters of "Jean" and "D'Cunha" being capitalized and prominent.

Dr. Jean D'Cunha  
Regional Programme Director  
UNIFEM East and Southeast Asia Regional Office  
Bangkok

# EXECUTIVE SUMMARY

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## Background

1. This report presents the results of a desk review commissioned by UNIFEM East and Southeast Asia Subregional Office, conducted in 2007 and early 2008. The review aimed to analyse gender equality laws (GEL) from around the world, to identify those that represent good practice from a CEDAW-informed perspective. Based on the good practice examples identified, the review aimed to analyse the strengths and weaknesses of enacted and draft GEL in five countries, namely Indonesia (Draft Act Concerning Gender Equality and Equity), Lao PDR (Law on the Protection and Development of Women and the Decree on the Implementation of the Law on the Development and Protection of Women 2006, which together constitute the Lao PDR GEL), Philippines (Draft Magna Carta for Women), Thailand (Promotion of Opportunity and Gender Equality Act) and Vietnam (Law on Gender Equality 2006).
2. Ratification, accession or succession to the Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW) creates both *de jure* obligations requiring the laws of the State party to accord with the Convention and *de facto* obligations requiring that the obligations created by the Convention are not merely reflected in the laws of the country but implemented in practice with the intended results. To achieve *de jure* compliance, a State party must ensure that its constitution and domestic legislation accords with the substantive legal rights and obligations created by articles 1-16 of CEDAW and that implementation and monitoring mechanisms are established to ensure the actual realisation of the Convention. This requires the amendment or repeal of discriminatory laws, the modification of existing laws or the enactment of new laws in areas lacking the necessary legislation. The latter requirement, the enactment of new laws to achieve *de jure* compliance, has given rise to an increasing global trend to develop and enact GEL. This marks a divergence from the traditional approach of incorporating gender equality provisions into existing legislation or constitutions.
3. The term 'gender equality laws' (GEL) in this report refers to legislation that seeks exclusively to implement principles of gender equality. The origins of GEL in the pre-CEDAW era can be traced to the Law on Sex Equality, enacted by the Democratic People's Republic of Korea in 1946 whereas the world's first GEL in the post-CEDAW era, the Sex Discrimination Act (Cth) was enacted in Australia in 1984. Since then there have been several 'waves' of GEL, the most recent being in Europe and Asia, particularly in the Central Asian States, the Baltic States, the former Yugoslav States and in the Southeast Asian (SEA) nations. The enactment of a single piece of domestic legislation that reflects the norms of CEDAW without engaging in the complicated, lengthy and resource intensive processes of amending multiple pieces of legislation, provides a straightforward initial response to a State party's *de jure* obligations under CEDAW.

## Methodology

4. The identification of CEDAW-informed 'good practice' in GEL involved an analysis of 45 enacted and draft GEL, identified for this review, and an analysis of relevant legislation

such as general equality laws and human rights acts enacted to give effect to other human rights conventions. It also involved a close analysis of the articles of CEDAW, the 25 general recommendations issued by the CEDAW Committee, which have interpreted various aspects of the Convention, the CEDAW Committee's concluding comments, particularly in relation to States parties that have enacted GEL, and a range of literature that addresses good practice in gender equality legislation.

5. This report has chosen to use the term 'good practice' rather than 'best practice', in recognition of the caution required when proclaiming the merits of one practice or approach over another. The term 'best practice' implies some degree of irrefutability which is not the aim of this report, recognising instead that both state and non-state actors continue to identify new and effective ways of achieving *de jure* gender equality. This report therefore seeks to present the variety of GEL models that have been utilised around the globe, with a view to assessing their conformity with the principles of CEDAW. In light of this objective, the term good practice is used as it accommodates both the recognition of existing strengths and acknowledges that the development of future models may present more effective alternatives.
6. This report divides GEL into two types, namely multi-area GEL and targeted GEL. Multi-area GEL are those that seek to address a substantial number of areas of women's lives as represented in articles 1-16 of CEDAW, whilst targeted GEL are those that focus on a particular area or article(s) of CEDAW, typically, equality and non-discrimination, employment or education.
7. This report divides its consideration of GEL in two further ways. The first, encapsulated in Part 2, considers and analyses 13 substantive areas typically included in GEL. The inclusion of all 13 areas and their corresponding legal rights and obligations in a GEL would represent good practice and compliance with CEDAW. The second part of this review, encapsulated in Part 3, identifies seven implementation and monitoring components of a good practice GEL. The inclusion of all seven components in a GEL would ensure its effective implementation, monitoring and enforcement.

## **Substantive Rights and Obligations**

8. There are 13 substantive areas that are typically included in worldwide GEL and are analysed in this report. The inclusion of all 13 areas and the ensuing legal rights and obligations in a GEL would represent good practice and full compliance with CEDAW. The 13 substantive areas are equality and non-discrimination, gender-based violence, the stereotyping of women in media, exploitation of prostitution of women, education, political and public life, employment, health, social and economic benefits, rural women, civil equality, and marriage and family relations.

## ***Equality and Non-Discrimination***

9. The first of the substantive areas considered in this review is equality and non-discrimination, an area included in all multi-area GEL examined. The importance of establishing strong and effective equality and non-discrimination provisions is a recurrent theme in contemporary international human rights norms, underpinning the concept of gender equality generally, and CEDAW in particular. Article 2(a) of CEDAW obligates States parties to 'embody the principle of equality of men and women in their national constitutions or other appropriate legislation' whilst Article 2(b) obligates States parties to 'adopt appropriate legislative

and other measures, including sanctions where appropriate, prohibiting all discrimination against women.’ The CEDAW Committee has emphasised the foundational and crucial role that the principles of equality and non-discrimination should play in domestic legislation, national constitutions, and if enacted, GEL. Whilst there are a range of models of equality and non-discrimination that can and have been adopted in GEL, this report identifies six good practice components that should be incorporated into equality and non-discrimination provisions. These include first, a positive duty on the State to achieve (or at minimum work towards) substantive equality for men and women; second, a definition of discrimination that accords with Article 1 of the CEDAW guaranteeing that women shall enjoy the exercise of all their fundamental rights and freedoms in the political, educational, economic, social, cultural, civil and any other sphere of life without discrimination; third, express inclusion of sexual harassment and gender-based violence in the definition of discrimination; fourth, express inclusion of direct and indirect discrimination in the definition of discrimination; fifth, anti-discrimination provisions that prohibit discrimination against women on the basis of marital status, pregnancy, race, disability, HIV status, sexual orientation or any other status, attribute or characteristic, and finally the GEL should bind the State, public authorities and their representatives, and private organisations and individuals.

10. All five SEA countries place a positive duty on the State to achieve gender equality. However, whilst the Philippines, in an example of good practice, expressly states that substantive equality must be achieved and whilst Indonesia and Vietnam imply that substantive equality must be achieved through the use of the phrase ‘benefit’, Lao PDR and Thailand do not extend the meaning of equality to substantive equality. The equality provisions of all four latter countries would be strengthened, therefore, with a clear and express guarantee of substantive equality (and in the case of Indonesia, the removal of the reference to ‘harmonious and balanced partnership’ which could imply a division of labour maintaining the sex roles of men and women). A guarantee of substantive equality is critical in order to address the structural discrimination embedded in institutions as a result of past discrimination.
11. The CEDAW Committee has identified the importance of including in GEL a definition of discrimination in line with Article 1 of the Convention which expressly extends to and defines direct and indirect discrimination. Whilst the Philippines, Vietnam, Lao PDR and Thailand incorporate, in large part, the definition of discrimination adopted in Article 1 of CEDAW, only Thailand, in an example of good practice, explicitly extends the meaning of discrimination to indirect as well as direct discrimination. The Indonesian GEL makes reference only to ‘disparity in the status, the functions and the roles of men and women’ and as such has not incorporated a definition of discrimination that accords with CEDAW. Additionally, none of the five countries include gender-based violence and sexual harassment in the definition of discrimination, as recommended by the CEDAW Committee.
12. An effective anti-discrimination clause should prohibit discrimination against women by public and private actors in all areas of their lives and in the exercise of all fundamental rights and freedoms. It should also explicitly prohibit discrimination across a range of intersections including but not limited to race, class, disability and sexual orientation. None of the five countries examined have established anti-discrimination provisions that fully meet this mandate. Whilst the Indonesian GEL makes discrimination unlawful in ‘politics, law, government, education’ by both public and private actors, and Vietnam

makes discrimination unlawful in social and family life, politics, law and government by both public and private actors, the Philippines and Thailand do not explicitly define the breadth of their anti-discrimination provisions. Lao PDR, despite a comprehensive definition of discrimination, does not include any anti-discrimination provisions and therefore discrimination whilst defined is not explicitly prohibited. Whilst the Philippines anti-discrimination provisions are insufficient in some respects, they do however, in full accord with CEDAW, protect women from multiple intersections of discrimination including class, age, sex, gender, sexual orientation, language, ethnicity, culture, religion, ideology, disability, education and status.

## *Gender-Based Violence*

13. The second of the 13 substantive areas considered in this review is gender-based violence.

Whilst few countries worldwide have incorporated gender-based violence into their GEL, and whilst it is not explicitly addressed in the text of CEDAW, the CEDAW Committee continues to emphasise the importance of combating gender-based violence in the achievement of gender equality. In General Recommendation 19(6), the Committee stresses that States parties should take 'effective legal measures, including penal sanctions, civil remedies and 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'. Effecting the legal protection of women and girls from gender-based violence is likely to require a range of detailed legislative measures in different areas of law including criminal law, evidence law, family protection law, bail law, criminal procedure laws and compensation law. Accordingly, because of a GEL's inability to comprehensively address that task, it should instead establish benchmarks for the State, leaving the detail to other domestic legislation. Such benchmarks in a GEL should include first, comprehensive sexual assault provisions in the criminal law that cover all violations against women and girls including penetration of all orifices by any object, graded on the basis of seriousness to the victim, with a comprehensive definition of consent covering all coercive circumstances, no exemption for marital rape and serious penalties. Further, in the law of evidence, a prohibition should be placed on discriminatory evidentiary rules such as the use of corroboration, prior sexual conduct and proof of resistance in sexual offence proceedings. Second, there should be targeted domestic violence legislation including clear and specific definitions of acts which may constitute domestic violence and a definition of the relationships within which domestic violence can occur. Third, there should be a presumption that perpetrators of domestic and sexual violence shall not be given bail. Fourth, a mechanism should be established that is equipped to award adequate compensation to all victims of gender-based violence. Fifth, a mechanism should be established to enable all women, married and unmarried to obtain non-molestation or restraining orders and to retain the occupation of the family home in situations of violence. Finally, a guarantee to establish appropriate and funded protective and support services should be provided for victims of all gender-based violence and their families.

14. Thailand has not incorporated provisions on gender-based violence into its GEL, whilst Indonesia states merely that all forms of family violence shall be settled according to the provisions of applicable laws and regulations and fails to set any benchmarks to which the State should adhere. Vietnam prohibits all gender-based violence but does not define it.

The Philippines requires the State to ‘protect’ women from all violence and, in a positive measure, defines gender-based violence comprehensively including during periods of conflict and crisis. Neither Vietnam nor the Philippines, however, provides sufficient specificity to either effectively protect women from gender-based violence or to guide the State towards further legislative protection. However, the mandatory obligation placed on the State in the Philippines GEL to establish crisis centres in all provinces and cities is a strong and useful provision. Lao PDR addresses domestic violence comprehensively but neglects other forms of gender-based violence. Whilst Lao PDR establishes extensive support facilities for victims of domestic violence as recommended by the CEDAW Committee, the measures for penalising offenders are focused on mediation rather than the strict prosecution of offenders. Mediation units are not required to be staffed by neutral personnel trained in domestic violence, which is critical to an effective and sensitive system of mediation.

### *Stereotyping of Women in Media*

15. The third of the 13 substantive areas considered in this review is the media. In recognition of the increasing role of the media in modern society and its ability both to perpetrate and to modify stereotypes of women and men, the CEDAW Committee, in accord with Article 5 of CEDAW, has encouraged States parties to enact legislation that compels the media to promote gender equality and to project a positive image of women. Whilst few GEL, to date, have incorporated media as a substantive area, it nevertheless has the potential to impact significantly on the achievement of gender equality.
16. Indonesia, Lao PDR and Thailand do not incorporate media provisions into their GEL. The Philippines requires the State to pursue through the mass media ‘consciousness-raising in relation to the dignity of women, their role and contribution to the family, community and society.’ Whilst the wording of this provision could be interpreted to imply the reproduction of sex-role stereotypes rather than their breakdown, the Philippines does provide for all media persons to attend gender sensitivity training aimed at encouraging non-stereotyped and positive images of women, which is indicative of good practice. Vietnam’s GEL establishes a duty for communication and education in gender equality through the media, and although this represents a positive measure, it is unclear on whom the duty is placed.

### *Exploitation of Prostitution of Women*

17. The fourth substantive area considered in this review is the prevention of the exploitation of the prostitution of women, a topic not typically incorporated into GEL. It is, however, an important area for women’s equality since many women and girls are forced into sex-work/prostitution against their will or through poverty and unemployment. Further, because of its unlawful status in many parts of the world and the consequent lack of legal and work protections, women also face considerable exploitation. Whilst Article 6 of CEDAW requires the prevention of the exploitation of prostitution of women, the CEDAW Committee has noted that sex-workers/prostitutes are vulnerable to violence and marginalised when their status is unlawful. The decriminalisation of soliciting and the operation of safe legal premises in accord with state requirements for all places of employment, including the imposition of occupational health and safety standards, as well as equal rights and conditions of employment for all sex-workers/prostitutes, is therefore an important measure for the

protection of sex workers. It is equally important, as repeatedly emphasised by the CEDAW Committee, that criminal offences for the procurement of girls or women who have not consented, with serious penalties, and comprehensive anti-trafficking provisions including prevention, prosecution and protection measures are incorporated into legislation. Since the enactment of targeted anti-trafficking legislation is a global trend it is important that GEL identify benchmarks for such legislation.

18. Indonesia, Thailand, the Philippines and Vietnam do not include provisions on the exploitation of prostitution of women in their GEL. Whilst Lao PDR does not address soliciting, it does have comprehensive anti-trafficking provisions in its GEL. Lao PDR, in a good practice example for the region, addresses prevention, prosecution and protection, the three key components of good practice anti-trafficking legislation. To prevent trafficking, the Lao PDR GEL establishes a committee charged with developing a plan, conducting research and drafting proposals for law reform. Whilst the GEL would be strengthened by more detail on the specific research to be conducted (for example, by gathering data on both cross-border and internal trafficking and creating an obligation to develop and deliver mass media campaigns and education about trafficking), these are nevertheless good practice provisions. Further, the prosecution of offenders is in accord with international standards, with a comprehensive definition of trafficking and serious penalties prescribed. The Lao PDR GEL also provides comprehensive good practice protection by providing victims of trafficking with comprehensive rights including safety, privacy, medical assistance, training, repatriation and compensation. Finally and importantly, victims have immunity from criminal prosecution for prostitution or illegal entry and a process is established for repatriation including searching for families and parents.

### *Public, Political and International Life*

19. The fifth substantive area considered in this review is the public, political and international lives of women. Although Article 7 of CEDAW requires States parties to take all appropriate measures to eliminate discrimination against women in the political and public life of their country, and Article 8 requires States parties to ensure women have equal opportunities to represent their governments at the international level and to participate in the work of international organisations, this is an area addressed in only a few GEL. It is nevertheless an important area for gender equality as women have historically been excluded from political life and decision making processes. Further, despite the principle of equality in many constitutions and laws, women have continued to have a low level of participation in public and political life. Good practice CEDAW-informed legal rights and obligations in this area include a guarantee that women have the right to vote and stand for election to all publicly elected bodies, the right to participate in the formulation and implementation of government policy, the right to be appointed to public office and to perform all public functions at all levels of government, the right to participate in non-governmental organisations and associations concerned with the public and political life of the country and equal opportunity to represent governments at the international level and to participate in the work of international organisations. Additionally, to accelerate the *de facto* participation of women in public, political and international life, as recommended by the CEDAW Committee and in accord with Article 4 of CEDAW, a GEL should incorporate special measures to recruit, assist and train women candidates, to develop campaigns directed at equal participation

in all levels of public office, and if necessary to set numerical goals and quotas and target women for appointment to public positions such as the judiciary or other professional groups.

20. With the exception of Thailand, the remaining four SEA countries examined include provisions on the political, public and international lives of women in their GEL with varying degrees of good practice. Whilst Indonesia, Lao PDR and Vietnam guarantee the right to stand for election for public office, only Indonesia and Lao PDR guarantee the right to vote in full accord with Article 7(a) of CEDAW. Indonesia, additionally, in accord with good practice, prohibits all gender discrimination in the field of politics and government. Further, although Indonesia and Lao PDR do not explicitly guarantee the right to participate in non-governmental organisations and associations, the Philippines, in an important provision that is unique in GEL, expressly provides for the right of women to form organisations which can lobby, advocate and perform a range of functions on their behalf.
21. Both Indonesia and Lao PDR imply that substantive equality must be achieved in the area of public, political and international life, although neither explicitly obligates the State to introduce temporary special measures to achieve *de facto* equality. Indonesia requires its government to promote political education aimed at gender equality for women in politics and government, and guarantees women an 'equal opportunity' to participate in government at the local and national and levels. Lao PDR, similarly, guarantees women the right to enjoy equality in politics and to be appointed to the appropriate positions at all levels in the organisations of party, State, the Lao Front for National Construction, mass and social organisations. The Philippines requires political parties to encourage the recruitment of 33% of women in all aspects of their internal structure and requires political parties to 'work towards' equal representation of women as official candidates in local and national positions. Although the provision does not establish mandatory quotas, it is still a positive measure aimed at achieving *de facto* equality. Vietnam is the only country to explicitly authorise the use of temporary special measures to ensure 'appropriate' proportions of women in the National Assembly and Peoples Councils. Although this is a positive measure, the provision is not mandatory, it does not identify the proportion of women required to be 'appropriate' and it does not identify the particular measures that might be adopted.

### *Nationality, Citizenship and Domicile*

22. The sixth substantive area considered in this review is nationality, citizenship and domicile. This is an area not incorporated in any of the global GEL considered in this review. However, the denial of citizenship rights can limit women's mobility, access to services and opportunities and ultimately their autonomy and equality. It is therefore a critical area for gender equality and accordingly Article 9 of CEDAW requires States parties to eliminate discrimination in the areas of nationality, citizenship and Article 15(4) of CEDAW requires States parties to ensure that women can choose their residence and domicile equally with men. Article 9 of CEDAW and General Recommendation 21, which deals with marriage and family relations, have explicitly identified the legal rights and obligations required to address discrimination in the area of nationality, citizenship and domicile. These include a guarantee that women have an equal right to acquire, change or retain their nationality, a guarantee that marriage to a non-national or a change to a husband's nationality does not change a wife's nationality, a guarantee that both spouses have equal rights to residency, citizenship

and employment when one is married to a non-national, a guarantee that both parents have equal rights to determine the nationality of their children, a guarantee that the rights of wives and husbands extend equally to partners in *de facto* relationships including same-sex partnerships, and finally a guarantee that women have an equal right to choose their domicile (i.e., the country in which a person intends to reside) or their place of residence.

23. None of the five SEA countries considered in this review have incorporated nationality, citizenship and domicile provisions into their GEL.

## Education

24. The seventh substantive area considered in this review is education. Provisions on education are incorporated into most multi-area and targeted GEL in accord with Article 10 of CEDAW. Article 10 obligates States parties to take all appropriate measures to eliminate discrimination against women and to ensure for them equal rights with men in the field of education. Gender equality in education is a critical area for gender equality, as educated women are more likely to have economic opportunities, to be able to engage more fully in public life, to be able to better protect their health, their children, and to avoid exploitation. Whilst a range of models has been adopted in the area of education, good practice CEDAW-informed legal rights and obligations include first, anti-discrimination provisions with specific protection from expulsion or discrimination in relation to pregnancy; second, a positive obligation on educational authorities and institutions to ensure an environment free of sexual harassment within all educational institutions; third, compulsory free education for all children for ages 5-16; fourth, compulsory sex education in schools; fifth, a guarantee that women shall have equal access to all educational facilities and equal delivery of benefits; sixth, a guarantee that the educational curricula will promote gender equality and be free from stereotypes of men and women; seventh, a guarantee that girls shall receive equal opportunity to participate in sports and leisure activities in schools and finally the inclusion of temporary special measures provisions including (where relevant) scholarships for girls and women, programmes for rural girls and women, programmes for girls and women who have left school prematurely and education and skills training in non-traditional fields.
25. All five countries have incorporated provisions on education into their GEL. Only Thailand and Lao PDR, however, have taken the step of incorporating anti-discrimination provisions in relation to education in their GEL. Further, the Indonesian education provisions are not strong, stating merely that discrimination in education may constitute an act against the law or other norms. Additionally, whilst Thailand prohibits both direct and indirect discrimination in education in accord with Article 10 of CEDAW, it does not specifically extend protection to the grounds of marital status, pregnancy or potential pregnancy.
26. Indonesia, Lao PDR, the Philippines and Vietnam all guarantee access to education at all levels to girls and women, although with varying degrees of effectiveness. Indonesia guarantees women an equal right to obtain education at every level ‘in accordance with her interests and abilities’ and prohibits all exploitation in education. Whilst these are important guarantees, they fall short of guaranteeing women equal access to and equal benefits from education. Lao PDR provides that all children shall have equal rights to receive education, although the GEL limits it to ‘as specified in the laws’. The Lao PDR GEL also

states that women shall have an equal right to develop themselves and development is defined as providing the conditions to enable women to receive 'basic education on natural and social sciences'. These are weak provisions as it is unclear how women should develop themselves in the area of education and the use of the term 'basic' education is limiting. However, in a positive measure Lao PDR places a mandatory obligation on the education sector to guarantee women equal access to the same opportunities in all levels of education. The Philippines provides that women shall receive equal access to quality education and scholarships, a provision that would be strengthened by also including equality of benefits. Vietnam, in a good practice example for the region, guarantees women equal access and equal benefits from education, professional training and retraining policies.

27. Lao PDR, the Philippines and Vietnam all address the requirement in Article 10(c) of CEDAW that the educational curricula should promote gender equality and be free from stereotypes of men and women. Lao PDR provides a guarantee that curricula and texts shall be free of sex-role stereotypes. Vietnam requires information on gender equality to be included in the education syllabus in schools and in the activities of other organisations and the Philippines places a mandatory duty on education institutions to integrate a gender and development perspective into the curricula and to introduce a gender sensitive curricula in the Madaris and school of living culture and traditions. The Philippines provision would be strengthened by a requirement to integrate the principles of gender equality (rather than gender and development) and directing that sex-role stereotypes be removed from the curricula and courses. The Indonesian GEL rather than addressing sex-role stereotypes provides that men and women shall work together and 'balance their roles in the educational, social and cultural spheres and their roles in the family'. Such a provision could be interpreted as perpetuating sex-role stereotypes and would be strengthened by referring to equality rather than the balancing of roles.
28. Four of the five countries reviewed place positive obligations in their GEL on the State to introduce temporary special measures in education in accord with Article 4 of CEDAW. Indonesia obligates the government to create programmes to promote equal rights between men and women in the educational sphere, Lao PDR obligates the State to introduce measures in education particularly for marginalised women, the Philippines obligates the State to introduce measures to eliminate discrimination against girl-children in education although does not extend this to all women and Vietnam authorises the use of quotas to ensure women, especially rural women, receive equal opportunities in education. Whilst all four approaches would be strengthened by detailed guidance on the forms of measures to be introduced accompanied by specific timetables, and whilst only Lao PDR requires the State to assess the *de facto* situation of women in education to determine where measures are to be targeted, all represent a positive and important response to gender inequality in education, providing a sound base on which to advance equality for women in education.
29. None of the five countries prohibits sexual harassment in educational facilities or in the delivery of education, nor do they provide compulsory free education to all children aged 5-16. Lao PDR does, however, impose an obligation on administrative authorities 'to encourage and promote more widespread enrolment by women'. None of the five countries mandates compulsory sex education in schools (as recommended by the CEDAW Committee), nor do they mandate that girls shall receive equal opportunity to participate in sports and leisure activities in schools as required by Article 10(g) of CEDAW.

## Employment

30. The eighth of the substantive areas considered in this review is employment, which is incorporated into most multi-area GEL and is also the subject of a number of targeted GEL. Equality in employment is a critical area for gender equality since access to resources and other benefits are closely tied to participation in the public sphere of employment. Accordingly, Article 11 of CEDAW requires States parties to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure they enjoy the same rights on a basis of equality with men. Whilst a range of models has been adopted in GEL in the area of employment, providing an array of suitable alternatives, the following CEDAW-informed good practice legal rights and obligations have been identified in the global review. First, the GEL should include comprehensive anti-discrimination provisions prohibiting direct and indirect discrimination against women in employment on the grounds of marital status, pregnancy, disability, HIV status, sexual orientation and any other status; second, a guarantee of the application of the same criteria for selection in matters of employment and a prohibition on discriminatory advertising; third, a positive obligation on all employers, both public and private, to provide equal conditions of work for men and women; fourth, a guarantee of the right to equal remuneration and to equal treatment in respect of work of equal value; fifth, a guarantee of paid maternity leave; sixth, a guarantee of flexible working conditions such as part-time work, flexible hours and childcare facilities; seventh, an equal right to join and participate in trade unions and professional organisations; eighth; equal opportunities for training and retraining; ninth, protection against sexual harassment in the workplace by employers or fellow employees and finally an obligation on the State and employers, both public and private to investigate the *de facto* situation of women in employment and introduce temporary special measures in response, in order to accelerate women's participation in employment.
31. Vietnam and Lao PDR do not include anti-discrimination provisions in their GEL in relation to employment. In the Indonesian GEL, discrimination in employment that violates gender equality 'may constitute an act against the law according to applicable laws and regulations, social and religious norms and justice', and there is a prohibition on all forms of exploitation of women in employment. Whilst the inclusion of an anti-discrimination provision is encouraging, it is weakened by the deferral to existing law instead of itself identifying the benchmark. The Philippines, in a good practice provision, prohibits discrimination against women in 'recruiting, hiring, dismissal retrenchment, giving of assignments, benefits and other conditions of employment', whilst Thailand prohibits both unfair direct and indirect gender discrimination in relation to employment. All three countries' anti-discrimination provisions would be strengthened by extending the grounds of discrimination to other intersections particularly maternity, marital status and family responsibilities which often form the basis for discrimination against women in paid employment.
32. Article 11(1)(c) of CEDAW places an obligation on the State to guarantee equal conditions of employment for men and women. Thailand's GEL does not contain such a guarantee. Indonesia prohibits exploitation, but does not guarantee equal working conditions. Lao PDR guarantees women safe working conditions, social welfare and equality in remuneration and 'other benefits', whilst the Philippines prohibits discrimination against women in benefits and other conditions of employment but does not place a positive obligation on employers to achieve equal conditions in employment. Indonesia guarantees women health protection

at work and special protection in relation to their reproductive health and safety. Vietnam, however, in accord with CEDAW, explicitly guarantees equal conditions of work including pay, insurance and other working conditions, providing a good practice example for the region. Additionally, although Indonesia guarantees women the right to acquire employment 'in accord with [their] ability', Vietnam alone of the five countries provides that promotion and recruitment must be on the basis of equality in full accord with Article 11(1)(b). None of the five countries, however, prohibits discriminatory advertising, although some protection is provided through general anti-discrimination provisions.

33. Indonesia, Lao PDR and Vietnam all incorporate temporary special measures in employment into their GEL. Indonesia places a mandatory obligation on the government to introduce programmes in employment. Lao PDR places a mandatory obligation on the State and the Labour and Social Welfare sector to develop women's skills, to encourage and promote women into more jobs at all levels, to run training programmes on sex-role stereotypes and customs that hinder women's opportunities in vocational and skill development, and to encourage the private sector to run vocational and skill development programmes. Vietnam authorises quotas and training or retraining to raise a female worker's capacity. Whilst all three approaches would be strengthened by first, detailed guidance on the forms of measures to be introduced with specific timetables, and second, a requirement that the State assess the *de facto* situation of women in employment to determine where measures are to be targeted, all nonetheless represent a positive and important response to gender inequality in employment. Neither the Philippines nor Thailand incorporate temporary special measures into their GEL in the area of employment.
34. Indonesia, Lao PDR, Thailand and Vietnam guarantee neither paid maternity leave nor the right to equal remuneration and equal treatment in respect of work of equal value. They do not guarantee equal opportunities for training and retraining, the equal right to join and participate in trade unions and professional organisations, protection against sexual harassment in the workplace and they do not incorporate flexible working conditions to enable both men and women to share family responsibilities. The Philippines guarantees protection against sexual harassment in the workplace and equal wages for the same kind of work. It also guarantees support services to enable women to balance family obligations and work responsibilities and membership in unions regardless of status and place of employment. Whilst more detail would strengthen the Philippines' Magna Carta, these are good practice provisions in accord with Article 11 of CEDAW.

## Health

35. The ninth substantive area considered in this review is health. Although few countries have incorporated health into their GEL, it is a critical area of focus because women and girls' unequal status hinders their ability to access adequate health care. Accordingly, Article 12(1) of CEDAW obligates States parties to '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.' Further, Article 12(2) obligates States parties to 'ensure to women appropriate services in connection with pregnancy, confinement and the postnatal period, granting free services where necessary, and adequate nutrition during pregnancy and lactation.' General Recommendation 24 issued by the CEDAW Committee, which focuses on health and

comprehensively analyses Article 12, identifies the good practice legal rights and obligations required to achieve gender equality in the area of health. These include, first, comprehensive anti-discrimination provisions prohibiting all discrimination against girls and women on the basis of sex, and other intersections, especially marital status, maternity and disability in all aspects of health care; second, a guarantee of equal access for women and girls to health care services, education and information; third, a guarantee of access to all reproductive-related health services including family planning, antenatal, maternity, post natal services and safe legal abortion which must be free and accessible for all women; fourth, to ensure the sexual health of girls and women, who are often unable to refuse sex or insist on safe and responsible sex practices, the right to sexual health information, education and services should be incorporated into GEL; fifth, a prohibition should be placed on coercive medical procedures, specifically, but not limited to non-consensual sterilisations, mandatory testing for sexually transmitted diseases and mandatory pregnancy testing; sixth, all health workers should be required to receive mandatory, comprehensive gender-sensitive training; seventh, mandatory protocols and procedures should be established for all hospitals and health-care services to prevent the sexual abuse of girls and women who access health services; eighth, a positive obligation should be placed on the State to conduct ethical research to assess the health needs and status of women, and finally, temporary special measures should be incorporated into GEL to address the health needs and rights of women as identified in the research.

36. Three of the five SEA countries have incorporated provisions on health in their GEL.

Indonesia incorporates health provisions in relation to employment, as discussed above in accord with Article 11 of CEDAW, but does not include any general health provisions. Lao PDR places a positive obligation on the State and the family to 'ensure' health care for mothers and children and the Philippines obligates the State to provide 'comprehensive gender responsive' health services, programmes and education in a range of areas but focusing primarily on all aspects of reproductive health. Neither, therefore, comprehensively guarantees equal access for women and girls to all health care services, education and information in accord with Article 12(1) of CEDAW and General Recommendation 24. Vietnam guarantees women equal opportunities to participate in education and communication on healthcare and reproductive health as well as equal use of healthcare services. Although this provision could be strengthened with further detail, it is nevertheless a good practice provision.

37. The Philippines provides a comprehensive guarantee of access to all reproductive-related health services including family planning, antenatal, maternity and post natal services and thus provides a good practice example of GEL provisions in this area. Lao PDR provides that a doctor or a midwife shall be present during deliveries and prohibits forcing women to give birth in isolated places. Whilst this is an important provision relevant to the particular context of Lao PDR, there is no guarantee of access to comprehensive reproductive health services and information. Vietnam guarantees access to information about reproductive health and access to services in accord with Article 12(2) of CEDAW. Vietnam also provides an equal right to choose contraceptive measures and to ensure safe sex although there is no mechanism in this provision that establishes how such a right will be enforced. None of the five countries guarantee women access to safe legal abortions as recommended by the CEDAW Committee in General Recommendation 24(11).

38. Of the three countries that have included health as a substantive area (Lao PDR, the Philippines and Vietnam), none has included comprehensive anti-discrimination provisions prohibiting all discrimination against girls and women on the basis of sex, and other intersections including marital status, maternity and disability in all aspects of health care, and none has prohibited coercive medical procedures specifically, including non-consensual sterilisations, mandatory testing for sexually transmitted diseases and mandatory pregnancy testing. Further, none of these countries has established mandatory protocols and procedures for all hospitals and health-care services to prevent the sexual abuse of girls and women who access health services. None has instituted programmes to ensure all health workers be required to receive mandatory, comprehensive gender-sensitive training, and none has placed a positive obligation on the State to conduct ethical research to assess the health needs and status of women. Finally, none of these three has placed any obligations on the State to establish temporary special measures to address the health needs and rights of women.

### *Equality in Social and Economic Benefits*

39. The tenth substantive area considered in this review is equality in social and economic benefits, including rights to property and access to safe, affordable housing. Article 13 of CEDAW obligates States parties to 'take all appropriate measures to eliminate discrimination against women in economic and social life in order to ensure, on a basis of equality of men and women, the same rights'. Article 15(2) obligates States parties to give women equal rights to administer property and Article 16(h) obligates States parties to ensure that both spouses have the same rights in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration. Although few global GEL contain provisions on equality in social and economic benefits or property rights, it is nevertheless an important area that enables women to achieve autonomy and independence. Good practice CEDAW-informed legal rights and obligations include the following: first, equal right to family benefits; second, equal right to bank loans, mortgages and other forms of financial credit as provided; third, an equal right to participate in recreational activities, sports and all aspects of cultural life, and fourth, equal rights to all aspects of property ownership and control including access to safe affordable housing.

40. The Philippines is the only country of the five examined to provide rights to family benefits. The Philippines GEL guarantees marginalised women equal access to social security, particularly in cases of retirement, unemployment, sickness, disability, old age and other incapacity to work. It also guarantees the right to paid leave, it provides for the creation of alternative social security systems and health insurance programs for older women and it obligates the Social Security System and Philippine Health Insurance to conduct membership campaigns amongst women in the marginalised sectors. Whilst the provisions focus on marginalised women and would be strengthened by extension to all women, this is a comprehensive response to Article 13(a) of CEDAW.

41. The Philippines guarantees women equal access to credit and capital, an equal share of farm produce and obligates the State to make available wider credit schemes and opportunities to women. Vietnam guarantees women equal opportunities to set up enterprises, carry out production and business activities, to administer business, and to

access information, capital, market and labour sources. Vietnam also authorises the use of temporary special measures to provide credit support, and agricultural, forestry or fishery extension to female labourers in rural areas. Whilst both provisions would be strengthened by the inclusion of specific objectives and timetables, they nevertheless represent good practice initiatives in accord with Article 13(b) of CEDAW.

42. Few GEL worldwide address property ownership, and the Philippines and Vietnam are the only two of the five SEA countries examined that do so. In examples of good practice, the Philippines and Vietnam guarantee women an equal right to property and resources. The Philippines additionally guarantees women access to housing and obligates the State to develop housing programs for women that are localised, simple, accessible, secure and located close to viable employment opportunities.
43. Lao PDR and Vietnam alone have included provisions to facilitate women's participation in recreational activities, sports and cultural life. Lao PDR obligates the State, society and the family to create conditions wherein women can enjoy equal cultural and social rights such as sport, education, public health, research, socio-cultural creation, science and technology. Vietnam provides that women shall have equal opportunities to participate in cultural, information, physical training and sports activities and shall receive equal benefits from culture and accessing and using information. Whilst both provisions would be strengthened by the inclusion of greater detail (i.e., what the State is required to do, how it will achieve those objectives, a timetable and a system of assessment), these are nevertheless positive features in the GEL.

## *Rural Women*

44. The eleventh substantive area considered in this review is equality for rural women. Article 14(2) of CEDAW obligates States Parties to take all appropriate measures to eliminate discrimination against women in rural areas and to ensure equal participation and benefit from rural development. Equality for rural women is important because they often form a significant proportion of the population and frequently play a significant role in the economic survival of their families and communities, particularly in developing countries. Few GEL, however, incorporate provisions specifically on rural women. Good practice CEDAW-informed legal rights and obligations that should be incorporated into GEL include the following: first, a guarantee of an equal right to participate in the elaboration and implementation of development planning; second, equal access to adequate health care facilities including information, counselling and services in family planning, and direct benefit from social security programmes; third, the right to obtain all types of training and education; fourth, the right to organise self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment; fifth, the right to participate in all community activities, the right 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, and finally the right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.
45. Only the Philippines and Vietnam have included provisions on rural women in their GEL. The Philippines obligates the State to provide for the 'protection, participation and

empowerment' of a variety of designated rural women. In accordance with Article 14(2) of CEDAW, the Philippines obligates the State to ensure the participation of women in the development and implementation of plans in the agricultural industry, including a quota of 33% representation in the various bodies. Vietnam provides for the introduction of temporary special measures for female labourers in rural areas in relation to credit and to education and training. Further, whilst Vietnam provides support to poor women residing in deep-lying and remote areas and ethnic minority women during childbirth, it is available only when in accordance with the population policy. This is discriminatory and contrary to CEDAW. Both Vietnam and the Philippines would strengthen their provisions in relation to rural women with a more comprehensive range of protections and benefits as detailed above at 43.

### *Civil Equality*

46. The twelfth substantive area considered in this review is equality before the law and in civil matters. Civil equality is crucial for gender equality because, as the CEDAW Committee explains in General Recommendation 21, any hindrance to a woman's capacity to initiate litigation, to access legal advice, to seek redress from the courts, or to appear as a witness denies her right to equality and diminishes her standing as a full and equal citizen in her community. Although few GEL contain civil equality provisions, the following good practice CEDAW-informed legal rights and obligations can be identified. First, the GEL should guarantee to women equality before the law and equal treatment in the application of any law. Second, the GEL should guarantee full legal capacity in civil matters identical to that of men and the same opportunities to exercise that capacity, and third, it should guarantee equal rights to conclude contracts and to administer property and guarantee equal treatment in all stages of procedure in courts and tribunals. Finally, all contracts and all other private instruments of any kind with a legal effect directed at restricting the legal capacity of women should be declared null and void.
47. Whilst the Philippines guarantees women equal treatment before the law and Vietnam guarantees spouses equality in civil relations, none of the five countries guarantees women civil equality in all aspects of their lives.

### *Marriage and Family Relations*

48. The final substantive area considered in this review is equality in marriage and family relations. The area of marriage and family relations is one in which gender inequality is often sharply demarcated and it is consequently an area of critical importance for gender equality. Article 16 of CEDAW provides extensive details of the measures required to eliminate discrimination against women in all matters relating to marriage and family relations. Effecting equality in marriage and family relations may, however, require detailed legislative change and a GEL may not itself be equipped to provide that detail. However, a GEL can aim to establish benchmarks and place an obligation on the State to enact and amend domestic legislation. Such good practice legal rights and obligations, as detailed in full in General Recommendation 21 include the following: first, setting the minimum age of marriage for men and women at 18; second, requiring both parents consent equally, in situations where consent is required; third, declaring the marriage of persons under 18 shall be void; fourth, requiring that marriage can be entered into only with the full and free

consent of both parties and is otherwise void; fifth, necessitating all marriages, including customary marriages, be registered in a central registry; sixth, prohibiting bigamy and polygamy; seventh, upon separation of married and unmarried persons and divorce, the issuing of a maintenance order to support children and ex-spouses based on need, earning capacity and the means of the two parties; eighth, women should have access to occupation orders to enable them to remain in their homes if they have dependant children or relatives or are in situations of domestic violence; ninth, the issuing of custody orders for the children of all relationships awarded on the basis on the best interests of the child; tenth, the establishment of a no-fault system of divorce; eleventh, legislating for an equal division of property after the breakdown of a relationship that includes recognition of women's unpaid contribution, and the calculation of future needs and future earning capacity of all parties; twelfth, legal recognition that women and men shall have the same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption; thirteenth, the extension of all rights and responsibilities to women in *de facto* relationships including same-sex partnerships, and finally, the imposition of equal rules of inheritance that apply in both formal and customary law.

49. Indonesia, Lao PDR, the Philippines and Vietnam have incorporated provisions on equality and marriage and family relations into their GEL.
50. Indonesia provides that rights and responsibilities in family life shall be built on equality and equity 'according to applicable laws and regulations'. Whilst this is an important provision with explicit reference to equality, it is weakened by deferring to existing law rather than itself identifying good practice benchmarks. Indonesia also obligates the government to pursue and raise 'family resilience and welfare' which is defined as the ability to 'live independently, harmoniously and with an ability to cope with various changes around it in the pursuit of the enhancement of inner welfare and happiness'. Whilst these are important goals, they do not equate to equality and do not accord with the obligations imposed by Article 16 of CEDAW. The Indonesian GEL also states that men and women shall have 'balanced' rights and obligations in relation to educating and raising children. The reference to 'balanced' could imply that a division of labour between public and private can and should remain, which is contrary to both CEDAW and gender equality and does not constitute good practice. The Indonesian GEL would therefore be strengthened by the inclusion of those benchmarks identified in 48 above.
51. Lao PDR guarantees women equality in the family, the right to choose a husband at 18, and the right to choose a family name in accord with Article 16(1)(g) of CEDAW. The Lao PDR GEL also guarantees women equal rights regarding common assets. Whilst this does not guarantee the recognition of non-financial contributions in a property division, it is nevertheless a positive inclusion. Lao PDR also provides that a man cannot request a divorce if his wife is pregnant and if they have a child under the age of one year. Whilst this provision is aimed at protecting women, it is paternalistic; a more effective CEDAW-informed approach would be to guarantee women occupation of the marital home, maintenance and full support for children upon divorce or separation. A maternal presumption in custody disputes is created by the Lao PDR GEL, however, this is contrary to the CEDAW Committee which has recommended that the best interests of the child be paramount. Finally, Lao PDR provides for maintenance for women who have been in *de facto* relationships and for the children of unmarried women. This is a positive good practice

inclusion although it would be strengthened by identifying criteria for the calculation of maintenance, such as needs, means of both parties and assets. The Lao PDR GEL would also be strengthened by the inclusion of the remaining benchmarks identified in 49.

52. The Philippines has replicated Article 16 of CEDAW in its GEL and is therefore representative of good practice in this area. CEDAW, however, like all international conventions is written in broad language and its translation into domestic law is an important part of a country's *de jure* obligations. Some of Article 16, therefore, requires more specific detail as outlined in General Recommendation 21. Additional legal rights and obligations in the Philippines GEL could include the following: a minimum equal age of marriage of 18 for men and women; a prohibition on bigamy and polygamy; a provision that upon separation of married and unmarried persons and divorce a maintenance order can be issued on the basis of need, earning capacity, and the means of the two parties; provision for occupation orders when women have dependant children or relatives or in situations of domestic violence; a no-fault system of divorce; an equal division of property that includes recognition of women's unpaid contribution, and the calculation of future needs and future earning capacity of all parties; and finally the extension of all rights and responsibilities to women in *de facto* relationships including same-sex partnerships.
53. Vietnam provides a general guarantee of equality for women in marriage and family relations. The provision, however, lacks the specificity required for the effective application of Article 16 of CEDAW. Vietnam also provides for equality in family planning, equality in the upbringing of sons and daughters, and that male and female family members share housework. Whilst the intent of these provisions is positive it is unclear how such provisions could be enforced. The Vietnamese GEL would also be strengthened by the inclusion of the remaining benchmarks identified in 49 above.

## Implementation and Monitoring

54. This report identifies seven implementation, monitoring and enforcement components indicative of good practice GEL. The inclusion of all seven components in a GEL would not only ensure the effective implementation of the GEL framework but also engender a more effective implementation of CEDAW. The seven implementation and monitoring components of a good practice GEL are, first, a harmonisation mechanism ensuring that existing and future domestic legislation accords with its provisions; second, the placing of a positive obligation on public and private institutions to implement the GEL; third, the establishment of mechanisms to monitor both public authorities and private organisations and individuals in their implementation and observance of the GEL; fourth, a complaints process to ensure victims of GEL violations can bring actions and receive appropriate remedies; fifth, a mechanism to ensure the collection of gender statistics; sixth, the incorporation of a review process to determine whether the GEL is working effectively; and seventh, the establishment of a funding mechanism for all GEL implementation and monitoring activities.

### Harmonisation Mechanisms

55. The first of the seven implementation and monitoring components indicative of good practice is the establishment of a harmonisation mechanism to ensure that existing and future domestic legislation accords with the provisions of the GEL. This is important to ensure discriminatory legislation does not continue to operate in discrete areas despite

the enactment of the GEL. There are a number of ways in which GEL can facilitate harmonisation with other domestic law such as (in order of their anticipated effectiveness and ranging from the most effective measures to the least), first, equipping GEL with constitutional status; second, including an inconsistency clause which expressly states that inconsistent laws are repealed; third, establishing an institution (preferably independent but alternatively a weaker option empowering a government or parliamentary institution) with a duty to review existing legislation for compliance and to make recommendations to the legislature to undertake appropriate reform; fourth, empowering an institution (preferably independent) to conduct mandatory pre-enactment scrutiny for GEL consistency; fifth, empowering courts to strike down legislation or declare as incompatible legislation that is inconsistent with the GEL, and finally, an interpretative clause requiring the courts to interpret legislation (primary and subordinate) in line with the GEL.

56. The draft and enacted GEL of the five SEA countries considered in this review have all developed harmonisation mechanisms to ensure that their existing and future domestic legislation accords with the GEL. However, none of the five countries examined has fully met the standards of good practice. Three countries, Thailand, Lao PDR, and Vietnam, have placed mandatory obligations on a variety of bodies to review existing laws. Thailand obligates the Opportunity and Gender Equality Commission (OGE) to examine laws in order to end 'unfair discrimination'. Lao PDR places a positive and mandatory duty on the Lao Women's Union to 'study' the laws and submit proposals for reform. Vietnam places an obligation on a variety of organisations including state management agencies, People's Committees and Ministries and agencies to 'review' and 'formulate' law that guarantees the 'basic principles of gender equality'. Whilst the different bodies have varying degrees of independence, only Thailand requires the composition of the Commission to be 50% staffed by gender experts. None of the three countries provides for a systematic review of all laws to ensure compatibility which is essential for ensuring that incompatible laws do not have continued application in practice.
57. The Philippines and Indonesia have not introduced machinery for the systematic review of laws for compatibility, although they have introduced inconsistency clauses which declare inconsistent legislation invalid. Indonesia's inconsistency clause requires clarification as its scope is uncertain. However the Philippines' draft Magna Carta provides an excellent example of such a clause. An inconsistency clause is nevertheless insufficient without a coexistent mechanism to systematically review all laws to ensure consistency which is not included in the draft Magna Carta. Finally, only Vietnam provides for the pre-enactment scrutiny of Bills or amendments for compatibility with GEL. Although pre-enactment scrutiny in Vietnam is not conducted by an independent institution and there is no requirement for the scrutiny to be conducted by gender experts, this is still a positive measure since without it the harmonisation of domestic legislation would be largely reliant on court processes.

### *Positive Obligations*

58. The second of the implementation and monitoring components indicative of good practice is the placing of a positive obligation on the State and all public and private institutions to implement the GEL. Such bodies are well placed to ensure that the principles of gender equality are integrated internally throughout their organisations and in their relationships with civil society. There are three main forms that positive obligations to implement GEL typically

take. The first is an obligation to formulate and implement a gender equality plan, defined as an operational road map which identifies the key steps an institution will take to implement gender equality. The second is an obligation to institute gender mainstreaming, which can be defined as the incorporation of the principles of equality between women and men in all aspects of operations including agenda setting, policy-making, planning, budgeting and in all decision-making procedures, and the third is a positive obligation to introduce temporary special measures.

59. All five countries place obligations on various institutions to develop gender equality plans, but only the Philippines provides for the development of a national gender equality plan. Thailand obligates the OGE to set 'action' plans, Lao PDR obligates the Public Health Sector, Information and Culture Sector and the Lao Women's Union to translate the law into 'action plans' in several areas, Vietnam obligates a variety of state agencies and institutions and private organisations to make 'plans' and Indonesia obligates the Minister and the Head of the Local Legislative Council to coordinate 'planning'. The Philippines, as well as providing for a national gender equality plan, also obligates all agencies, national and local, state colleges and universities, government owned and controlled corporations including local government units, to develop plans. Although the Philippines does require the identification of budgets in all gender equality plans and the development of performance indicators, all five countries lack sufficient detail to ensure the execution of effective gender equality plans including timetables, identified objectives and a clear implementation and assessment process.
60. Three of the five SEA countries examined, namely, Vietnam, Indonesia and the Philippines, provide for gender mainstreaming, as recommended by the CEDAW Committee. Vietnam obligates a variety of state agencies and institutions and private organisations to ensure gender equality in their organisations, Indonesia obligates the State and its representatives to introduce gender mainstreaming and the Philippines obligates the State and its agencies including universities to introduce gender mainstreaming. All three GEL could be strengthened by extending the obligation to all private institutions. Additionally, incorporating a mechanism for analysing current policies and programs in all institutions (private and public) to facilitate effective gender mainstreaming would further strengthen the current processes.
61. All five SEA countries examined authorise the establishment of temporary special measures and/or special measures for the advancement of women in accord with Article 4 of CEDAW. Whilst good practice requires positive obligations be placed on both the State and its representatives, as well as on private organisations, to institute temporary special measures, none of the five countries fully meets this mandate. Thailand places a mandatory obligation only on the OGE to institute special measures, Vietnam obligates the National Assembly, the Standing Committee, the government and state agencies to introduce special measures and a 'considerable disparity' is required. Indonesia and the Philippines place mandatory obligations on the State and Lao PDR obligates the State and designated public and private organisations to institute 'measures.'
62. To ensure the effective and targeted application of temporary special measures, the GEL should also establish a mechanism by which a systematic assessment of women's *de facto* status is conducted to identify areas of inequality that require the implementation of

temporary special measures. Of the five countries examined, only Lao PDR has included such a mechanism. Temporary special measures should be mandatory in all areas of women's lives where *de facto* inequalities are identified. Thailand, Lao PDR and Vietnam do not identify potential areas for temporary special measures and Indonesia restricts temporary special measures to the fields of education and employment and in social and cultural spheres, whilst the Philippines, in a good practice provision and in accord with Article 4 of CEDAW, places a positive obligation on the State to adopt temporary special measures in the political, economic, social, cultural, civil or any other field. Vietnam and the Philippines specifically identify a range of particular temporary special measures (as recommended by the CEDAW Committee) which can be employed including policies, practices, quotas, and training and retraining. Indonesia restricts temporary special measures to 'programmes', whilst Thailand and Lao PDR do not identify the form that temporary special measures might take. Finally, only Vietnam expressly excludes temporary special measures from any claim of discrimination as required by Article 4(2) of CEDAW, and only Vietnam and Lao PDR provide for regular assessment of such measures, as recommended by the CEDAW Committee, and which is an important inclusion to ensure their effectiveness.

### *Mechanisms for Monitoring*

63. The third of the implementation and monitoring components indicative of good practice GEL is the establishment of mechanisms to monitor public authorities and private organisations, as well as individuals, in their implementation and observance of the GEL. To be effective, the GEL must incorporate mechanisms and machinery to ensure that all actors perform their duties and obligations with the desired and intended results and that they do not breach the provisions of the GEL. There are a range of mechanisms that have been adopted by GEL generally, to monitor public authorities and private organisations to ensure that the GEL is implemented and to punish and deter those that breach its provisions. These include the obligation to report, the establishment of a system of rewards or incentives, disincentives such as the denial of credit and government tenders or the publication of names of violators and finally more punitive measures such as fines or imprisonment.
64. Indonesia, Lao PDR, Thailand and Vietnam (but not the Philippines) all place obligations on either government or specified organisations to report on the implementation of the GEL. Thailand obligates the OGE to report annually to Cabinet and Lao PDR requires the Women's Union to report on implementation, but it is unclear to whom they should report. It is also unclear whether the Lao Women's Union has sufficient resources, expertise and power to coordinate a monitoring exercise throughout the concerned sectors as they are a mass organisation without executive power. Vietnam requires the government to report annually to the National Assembly on the implementation of gender equality goals and Indonesia requires the Minister and Head of the Local Legislature to coordinate 'reporting' although no timeline is specified. None of the four countries places comprehensive duties to report on all government and non-government agencies and organisations. There is also little guidance given in any of the four countries on what the report must contain, and none of the four countries specifies the action required if reporting reveals unsatisfactory results.
65. The Philippines and Lao PDR are the only two of the five reviewed countries to introduce rewards as a mode of monitoring. Lao PDR provides for rewards to those implementing,

participating, managing and monitoring the development and protection of rights and benefits of women and children, as well as for those preventing and combating trafficking or domestic violence, including those who provide consultation. Likewise, the Philippines provides for the establishment of a system of incentives and awards for both public and private organisations. The provisions in both countries would be strengthened by the inclusion of more detail, including: a procedure for assessment of outstanding performance, a timetable, specific identification of rewards and the nomination of the authority or institution charged with the responsibility of establishing the system. Nevertheless, the introduction of rewards and incentives is a positive development.

66. None of the five countries has introduced disincentives as a means of monitoring the implementation of GEL. Such disincentives could include denying private organisations access to government benefits or publishing a public list of violators of the law. Disincentives can be an effective means of ensuring both public and private actors fulfil their GEL obligations.
67. Four of the five countries examined namely, Lao PDR, Thailand, the Philippines and Vietnam impose sanctions on both public and private actors for breaches of GEL as a means of monitoring its implementation. Indonesia, to date, is the only country of the five examined, that does not institute a system of sanctions for breaches of the GEL. Thailand and the Philippines provide for both specific terms of imprisonment and fines. Less specific, and therefore weaker sanctions, are provided in Lao PDR, which imposes 'educational or criminal' measures, and Vietnam, which stipulates disciplinary 'measures, administrative sanctions or criminal prosecutions.' Of the four, the Philippines provides the most severe sanctions and includes, in a positive measure, an administrative sanction for a government agency or unit for failure to allocate 5% of their budget to GEL implementation.

### *Complaints Process*

68. The fourth of the implementation and monitoring components indicative of good practice is the incorporation of a complaints process to ensure victims of GEL violations can seek redress and access appropriate remedies. The central purpose of a complaints process, as distinct from the mechanisms described above, is to provide victims of gender-based discrimination with remedies. A good practice complaints process, identified through the analysis of global GEL and other literature on complaints processes, requires the incorporation of a number of key components as follows: (1) It should be facilitated by a funded independent body; (2) It should be staffed by gender experts; (3) The complaints process should be free of charge to complainants; (4) Complaints should be receivable in relation to violations by public and private institutions and individuals; (5) Standing should be open enabling the lodgement of complaints by those not personally harmed by violations; (6) There should be a clear procedure for establishing liability; (7) The burden of proof should be placed on the violator rather than the complainant; (8) The complaints body should have the power to award appropriate and adequate remedies; (9) Information about victims should be confidential and retaliation prohibited; (10) The process should permit the complaints body to provide opinions to persons and institutions on whether an intended act will constitute a breach of the GEL; (11) An effective appeals process should be incorporated. GEL, both enacted and draft, utilise a wide range of bodies with the ability to receive and investigate complaints and award remedies to victims. These include the establishment of Offices of the

Ombud, Councils, Commissions, Offices and Tribunals.

69. Lao PDR, the Philippines, Thailand and Vietnam, but not Indonesia, have established complaints processes in their GEL.
70. The Philippines utilises the Gender Equality Council (GEC) to hear complaints regarding violations of the Act. However this appears only to establish an administrative review process rather than an individual complaints system. Instead, individual complaints must be raised in the court system and although the GEC must assist such individuals in actioning their cases, this is not a strong mechanism.
71. Vietnam and Lao PDR provide for a variety of organisations and institutions to receive complaints. Lao PDR enables the Central Lao Women's Union and the Lao Women's Union to receive complaints and report back to the complainant within 30 days. Neither organisation, however, has the power to provide remedies other than 'giving advice' and 'resolving unlawful acts'. Whilst such organisations can then refer the matter to the police or 'higher authorities', there is no obligation on either to provide remedies. Other Lao authorities are also required by the GEL to receive complaints but the detail necessary for an effective complaints procedure is absent. Vietnam, like Lao PDR, enables a number of agencies to receive complaints but does not clearly define the procedure by which a complaint shall be heard. In a positive initiative, complaints in Vietnam can be received from anyone who believes the Act has been violated enabling 'public spirited' persons to identify systemic (rather than individual) harm, or to represent persons without the ability to lodge complaints. Remedies are provided including compensation and the cessation of the discriminatory behaviour. Both countries would benefit from the establishment of a single, clearly-defined and -funded complaints process.
72. Finally, Thailand has established a comprehensive complaints mechanism which provides a good practice example for the region. It is administered by a single institution staffed by gender experts, it provides a clear procedure for lodging complaints and pursuing actions, provides assistance and aid for complainants, and a range of remedies can be awarded. The complaints mechanism could be further strengthened, however, by enabling non-aggrieved applicants to lodge complaints (as in Vietnam), by shifting the burden of proof to the defendant in accord with global trends in GEL and finally, with the inclusion of an appeals process.

### *Collection of Gender Statistics*

73. The fifth of the implementation and monitoring components indicative of good practice in GEL and recommended by the CEDAW Committee is the establishment of a mechanism for ensuring the collection of statistics disaggregated by sex and the gender dimensions of other intersections such as ethnicity, disability, sexual orientation and age. Such statistics are critical for the effective monitoring and implementation of GEL since good evidence-based policymaking requires the use of both up-to-date quantitative data, collected across a wide sample base, as well as qualitative information to help refine understanding. Essential features of a good practice mechanism include the establishment of a mandatory and systematic process to gather data, a duty to collect data relating to all areas of women's lives (and not merely as an additional aspect of existing data collection) and the collection of statistics disaggregated by sex and the gender dimensions of other intersections.

74. Thailand and Indonesia do not provide for the collection of statistics disaggregated by sex. Whilst Lao PDR, the Philippines and Vietnam do make provision for the collection of sex-disaggregated data, none as yet represent good practice examples. Lao PDR provides for various agencies that counsel women to ‘summarise statistics and data’. Under this model, however, data will be collected only from women who choose to participate in counselling and may not therefore result in a comprehensive set of data relating to all areas of women’s lives. Vietnam obligates a variety of agencies to gather statistics on gender equality and requires the government to identify indicators for gender classification in state statistical information. The Philippines requires government agencies including universities to ‘include sex-disaggregated data.’ None of the three, however, provides for the systematic and mandatory collection of data (within designated time-frames) relating to all aspects of women’s lives and disaggregated by sex and the gender dimensions of other intersections such as ethnicity, disability, age and sexual orientation. Such a mechanism, recommended by the CEDAW Committee, would enable plans, policies, measures and laws to be developed based on the *de facto* situation of women and enable effective monitoring of the measures already in place.

### *Review Process*

75. The sixth implementation and monitoring component indicative of good practice in GEL is a review process to determine whether the GEL is working effectively with the intended results. The process should also provide for the recommendation of amendments if the GEL is found not to be working effectively. A review process should be mandatory and regular. None of the five countries, however, has incorporated such a review process.

### *Funding Mechanism*

76. The seventh and final implementation and monitoring component indicative of a good practice GEL is the establishment of a funding mechanism to support all GEL implementation and monitoring activities. The funding sources should include a designated amount from government revenue, be adequate for the purpose(s) it is intended for, the funds should be managed and distributed by a (preferably independent) institution and a detailed guide should be provided specifying what the funds can be spent on. Those purposes should include the review of existing law and future enactments for compliance with GEL, the development and drafting of new laws and amendments, assistance for or compensation to victims for breaches of the GEL, the monitoring of the performance of state officials, government agencies and private institutions in the implementation of the GEL, the promotion of education, research and dissemination of knowledge relating to the implementation of the GEL, the development and implementation of special measures, the gathering of sex disaggregated data, and for any other activity in relation to the promotion of opportunity, gender equality and the implementation of the GEL.

77. All five of the SEA countries examined have established a funding mechanism to support GEL implementation and monitoring activities. All five countries identify the sources of the funds, although only Thailand, Lao PDR and Vietnam provide for additional funding from the government. No specific amount, however, is identified and to fully meet the standard of good practice, a minimum should be specified to ensure at least adequate or sufficient funding. Indonesia and the Philippines provide that each government agency responsible

for implementation will fund such activities from their allocated budgets, which is a more restrictive mode of funding.

78. None of the five countries examined provides for the funds to be managed by an independent institution, although Thailand provides for the funds to be distributed by a partially independent institution (namely, the OGE).
79. Thailand and Lao PDR both represent examples of partial good practice, as they provide detailed guidelines on the activities the budgeted monies are to be spent on. Further, whilst temporary special measures is not identified as a targeted area for funding, a wide array of other implementation and monitoring activities are. Finally, Indonesia, Vietnam and the Philippines do not specify what the funds can be spent on, and although this provides some degree of flexibility, the implementation mechanisms of the three countries could be strengthened by designating the possible areas of expenditure.



# Part 1

## INTRODUCTION

### 1.1 Terms of Reference

UNIFEM is the Women's Fund at the United Nations (UN) which provides financial and technical assistance to innovative programmes and strategies that promote women's human rights, political participation and economic security. UNIFEM promotes gender equality and 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 employment strategies.

This report contains the results of a desk review commissioned by UNIFEM East and Southeast Asia Regional Office to analyse global gender equality laws (GEL) and to identify those that represent good practice from a CEDAW-informed perspective. The review was also commissioned to analyse the strengths and weaknesses

of enacted and draft gender equality laws in five Southeast Asian (SEA) countries, namely, the Draft Gender Equality Law 2004 (Indonesia), Law of Lao People's Democratic Republic on the Development and Protection of Women 2004, Decree on the Implementation of the Law on Development and Protection of Women 2006 (together these two laws constitute the GEL of Lao PDR), Draft Magna Carta for Women (Philippines), Draft Equal Opportunity and Gender Equality Act (Thailand), and the Gender Equality Law 2006 (Vietnam). The review was conducted in 2007 and early 2008 and does not incorporate changes that have been introduced since that period.

This report is not intended to reflect negatively on any government but is aimed at assessing the effectiveness of enacted and draft GEL with a view to working towards better development and implementation of gender equality laws in the future. It is intended as a resource and a tool for governments and non-government organisations in their work to achieve full participation, equality and non-discrimination for women in all aspects of their lives.

### 1.2 CEDAW: Background, History and Scope

On 18 December 1979, the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>1</sup> On 3 September 1980, the Convention came into force with over 20 countries becoming signatories. As of 1 October 2008, 185 countries have ratified or acceded to the Convention, representing over ninety percent of the members of the UN and making it the second most ratified UN convention in the world.<sup>2</sup> CEDAW is the first international treaty to systematically address the needs of women and is often described as an international bill of rights for women.<sup>3</sup> The call for the Convention came from women's groups across the globe and was based on the premise that existing international human rights conventions did not effectively address the types and forms of discriminations experienced by women. Although historically UN conventions typically had separated civil

and political rights on the one hand, and economic, social and cultural rights on the other, the Convention was unique for its time as it transcends that traditional divide and seeks the elimination of discrimination experienced by women in all areas of their lives, including in the political, economic, social, cultural, civil or any other field.

The Convention is worded in broad terms. It consists of a Preamble and has 30 articles which are divided into six parts. In the Preamble, States parties declare that they are ‘determined to adopt the measures required for the elimination of discrimination in all its forms and manifestations.’ Part I (Articles 1-6) deals with the basic principles underscoring the Convention. Article 1 provides a comprehensive definition of discrimination to include ‘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 explicitly condemns discrimination against women and requires States parties to take ‘all appropriate measures, including legislation’ to ‘modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women’. Uniquely, since international human rights treaties are usually limited to the conduct of States parties and their agencies, States parties under CEDAW are also obliged to eliminate discrimination against women by any person, organisation or enterprise. Part II (Articles 7-9) is primarily concerned with discrimination against women in the public sphere. In particular, States parties are obligated to ensure equal voting rights, equal opportunities to enable women to represent their governments, and equal opportunities to participate in the work of international organisations. The rights of women to full and equal citizenship and the rights of women to pass on their nationality to their children are also identified in this section. Part III (Articles 10-14) envisages broader social and legal reform, particularly access to education, equality in employment, access to health care, access to financial services, and equal participation in social and cultural life. In addition, this Part addresses the specific needs of rural women. Part IV (Articles 15 and 16) covers the rights of women to equality before the law and within the family. It obligates States parties to ensure that women have the legal right to own property, the right to contract and the right to equality within all aspects of marriage, parenting, divorce and inheritance. Part V (Articles 17-22) details the establishment and functions of the CEDAW Committee, a body of 23 experts responsible for overseeing the effective implementation of the Convention, and finally Part VI (Articles 23-30) covers implementation, ratification, entry into force and reservations.

### 1.3 Obligations Created by Ratification of CEDAW

Ratification of or accession or succession to CEDAW requires States parties to comply with the Convention’s provisions. This includes *de jure* obligations, requiring the laws of the State party to accord with the Convention, and *de facto* obligations, requiring that the State party’s observance of the Convention is not merely reflected in the laws of the country but implemented in practice with the intended results. Indeed, the obligations of ratification are confirmed by Article 26 of the Vienna Convention on the Law of Treaties which states, ‘every treaty in force is binding upon the parties to it and must be performed by it in good faith’.<sup>4</sup> The *de jure* obligations imposed by CEDAW on a State party require the amendment or repeal of discriminatory laws, the modification of existing laws, or the enactment of new laws in areas lacking the necessary legislation. In meeting their *de jure* obligations and implementing

CEDAW into their domestic legal systems, States parties are therefore obligated to ‘pursue all appropriate means’ to enable the practical realisation of equality.<sup>5</sup> Thus, a State may not ‘plead its internal law’ as an excuse for failure to comply with its *de jure* obligations.<sup>6</sup> Amongst the SEA countries that form part of this review, Lao PDR, the Philippines and Vietnam acceded to the Convention in 1981, Indonesia acceded in 1984 and Thailand in 1985. Of the five countries examined, three have entered reservations on the Convention. Thailand has placed a reservation on Article 16 and Thailand, Indonesia and Vietnam have placed reservations on Article 29(1) which provides for arbitration if there is a dispute between two or more States parties concerning the interpretation or application of the present Convention that cannot be settled by negotiation. If arbitration fails, Article 29(1) provides for the dispute to go to the International Court of Justice. As neither of the remaining two countries (Lao PDR and the Philippines) has entered reservations upon the Convention, both are obligated to comply with all of its articles.

International law permits a State party to determine how it will implement its treaty obligations but there are typically two legal avenues through which international instruments are incorporated into domestic legal systems. The first, referred to as monism (the view that the international law system and the domestic law system constitute a single system of law), is where constitutional legal arrangements provide that treaties ratified by the State party automatically become the law of that State. In monist countries, courts can interpret the Convention directly in line with their judicial responsibilities and duties. The obligation, however, to harmonise domestic law with the Convention and to translate CEDAW into effective and specific legal provisions, remains. The second avenue, referred to as dualism (the view that international law, including the application of conventions, is separate from domestic law), is where constitutional legal arrangements provide that treaties have no domestic effect without implementing legislation. In dualist jurisdictions, therefore, there is a clear obligation to introduce the principles of CEDAW into domestic legal systems by enacting or amending domestic legislation. The CEDAW Committee has emphasised, however, that whether dualist or monist, States parties must ‘take measures to ensure that the Convention becomes fully applicable in the domestic legal system, either through domesticating it in full or by adopting appropriate legislation.’<sup>7</sup> Of the five SEA countries examined for this review, Thailand has a dualist legal system and therefore must enact domestic legislation to comply with its *de jure* obligations to CEDAW. Whilst Lao PDR, Indonesia, the Philippines and Vietnam ostensibly have monist systems, there is no clear guidance in the constitutions of these countries on how to proceed if domestic law conflicts with international treaties and conventions to which they are parties. It is certainly clear, however, that domestic law does not become void in instances of conflict and therefore action must be taken by the State party to incorporate the norms of CEDAW into its domestic law in order for such principles to be justiciable and to fulfil its obligations for *de jure* compliance.<sup>8</sup>

## 1.4 Gender Equality Laws: Definitions

To achieve *de jure* compliance with CEDAW, a State party must ensure that its constitution and domestic legislation accords with the substantive rights and obligations posed by articles 1-16 of CEDAW and that appropriate monitoring mechanisms are established to ensure the implementation of the Convention. This requires the amendment or repeal of discriminatory laws, the modification of existing laws or the enactment of new laws to cover areas not yet

legislated in. The latter requirement, the enactment of new laws to achieve *de jure* compliance with CEDAW, has given rise to the development and the adoption of gender equality laws, marking a divergence from the traditional approach of incorporating gender equality provisions into existing legislation or constitutions.

In this report, gender equality laws (GEL) refers to legislation that is solely focused on gender equality rather than the amendment or insertion of gender equality provisions into existing legislation or constitutions. This report further divides GEL into two types. Multi-area GEL are those that respond to a substantial number of CEDAW's 16 articles whilst targeted GEL are those focused on a particular area or article(s) of CEDAW, typically equality and non-discrimination, employment and/or education.<sup>9</sup> The difference between the two types of GEL is important because whilst a targeted GEL can seek to replace a particular area of domestic law, a multi-area GEL cannot realistically achieve this in all areas. It is not realistic because specificity (i.e., detailed legislative provisions) is the hallmark of effective domestic law and a multi-area GEL, which spans a range of areas of law, cannot effectively replace all relevant domestic law. Instead, in some areas (such as gender-based violence) it must seek to articulate clear, but necessarily more general, provisions about women's rights, providing benchmarks that can then in turn be effectively translated into either regulations or domestic legislation. In other areas (such as equality and non-discrimination), where the legal parameters are more confined, a GEL can seek to be sufficiently specific and detailed to enable its direct application by a court or a tribunal in the resolution of a case.

## 1.5 Gender Equality Laws: History and Rationale

The world's first GEL, the Law on Sex Equality was enacted by the Democratic People's Republic of Korea in 1946. However, GEL had their modern genesis in the pre-CEDAW period in the United Kingdom (UK) with the enactment of the Equal Pay Act 1970 (UK) and the Sex Discrimination Act 1975 (UK), a 'package of laws aimed at addressing gender based discrimination.' The first GEL to be enacted in the post-CEDAW period was the Sex Discrimination Act 1984 (Cth) in Australia. Since then there have been several waves of gender equality laws, the most recent being in Europe (particularly the Baltic States, the Central Asian States, and the former Yugoslav States) and in Southeast Asia. Such moves towards the adoption of gender equality laws have been most common in new or emerging States. In the European region, this trend may be attributable in part to the requirements placed on States to satisfy the Copenhagen criteria<sup>10</sup> as a precondition for admission into the European Union.<sup>11</sup> Similar developments could be attributed in the Southeast Asian region to the moves towards regional groupings and the recent adoption of the ASEAN Charter on Human Rights. Additionally, the enactment of a single, overarching piece of domestic legislation that reflects the norms of CEDAW may seem attractive to NGOs and governments alike as a straightforward initial response to a State party's *de jure* obligations under CEDAW. Such a response may seem more achievable than engaging in the complicated, lengthy and resource-intensive processes of amending multiple pieces of legislation.

There have also been significant developments in countries such as Spain, which has recently enacted a detailed multi-area GEL as well as in the Scandinavian countries which are notable for their extensive developments in targeted equal opportunity and employment laws. Additionally, some regional trends can be identified. The Baltic, Balkan and Southeast Asian States have shown a preference for multi-area GEL (attributable possibly to their developing

nation status whose legal frameworks may require more legislative reform), whilst Scandinavian and other industrialised countries have focused on particular areas such as employment, equality and non-discrimination (attributable possibly to the existing extensive legislative protection for women in a range of areas). The areas of CEDAW most frequently included in GEL are employment, education, and equality and non-discrimination. For the most part, however, gender equality laws have emerged to span a continuum, ranging from laws that seek to comprehensively incorporate the range of substantive rights and obligations required by CEDAW to those that focus on a few articles of CEDAW. Despite their origins and variations in models, it is fair to say that most gender equality laws have emerged since 2000 and have become an increasingly popular response to gender equality and the obligations created by CEDAW. The CEDAW Committee has welcomed this global trend towards the enactment of GEL<sup>12</sup> whilst noting the need to ensure such laws do not contain discriminatory provisions and emphasising the continuing necessity to reform domestic legislation.<sup>13</sup>

## 1.6 Methodology

This report seeks to identify and define CEDAW-informed good practice in GEL and to analyse, based on the good practice template identified, the GEL in five SEA countries (Indonesia, Lao PDR, the Philippines, Thailand and Vietnam). This report has chosen to utilise the term 'good practice' rather than 'best practice', in recognition of the caution required when proclaiming the merits of one practice or approach over another. The term 'best practice' implies to some degree, irrefutability which is not the aim of this report, recognising instead that both state and non-state actors continue to identify new and effective ways of achieving *de jure* gender equality. This report therefore seeks to present the variety of GEL models that have been utilised around the globe, with a view to assessing their conformity with the principles of CEDAW. Accordingly the authors prefer the term 'good practice' as it accommodates both the recognition of existing strengths in gender equality laws and the development of future models.

The identification of 'good practice' in GEL was therefore the first task of this review. This involved the analysis of 45 enacted and draft GEL from around the world and an analysis of other relevant legislation such as equality laws generally and human rights acts enacted to give effect to other conventions. It also involved a close analysis of the articles of CEDAW, the 25 general recommendations issued by the CEDAW Committee (which have interpreted various aspects of the Convention), as well as the Committee's concluding comments, particularly in relation to States parties that have enacted GEL. In some instances, the good practice examples used in this report (where there is little or no guiding material from the Committee) were selected after an extensive review of relevant reports, comments and other relevant literature that identify good practice in the area of gender equality as well as the authors' cumulative interpretations of the above. Whilst this review identifies good practice in relation to both implementation and monitoring on the one hand, and on the other, the range of substantive areas and the corresponding legal obligations and rights that should be included in GEL for full *de jure* compliance with CEDAW, it does not, however, attempt to designate areas of inclusion. It envisages instead that this task will be undertaken by States parties individually to be determined within their particular social, economic, cultural and political contexts.

The second objective of this report is to consider and analyse, in the light of the framework of good practice examples identified, the draft bills or enacted GEL in each of the five SEA countries. The review of the five GEL was conducted on the basis of the text of the enacted

and draft GEL made available in translated form. In places, due to the uncertain meaning in some translations, the authors have edited the translation to provide clarification and introduced numbering to more easily identify different sections.

## 1.7 Table of Draft and Enacted GEL

The following table lists the 45 enacted and draft GEL located and considered in this review. The table does not include Domestic Violence Acts, and Anti-Trafficking Acts which have been increasingly adopted in jurisdictions around the globe. Although such legislation is often exclusively focused on the protection of women and girls, and could be considered targeted GEL, it is beyond the scope of this review. The table also excludes legislation that focuses on a specific topic within a larger topic area such as equal pay legislation and maternity leave legislation. Finally, the table does not include Equality Acts (such as is present in Ireland, South Africa, Guyana, Slovakia and Mauritius) which focus on equality and multiple grounds of discrimination including sex but not exclusively and therefore, for the purposes of this report, are not GEL.

Country	Title	Year	Status
Albania	Law on Gender Equality	2004	Enacted
Azerbaijan	State Guarantees of Equal Rights for Women and Men	2006	Enacted
Australia	Sex Discrimination Act	1984	Enacted
Bosnia and Herzegovina	Law on Gender Equality	2003	Enacted
Bulgaria	Act on Equal Opportunities for Women and Men	2002	Enacted
China	Law of the People's Republic of China on the Protection of Rights and Interests of Women	1992	Enacted
Columbia	Norms on the Equality of Opportunity for Women	2003	Enacted
Democratic People's Republic of Korea	Law on Sex Equality	1946	Enacted
Croatia	Gender Equality Act	2003	Enacted
Denmark	Gender Equality (Consolidation) Act	2002	Enacted
Estonia	Gender Equality Act	2004	Enacted
Finland	Act on Equality between Women and Men	1986	Enacted
Germany	Advancement of Women Act	1994	Enacted
Honduras	Law on Equality of Opportunities for Woman	2000	Enacted
Hong Kong	Sex Discrimination Ordinance	1995	Enacted
Iceland	Act on the Equal Status and Equal Rights of Women and Men	2000	Enacted
Indonesia	Act Concerning Gender Equality and Equity		Draft
Japan	Basic Law for Gender Equal Society	1999	Enacted
Kazakhstan	Equal Rights and Opportunities of Women and Men		Draft
Kosovo	Law on Gender Equality	2004	Enacted
Kyrgyzstan	Law on the Basics of State Guarantees of Gender Equality	2003	Enacted

Country	Title	Year	Status
Lao PDR	Law on the Development and Protection of Women	2004	Enacted
	Decree on the Implementation of the Law on the Development and Protection of Women	2006	Enacted
Liechtenstein	Gender Equality Act	1999	Enacted
Lithuania	Law of the Republic of Lithuania on Equal Opportunities	1998	Enacted
Macedonia	Law on Equal Opportunities		Draft
Malta	Equality for Men and Women Act	2003	Enacted
Moldova	Law on Ensuring Equal Opportunities for Women and Men	2006	Enacted
Mongolia	Gender Equality Law		Draft
Nicaragua	Law on Equality of Rights and Opportunities		Draft
Norway	The Act Relating to Gender Equality	2005	Enacted
Philippines	Magna Carta for Women		Draft
Puerto Rico	Law to Guarantee Equality of Opportunity in Employment	1999	Enacted
Romania	Law on Equal Opportunities between Women and Men	2002	Enacted
Russia	Law on State Guarantees of Equal Rights and Opportunities for Men and Women		Draft
Singapore	Women's Charter	1961	Enacted
Spain	Constitutional Act for Effective Equality Between Women and Men	2007	Enacted
Slovenia	Act on Equal Opportunities for Women and Men	2002	Enacted
South Korea	Gender Discrimination Prevention and Relief Act	1999	Enacted
Sweden	Act on Equality between Women and Men	1991	Enacted
Switzerland	Federal Act on Gender Equality	1995	Enacted
Tajikistan	On State Guarantees of Equal Rights for Men and Women and Equal Opportunities in the Exercise of Such Rights		Draft
Thailand	Promotion of Opportunity and Gender Equality Act		Draft
Ukraine	On State Guarantees of Equal Rights and Opportunities for Men and Women	2005	Enacted
United Kingdom	Sex Discrimination Act	1975	Enacted
Vietnam	Law on Gender Equality	2006	Enacted

## 1.8 How to Use this Report

This report is divided into three parts. Part 1 begins with an overview of CEDAW and its scope as a defining framework for gender equality legislation. It defines GEL and discusses its history and rationale. Included in this part, in table form is a complete list of enacted and draft GEL located and considered in this review. Finally it details the methodology adopted in firstly developing a good practice template, as well as the subsequent analysis of the GEL of five Southeast Asian countries against the template identified.

Part 2 begins by considering the 13 substantive areas that have typically been incorporated into GEL (in response to articles 1-16 of CEDAW, e.g., employment, education, health, etc.) and identifies the corresponding legal rights and obligations required to achieve good practice. Each substantive area is accompanied by an introductory commentary which explains its link to CEDAW and its relevance and importance to gender equality. This is followed by the identification of the good practice legal rights and obligations relevant to each area,

accompanied by a rationale for their inclusion, and finally a selection of good practice examples drawn from GEL worldwide. Part 2 analyses the substantive legal rights and obligations in the five SEA GEL. To assist the reader, the substantive area and the country's corresponding response to each is shown in table form. In brief, therefore, the template, in table form, identifies the substantive area, the corresponding relevant GEL provision for each SEA country and finally, a commentary is provided analysing the strengths and weaknesses of each country's response to the substantive area.

Part 3 considers the implementation and monitoring mechanisms that are essential to the effective and actual implementation of GEL. Seven good practice components are identified and each is accompanied by a commentary which explains its link to CEDAW and the rationale for its inclusion. For each component, the range of mechanisms that have been utilised in GEL to meet the requirement are identified as subcomponents and each is accompanied by good practice examples drawn from GEL worldwide. Part 3 also analyses each of the five SEA GEL on the basis of the seven identified good practice implementation and monitoring components. To assist the reader, the results of the review of the SEA GEL (namely, the component and the country's corresponding response to each requirement) are shown in table form. In brief, therefore, the template, in table form, identifies the good practice component, the relevant GEL provision of each country and finally, a commentary is provided analysing and identifying the strengths and weaknesses of each country's response to the requirement.

A glossary and a list of acronyms have been provided at the end of this report to assist the reader.



## Part 2

# SUBSTANTIVE RIGHTS AND OBLIGATIONS: GOOD PRACTICE IN GLOBAL GEL

Part 2 overviews 13 substantive areas that are typically incorporated into GEL. It identifies the legal rights and obligations in the 13 areas required to achieve CEDAW-informed good practice, and, where possible, provides good practice examples of each. A 'substantive area' in this Part refers to each area of women's lives where a framework of rights is required by CEDAW and includes equality and non-discrimination, gender-based violence, media, exploitation of women in prostitution, political, public and international life, education, nationality and citizenship, employment, health, social and economic benefits, rural women, civil equality and marriage, and family relations. The 13 substantive areas and corresponding (good practice) legal rights and obligations are primarily derived from Articles 1-16 of CEDAW and

the 45 global GEL (draft and enacted) considered in this review. Some substantive areas are more frequently incorporated into GEL (such as equality and non-discrimination, education, and employment) and therefore provide more breadth from which to select good practice examples. In areas where good practice models were scarce, such as nationality for example, which was not covered in any GEL, 'authors' suggestions' have been provided. Although this Part reviews all 13 substantive areas, it should be noted that some countries may chose to enact other legislation or amend existing domestic legislation in targeted areas to meet their *de jure* obligations under CEDAW rather than include them in the GEL framework.

Part 2 begins by identifying the 13 substantive areas, each of which is considered individually and linked to the relevant article of CEDAW and/or the general recommendations and the concluding comments of the CEDAW Committee. In some areas the legal rights and obligations required for good practice are separated for clarity. A selection of one or more good practice examples drawn globally from existing enacted and draft GEL is also provided, each accompanied by a commentary identifying its strengths and weaknesses. At the end of the overview of good practice substantive legal rights and obligations required in GEL, this Part provides an analysis of the GEL of five Southeast Asian (SEA) countries, namely, Indonesia, Lao PDR, the Philippines, Thailand and Vietnam. The results of the analysis of the five countries is considered in table form in light of the template of good practice examples identified previously, and each is accompanied by a commentary identifying their strengths and weaknesses as well as suggestions for improvement.

## 2.1 Equality and Non-discrimination

The principles of equality and non-discrimination, the cornerstone of human rights discourse, has underscored the development of rights frameworks in the areas of race, sex, religion, and disability, to name a few. Indeed, the importance of establishing strong and effective equality and

anti-discrimination provisions is a recurrent theme in contemporary international human rights norms, underpinning the concept of gender equality generally and CEDAW in particular.<sup>14</sup> The CEDAW Committee has emphasised the foundational and crucial role that the principles of equality and non-discrimination should play in domestic legislation, national constitutions, and, if enacted, GEL.<sup>15</sup> This is affirmed by Article 2(a) of CEDAW which obligates States parties to ‘embody the principle of equality of men and women in their national constitutions or other appropriate legislation’ whilst Article 2(b) obligates States parties to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women.

All GEL examined for this report that had a multi-area focus did incorporate equality and non-discrimination provisions. Whilst there is a range of models of equality and non-discrimination that can and have been adopted in GEL, CEDAW-informed good practice legal rights and obligations include first, a positive duty on the State party to achieve, or at minimum work towards, substantive equality for men and women; second, a definition of discrimination that accords with Article 1 of the Convention; third, express inclusion of sexual harassment and gender-based violence in the definition of discrimination; fourth, express inclusion of direct and indirect discrimination in the definition of discrimination; fifth, anti-discrimination provisions that prohibit discrimination against women on the grounds of marital status, pregnancy, race, disability, HIV status, sexual orientation or any other status, attribute or characteristic; and sixth, the anti-discrimination provisions should bind the State, public authorities and their representatives and private organisations and individuals. Each of the legal rights and obligations is discussed below, accompanied by an explanation of the rationale for its inclusion and ‘good practice’ example(s) drawn from a range of existing (draft and enacted) GEL. Each good practice example included is, in turn, accompanied by a commentary which assesses its strengths and weaknesses.

### 2.1.1 Substantive Equality

**Does the GEL place a positive duty on the State to achieve substantive equality for women?**

A positive duty on the State to achieve substantive equality requiring equality of benefits, results and outcomes rather than merely ‘equality of women with men in and before the law with respect to formal opportunities and treatment’<sup>16</sup> is an essential component of good practice GEL.<sup>17</sup> Such a duty is in accord with Article 2(a) of CEDAW which requires States parties to ‘embody the principle of 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 realisation of this principle’. Such a duty recognises that neutral and gender blind ‘formal equality’ provisions are insufficient to address the structural discrimination and privilege embedded in institutions as a result of past discrimination and that the State is best placed to work towards, and to achieve equality.<sup>18</sup>

### Good Practice Example Substantive Equality

#### Philippines: Magna Carta for Women (draft).

##### Section 2.

- The State recognises the role of women in nation building and shall ensure the substantive equality of women and men through legislation, policy and programmes. It shall pursue equal opportunities and access as well as ensure equal rights and outcomes for women and men.

### Commentary

- Section 2 places a positive and mandatory obligation on the State to achieve substantive equality through the use of legislation, policy and programmes. This is a strong provision explicitly requiring the achievement of substantive equality and is comprehensive in its requirement that the State pursue substantive equality not only in legislation but also in policy and programmes.

## 2.1.2 Definition of Discrimination

### Does the GEL contain a definition of discrimination that is in accord with Article 1 of CEDAW?

A clear definition of discrimination, consistently applied, identifying the actions and behaviours that constitute discrimination is a critical component of effective anti-discrimination provisions. CEDAW provides the most advanced and effective definition to date, as it is premised on the substantive equality model, and is comprehensive in its breadth. Article 1 of CEDAW defines discrimination as ‘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.’ The CEDAW Committee has highlighted the importance of incorporating a definition of discrimination ‘in line with Article 1 of the Convention’<sup>19</sup> into GEL and other anti-discrimination legislation.

### Good Practice Example Definition of Discrimination

#### Croatia: Gender Equality Act 2003.

##### Article 6(1).

- Discrimination on the basis of gender (hereinafter: discrimination) shall mean any normative or real, direct or indirect differential treatment, exclusion or limitation based on one's gender which renders more difficult or denies equal recognition, enjoyment or exercise of human rights of men and women in political, educational, economic, social, cultural, civil and any other sphere of life.

### Commentary

- This is a comprehensive definition of discrimination that accords with Article 1 of CEDAW including an express extension to direct and indirect discrimination.

### 2.1.3 Sexual Harassment and Gender-Based Violence

**Does the GEL definition of discrimination include sexual harassment and gender-based violence?**

The definition of discrimination in GEL should expressly include sexual harassment and gender-based violence. The CEDAW Committee explicitly states in General Recommendation 19(6) that ‘the definition of discrimination includes gender-based violence, i.e., 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.’ Additionally, the Committee states in General Recommendation 19(18) that gender-based violence includes sexual harassment, which it defines as ‘such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions.’ Specific and express acknowledgment that discrimination includes gender-based violence and sexual harassment, and ensuring that such behaviours are identified as discrimination and prohibited, are therefore important components of GEL, although few explicitly contain such recognition.

#### Good Practice Example Harassment, Sexual Harassment and Gender Violence

**Croatia: Gender Equality Act 2003.**

**Article 8.**

- Harassment and sexual harassment shall be considered discrimination under this Act.
- Harassment shall include any form of unwanted behaviour conditioned by the person's gender, which aims at or actually constitutes violation of the personal dignity and creates an unpleasant, unfriendly, humiliating or insulting atmosphere.
- Sexual harassment shall include any form of unwanted verbal or non-verbal, that is, physical behaviour of sexual nature, which aims at or actually constitutes violation of the personal dignity and creates an unpleasant, unfriendly, humiliating or insulting atmosphere.

#### Commentary

- Article 8 expressly states that harassment and sexual harassment shall be considered discrimination in accord with the CEDAW Committee in GR 19(18).
- The definition of sexual harassment closely accords with the CEDAW Committee's definition. It includes both verbal and physical behaviour, ‘any form’ of such behaviour and extends to all unwanted behaviour.
- The provision is also strong as it is not limited to the workplace and therefore applies in any context of women's lives.

### 2.1.4 Direct and Indirect Discrimination

**Does the GEL definition of discrimination include and define both direct and indirect discrimination?**

The GEL definition of discrimination should expressly extend to direct and indirect discrimination and include a clear definition of each. Such an inclusion accords with the CEDAW Committee's constant recommendation that States parties 'incorporate in their Constitution or other appropriate legislation a definition of discrimination against women incorporating both direct and indirect discrimination'.<sup>20</sup> As well as expressly extending discrimination to both direct and indirect discrimination, good practice GEL should define both. Direct discrimination refers to a situation where a person is treated less favourably on any of the grounds of discrimination covered by the law (i.e. sex/gender) than another person who does not possess the same protected characteristics or would be treated in the same circumstances. Indirect discrimination refers to a situation where laws, policies or programmes, apparently based on gender-neutral criteria, disadvantage women because they fail to take account of women's real biological differences such as birthing, or differences that exist because of stereotypical expectations, attitudes and past discrimination.<sup>21</sup> GEL (and anti-discrimination legislation generally) typically place limits on the definitions of direct and indirect discrimination based on 'reasonableness' and 'justifiability'. However to fully accord with the Convention's definition of discrimination, which prohibits 'any distinction, exclusion or restriction' on women's human rights, no such exceptions or limits should be placed.

#### Good Practice Example Direct and Indirect Discrimination

##### **Croatia: Gender Equality Act 2003. Article 7.**

- Direct discrimination exists if a person is treated or could be treated unfavourably under the same or similar circumstances in comparison to a person of a different gender.
- Indirect discrimination exists when a neutral legal norm, criterion or practice applied under the same or similar circumstances puts persons of one sex in an unfavourable position in comparison to persons of the other gender.
- Legal norms, criteria or practices that are necessary or can be justified by objective facts that are gender neutral shall not be considered acts of discrimination.

##### **Lithuania: Law of the Republic of Lithuania on Equal Opportunities 1998. Article 4.**

- Indirect discrimination on grounds of sex means action or inaction, legal norm or evaluation criterion, which being formally equal to both men and women, when implemented or applied [has a] different factual impact on one of sexes in terms of restriction of rights or granting of privileges, preference or advantage.

### Commentary

- The terms ‘norms, criteria and practice’ used in Article 7(2) of the Croatian Act are broad positive terms which can include less formal arrangements, e.g. an expectation that an employee vary her hours at short notice.
- Article 7(3) of the Croatian Act limits indirect discrimination by necessity or justifiability. This is not fully compliant with CEDAW which prohibits any distinction, exclusion or restriction on women’s human rights.
- The Lithuanian law does not place any limits on indirect discrimination as would be required for good practice and is therefore in full compliance with CEDAW.

### 2.1.5 Discrimination Prohibited on Multiple Grounds

**Does the GEL contain provisions that prohibit discrimination against women on the grounds of marital status, pregnancy, race, disability, HIV status, sexual orientation or any other status, attribute or characteristic?**

Article 2(b) of CEDAW requires States parties to adopt appropriate legislative and other measures prohibiting all discrimination against women; the adoption of strong anti-discrimination provisions in GEL would therefore satisfy this mandate. Discrimination against women should be further prohibited on the basis of other intersections such as marital status, pregnancy, race, disability, HIV status, sexual orientation or any other status, attribute or characteristic in accord with the CEDAW Committee’s recognition of the ‘cross-cutting nature of discrimination.’<sup>22</sup> Women comprise approximately half of the world’s population and as such are not a ‘vulnerable’ minority group such as those discriminated against because of, for example, their ethnicity or age, because they suffer discrimination both inside and outside of such groups.<sup>23</sup> The incorporation of an ‘other status’ clause, which invites the recognition of further grounds of discrimination not explicitly nominated, is also important to ensure that latent grounds of discrimination can be recognised and addressed as required. In other words, the inclusion of ‘other status’ in a GEL is a useful ‘catch-all’ tool that has the potential to capture any discriminatory behaviours that may otherwise escape detection and redress.

### Good Practice Examples Multiple Grounds of Discrimination

#### South Africa: Promotion of Equality and Prevention of Unfair Discrimination Act 2000.

##### Article 8.

- Provisions that result in a person or a group being treated less favourably than another person or group in a comparable situation because of his/her (a) sex, (b) racial origin, (c) colour, (d) nationality, (e) national or ethnic origin, (f) mother tongue, (g) disability, (h) state of health, (i) religious or ideological conviction, (j) political or other opinion, (k) family status, (l) motherhood (pregnancy) or fatherhood, (m) sexual orientation, (n) sexual identity, (o) age, (p) social origin, (q) financial status, (r) the part-time nature or definite term of the employment relationship or other relationship related to employment, (s) the membership of an organisation representing employees’ interests, (t) other status, attribute or characteristic (hereinafter collectively: characteristics) are considered direct discrimination.

**Philippines: Magna Carta for Women (draft).****Section 2.**

- The State recognises and affirms women's rights as human rights and shall intensify its efforts to respect, protect and fulfil all fundamental rights and freedoms of women especially in the marginalised sectors of society to guarantee their economic, social and cultural well-being without distinction or discrimination on account of class, age, sex, gender, sexual orientation, language, ethnicity, culture, religion, ideology, disability, education and status.

**Commentary**

- Both the Philippines and South Africa recognise a comprehensive range of grounds of discrimination.
- South Africa includes an 'other status' clause allowing for other attributes to be considered depending on the circumstances, which is an important and forward thinking measure.
- South Africa's Equality Act is not a GEL. It is instead an equality law and therefore the protected grounds of discrimination, whilst exhaustive, cannot be used to intersect with sex/gender. In contrast, the grounds of discrimination in the Philippines' Magna Carta can be intersected with sex/gender, enabling multiple discrimination claims. Although the clause is weakened by the language 'shall intensify its efforts to respect, protect and fulfil' rather than prohibit any breaches, the ability to bring claims of multiple discrimination is important and unique in GEL.

**2.1.6 Public Authorities, Private Organisations and Individuals**

**Does the GEL bind the State, public authorities, private organisations and individuals?**

Good practice GEL should expressly bind public authorities, their representatives as well as private organisations and individuals. Article 2(d) of CEDAW obligates States parties to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and their representatives act in conformity with this obligation. Article 2(e) of CEDAW obligates the State party to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise. The extension of protection beyond that of state actors to all other persons and organisations recognises that to effectively combat discrimination in all areas of women's lives, the regulation of both state and non-state actors throughout the public and private spheres of women's lives is required.<sup>24</sup>

**Good Practice Examples****Public Authorities, Private Organisations and Individuals****Vietnam: Law on Gender Equality 2006.****Article 2.**

- The subjects of regulation are Vietnamese state agencies, political organisations, socio-political organisations, socio-political professional organisations, social organisations, socio-professional organisations, economic organisations, non-business units, units of people's armed forces, families and citizens.

**Moldova: Law on Ensuring Equal Opportunities for Women and Men 2006.****Article 3.**

- The subject of legal relations aimed at ensuring equality between men and women are: the State, legal persons and natural persons.

### Commentary

- Although the Vietnamese law is tailored to Vietnamese societal structures and is lengthy when compared to the Moldovan example, it is nevertheless a comprehensive provision that binds all agencies and organisations, both public and private, and represents not only compliance with CEDAW but also good practice in GEL.
- The Moldovan law is succinct and although it does not expressly include representatives of the State and private organisations, it is likely that the definition can be interpreted inclusively.

## 2.2 Gender-Based Violence

The role of violence in creating and sustaining inequality has been recognised both nationally and internationally,<sup>25</sup> and whilst gender-based violence is not explicitly addressed in CEDAW, the CEDAW Committee states in General Recommendation 19(6) that 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. Gender-based violence includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.’ Gender-based violence constitutes a direct violation of women’s human rights and contributes to their inability to enjoy the full range of civil, political, economic, social and cultural rights. It reflects and reinforces inequality between men and women. It compromises women’s health, including their reproductive and sexual health, and impacts upon their dignity, security as well as their economic independence and autonomy.<sup>26</sup> Although few GEL, to date, have incorporated provisions on gender-based violence,<sup>27</sup> it is nevertheless an area that requires a strong legal framework. Effecting the legal protection of women and girls from gender-based violence, however, requires a range of detailed legislative measures in different areas of law, including criminal law, evidence law, family protection law, criminal procedure laws and compensation law. A GEL, therefore, may not be best placed to provide the breadth and detail required for an effective legislative framework which can respond to and prevent gender-based violence. A GEL should seek instead to set clear benchmarks for the State to achieve in other domestic legislation, leaving the detail to the domestic laws themselves.

The CEDAW Committee has provided general, but not specific, guidance in General Recommendation 19, on the laws required to address gender-based violence. In Article (24)(t) the CEDAW Committee states that States parties should take ‘effective legal measures, including penal sanctions, civil remedies and 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’. More specific benchmarks are, however, detailed in the sections to follow, drawn from a variety of sources including the 25 general recommendations of the CEDAW Committee, the concluding comments of the CEDAW Committee (particularly from 2007 & 2008 which represent the Committee’s most recent thinking on gender-based violence), and the comprehensive body of feminist literature addressing legislative responses to gender-based violence.<sup>28</sup>

### 2.2.1 Sexual Assault

Sexual assault constitutes, according to the CEDAW Committee, a ‘grave and systemic violation of women’s human rights’;<sup>29</sup> a strong legal framework aimed at preventing sexual assault, prosecuting offenders and providing protection to women and girls, including the provision

of remedies, is critical. Good practice GEL should therefore set the following good practice benchmarks and mandate their incorporation into the national legal framework within a designated time-frame.

First, the GEL should direct the State to incorporate into its criminal law framework sexual assault provisions which criminalise all forms of sexual violations against women and girls including penetration of all orifices by any object,<sup>30</sup> with particular recognition of the gravity of sexual assault when perpetrated by a person in a position of trust, and containing serious penalties.<sup>31</sup> Any exemption for marital rape should be explicitly prohibited.<sup>32</sup> A comprehensive definition of consent detailing the coercive circumstances where consent cannot be deemed to be given should be included in the legislation. Such circumstances include where the person is asleep, is affected by drugs and/or alcohol, where there are threats, coercion or intimidation of any kind, blackmail including threats of harm to a third party (such as a child, sibling or mother).<sup>33</sup> A statutory definition of consent in the criminal law legislation affords greater protection to women by specifically determining the range of circumstances which may induce an unwilling consent and at the same time designates the standards of acceptable sexual conduct. A failure to define 'consent' in the legislation means that the term will be subject to a judge's interpretation and discretion and may be misused or misapplied in the courts.

Second, in the criminal procedure laws and the law of evidence, the GEL should direct the State to place a prohibition on the use of three discriminatory rules often employed in sexual assault prosecutions. These discriminatory rules, research shows, contribute to the low conviction rates in sexual offence matters worldwide.<sup>34</sup> The first rule, 'corroboration', refers to a requirement for the victim to produce independent evidence that connects the accused with the sexual assault, such as a witness or torn clothing, which is problematic for sexual assault victims because there are often no witnesses to sexual assaults.<sup>35</sup> The second rule, 'proof of resistance' which requires sexual assault victims to establish that they physically resisted the perpetrator or consent may be inferred, is similarly problematic because physical resistance may be an unrealistic expectation of a victim against a strong or armed perpetrator.<sup>36</sup> Third, the admission of the prior sexual history of a victim in order to establish that she consented to the sexual act in question, perpetuates the myth that a victim's previous relationship with the accused or another person or persons makes it more likely she consented to the assault in question.<sup>37</sup>

Third, in bail laws, the GEL should direct the State to place a requirement on sexual assault suspects that if there is any risk to the victim bail should not be granted. If the accused is to be released on bail then the legislation should also require that the complainant is informed.<sup>38</sup> Although typically in criminal law proceedings, there is a presumption that bail will be granted on the basis that it is essential to protect the liberty of accused persons who have not yet been convicted of any crime, sexual assault is unlike other crimes because it violates not only the physical safety of women and children but also their sexual and psychological integrity and the fear of a repeat offence is 'real and substantial.'<sup>39</sup>

## 2.2.2 Domestic Violence

Domestic violence, defined as past or present physical, sexual, psychological or economic violence between former or current intimate partners, adult household members, or a parent and children, has devastating effects on women, their families and their communities.<sup>40</sup> Whilst

historically viewed as a private matter rather than a state concern, domestic violence has shifted into the public domain, requiring state-based solutions. The CEDAW Committee, accordingly, has emphasised the need to incorporate specific and targeted domestic violence legislation into domestic law frameworks.<sup>41</sup> Although a GEL cannot incorporate the complexity of effective domestic violence legislation, it can nevertheless set the following good practice benchmarks and mandate their incorporation into the national legal framework within a designated time-frame.

First, to work towards the prevention of domestic violence, the GEL should direct the State to ‘implement a comprehensive strategy that includes prevention efforts involving the media and public education programmes aimed at changing social, cultural and traditional attitudes that are root causes of, and perpetuate, violence against women’.<sup>42</sup> Further, the GEL should direct the State to ‘conduct research on the prevalence, causes and consequences of domestic violence’.<sup>43</sup> Second, to ensure the prosecution of perpetrators, the GEL should direct the State to include in its criminal laws targeted domestic violence offences incorporating clear and specific definitions of acts which may constitute domestic violence, as well as a comprehensive definition of the relationships within which domestic violence may occur. Prosecution of offenders should be mandatory, with serious penalties; minimum sentences should apply to ensure domestic violence is regarded as a serious offence.<sup>44</sup> Third, to ensure the protection and rehabilitation of victims of domestic violence, the GEL should direct the State to provide access to restraining orders and occupation orders through domestic legislation. Restraining orders aim to protect women from the immediate threat of violence by prohibiting the perpetrator from contacting the victim and occupation orders enable victims of violence to retain possession of their home.<sup>45</sup> Further, the right to a remedy, including ‘access to justice, reparation for harm suffered, restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition and prevention’<sup>46</sup> should also be made available. In *AT v Hungary*, the Committee stated that ‘effective and sufficient’ remedies should be provided to victims of gender-based violence. In relation to the victim in the case the Committee stated that reparation ‘should be proportionate to the physical harm undergone and to the gravity of the violation of her rights’.<sup>47</sup> Finally, the GEL should direct the State to establish appropriate and funded support services for victims of all gender-based violence. These should include ‘a sufficient number of accessible shelters and crisis centres for female victims of violence in both urban and rural areas’.<sup>48</sup> Shelters should be ‘staffed by expert personnel’ and ‘provided with adequate financial resources’.<sup>49</sup> Additionally counselling services<sup>50</sup> and legal aid should be provided for all victims of violence.<sup>51</sup>

## Good Practice Example

### Gender-based Violence

#### **Bosnia: Law on Gender Equality 2003.**

##### **Article 17.**

- All forms of gender-based violence in private and public life is prohibited.
- Competent authorities shall also develop measures of protection of gender-based violence in public and private life and shall provide instruments of protection, assistance and compensation to victims.
- The relevant authorities shall also take steps to prevent gender-based violence, particularly in the field of education, to eliminate prejudices, customs and all other practices based on the idea of the inferiority or superiority of either gender or on the stereotypical roles of men and women. This includes but is not restricted to education and awareness-raising among state officials, the general public, etc.

### Commentary

- Article 17 provides a prohibition on all forms of gender-based violence in both public and private spheres. Whilst it is a strong symbolic statement, the phrasing 'develop measures of protection of gender based violence' and instruments of 'protection, assistance and compensation' to victims, however, is vague and does not identify specific benchmarks that the State must meet to prevent gender-based violence.
- Article 17 obligates the authorities to eliminate prejudices, customs and sex-role stereotyping. This is an important recognition of their role in creating the conditions that lead to gender-based violence. It would be strengthened by more detailed identification of the relevant authorities, the steps those authorities are required to take, a timetable, and a means of measuring progress.

## Authors' Suggestion

### Gender-Based Violence

The State shall enact legislation within a reasonable time-frame to protect women from all forms of violence including:

1. A sexual assault criminal code that encompasses all violations against women and girls including penetration of all orifices by any object, graded on the basis of seriousness to the victim, including a comprehensive definition of consent covering all coercive circumstances, with serious penalties and no exemption for marital rape;
2. A prohibition on the use of corroboration, prior sexual conduct and proof of resistance in sexual offence proceedings;
3. Targeted domestic violence criminal offences with serious penalties, including clear and specific definition of acts which may constitute domestic violence, definition of the relationships within which domestic violence may occur and introduction of procedural provisions which would provide effective assistance and remedies to the victims of violence and to the family affected by the violence;
4. A presumption that perpetrators of domestic and sexual violence shall not be given bail if there is any risk of re-offending;
5. A mechanism equipped to ensure adequate compensation to victims of all gender-based violence;
6. A mechanism to enable all women, married and unmarried to obtain non-molestation orders;
7. A mechanism to enable all women, married and unmarried to retain the occupation of the family home in situations of violence;
8. The establishment of appropriate and funded protective and support services for victims of all gender-based violence.

## 2.3 Stereotyping of Women in Media

Mass media is a conduit for social and attitudinal patterns, with the potential to promote gender equality, to break down sex-role stereotypes, and to influence cultural change. In recognition of the increasing role of the media in modern society and its ability to both perpetuate and modify stereotypes of women and men, the CEDAW Committee has encouraged States parties to direct the media ‘to discuss and promote non-stereotypical and positive images of women and promote the value of gender equality to society as a whole’,<sup>52</sup> to make use of ‘radio, television and print and encompass both specialised and general programmes’,<sup>53</sup> and to take measures ‘to sensitise members of the press, television and other media on gender equality issues.’<sup>54</sup> Such a position aligns with Article 5 of CEDAW which requires States parties to take all appropriate measures to eliminate prejudices and customary practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women. Additionally, the CEDAW Committee in General Recommendation 3 urges States parties to adopt ‘education and public information programmes which will help eliminate prejudices and current practices that hinder the full operation of the principle of the social equality of women’.<sup>55</sup> Increasingly, GEL, in recognition of the role of media in sex-role stereotyping, have incorporated provisions that obligate the media to raise awareness about gender equality and to develop programmes to counter sex-role stereotyping, as illustrated below in the examples of Moldova, Croatia and Spain.

### Good Practice Examples Media

#### **Moldova: Law on Ensuring Equal Opportunities for Women and Men 2006.**

##### **Article 8.**

- Mass media shall contribute to the promotion of the principle of equality between women and men within society by developing programs and materials to overcome gender stereotypes.
- Any public discourse or materials that present the image of women or men in a manner that abases them shall be deemed unacceptable and shall be counteracted in accordance with this Law.

#### **Croatia: Gender Equality Act 2003.**

##### **Article 16.**

- The media shall through their programme concepts help raise awareness about equality of women and men.
- Public display and presentation of any person in an insulting, belittling or humiliating manner, as regards his/her gender and sexual orientation, shall be forbidden.

#### **Spain: Constitutional Act for Effective Equality Between Women and Men 2007.**

##### **Article 36.**

- State-owned media will take care to portray an egalitarian, plural and non-stereotyped image of women and men in society, and will further the understanding of and propagate the principle of equality between women and men.

### Commentary

- All three Acts place mandatory obligations on the media to raise awareness about gender equality and to overcome sex-role stereotypes which are positive measures.
- Croatia and Moldova both prohibit media representations of men and women that are ‘insulting’ or ‘unacceptable’. Whilst these provisions are positive, a stronger approach would be to prohibit all sex-role stereotypes of men and women.

## 2.4 Exploitation of Prostitution of Women

Article 6 of CEDAW requires States parties to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women. Whilst this is an area addressed in only one of the GEL considered in this report,<sup>56</sup> it is an important area for gender equality and requires a strong legal framework. Effecting the legal protection of women and girls from exploitation, however, requires detailed legislative measures. A GEL, therefore, may not be best placed to provide the breadth and detail required for an effective legislative framework to suppress all forms of traffic in women and exploitation of prostitution of women. It should, therefore, seek instead to set clear benchmarks for the State to achieve in other legislation, leaving the detail to the domestic laws themselves. Additionally, it is important to note that there are two identifiable feminist positions in relation to prostitution/sex work, each advocating a different legal framework. The first views prostitution/sex work in any context as a breach of civil and political human rights as either a form of ‘modern day slavery’<sup>57</sup> and/or an institutionalised practice of sexual violence and gender inequality.<sup>58</sup> Consent is irrelevant from this perspective as sex workers/prostitutes, proponents argue, are the victims of rape and exploitation who lack agency and therefore have no genuine consensual capacity.<sup>59</sup> The second feminist position takes the contrasting view that some prostitution/sex work and some trafficking, specifically adult voluntary sex work and migration for work purposes including sex work, is, or at least can be, a free choice to engage in a viable employment opportunity even if made out of economic necessity.<sup>60</sup> Advocates of this position rely on the right to work and the right to self-determination guaranteed by both basic human rights instruments and internationally guaranteed labour rights.<sup>61</sup>

Contemporary human rights and feminist discourse,<sup>62</sup> particularly the CEDAW Committee’s views, which in all recent concluding comments refers only to either the prevention of trafficking and forced prostitution<sup>63</sup> or the ‘rehabilitation and support for women who wish to discontinue their lives in prostitution’,<sup>64</sup> favour the latter position and this report therefore suggests the GEL sets the following benchmarks for the State to incorporate in domestic legislation that, first, decriminalises prostitution/sex work in relation to adult consensual prostitution/sex work; second, guarantees equal conditions of work and full legal right and protections for all prostitutes/sex workers; third, stipulates serious penalties for the procurement of any girl under 18 or any non-consensual adult woman and, fourth, mandates a comprehensive legal framework to address trafficking including ‘measures of prevention, prosecution and punishment of offenders, as well as measures to rehabilitate victims and reintegrate them into society.’<sup>65</sup>

In relation to the trafficking of women a strong legal framework of domestic laws containing specific and detailed legislative provisions is vital to support the provisions of the GEL. A good practice anti-trafficking legal framework requires the incorporation of the following components, which GEL should direct the State to incorporate. The first of these is prevention measures which include compelling States parties to systematically compile data on both cross border and internal trafficking,<sup>66</sup> to instigate ‘nationwide awareness-raising campaigns on the risks and consequences of trafficking targeted at women and girls,’<sup>67</sup> to ‘train law enforcement, migration and border police officials on the causes, consequences and incidence of trafficking in women and girls and different forms of exploitation’<sup>68</sup> and to initiate programmes to improve the economic situation of women and girls so as to alleviate the factors that make women and children vulnerable to trafficking such as poverty, underdevelopment and lack of equal

opportunity.<sup>69</sup> Second, the GEL should direct the State to recognise trafficking as a specific crime, subject to serious sanctions, to enable the 'timely prosecution and punishment' of offenders.<sup>70</sup> A comprehensive definition of trafficking should be incorporated into the legislation that includes deception (e.g. where trafficked persons are aware that they are being engaged to work in the sex industry but are not aware that their employment will involve exploitation) and debt bondage, where exploitative debt contracts or arrangements are made that force a person into providing sexual services or other labour to pay off large 'debts' supposedly incurred by the victim. A good practice definition of trafficking adopted by UN is 'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.'<sup>71</sup> Sanctions for trafficking should be severe, including imprisonment and the forfeiture of assets.<sup>72</sup> Finally, the GEL should direct the State to 'ensure the protection of the human rights of women and girls who are victims of trafficking'<sup>73</sup> by establishing a strong legal framework including immunity for victims from liability or prosecution for illegal acts (provided those acts are related to trafficking), regardless of whether the act involves illegal entry, falsification of travel documents, or prostitution. Additionally, victims should be guaranteed (1) the right to safety; (2) the right to privacy; (3) the right to information; (4) the right to legal representation; (5) the right to be heard in court; (6) the right to compensation for damages; (7) the right to medical assistance; (8) the right to social assistance; (9) the right to seek residence, and (10) the right to return to their place of origin.<sup>74</sup>

### **Authors' Suggestion** **Exploitation of Prostitution of Women**

The State shall enact legislation or amend existing legislation to guarantee women protection from exploitation including:

1. Decriminalisation of soliciting;
2. Decriminalisation of the operation of safe state-supervised sex-work institutions;
3. Equal rights and conditions of employment including occupational health and safety for all sex workers;
4. Serious criminal offences for procurement of girls or non-consensual women;
5. Comprehensive anti-trafficking provisions including:
  - a) Prevention measures including research, mass media campaigns and social and economic initiatives.
  - b) Prosecution measures including incorporating all forms of trafficking (comprehensively defined including deception) as specific crimes with serious sanctions.
  - c) Protection measures including immunity from criminal liability, the right to legal representation, the right to be heard in court, the right to compensation for damages, the right to medical assistance, the right to social assistance, the right to seek residence, and the right to return to original residence.

## **2.5 Political, Public and International Lives**

The importance of achieving substantive equality for women in the political and public spheres has been recognised by many commentators.<sup>75</sup> Although equal and active participation in political life and the decision-making process 'determines the pattern of their daily lives and the future of societies'<sup>76</sup> and although women world- wide have a 'low level of participation in

public and political life,<sup>77</sup> few GEL to date have incorporated provisions guaranteeing equality for women in political and public life. Articles 7 and 8 of CEDAW and General Recommendation 23 provide express and specific guidance on the legal obligations required to achieve full and equal participation in the public, political and international lives of women. Good practice in GEL, therefore, requires the incorporation of the following legal rights and obligations.

First, a GEL should provide that women have, 'on equal terms with men, the right to vote in all elections and public referenda' as stated in Article 7(a) of CEDAW and as illustrated in the example of China below. The right to vote is an essential component of equality to ensure that the opinions and interests of the female half of the population are integrated into political life.<sup>78</sup> It should be noted, however, that almost every country in the world has achieved universal suffrage, guaranteed in either their constitution or in other domestic legislation, and its incorporation in a GEL may, accordingly, be unnecessary.<sup>79</sup> Second, the GEL should provide that women are eligible, on equal terms with men, for election to all publicly-elected bodies and have the right to hold public office and perform all public functions on a basis of equality with men as stated in Article 7(a) & (b) of CEDAW. The CEDAW Committee notes in General Recommendation 23(30) that whilst women are often 'excluded from top-ranking positions in cabinets, the civil service and public administration, in the judiciary and in justice systems,' the importance of 'women's participation in decision-making for society as a whole<sup>80</sup> and to the achievement of substantive equality in public life<sup>81</sup> cannot be underestimated.

Third, the GEL should provide a guarantee of 'the equal rights of women to participate in non-government organisations that are concerned with the political and public life of the country' as stated in Article 7(c) of CEDAW. The CEDAW Committee has strongly recommended that States parties 'ensure sustained and governmental financial support at the national and local levels for the work of women's NGO's to increase their capacity to support women's human rights.'<sup>82</sup> The Committee has also recommended that States parties not restrict women's non-governmental organisations with respect to their establishment, their operation and their ability to engage in advocacy and lobbying<sup>83</sup> as illustrated in the good practice example of the Philippines below. Fourth, the GEL should expressly requires the State to ensure, on equal terms with men and without any discrimination, that opportunities are provided to women 'to represent their governments at the international level, and to participate in the work of international organisations' as required by Article 8 of CEDAW. In General Recommendation 23(36) the CEDAW Committee notes that 'opportunities for women to engage in international work are often denied because of assumptions about their family and domestic responsibilities', and stresses the importance of including women in 'the diplomatic service and in international organisations.'<sup>84</sup>

Finally, the GEL should obligate the State, public institutions and private organisations to institute temporary special measures because, as the CEDAW Committee states in General Recommendation 23(15), 'while removal of *de jure* barriers is necessary, it is not sufficient' to achieve full compliance with Article 7. Accordingly, further action in addition to guarantees of formal equality is essential to ensure genuine equality for women in public, political and international life. Article 4(1) of CEDAW obligates States parties to adopt temporary special measures in areas where substantive equality has not-and is unlikely to be-achieved, and General Recommendation 23(15) specifically recommends the introduction of temporary special measures in the area of public and political life. Such measures in relation to women's public and political life can include 'recruiting, financially assisting and training women candidates,

amending electoral procedures, developing campaigns directed at equal participation, setting numerical goals and quotas and targeting women for appointment to public positions such as the judiciary or other professional groups that play an essential part in the everyday life of all societies.’<sup>85</sup> Although few GEL incorporate temporary special measures in the area of public and political life, it is nevertheless an important area of inclusion, recommended by the CEDAW Committee,<sup>86</sup> and illustrated in the example of Kosovo below.

### Good Practice Example Formal Equality

**China: Law of the People’s Republic of China on the Protection of Rights and Interests of Women 1992.**

**Article 8.**

- The State shall guarantee that women enjoy equal political rights with men.

**Article 10.**

- Women shall enjoy the equal right, with men, to vote and to stand for election.

#### Commentary

- Articles 8 and 10 are clear provisions creating formal rights for women to vote and stand for election.
- They are, however, insufficient on their own without measures to address substantive inequality.

### Good Practice Example Temporary Special Measures

**Kosovo: Law on Gender Equality 2004.**

- **3.1** The implementation of legal and affirmative measures [to] establish equal participation for both females and males in legislative, executive, judicial bodies of all levels and in public institutions, so that representation of both genders in these institutions [has] its level of their representation in the general population of Kosovo.
- **3.2** Equal gender participation of both females and males, according to Section 3.1, is achieved in cases where the participation of the particular gender in the institutions, bodies or at the level of authority is 40%.
- **3.3** Equal gender participation, in compliance with section 3.2, must be observed during appointments in central and local government bodies.
- **3.4** Equal gender participation must be observed during the appointment of members of certain councils, committees and representative bodies within and outside Kosovo, by the competent institutions.
- **3.5** Gender equality must be observed when naming institutions, public undertakings, roads
- **10.1** All registered political parties shall ensure in compliance with 3.2 that both males and females are equally represented.

#### Commentary

- The provisions require 40% of the positions in all legislative, executive and judicial bodies at all levels to be filled by women.
- The GEL mandates the use of temporary special measures to achieve ‘equal gender participation’ which is defined as 40%. Whilst this percentage should ideally be 50%, it is nevertheless a strong measure.

### Good Practice Example Right to Organise

#### Philippines: Magna Carta for Women (draft).

##### Section 4B(1).

- The State shall recognise the right of women to organise in order to promote their welfare, protect their rights, express their concerns, develop skills, advance or safeguard their interests and initiate action to resolve women's issues. Towards these ends establishment of self help and political organisations such as but not limited to cooperatives, associations and peoples organisations to enable members to improve the quality of their life and enhance their socio-cultural and political role and status in society, shall be encouraged.

#### Commentary

- Section 4B(1) is an important provision, unique in GEL, which expressly provides for the right of women to form organisations and to lobby, advocate and perform a range of functions on their behalf. It would be strengthened by establishing a system of registration for such groups, a measure adopted in some countries to clarify the legal status and role of these organisations.
- Section 4B(1) also obligates the State to encourage the establishment of such groups. Although the wording could be strengthened this is an important and positive obligation recognising the value and importance of such groups.

## 2.6 Nationality, Citizenship and Domicile

The denial or restriction of citizenship rights can limit the mobility, access to services and opportunities, and ultimately the autonomy and equality of women. Historically, the view was that men's citizenship rights were primary and that women's rights flowed from their husbands or fathers. This led to citizenship regimes wherein upon marriage a wife was awarded the nationality of her husband (and not vice versa), and children's nationalities were determined by their father's status.<sup>87</sup> Article 9 of CEDAW, in recognition of the importance of citizenship rights to achieving full gender equality, requires States parties to eliminate discrimination in the areas of nationality and citizenship, while Article 15(4) requires States parties to ensure that women can choose their residence and domicile equally with men. Despite the importance of this area to gender equality and the considerable and consistent emphasis placed on this subject by the CEDAW Committee,<sup>88</sup> to date, no country has included nationality and citizenship in its GEL. Accordingly, an authors' suggestion has been included.

Article 9 of CEDAW and General Recommendation 21 provide extended detail on the legal measures to be adopted to address discrimination in the area of nationality, citizenship and domicile. The incorporation of the following good practice legal rights and obligations into GEL would comprehensively address CEDAW and the CEDAW Committee's recommendations. First, the GEL should guarantee women an equal right to acquire, change or retain their nationality as required by Article 9 of CEDAW. The CEDAW Committee states in General Recommendation 21(6) that nationality is critical to a woman's full participation in society since it affects her right to vote or stand for public office, her choice of residence, and her access to public services and benefits. Second, the GEL should guarantee that marriage to a non-national or a change to her husband's nationality does not change a wife's nationality. In General Recommendation 21(6), the CEDAW Committee states that nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of a marriage or because her husband changes his nationality. This ensures that

women are not captive to their husbands' circumstances and further, that their independence and autonomy are not compromised. Third, the GEL should guarantee the equal rights of both spouses to residency, citizenship and employment when married to a non-national. This is important because if rights such as residency, citizenship or employment are not afforded to their spouses, women married to non-nationals are forced to choose between residing in their place of origin or where their spouse is located, creating 'obstacles to women's full enjoyment of their citizenship rights'.<sup>89</sup>

Fourth, the GEL should guarantee the equal rights of both parents to determine the nationality of their children as articulated in Article 9 of CEDAW. Citizenship law under which children automatically acquire the nationality or citizenship of their fathers but not their mothers is discriminatory, as highlighted by the CEDAW Committee.<sup>90</sup> Fifth, the GEL should guarantee that all citizenship and nationality rights should extend to partners in *de facto* relationships including same-sex partnerships.<sup>91</sup> Finally, the GEL should guarantee that women have an equal right to choose their domicile (which refers to the country in which a person intends to reside) or their place of residence as required by Article 15(4). In General Recommendation 21(9), the CEDAW Committee clearly states that any restrictions on a woman's right to choose her domicile prevents her from freely entering and leaving a country in her own right and is therefore discriminatory.

### **Authors' Suggestion** **Nationality, Citizenship & Domicile**

The State shall enact legislation or amend existing legislation to guarantee women have equal rights in all aspects of citizenship and nationality and domicile, including:

1. An equal right to acquire, change or retain their nationality;
2. A guarantee that marriage to a non-national or a change to a husband's nationality does not change a wife's nationality;
3. Equal rights of both spouses to residency, citizenship and employment when married to a non-national;
4. Equal rights of both parents to determine the nationality of their children;
5. The rights of wives and husbands should extend to partners in *de facto* relationships including same-sex partnerships;
6. The equal right of women to choose their domicile and residence.

## **2.7 Education**

The right to education is recognised as a fundamental human right,<sup>92</sup> and the CEDAW Committee has stated that education is 'key to the advancement of women and the low level of education of women remains among the most serious impediments to their full enjoyment of human rights and achievement of women's empowerment.'<sup>93</sup> Educating girls and women has social and economic benefits for society as a whole; it provides women with more economic opportunities, facilitates greater participation in public life and enables women to make informed choices about their health, employment and safety.<sup>94</sup> The importance of equality in education is affirmed by Article 10 of CEDAW, which obligates States parties to take all appropriate measures to eliminate discrimination against women in order to ensure women equal rights with men in the field of education.

In recognition of its importance to gender equality, education is an area frequently included in both multi-area and targeted GEL. Whilst a range of models has been adopted in the area of education, good practice CEDAW-informed legal rights and obligations include the following:<sup>95</sup> first, the inclusion of anti-discrimination provisions with specific protection from expulsion or discrimination in relation to pregnancy; second, the inclusion of a positive responsibility on educational authorities and institutions to ensure an environment free of sexual harassment in all educational institutions and equipped with effective internal grievance procedures; third, a guarantee of compulsory free education for all children between the ages of 5-16; fourth, a guarantee of compulsory sex education in schools; fifth, a guarantee that women shall have equal access to all educational facilities and equal delivery of benefits; sixth, a guarantee that the educational curricula will promote gender equality and be free from stereotypes of men and women; seventh, the inclusion of temporary special measures provisions including (where relevant) scholarships for girls and women, programmes for rural women and girls and women who have left school prematurely, programmes to foster skills in non-traditional fields, and finally a guarantee that girls shall receive equal opportunities to participate in sports and leisure activities in schools. Each good practice component is discussed in detail below, accompanied by an explanation of the rationale for its inclusion and one or more ‘good practice’ examples drawn from a range of existing (draft and enacted) GEL. Each good practice example is also accompanied by a commentary which assesses its strengths and weaknesses.

### 2.7.1 Anti-Discrimination Provisions

**Does the GEL contain provisions that prohibit discrimination against women in education on the grounds of marital status, pregnancy, race, disability, HIV status, sexual orientation or any other status, attribute or characteristic?**

An essential component of good practice education provisions in GEL is comprehensive anti-discrimination provisions with specific protection prohibiting expulsion from school because of pregnancy, as illustrated in the example of Australia below. The inclusion of such provisions is in accord with Article 10 of CEDAW which obligates States parties to take all appropriate measures to eliminate discrimination against women and to ensure them equal rights with men in the field of education. In particular, Article 10(f) recommends that States parties prevent the early departure of girls from the school system due to pregnancy and prevent expulsion or discrimination in relation to pregnancy. Such discrimination has far reaching impacts on the future lives of young girls, in particular, on their autonomy and their economic independence.<sup>96</sup>

#### Good Practice Example Anti-Discrimination Provisions

**Australia: Sex Discrimination Act 1984.  
Section 21(2).**

- It is unlawful for an educational authority to discriminate against a student on the ground of the student's sex, marital status, pregnancy or potential pregnancy (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority (b) by expelling the student; or (c) by subjecting the student to any other detriment.

### Commentary

- Section 21(2) is clearly worded and specific. It expressly prohibits discrimination on the basis of marital status, pregnancy and potential pregnancy. It also expressly prohibits expulsion because of pregnancy or potential pregnancy and further prohibits discrimination that results in any detriment.
- The provision would be strengthened by including other grounds of discrimination such as sexual orientation, etc.

### 2.7.2 Sexual Harassment

**Does the GEL obligate educational authorities to provide an environment free from sexual harassment and to establish a complaints procedure?**

An essential component of good practice education provisions is a guarantee that educational authorities and institutions shall provide an environment free from sexual harassment within all educational contexts and additionally, establish an effective internal grievance procedure. Sexual harassment, which the CEDAW Committee has identified as a form of discrimination against women in General Recommendation 19(17), may deprive women of a safe and secure environment to exercise their right to equal opportunity and the equal delivery of benefits in education. A good practice GEL provision would require a comprehensive definition of sexual harassment that accords with the definition in General Recommendation 19(18). The Recommendation characterises sexual harassment as ‘unwelcome sexually determined behaviour such as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions’. A good practice GEL provision would also require that all educational authorities and institutions produce and publicise a code of conduct that first, incorporates a compliant definition of sexual harassment, and second, that designates sexual harassment as a form of misconduct extending to all actors in the educational environment, and third, that creates an accessible and confidential complaints and redress mechanism and treats cases promptly, strictly and efficiently.<sup>97</sup>

### Good Practice Example Sexual Harassment

**Bosnia: Law on Gender Equality (2003).  
Article 6.**

- The relevant authorities, education institutions and other juristic persons shall provide effective mechanisms to protect against discrimination and sexual harassment and shall take no disciplinary or other punitive measures against a person by reason that that person has brought proceedings for discrimination, harassment or sexual harassment or has given evidence in relation to discrimination, harassment or sexual harassment.

### Commentary

- Article 6 directs all authorities and institutions to provide effective mechanisms to protect against sexual harassment which is a positive measure. It would be strengthened, however, with an explicit direction to establish a complaints mechanism and to conduct educative and preventative programmes.

### 2.7.3 Compulsory Free Education

**Does the GEL guarantee compulsory free education to children aged 5-16?**

A guarantee of compulsory free education, in recognition of the link between compulsory education and universal education, particularly for children aged 5-16 as required by Article 28(a) of the Convention on the Rights of the Child 1989 (CRC), Article 26(1) of the Universal Declaration of Human Rights 1948 (UDHR), and Article 13(2) of the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR), comprises an important component of good practice education provisions in GEL. As none of the GEL reviewed has included such a guarantee, an authors' suggestion is provided.

### Good Practice Example Compulsory Free Education

- The State guarantees free and compulsory education to all children aged 5-16.

### 2.7.4 Compulsory Sex Education

**Does the GEL guarantee the provision of age-appropriate sex education in secondary schools?**

A guarantee of mandatory 'systematic' age-appropriate sex education in schools is important to ensure young people have adequate knowledge of the use of modern means of birth control and other sexual and reproductive matters,<sup>98</sup> and is an essential component of good practice education provisions. Such a guarantee is in accord with Article 10(h) of CEDAW, which directs States parties to provide equal access to specific educational information to help ensure the health and well-being of families, including information and advice on family planning. As none of the GEL reviewed has included such a guarantee, an authors' suggestion is provided.

### Good Practice Example Compulsory Sex Education

- Sex education, including information on birth control and sexually transmitted diseases, shall be provided on a regular basis in all secondary schools.

## 2.7.5 Access and Delivery of Benefits

**Does the GEL guarantee equal access to and equal benefits from education to women and girls in both urban and rural areas?**

A guarantee that women and girls have, on an equal basis with boys and men, access to studies in all categories of educational establishments in rural and urban areas and ‘that schools for girls are provided with the same facilities and resources as schools for boys’<sup>99</sup> is an essential component of good practice education provisions in accord with Article 10(a) of CEDAW. Additionally, since access alone is insufficient to achieve substantive equality, a guarantee that women and girls shall receive equal benefits from education is critical. Many of the GEL reviewed address this requirement with the adoption of reactive anti-discrimination provisions as illustrated in the example of Bosnia below. However, a stronger approach, as illustrated by the example of Lithuania, places a positive obligation on educational institutions to actively seek out and ensure equality in access to education and equality in benefits.

### Good Practice Examples Access and Delivery of Benefits

#### **Bosnia: Law on Gender Equality 2003.**

##### **Article 5.**

- Education institutions may not discriminate on the grounds of gender in relation to (1) terms of admission (2) refusal of admission (3) the way access to services, facilities and benefits is afforded (4) exclusion from the education process (5) assessment of results achieved during education (5) equal career opportunities and vocational specialization, training and the acquisition of diplomas and degrees (6) other potential circumstances.

#### **Lithuania: Law of the Republic of Lithuania on Equal Opportunities 1998.**

##### **Article 4.**

- The institutions of education and science must ensure equal conditions for women and men regarding:
  - admission to vocational educational institutions, colleges, institutions of higher education, and to qualification improvement courses;
  - award of grants and providing loans for students;
  - selection of curricula;
  - assessment of knowledge.

### Commentary

#### **Bosnia:**

- The category of ‘other potential circumstances’ in Article 5 is a good practice provision as the non-exhaustive list is forward thinking and bars discrimination in situations that fall outside the scope of the list. This is important since there is no specific prohibition on discrimination in the curricula, teaching expertise, and provision of equipment as required by Article 10(a) of CEDAW.

#### **Lithuania:**

- This is a results-focused provision which places a proactive duty on educational institutions to take action to achieve equal conditions of education for women. Although the list is not exhaustive and would be strengthened by the inclusion of an ‘other status’ clause, it is nevertheless a positive measure.

### 2.7.6 Sex-role Stereotypes

**Does the GEL guarantee that the education system including the school curricula will promote gender equality and be free from sex-role stereotypes?**

A guarantee that the education system, including the school curricula, will promote gender equality and be free from sex-role stereotypes is an essential component of good practice education provisions. It also accords with both Article 5 of CEDAW which requires that States parties take appropriate measures to eliminate practices and prejudices based on stereotyped roles for men and women and Article 10(c) of CEDAW which specifically states that textbooks and educational programmes should eliminate any portrayal of stereotyped roles of men and women. The CEDAW Committee accordingly has recommended the ‘mainstreaming of a gender perspective into textbooks and curricula at all levels<sup>100</sup> (as illustrated in the following examples of Bosnia and Malta) and the encouragement of ‘diversification of the educational choices of boys and girls’<sup>101</sup> as illustrated in the example of Iceland below.

#### Good Practice Examples Sex-role Stereotypes

##### **Bosnia: Law on Gender Equality 2003.**

###### **Article 6.**

- **(1).** The relevant authorities, education institutions and other juristic persons shall ensure that their plans and methodology provide for the establishment of an education system that will guarantee to eliminate elements of the curriculum that contain stereotypical social roles for men and women and that result in gender discrimination and gender inequality. **(2).** Contents that promote the equal treatment of the sexes shall be an integral part of the curriculum at all education levels.

##### **Malta: Equality for Men and Women Act 2003.**

###### **Section 8(3).**

- It shall be the duty of educational establishments and entities providing vocational training, within the limits of their competence to ensure that curricula and textbooks do not propagate discrimination.

##### **Iceland: Act on the Equal Status and Equal Rights of Women and Men 2000.**

###### **Article 19.**

- Introduction on educational and vocational training opportunities, and counselling within schools, shall introduce to both boys and girls those occupations which up to now have been considered as traditional male or female work.

##### **Spain: Constitutional Act for Effective Equality Between Women and Men 2007.**

###### **Section 24(2)(f).**

- Educational institutions shall take measures to establish educational measures designed to acknowledge and teach women’s role in history.

#### Commentary

##### **Bosnia:**

- Article 6(1) establishes a mandatory and strong obligation on relevant authorities, education institutions and other juristic persons to eliminate elements of the curriculum that contain stereotypical social roles for men and women. There is also a positive obligation to promote gender equality. Whilst these are positive measures, the inclusion of timelines and implementation plans would strengthen the provision.

## Commentary

### Malta:

- This provision is limited by the phrase ‘within the limits of their competence’.

### Iceland:

- Article 19, obligating educational institutions to introduce traditional male or female occupations to both boys and girls, is unique in GEL and provides an important example of a measure aimed at structural change.

### Spain:

- Like Iceland, s 24(2)(f) introduces a component unique in GEL to include women’s role in history in the curriculum.

## 2.7.7 Temporary Special Measures

**Does the GEL contain temporary special measures provisions that prohibit discrimination against women on the grounds of marital status, pregnancy, race, disability, HIV status, sexual orientation or any other status, attribute or characteristic?**

Temporary special measures provisions are an important aspect of good practice education provisions. They should include (where relevant) the provision of scholarships for girls and women, programmes for rural girls and women, programmes for girls and women who have left school prematurely,<sup>102</sup> including incentives to parents especially in rural or remote areas<sup>103</sup> and ‘targeted’ education for girls and women in non-traditional fields.<sup>104</sup> The provision of temporary special measures for the advancement of women in education, as illustrated by the examples of Greece and Bulgaria below, accords with General Recommendation 5 of the CEDAW Committee which specifically encourages States parties to make more use of temporary special measures, such as positive action, preferential treatment or quota systems to advance women’s integration into education.

## Good Practice Examples Temporary Special Measures

### Croatia: Gender Equality Act 2003.

#### Section 14(4).

- The competent government body for education and institutions that are active in the field of education shall implement affirmative actions, especially in regard to:
  - access to education,
  - preparation, adoption and implementation of the educational programme,
  - issuing mandatory approvals for text-books and teaching aids,
  - introduction of organisational innovations,
  - changes in teaching and andragogical methods.

### Bulgaria: Act on Equal Opportunities for Women and Men 2002.

#### Section (2).

- Incentive measures in the field of education; training and vocational education and training can be introduced for reduction of the existing imbalanced participation in a specific profession or area of activity.

### Commentary

#### Croatia:

- Section 14(4) places a mandatory obligation on the relevant government body to implement temporary special measures, which is a positive inclusion. The areas identified, however, are vague, i.e., What organisational innovations? What changes in teaching? Which text books? The Act would be further strengthened by specific direction including an obligation to research what *de facto* inequalities women and girls experience in education.

#### Bulgaria:

- Section 2(2) is not mandatory but the provision enables temporary special measures in any area where there is imbalance.

## 2.7.8 Sports and Physical Education

**Does the GEL obligate all education providers to establish equal opportunities for girls to participate in sports and physical education?**

A guarantee that educational authorities and institutions shall provide equal opportunities for girls to participate in sports and physical education at school<sup>105</sup> as illustrated by the example of Kosovo below, is an essential component of good practice education provisions. Such a guarantee is in accord with Article 10(g) of CEDAW which obligates States parties to ensure, in the field of education, the same opportunities for girls and women to 'participate actively in sports and physical education.'

### Good Practice Example Sports and Leisure

#### Kosovo: Law on Gender Equality 2004. Section 14.2.

- The competent bodies and institutions in the field of education of all levels shall establish, implement and supervise policies with the purpose of ensuring gender equality, especially concerning: equal participation of females and males in all sports and leisure activities during the educational hours.

### Commentary

- Section 14.2 places a positive mandatory obligation on educational authorities to establish, implement and supervise policies, to ensure the equal participation of females in sport and leisure during school hours. This is a positive provision which is unique in GEL.

## 2.8 Employment

The right to work is an internationally recognised human right<sup>106</sup> and equality in paid employment is a critical area for gender equality since access to economic resources, economic power and other benefits is contingent on participation in the public sphere of employment.<sup>107</sup> The importance of equality in employment has been highlighted by the CEDAW Committee which has called on States parties to 'ensure that employment legislation applies to and is enforced in the public and private sectors'.<sup>108</sup> It has also called on States parties to 'prioritise the realisation of women's *de facto* equality with men in the labour market so as to achieve full compliance with Article 11 of the Convention'.<sup>109</sup> In recognition of the importance of employment to gender equality, most multi-area GEL examined for this report did incorporate provisions on employment, and many other countries have introduced targeted employment

GEL. Article 11 of CEDAW provides express and specific guidance on the legal obligations required to achieve good practice in this area. Whilst a range of models has been adopted in GEL in the area of employment, providing an array of suitable alternatives, CEDAW-informed good practice legal rights and obligations include the following.<sup>110</sup>

First, the GEL should incorporate comprehensive anti-discrimination provisions prohibiting direct and indirect discrimination against women in employment, on the grounds of marital status, pregnancy, disability, HIV status, sexual orientation or any other status. In particular, the GEL should incorporate a specific prohibition on dismissal on the grounds of pregnancy, maternity leave or marital status. Second, the GEL should guarantee the application of the same criteria for selection in matters of employment and prohibit discriminatory advertising. Third, the GEL should place a positive obligation on all employers, both public and private, to provide equal conditions of work for men and women, including the right to promotion, job security and all benefits and conditions of service such as paid leave and the right to the protection of health and safety in the workplace (including safeguarding all aspects of the function of reproduction). Fourth, the GEL should guarantee the right to equal remuneration and to equal treatment in respect of work of equal value. Fifth, the GEL should guarantee paid maternity leave. Sixth, the GEL should guarantee the introduction of flexible ‘family friendly’ work conditions such as part-time work and child-care, and seventh, the GEL should guarantee protection against sexual harassment in the workplace by employers or fellow employees, supported by an effective complaints process with remedies. Finally, the GEL should place an obligation on the State and employers, both public and private, to investigate the *de facto* situation of women in employment and introduce temporary special measures in response in order to accelerate women’s participation in employment. Each good practice component is discussed in turn below accompanied by an explanation of the rationale for its inclusion and one or more ‘good practice’ examples drawn from a range of existing (draft and enacted) GEL. Each good practice example is also accompanied by a commentary which assesses its strengths and weaknesses.

### 2.8.1 Anti-Discrimination Provisions

**Does the GEL contain provisions that prohibit direct and indirect discrimination against women in employment on the grounds of marital status, pregnancy, race, disability, HIV status, sexual orientation or any other status, attribute or characteristic?**

The inclusion of comprehensive anti-discrimination provisions is an essential component of good practice employment provisions in GEL. Anti-discrimination provisions should prohibit both direct and indirect discrimination against women in employment on the grounds of marital status, pregnancy, maternity leave, family responsibilities, disability, HIV status, sexual orientation or any other status. Such a guarantee is in accord with Article 11(1) of CEDAW, which obligates States parties to take all appropriate measures to eliminate discrimination against women in the field of employment, and the Beijing Platform which calls upon ‘governments, employers, employees, trade unions and women’s organisations to prohibit direct and indirect discrimination on grounds of sex, marital or family status, in relation to access to employment, conditions of employment, including training, promotion, health and safety, as well as termination of employment and social security of workers’.<sup>111</sup>

## Good Practice Example Anti-Discrimination Provisions

### Australia: Sex Discrimination Act 1984.

#### Section 14(1).

- It is unlawful for an employer to discriminate\* against a person on the ground of the person's sex, marital status, pregnancy or potential pregnancy (a) in the arrangements made for the purpose of determining who should be offered employment (b) in determining who should be offered employment; or (c) in the terms or conditions on which employment is offered.

#### Section 14(2).

- It is unlawful for an employer to discriminate against an employee on the ground of the employee's sex, marital status, pregnancy or potential pregnancy (a) in the terms or conditions of employment that the employer affords the employee; (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; (c) by dismissing the employee; or (d) by subjecting the employee to any other detriment.

#### Section 14(3).

- Nothing in paragraph (1)(a) or (b) renders it unlawful for a person to discriminate against another person, on the ground of the other person's sex, in connection with employment to perform domestic duties on the premises on which the first mentioned person resides.

#### Section 14(3A).

- It is unlawful for an employer to discriminate against an employee on the ground of the employee's family responsibilities by dismissing the employee.

\*discrimination is defined as including direct and indirect elsewhere in the Act. (Section 5)

## Commentary

- Whilst section 14 does not include all intersections of discrimination that women may experience in employment, it does provide protection against discrimination on most of the grounds, i.e., sex, marital status, pregnancy or potential pregnancy upon which employment discrimination is often based.
- The provision is potentially weakened by the exception relating to domestic premises, enabling discrimination to continue in domestic work carried out in the home beyond the purview of the law.

## 2.8.2 Selection Criteria and Advertising

**Does the GEL require the application of the same criteria for selection and prohibit discriminatory advertising?**

The inclusion of a requirement for the application of the same criteria for selection in matters of employment is an essential component of good practice employment provisions in GEL. Such a requirement is in accord with Article 11(1)(b) of CEDAW which requires the application of the same criteria for selection in matters of employment. It is additionally important that the GEL prohibits advertising that discriminates either directly by explicit exclusion, or indirectly by prioritising certain skills or experience which favour men, as illustrated in the example of Germany below. The combined effect of discriminatory selection criteria and discriminatory advertising is to perpetuate historical discrimination against women and disproportionately reduce their prospects of equal access to employment.

## Good Practice Examples Selection Criteria and Advertising

### **Finland: Act on Equality between Women and Men 1986.**

#### **Section 6.**

- In order to promote gender equality in working life, the employer must, with due regard to the resources available and any other relevant factors (1) act in such a way that job vacancies attract applications from both women and men (2) promote the equitable recruitment of women and men in the various jobs and create for them equal opportunities for career advancement.

### **Germany: The Advancement of Women Act 1994.**

#### **Section 6(1).**

- No vacancy may be advertised as being only for men or only for women, unless belonging to one or the other sex is an indispensable precondition for the job advertised. Advertisements shall be worded in such a way that women are also invited to apply. This shall apply in particular to positions in areas in which women are employed in smaller numbers than men.

## Commentary

- Both Finland and Germany place a mandatory obligation on employers to encourage women to apply for positions.
- Neither explicitly guarantees equal selection criteria, although Finland requires the 'equitable' recruitment of women which implies equality in the selection criteria.

### *2.8.3 Conditions of Work*

**Does the GEL  
guarantee equal  
conditions of work  
for men and  
women in the  
formal and  
informal sectors?**

A guarantee of equal conditions of work for men and women in both the formal and informal sectors, including the equal right to promotion, job security and all benefits and conditions of service such as paid leave and equal health and safety protection in the workplace is an essential component of good practice employment provisions in a GEL. Such a requirement is in accord with Article 11(1)(a) of CEDAW and with the CEDAW Committee's request that States parties 'pay particular attention to the conditions of women workers in the informal sector'<sup>112</sup> to ensure that family workers, domestic workers, casual workers, outworkers and part-time workers are not excluded from employment and employment-related legislation.<sup>113</sup> A good practice provision, rather than merely placing a prohibition on discrimination in working conditions (an approach adopted by many GEL), should place a positive obligation on employers to achieve and maintain equal conditions of work, as illustrated in the example of Finland below.

### Good Practice Example Conditions of Work

**Finland: Act on Equality between Women and Men 1986.**

**Section 6(2)(4).**

- In order to promote gender equality in working life, the employer must, with due regard to the resources available and any other relevant factors develop working conditions to ensure they are suitable for both women and men.

### Commentary

- Section 6 is weakened by the phrase 'due regard to the resources available' as it limits gender equality measures to current resources rather than recognising that additional funds and resources may be required to ensure progress is achieved. In such situations, it is easy or excusable for the employer not to comply with this provision. Further, the use of the phrase 'suitable', while perhaps intending to recognise the different needs of men and women, is nevertheless weak. It would be strengthened by guaranteeing equal conditions and providing separately for the needs of women in relation to reproduction.

## 2.8.4 Training

**Does the GEL guarantee women the right to vocational training and retraining?**

A requirement that the State and employers, both public and private, provide women with an equal right 'to vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training' is an essential component of good practice employment provisions in a GEL and is in accord with Article 11(1)(c) of CEDAW. The provision of training and retraining opportunities for women in all areas relating to employment, particularly for 'unemployed women, including marginalised groups of women',<sup>114</sup> is an important measure 'to eliminate occupational segregation', and 'to facilitate women's re-entry into the workforce after childbirth'.<sup>115</sup>

### Good Practice Example Training and Retraining

**Kosovo: Law on Gender Equality 2004.**

- **13.6.** Employers ensure that both female and male employees have equal opportunity to attend education and professional training and attend courses that aim to improve professional skills or prepare them for other professions.
- **13.7.** Employers or institutions that provide professional training or any individual participating in such training shall not discriminate any individual on gender basis.

### Commentary

- This is a strong provision as it is broad and forward thinking, taking account of the current needs of employees as well as measures that will assist the prospects of employees in other professions.

## 2.8.5 Equal Treatment in Respect of Work of Equal Value

**Does the GEL guarantee equal treatment in respect of work of equal value?**

A guarantee of equal treatment in respect of work of equal value is an essential component of good practice employment provisions in GEL, in accord with Article 11(1)(d) of CEDAW and with General Recommendation 13 where the CEDAW Committee explains that more is required to achieve substantive equality in pay than merely introducing equal pay provisions for persons employed in the same work.<sup>116</sup> Instead, to ensure that occupations requiring similar skill levels receive the same rates of pay, a mechanism or a system is required to facilitate the comparison of work which is different in nature but requires comparably similar skills, experiences and qualifications and is carried out in comparably similar circumstances. Such a system is essential because research has shown that a primary reason for the worldwide persistence of wage differentials between men and women is that women are predominantly employed in industries and sectors where jobs are undervalued, regardless of skill levels (often due to sex-role stereotyping) and where jobs attract lower rates of pay.<sup>117</sup> Additionally, good practice GEL should designate a clear and efficient timeline for bringing the wages into line as illustrated in the example of Sweden below.

### Good Practice Example

#### Equal Treatment in Respect of Work of Equal Value

**Sweden: Act on Equality between Women and Men 1991.**

##### Section 10.

- With the purpose of discovering, rectifying and preventing unwarranted pay differentials and other terms of employment between women and men, the employer shall annually survey and analyse regulations and practice concerning pay and other terms of employment that are applied with the employer, and pay differentials between women and men who perform work which is regarded as equal or of equal value.
- The employer shall assess whether the pay differentials prevailing are directly or indirectly connected to sex. This assessment shall in particular relate to differentials between women and men who perform work which is regarded as equal, and groups with employees who perform work that is or is usually regarded to be female dominated and groups with employees who perform work which is regarded as of equal value with such work but neither is nor normally regarded as female dominated. (SFS 2000:773)

##### Section 11.

- The employer shall each year prepare a plan of action for equal pay and therein report the results of the survey and analysis in accordance with Section 10. The plan shall state what pay adjustments and other measures are necessary to be implemented to attain equal pay for work which is to be regarded as equal or of equal value. The plan shall contain a cost computation and a time schedule with the aim that the pay adjustments that are necessary shall be implemented as soon as possible and at the latest within three years.

- A report and an evaluation of how the planned measures were implemented shall be included in the plan of action for the following year.
- The obligation to prepare a plan of action for equal pay shall not apply where the employer had less than ten employees at the end of the immediately preceding calendar year (SFS 2000:773).

### Commentary

- A clear mandatory system is established by Sections 10 and 11 to implement equal treatment in respect of work of equal value. This is a strong good practice provision.
- Section 11 provides for a plan for equal pay to be prepared yearly and a timeline for implementation must be nominated which can be no more than three years. This is a reasonable time period.
- The Act does not apply to employers with less than 10 employees. Whilst this will exclude workers employed in small businesses, it is nevertheless reasonable as the achievement of equal pay for work of equal value is an important goal which can realistically be achieved incrementally.

## 2.8.6 Trade Unions and Professional Organisations

**Does the GEL guarantee women the equal right to participate in trade unions and professional organisations?**

Trade unions play an important role in ensuring protection of the right to work, securing conditions of recruitment and in determining working conditions.<sup>118</sup> Although not expressly mandated by CEDAW, a guarantee that women have an equal right to participate in trade unions and professional organisations is an essential component of good practice employment provisions in GEL, as illustrated in the examples of Kosovo and Bosnia below. Such a guarantee is in accord with Article 2(e) of CEDAW which requires States parties to take all appropriate measures to eliminate discrimination against women by any organisation; it also accords with Article 7(c) of CEDAW, which requires States parties to ensure that women have an equal right to participate in associations concerned with the public life of the country and is critical to ensuring that women's employment rights are a priority in trade union negotiations.

### Good Practice Examples Trade Unions and Professional Organisations

#### **Kosovo: Law on Gender Equality 2004.**

##### **Section 13.10.**

- All female and male employees have the right to become members and take active part in the employees' or employers' unions or in any other professional organization and receive the benefits from such membership.

#### **Bosnia: Law on Gender Equality 2003.**

##### **Article 9.**

- Trade unions and associations of employers will have a particular part to play in ensuring equal protection of the right to work and equal conditions of recruitment and shall ensure that there is no discrimination on the grounds of gender among their members, whether direct or indirect.

### Commentary

- The Kosovo Law guarantees female employees the right to become members of unions and organisations but also to receive the benefits of membership. This is a positive inclusion recognising that trade unions have an important influence on work conditions and that women need to participate and voice their concerns.
- The insertion of the term, 'equal' before right and benefit would strengthen the Kosovo provision.
- Article 9 in the Bosnian Law specifically prohibits direct and indirect discrimination amongst members of trade unions and organisations. This is a strong provision because discrimination can occur within trade unions just as it can in places of employment.

### 2.8.7 Paid Maternity Leave

#### Does the GEL guarantee paid maternity leave?

A guarantee of job-protected paid maternity leave is an important component of good practice employment provisions in GEL and is in accord with Article 11(2)(b) which requires States Parties to introduce maternity leave with pay or with comparable social benefits. Although the CEDAW Committee has emphasised the importance of paid maternity leave to enable women to combine birthing with paid employment,<sup>119</sup> no GEL contains a guarantee of entitlement to paid maternity leave and therefore an authors' suggestion has been included.

### Authors' Suggestion Paid Maternity Leave

1. All employers, in the both the public and private sectors, shall provide for paid maternity or parental leave of not less than 14 weeks.
2. All employers, public and private, shall provide for unpaid maternity leave, of not less than six months.
3. The employee shall be entitled to return to the same position, or at a similar level, after the expiration of the maternity leave, regardless of whether it is paid or unpaid. If it is a paid position, there should be no reduction in pay.

### 2.8.8 Flexible Working Conditions

#### Does the GEL require all employers to incorporate flexible working conditions?

A guarantee of flexible working conditions '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 childcare facilities' is an important component of good practice employment provisions in GEL and is in accord with Article 11(2)(c) of CEDAW. The CEDAW Committee has endorsed the introduction and strengthening of flexible working conditions by 'developing initiatives to encourage more men to avail themselves of parental leave',<sup>120</sup> establishing 'more and improved childcare facilities' in order to facilitate

women's entry (back) into the labour force,<sup>121</sup> ensuring that the 'reconciliation of family and work responsibilities is targeted at both women and men' and ultimately to work towards greater involvement of men in domestic and care responsibilities.'<sup>122</sup>

### Good Practice Example Flexible Working Conditions

#### Germany: The Advancement of Women Act 1994.

##### Section 9.

- Within the limits of the regulation of working hours, whether by law, collective agreement or other means, and feasibility within the department, employees with family responsibilities shall in individual cases be granted alterations of their daily and weekly hours of work in case of need.

##### Section 10.

- **(1).** The department must create an adequate number of part-time appointments (including appointments with managerial and directive duties), within the limits of the capacities of the department and as needed. In this regard care must be taken to ensure that employees of the department are not overburdened. **(2).** Applications for part-time appointments, including appointments with managerial and directive duties, from established civil servants with family responsibilities shall be dealt with under section 79(a) of the Federal Civil Service Act. In the event that an application is refused, the department must give its reasons in each individual case. **(3).** Part-time employees with family responsibilities who seek full-time employment should be given preferential consideration, taking into account suitability, capability and performance and subsection 7(2).

### Commentary

- Section 9 is a strong mandatory provision requiring government departments to provide workers with flexible hours to fit with family responsibilities. It is, however, limited by permitting such conditions to be governed by 'feasibility' within the department. This is limiting because often the primary reason given for not instituting flexible working conditions is 'feasibility', rather than finding ways of accommodating those with family responsibilities.
- Section 10 obligates the department to establish part-time positions and to ensure that such workers are not over-burdened, i.e., that the workload is in fact part-time and not just the hours. Again this is limited by the capacity of the department.
- Section 10(3) requires preferential consideration be given to part-time employees with family responsibilities who subsequently seek full-time employment.
- The Act relates only to Federal Administration and Federal Courts, although it provides an excellent model that could be used in other contexts i.e. throughout the public sector and in the private sector.

### 2.8.9 Sexual Harassment

**Does the GEL prohibit sexual harassment in all places of employment and protect complainants from victimisation?**

A prohibition on sexual harassment in all places of employment, in both the public and private sectors, is an important component of good practice employment provisions in GEL and is in accord with General Recommendation 19(17) where the CEDAW Committee identifies sexual harassment in the workplace as a form of discrimination against women. The CEDAW Committee in General Recommendation 19(18) defines sexual harassment as follows. 'Unwelcome sexually determined behaviour such as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands whether by words or actions. Such actions can be humiliating for the recipient and are discriminatory when they create a hostile work environment. Discrimination can also occur when a woman has reasonable grounds to believe any objection to the harassment will disadvantage her in connection with her employment including recruitment or promotion.' To provide adequate protection for women against sexual harassment in the workplace, the GEL should, first, prohibit sexual harassment in all workplace-related contexts; second, ensure a comprehensive definition of sexual harassment that accords with the definition provided by the CEDAW Committee described above; third, direct all employers to develop an effective complaints process that includes appropriate remedies, including compensation, prevention of any further sexual harassment and if necessary the removal of the harasser from the workplace, and finally the GEL should also prohibit 'victimisation' to prevent employers from retaliating against those who complain of sexual harassment, as illustrated below in the examples of Bosnia and Kosovo.

#### Good Practice Example Sexual Harassment

**Iceland: Act on the Equal Status and Equal Rights of Women and Men 2000.**

**Article 17.**

- Employers and directors of institutions and social activities shall take special measures to prevent employees, students and clients from being subjected to sexual harassment in the work place, within institutions, during social activities or within schools.
- Sexual harassment constitutes sexual behaviour that is unreasonable and/or insulting and against the will of those who are subjected to it, and which affects their self-esteem and is continued in spite of a clear indication that this behaviour is unwelcome. Sexual harassment can be physical, oral or symbolic.
- One event may be considered sexual harassment if it is serious.
- If a superior is charged with sexual harassment, he/she shall be deemed incompetent to take decisions on the working conditions of the plaintiff during the investigation of the case and a higher superior shall take decisions regarding the plaintiff.

### Commentary

- Article 17 places a positive duty on employers and directors of institutions and social activities to prevent the occurrence of sexual harassment. This is a strong measure that requires proactive prevention rather than merely creating a reactive complaints process.
- Article 17 explicitly removes the offender if they are a superior, which recognises the power imbalance often present in sexual harassment situations.
- The definition of sexual harassment requires a clear indication that the behaviour is unwelcome. It may not always be possible for women to provide clear resistance, especially if the harassment is perpetrated by a supervisor or more senior person.

### Good Practice Examples Victimisation

#### **Bosnia: Law on Gender Equality 2003.**

- An employer is required to take effective measures to prevent harassment, sexual harassment and gender discrimination at work and in employment as set out in para. 1 of this Law, and may take no measures against an employee by reason that that employee has brought proceedings for harassment, sexual harassment or discrimination on the grounds of gender.

#### **Kosovo: Law on Gender Equality 2004.**

##### **Section 13.13.**

- Expulsion from work, temporary suspension, unfairness regarding the work safety, working conditions or the recognition of his/her work due to his/her complaint for sexual harassment or discrimination on gender bases, is prohibited.

### Commentary

- Both Bosnia and Kosovo prohibit retaliation or victimisation against an employee who makes a sexual harassment complaint. In both cases it is restricted to employers rather than including fellow employees.

## 2.8.10 Temporary Special Measures

**Does the GEL obligate employers to initiate temporary special measures in order to accelerate women's participation in employment?**

A positive obligation on employers in both the public and private sectors to introduce temporary special measures to eliminate both 'horizontal and vertical occupational segregation' to 'close the gender-based wage gap between men and women'<sup>123</sup> and to ensure 'equal opportunities for women in the labour market'<sup>124</sup> is an important component of good practice employment provisions in GEL. Such an obligation is in accord with General Recommendation 5<sup>125</sup> and General Recommendation 25,<sup>126</sup> which both focus on temporary special measures including the advancement of women in employment. Temporary special measures in employment can take the form of quotas for women in certain positions,<sup>127</sup> special programmes to advance women's skills (as in the example of Germany below), and programmes targeted at the encouragement of women to join non-traditional occupations.<sup>128</sup>

## Good Practice Example

### Temporary Special Measures

#### Germany: Advancement of Women Act 1994.

##### Section 7(1).

- As long as women are employed in individual areas in smaller numbers than men, the department must increase the proportion of women under the terms of the obligatory aims proposed in the plan for the advancement of women and of corresponding staff planning, taking into account the prior importance of suitability, capability and performance: (i) in appointments to the positions of civil servant, judge, employee and worker, including positions with managerial and directive duties, and in appointments to positions for vocational training (ii) in promotion or transfer to a higher group and in assignments to more highly rated positions and workplaces, and in respect of functions entailing managerial and directive duties.

##### Section 8(1).

- The department shall encourage the further training of women by appropriate measures. In further training for introduction to work, promotion and adaptation, women shall normally be considered in accordance with their numbers in the target group for further training in each case. (2). Persons with family responsibilities (subsection 3(2)) must be appropriately enabled to take part in further training. In case of necessity additional programmes, appropriately organized both in space and time, shall be offered; and in case of need, child-minding facilities should be made available. (3). Further training courses which facilitate career advancement for women, and in particular courses which facilitate the reintegration of employees on lower-grade pay scales and employees on leave, shall be offered to an adequate extent; this will include when necessary offers of courses primarily for women.

### Commentary

- Section 7 places a mandatory duty on the department to increase numbers of women in appointments and promotions where there are smaller numbers than men. Although no quota is set, it is still a positive initiative.
- Section 8 provides for further training targeted at women. In particular, the section provides that persons with family responsibilities shall be entitled to attend training, and if necessary childcare facilities shall be made available.

## 2.9 Health

The right to health is an internationally recognised human right,<sup>129</sup> and full and equal access to and delivery of all aspects of health care, services and information including reproductive and sexual health is an essential component of a good practice GEL. Whilst the 'intrinsic relation of gender equality to women's right to health finds expression throughout the CEDAW Convention',<sup>130</sup> its particular importance in the achievement of substantive equality for girls and women is articulated in Article 12 of CEDAW. Article 12(1) obligates States parties to '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'. Article 12(2) obligates States parties to 'ensure to women appropriate services in connection with pregnancy, confinement and the postnatal period, granting free services where necessary, and as adequate nutrition during pregnancy and lactation.' Despite the importance of this area to gender equality and the considerable and consistent emphasis placed on it by the CEDAW Committee,<sup>131</sup> few countries, to date, have included the area of health in their GEL. Further, although examples are provided below from

Kyrgyzstan and Bosnia, neither comprehensively encompasses the legal rights and obligations required by CEDAW. An authors' suggestion is therefore included.

General Recommendation 24, which focuses on health and comprehensively analyses Article 12, provides express and specific guidance on the legal rights and obligations required to achieve gender equality in this area. Good practice legal rights and obligations include the following: first, the inclusion of comprehensive anti-discrimination provisions prohibiting all discrimination against girls and women on the basis of sex, disability, sexual orientation, HIV status, marital status, maternity or any other status in all aspects of health care as recommended by required by Article 12(1) of CEDAW. Second, the GEL should place a positive legal obligation on the State to conduct ethical research so as to assess the health needs and status of women as recommended by General Recommendation 24(9). Third, the GEL should place an obligation on the State and all health providers to 'take concrete measures' to ensure equal access for women and girls to health care services, education and information.<sup>132</sup> Additionally, the GEL should prohibit any restriction on 'women's access to health services or to clinics that provide those services on the ground that women do not have the authorisation of husbands, partners, parents or health authorities.'<sup>133</sup>

Fourth, the GEL should guarantee the provision of, and ensure equal access to, sexual and reproductive-related health services,<sup>134</sup> particularly in rural areas.<sup>135</sup> This should include 'appropriate services in connection with pregnancy, confinement and the post-natal period obstetric services'<sup>136</sup> particularly in rural areas<sup>137</sup> and the allocation to these services of 'the maximum extent of available resources.'<sup>138</sup> Further, to ensure the sexual health of girls and women, who are often unable to refuse sex or insist on safe and responsible sex practices, the right to sexual health information, education and services, including 'information on the spread of sexually transmitted diseases and HIV/AIDS'<sup>139</sup> should be incorporated into the GEL, identifying how it will be delivered and by whom.<sup>140</sup> Access to an affordable and comprehensive range of contraceptives should be guaranteed,<sup>141</sup> and safe legal abortion should be free and accessible to all women as mandated by the CEDAW Committee.<sup>142</sup> Fifth, the GEL should prohibit coercive medical procedures specifically including non-consensual sterilisations, mandatory testing for sexually transmitted diseases and mandatory pregnancy testing which can be used to discriminate against women in employment and violate their rights to informed dignity and consent in accord with General Recommendation 24(22). Sixth, all health workers should be required to receive mandatory and comprehensive gender-sensitive training. The GEL should also mandate that protocols and procedures are adopted in all hospitals and health-care services to prevent the sexual abuse of girls and women who access health services including 'fair and protective procedures for hearing complaints and imposing adequate sanctions on health-care professionals guilty of sexual abuse of women patients, in accord with General Recommendation 24(15)(c). Finally, the GEL should establish procedures for implementing temporary special measures to address the health needs and rights of women belonging to vulnerable and disadvantaged groups such as 'migrant women, refugee or internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities.'

## Good Practice Examples Health

### **Bosnia: Law on Gender Equality 2003.**

#### **Article 13.**

- **(1).** Everyone has an equal right to health care and access to health care services, including those relating to family planning, regardless of gender. **(2).** Health care institutions shall take all necessary steps to prevent discrimination on the grounds of gender in the enjoyment of all forms of health care. **(3).** The relevant authorities shall take all necessary steps to protect and advance the reproductive health of women.

### **Kyrgyzstan: Law on the Basics of State Guarantees of Gender Equality 2003.**

#### **Article 8.**

- **(1).** Prohibited is demonstration of gender inequality and discrimination in reproductive and sexual rights. **(2).** The protection of reproductive and sexual health shall be regulated by the relevant legislation.

## Commentary

- Both Bosnia and Kyrgyzstan provide broad statements relating to the content of Article 12, including a positive obligation in the Bosnian GEL 'to protect and advance the reproductive health of women'.
- Both laws are weakened by a lack of specific detail on exactly what the State must do to prevent discrimination and to achieve equality of access to and delivery of health services.

## Good Practice Example Health

### **Spain: Constitutional Act for Effective Equality Between Women and Men 2007.**

#### **Article 27.**

- In their formulation, development and assessment, health policies, strategies and programmes will integrate women's and men's differing needs and the measures required to suitably meet them.
- The central, regional and local governments will guarantee equal rights to health for women and men through the active integration, in health policy objectives and practice, of the principle of equal treatment, preventing the generation of inequalities between women and men due to biological differences or the associated social stereotypes.
- The central, regional and local governments, through their health services and respective competent bodies and in accordance with the principle of equal opportunities, will:
  - a) Systematically adopt initiatives designed to favour the specific promotion of women's health and prevent their discrimination within their health education programmes.
  - b) Further scientific research on the differences between women and men in connection with protection of their health, particularly as refers to accessibility and diagnostic and therapeutic endeavour in terms of both clinical tests and care.
  - c) Include sexual harassment and harassment on the grounds of sex in their schemes for the protection, furtherance and improvement of occupational health.
  - d) Integrate the principle of equality in training for staff rendering their services in health institutions, especially to ensure their ability to detect and handle gender violence situations.
  - e) Ensure the balanced presence of women and men in management and positions of professional responsibility in the National Health System as a whole.
  - f) Gather and process data in records, surveys, statistics and other systems of medical and health information, disaggregated by sex wherever possible.

### Commentary

- These provisions include some of the key criteria recommended by the CEDAW Committee in General Recommendation 24 (e.g., a guarantee of equality of access, an obligation on state institutions to conduct research on women's health needs, and training in gender sensitivity). However, these provisions would be strengthened with a more comprehensive response to General Recommendation 24 (see below in authors' suggestion).

### Authors' Suggestion Health

1. Any form of discrimination against girls and women on the basis of sex, marital status, sexual orientation, HIV status, disability or any other status in relation to the provision of any health service by any provider is prohibited.
2. Non-consensual sterilisations, mandatory testing for sexually transmitted diseases and mandatory pregnancy testing are prohibited.
3. The State shall conduct ethical research to assess the health needs and health status of women in all sections of the community.
4. The State guarantees equal access for women and girls to health care services, education and information.
5. The State guarantees to all women free access to adequate reproductive related health services including family planning, antenatal, maternity and post-natal services without any requirement for the consent of others such as parent, spouse, or hospital authorities.
6. The State guarantees women access to free safe abortions without any requirement for the consent of others such as parent, spouse, or hospital authorities.
7. The State shall provide sexual health information, education and services delivered by qualified experts to all girls and women.
8. The State shall establish mandatory, comprehensive gender-sensitive training for all health workers.
9. The State shall establish protocols and procedures for all hospitals and health-care services to prevent the sexual abuse of girls and women, including a complaints mechanism with appropriate sanctions.
10. The State shall introduce temporary special measures, where *de facto* inequality is identified, to address the health needs and rights of women and girls including migrant women, refugee or internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities.

## 2.10 Social and Economic Benefits

Equality in access to social and economic benefits and equality in property rights including access to safe, affordable housing is an essential component of a good practice GEL. In recognition of the importance of substantive equality in access to social and economic benefits, there is a clear mandate in Article 13 of CEDAW which obligates States parties to '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'. Further, in recognition of the importance of property rights to the substantive equality of women, Article 15(2) of CEDAW additionally obligates States parties to give women equal rights to administer property, and Article 16(1)(h) of CEDAW obligates States parties to ensure that 'both spouses have the same rights in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.' Despite the importance of this area to gender equality and the considerable

and the consistent emphasis placed on it by the CEDAW Committee,<sup>143</sup> few countries, to date, have included the area of social and economic benefits and property rights in their GEL.

CEDAW-informed good practice legal rights and obligations include the following: first, the right to family benefits; second, the right to bank loans, mortgages and other forms of financial credit; third, a guarantee that women have an equal right to participate in recreational activities, sports and all aspects of cultural life; fourth, a guarantee that women shall receive equal rights in respect to all aspects of property ownership, acquisition, management, administration, enjoyment and disposition including access to safe affordable housing. Each good practice component is discussed below, accompanied by an explanation of the rationale for its inclusion and one or more ‘good practice’ examples drawn globally from a range of existing (draft and enacted) GEL. Each good practice example is also accompanied by a commentary which assesses its strengths and weaknesses.

### 2.10.1 Family Benefits

**Does the GEL guarantee that women shall have on the basis of equality of men and women, the same rights to family benefits?**

A guarantee that women shall have, on the basis of equality of men and women, the same rights to family benefits is an important component of good practice GEL and in accord with Article 13(a) of CEDAW. Such benefits can be social, economic or financial and include ‘family allowances, insurance provision, housing subsidies, childcare and financial or tax credits.’<sup>144</sup> The CEDAW Committee has highlighted the importance of ensuring such access<sup>145</sup> and noted that, since women often work in family enterprises without pay or adequate remuneration, States parties should take necessary steps to ‘guarantee payment of social security and social benefits’ to women working in such situations.<sup>146</sup>

#### Good Practice Examples Family Benefits

##### **Bosnia: Law on Gender Equality 2003.**

##### **Article 11.**

- **(1).** Everyone has equal rights to social welfare regardless of gender. **(2).** Discrimination on the grounds of gender in the exercise of all forms of social rights stipulated by current legislation is prohibited, in particular (a) when applying to exercise any social welfare right (b) in the process of ascertaining social rights and the manner in which they may be exercised and in identifying beneficiaries (c) when the exercise of ascertained rights ceases.

##### **Article 12.**

- The relevant authorities shall ensure that laws and other regulations and the mechanisms relating to access to and enjoyment of social welfare are non-discriminatory on the grounds of gender, whether directly or indirectly.

##### **Philippines: Magna Carta for Women (draft).**

##### **Section 25(8).**

- Women shall have equal access to social security, particularly in cases of retirement, unemployment, sickness, disability, old age and other incapacity to work as well as the right to paid leave.

### Commentary

#### Bosnia:

- The GEL guarantees equal rights in relation to social welfare and prohibits discrimination, both direct and indirect. The Law would be strengthened by a more comprehensive explanation of the kinds of benefits 'social welfare' includes.

#### Philippines:

- This provision contains a comprehensive definition of benefits, applicable in many situations of disadvantage in women's lives.

## 2.10.2 Bank Loans, Mortgages and Other Forms of Financial Credit

**Does the GEL guarantee that women shall have an equal right to receive bank loans, mortgages and other forms of financial credit?**

A guarantee that women shall have the right to receive bank loans, mortgages and other forms of financial credit free from discrimination, as illustrated in the example of the Philippines below, is an important component of good practice GEL and is in accord with Article 13(b) of CEDAW. In recognition of the importance of such access to women's autonomy and their ability to earn a livelihood especially in rural areas, the CEDAW Committee has specifically recommended that States parties ensure women have full and equal access to bank loans and other forms of financial credit<sup>147</sup> with minimal interest rates,<sup>148</sup> and additionally ensure equal access to 'technical assistance' in order to promote women's entrepreneurship.<sup>149</sup> It has also urged 'the establishment of programmes with goals and timelines, to issue credit to poor women who are not able to participate in the self-help groups and do not otherwise have access to credit.'<sup>150</sup>

### Good Practice Example

#### Bank Loans, Mortgages and Other Forms of Financial Credit

##### Philippines: Magna Carta for Women (draft).

##### Section 25.

- **(1).** Women shall be given equal access to formal sources of credit and capital. **(2).** Wider credit schemes and opportunities shall be made available to women. **(3).** women shall be given an equal share of the produce of the farm, household and to savings and services of the organisation to which they belong. **(4).** Government agencies, financial institutions and units shall ensure that all their programs for credit, training, technical and marketing assistance and housing shall be made available to women workers in the informal economy on easy terms.

### Commentary

- Section 25 places a mandatory obligation on government agencies and financial institutions to provide credit and housing to 'women workers in the informal economy on easy terms.' Whilst this would be strengthened with a clear timetable and mechanism for implementation as well as with the removal of the term 'informal economy', this is nevertheless a positive provision.

### 2.10.3 Recreational Activities, Sports and Cultural Life

**Does the GEL guarantee that women shall have an equal right to participate in recreational activities, sports and all aspects of cultural life?**

A guarantee that women shall have an equal right to participate in recreational activities, sports and all aspects of cultural life is an important component of good practice GEL and in accord with Article 13(c) of CEDAW. Although the benefits of participation in sport, physical activities and cultural life to the well-being of women in particular, and society in general, are well documented,<sup>151</sup> there are only a few examples in GEL of such a provision – Spain being a notable exception.

#### Good Practice Example Recreational Activities, Sports and Cultural Life

**Spain: Constitutional Act for Effective Equality Between Women and Men 2007.**

**Article 29.**

- **(1).** The design and implementation of all public sports programmes will include the principle of real and effective equality between men and women. **(2).** The government will further female sport and favour effective access by women to athletic disciplines by implementing specific programmes for all ages and levels including responsibility and decision-making.

#### Commentary

- Article 29(1) places a mandatory obligation on all public sports programmes to include the principle of real and effective (substantive) equality, which is a positive measure.
- Article 29 further obligates the government to favour effective access by women into the athletic disciplines by introducing temporary special measures. This is a positive provision because historically women have not been prioritised in such disciplines. This has led to a predominance of men's sport globally, reflected in the unequal remuneration, commercial dealings, attention, media coverage and consequent popularity of men's sports. Temporary special measures targeting and favouring women's participation will serve to address this imbalance.
- The provision is limited to public sports programmes but provides a good model for implementation in other sectors such as schools and other educational institutions.

### 2.10.4 Property Rights

**Does the GEL guarantee women the equal right to own, manage, enjoy and dispose of property and access to safe affordable housing?**

A guarantee that all women shall have the right to the right to own, manage, enjoy and dispose of property on an equal basis with men, as illustrated in the examples of Azerbaijan and Kyrgyzstan below, is an important component of good practice GEL. In recognition of the importance of such rights, Article 15(2) of CEDAW obligates States parties to ensure women have equal rights to administer property, and Article 16(1)(h) obligates States parties to ensure that spouses have the same rights in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free

of charge or for a valuable consideration. Additionally, the importance of access to safe and affordable housing is illustrated in the good practice example of Australia below.

## Good Practice Examples

### Property

#### **Azerbaijan: State Guarantees of Equal Rights for Women and Men 2006.**

##### **Section 8.**

- The State guarantees equal property rights for women and men and creates equal opportunities for its applications.

##### **Section 9.**

- **(1).** The State guarantees establishment of the equal opportunities of entrepreneurship for men and women. **(2).** Gender-based discrimination in entrepreneurial activities is prohibited.

##### **Section 10.**

- **(1).** The State shall create equal opportunities for women and men in the administration of agricultural entities. **(2).** Gender-based discrimination in agricultural administration is prohibited.

##### **Section 11.**

- **(1).** The State shall create equal opportunities for women and men in the use of land plots, which are their property or given for utilisation. **(2).** The land right of women and men shall be equally protected.

#### **Kyrgyzstan: Law on the Basics of State Guarantees of Gender Equality 2003.**

##### **Article 15.**

- **(1).** The State shall ensure implementation of property rights equally for both men and women. **(2).** The State shall provide necessary conditions for woman to enjoy her property-related rights: right to own, right to use and right to dispose of property. **(3).** No one shall be discriminated against on the basis of gender in the process of privatization or in any legal relations between citizens. The State shall guarantee equal access through all existing procedures.

#### **Australia: Sex Discrimination Act 1984.**

##### **Section 23(1).**

- It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's sex, marital status, pregnancy or potential pregnancy: (a) by refusing the other person's application for accommodation (b) in the terms or conditions on which accommodation is offered to the other person; or (c) by deferring the other person's application for accommodation or according to the other person a lower order of precedence in any list of applicants for that accommodation.

## Commentary

- Azerbaijan and Kyrgyzstan both guarantee equal property rights for women, however, the Kyrgyzstan provision appears to go further by guaranteeing the implementation of property rights, implying the intention to achieve substantive equality and to create the conditions to enable women to enjoy their right 'to own, right to use and right to dispose [of] property'. This is a very strong good practice provision.
- Section 23(1) of the Australian example provides a strong anti-discrimination provision in the area of accommodation, recognising the difficulties in obtaining accommodation faced by women who may not have the financial resources of others.

## 2.11 Rural Women

Rural women form a significant proportion of many populations, particularly in developing countries, and frequently play an important role in the economic survival of their families and communities. Despite this, many rural women live in ‘extreme poverty and lack access to health care, education, vocational training, credit facilities and income generating opportunities’;<sup>152</sup> many receive ‘little or no recognition for their efforts and they are often denied access to the results of their work’<sup>153</sup> which, in turn, ‘seriously impairs their enjoyment of their social, economic and cultural rights’.<sup>154</sup> In acknowledgement of the importance of achieving substantive equality for rural women, Article 14(2) of CEDAW obligates States parties to eliminate discrimination against women in rural areas. Despite the importance of this area to gender equality and the considerable and consistent emphasis placed on it by the CEDAW Committee,<sup>155</sup> few GEL include or target rural women. Thus, although the Philippines provides a good practice example, addressing some aspects of Article 14 as shown below, an authors’ suggestion has been included.

CEDAW-informed good practice legal rights and obligations for the achievement of equality of rural women include the following: first, the GEL should guarantee women an equal right to participate in ‘designing and implementing local development plans’<sup>156</sup> at all levels as required by Article 14(2)(a) of CEDAW; second, the GEL should guarantee rural women equal access to adequate health care facilities including information, counselling and services in family planning as required by Article 14(2)(b) of CEDAW; third, the GEL should guarantee rural women direct benefit from social security programmes; fourth, the GEL should guarantee rural women the right to obtain all types of training and education as required by Article 14(2)(d) of CEDAW; fifth, the GEL should guarantee rural women the right to organise self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment as required by Article 14(2)(e) of CEDAW; sixth, the GEL should guarantee rural women the right to participate in all community activities as required by Article 14(2)(f) of CEDAW; seventh, the GEL should ensure rural women have equal opportunities to ‘participate in decision-making processes and have full access to credit facilities,’<sup>157</sup> ‘income generating projects,’<sup>158</sup> marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes, as required by Article 14(2)(g) of CEDAW; and eighth, the GEL should guarantee rural women the right to enjoy adequate living conditions, particularly ‘clean water and sanitation services’,<sup>159</sup> housing, electricity supply, transport, and communications, as required by Article 14(2)(h) of CEDAW. Finally, the CEDAW Committee has recommended the incorporation of temporary special measures provisions into legislation to accelerate the realisation of substantive equality for rural women<sup>160</sup> ‘to ensure that rural women enjoy their political, social, economic and cultural rights without any discrimination, especially with regard to access to education, public services, justice, health care and micro-financing.’<sup>161</sup>

### Good Practice Example Rural women

#### **Philippines: Magna Carta for Women (draft).**

#### **Section 22.**

- The State shall at all times provide for the protection, participation and empowerment of A. Women small farmers and rural workers B. Women fishers G. Indigenous women H. Moro women.

**Section 26.**

- Agricultural and environmental agencies shall ensure women's participation in agriculture and sustainable use.

**Section 28.**

- Obligates the State to provide for the promotion of women's participation in policy-making and processes in agricultural industry plans including 33% representation of women farmers, women fishers, indigenous women in various planning and management bodies.

**Commentary**

- Section 22 places an obligation on the State to provide for the 'protection, participation and empowerment' of a variety of designated rural women. The provision would be strengthened by a requirement to achieve substantive equality, in accordance with CEDAW, as well as 'protection, participation and empowerment'. The provision would also be strengthened by specifically identifying the responsibilities of the State, the programmes they are required to implement, the objectives and the timetable involved.
- Section 28 obligates the State to ensure the participation of women in the development and implementation of plans in the agricultural industry including a quota of 33% representation in the various bodies. This is a positive measure in accord with Article 14(2) of CEDAW. Temporary special measures could be usefully employed, however, in all areas of rural women's lives.

**Authors' Suggestion  
Rural Women**

1. Any form of discrimination against rural women on the basis of sex, ethnicity, marital status, sexual orientation, HIV status, disability or any other status in relation to the access of or benefit from any service or facility is prohibited.
2. The State guarantees rural women an equal right to participate in the elaboration and implementation of development planning.
3. The State shall ensure that rural women have equal access to adequate health care facilities including information, counselling and services in family planning.
4. The State guarantees rural women equal benefit from social security programmes.
5. The State shall ensure that rural women have equal opportunity to access and benefit from all types of training and education.
6. The State guarantees rural women the right to organise self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment.
7. The State guarantees rural women the right to participate in all community activities.
8. The State shall ensure that rural women have equal 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.
9. The State guarantees rural women adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.
10. The State shall conduct research to identify *de facto* inequalities of rural women and shall introduce temporary special measures aimed at achieving substantive equality for rural women in all areas of their lives.

## 2.12 Civil Equality

A guarantee of equality before the law and equality between men and women in all civil matters is an essential component of good practice civil equality provisions in GEL. In recognition of the importance of such guarantees, the CEDAW Committee, in General Recommendation 21(8), explains that any hindrance to a woman's capacity to initiate litigation, to access legal advice, to act as a witness or to seek redress from the courts limits her right to effectively pursue or retain her share of property, and also restricts her ability to provide for herself and her dependants and consequently 'her standing as an independent, responsible and valued member of her community is diminished.'<sup>162</sup> Despite the importance of this area to gender equality, no country, to date, has included the area of civil equality in their GEL and therefore an authors' suggestion has been included.

Article 15 of CEDAW clearly and expressly articulates the legal obligations required to achieve good practice in the area of civil equality. These are as follows: first, the GEL should guarantee equality before the law, ensuring that men and women are subject equally to the law and to equal treatment in the application of any law as required by Article 15(1) of CEDAW. Second, the GEL should guarantee women full legal capacity in civil matters identical to that of men, and the same opportunities to exercise that capacity. In particular, it should give women equal rights to conclude contracts and to administer property and should treat them equally at all stages of procedure in courts and tribunals as required by Article 15(2) of CEDAW. Finally, the GEL should prohibit and declare null and void all contracts and all other private instruments of any kind which have a legal effect directed at restricting the legal capacity of women as required by Article 15(3) of CEDAW.

### Authors' Suggestion Civil Equality

1. The State guarantees women equality with men before the law.
2. The State guarantees women an equal right with men to participate in courts and tribunals at all stages.
3. The State guarantees women (regardless of marital status) an equal right with men to conclude contracts and administer property.
4. All contracts and instruments that limit women's legal capacity are void.

## 2.13 Marriage and Family Relations

The importance of equality in the laws relating to marriage and family relations has been emphasised by many commentators and in recognition of this, Article 16 of CEDAW and General Recommendation 21 provide detailed guidance on the legal rights and obligations required to achieve equality in this area.<sup>163</sup> Although few GEL to date, have incorporated provisions on marriage and family relations it is nevertheless an area that requires a strong legal framework. The failure to include such legal rights and obligations in GEL may be attributed, in part, to the fact that establishing an effective legal system of rights and protection for women and girls in the area of marriage and family relations requires detailed legislative measures, which may be better dealt with in targeted family law legislation. However, although a GEL may not therefore of itself be equipped to provide the necessary breadth and detail required for this area, it can nevertheless establish benchmarks and place an obligation on the State to enact

and amend domestic legislation so as to provide a comprehensive response to discrimination in marriage and family relations law ‘within a specific timeframe’.<sup>164</sup> An authors’ suggestion identifying the appropriate benchmarks which could be included in a GEL has accordingly been included at the end of this section.

### 2.13.1 Marriage

Equality in all aspects of marriage law including a woman’s right to choose ‘when, if and whom she shall marry must be protected and enforced at law’<sup>165</sup> is important to women’s equality and self-determination and a strong legal framework in this area is critical. Good practice GEL should therefore set the following good practice benchmarks and mandate their incorporation into the domestic marriage law framework within a designated time-frame. First, the GEL should direct the State to incorporate into the marriage laws a provision that if a marriage has taken place under duress or undue influence, it is void in accord with Article 16(1)(b) of CEDAW. The importance of this has been emphasised by the CEDAW Committee in General Recommendation 21(16) which states that a woman’s right to choose a spouse and enter freely into marriage is ‘central to her life and to her dignity and equality as a human being.’ Second, the GEL should direct the State to incorporate into the marriage laws a minimum age for marriage of 18, in accord with General Recommendation 21(36). The CEDAW Committee has explained that marriage carries with it important responsibilities which require maturity and capacity to act and, additionally, child bearing and raising children can have ‘negative effects on women’s enjoyment of their human rights, especially their rights to health and education.’<sup>166</sup> Third, the GEL should direct the State to incorporate into the marriage laws, a compulsory requirement that all marriages including customary marriages must be registered in an official register in accord with Article 16(2) of CEDAW. The registration of marriage enables the State to ensure that the minimum age for marriage and the prohibitions on bigamy and polygamy, which the CEDAW Committee categorises as ‘de facto discrimination,’<sup>167</sup> are adhered to. It also protects women upon the dissolution of marriage against claims that they were not married and not entitled to spousal and other benefits. Finally, the GEL should direct the State to incorporate into the marriage laws a guarantee that a husband and wife have the same personal rights including the right to choose a family name in accord with Article 16(1)(g) of CEDAW. This enables women to preserve their individuality and autonomy, their identity in the community and to distinguish themselves from other members of society.<sup>168</sup>

### 2.13.2 Separation and Divorce

Effective protection of women and recognition of their rights at the dissolution of marriages or *de facto* relationships, including same-sex relationships, is an important component of gender equality, particularly given the prevalence of discriminatory cultural and religious practices in the personal laws of many regions. A strong legal framework in this area is therefore critical and a GEL should set the following good practice benchmarks and mandate their incorporation into the domestic family law framework within a designated time-frame. First, the GEL should direct the State to incorporate into the family law framework, a right to obtain maintenance orders in favour of children and ex-spouses based on clear criteria such as commitments, income and earning capacity, in to respond to the ‘negative economic and social consequences of divorce for women’<sup>169</sup> which may leave women without the means to financially support herself and her children. Second, the GEL should direct the State to incorporate into family law, a

formula for property division after divorce and the break-down of *de facto* relationships. The formula adopted should include non-financial contributions during both marriage and *de facto* relationships,<sup>170</sup> such as raising children, caring for elderly relatives, and discharging household duties. Such a measure would address the CEDAW Committee's concern that 'the distribution of assets and property including potential future earnings may not adequately address gender-based economic disparities between spouses resulting from the existing sex segregation of the labour market and women's greater share in unpaid work and potentially interrupted career patterns due to family responsibilities'. Third, the GEL should direct the State to incorporate into the family law framework, a no-fault formula for divorce in accord with the CEDAW Committee's mandate that States parties abolish fault based divorce, basing divorce provisions instead on 'mutual consent.'<sup>171</sup> Fifth, the GEL should direct the State to incorporate into its family laws, a guarantee that custody and access to children will be determined on the basis of the best interests of the child regardless of relationship of parents in accord with Article 16(1)(d) of CEDAW. Sixth, the GEL should direct the State to incorporate into its family laws, a guarantee that women and men have the same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption in accord with Article 16(1)(f) of CEDAW. Finally, the GEL should direct the State to incorporate into its family laws, a guarantee that women in *de facto* relationships including same-sex relationships, and their children, are availed of the same rights and protections, discussed above, as married women. Such a position accords with the CEDAW Committee's recognition that a 'restricted concept of family may have a negative impact on women's exercise and enjoyment of their human rights in marriage and family relations'<sup>172</sup> and that 'the form and concept of the family can vary and whatever form it takes, the treatment of women in the family at law and in private must accord with the principles of equality and justice for all.'<sup>173</sup>

### 2.13.3 Inheritance

Legal recognition of women's equal rights to inheritance is an important component of gender equality, particularly given the prevalence of discriminatory cultural and religious practices in the personal laws of many regions. Although no GEL, to date, has included inheritance rights, its importance has been highlighted by the CEDAW Committee, which has emphasised that serious discrimination against women occurs when the law and practice concerning inheritance does not treat females equally with men.<sup>174</sup> The Committee has urged States parties to take appropriate measures to eliminate all forms of discrimination against women with respect to the inheritance of property.<sup>175</sup> A GEL should accordingly direct the State to incorporate into the domestic law framework, a guarantee that of equality in all inheritance determinations including in customary law.

## Authors' Suggestion

### Inheritance

The State guarantees:

or

The State shall enact legislation that guarantees:

1. The minimum age of marriage for men and women is 18.
2. Marriages of persons under 18 are void.
3. Marriage can only be entered into with the full and free consent of both parties and are otherwise void.
4. All marriages including customary marriages must be registered in a central registry.
5. Bigamy and polygamy are prohibited.
6. Upon separation of married and unmarried persons and divorce a maintenance order can be issued on the basis of need, earning capacity, and the means of the two parties.
7. Occupations orders are obtainable when women have dependant children or relatives or in situations of domestic violence.
8. Custody orders for the children of all relationships shall be issued on the basis on the best interests of the child.
9. A no fault system of divorce.
10. An equal division of property that includes recognition of women's unpaid contribution and the calculation of future needs and future earning capacity of all parties.
11. Women and men have the same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption.
12. The extension of all rights and responsibilities to women in *de facto* relationships including same-sex partnerships.
13. Equal inheritance rights for men and women in both formal and customary law.
14. The provisions of the GEL will take precedence over customary law in situations of conflict.



# ANALYSIS OF SUBSTANTIVE RIGHTS AND OBLIGATIONS IN GENDER EQUALITY LAWS AND DRAFT LAWS

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- Indonesia : Act Concerning Gender Equality and Equity (draft)
- Lao PDR : Law on the Development and Protection of Women 2004 and Decree on the Implementation of the Law on the Development and Protection of Women 2006
- Philippines : Magna Carta for Women (draft)
- Thailand : Promotion of Opportunity and Gender Equality Act (draft)
- Vietnam : Law on Gender Equality 2006

## Indonesia : Act Concerning Gender Equality and Equity (draft)

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
Equality and Non-discrimination	<p><b>Act Concerning Gender Equality and Equity (draft).</b></p> <p><b>Article 1.</b></p> <ul style="list-style-type: none"> <li>• <b>(b).</b> Gender equality and equity refers to a situation where there is a harmonious, matching, balanced partnership between men and women where both have an equal opportunity to access, participate, control and benefit from development and enjoy its results in family life, society, the nation and the State.</li> <li>• <b>(c).</b> Gender discrimination refers to social relations that reflect disparity in the status, the functions and the roles of men and women.</li> </ul> <p><b>Article 2.</b></p> <ul style="list-style-type: none"> <li>• <b>(1).</b> Gender equality measures shall ensure equilibrium in terms of quality and quantity between men and women as equal partners in the household and community environment on the basis of applicable laws and regulations as well as social and religious norms. <b>(2).</b> Gender equity measures shall be based on justice for men and women. <b>(3).</b> The State guarantees and shall ensure the achievement of gender equality and equity.</li> </ul> <p><b>Article 14(3).</b></p> <ul style="list-style-type: none"> <li>• Women shall have the right to the cheapest and easiest legal access and protection if their rights are violated.</li> </ul>	<ol style="list-style-type: none"> <li>1. Article 2 (3) places a positive obligation on the State to achieve gender equality and gender equity in accord with Articles 1 and 2 of CEDAW.</li> <li>2. The definitions of gender equality and gender equity appear to imply (through the reference to the opportunity to enjoy the results of development) that the State has an obligation to achieve substantive equality, rather than merely formal equality, in accord with Article 1 of CEDAW. However, the definition also refers to harmonious and balanced partnership which could imply that a division of labour maintaining the sex roles of men and women is an object of the Act rather than equality. Expressly defining gender equality and equity to mean substantive equality and removing the reference to 'harmonious, matching, balanced partnership' would strengthen the GEL.</li> <li>3. There is no general anti-discrimination clause although there are anti-discrimination clauses in each of the areas covered by the Act (politics, law, government, education), each binding both public and private actors in accord with Article 2 of CEDAW. The inclusion of a general anti-discrimination clause that extends to all areas of women's lives (not limited to politics, law, government, education) would strengthen the Act.</li> <li>4. The definition of discrimination is not in accord with CEDAW signalling a significant weakness in the GEL. The express inclusion of direct and indirect discrimination, recognition of other intersections of discrimination such as disability, marital status etc. and inclusion of gender-based violence and sexual harassment in the definition of discrimination would greatly strengthen the GEL.</li> <li>5. Basing gender equity measures on justice is unclear and may compromise equality. This should be more clearly defined in line with Articles 1 &amp; 2 of CEDAW.</li> </ol>
Gender-Based Violence	<p><b>Act Concerning Gender Equality and Equity (draft).</b></p> <p><b>Article 5.</b></p> <ul style="list-style-type: none"> <li>• All forms of family violence shall be settled according to the provisions of applicable laws and regulations.</li> </ul>	<p>Article 5 does not expressly prohibit gender based violence and does not set any benchmarks in relation to domestic violence or any other form of gender-based violence.</p> <p>For a detailed discussion on the elements necessary for good practice GEL in the area of gender-based violence please refer to Part 2, 2.2.</p>
Stereotyping of Women in Media	No media provision is included.	For a detailed discussion on the elements necessary for good practice GEL in the area of media please refer to Part 2, 2.3.

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Exploitation of Women in Prostitution	No exploitation of women in prostitution provision is included.	For a detailed discussion on the elements necessary for good practice GEL in the area of exploitation of women in prostitution please refer to Part 2, 2.4.
Political and Public Life	<p><b>Act Concerning Gender Equality and Equity (draft).</b></p> <p><b>Article 8.</b></p> <ul style="list-style-type: none"> <li>• <b>(1).</b> Every person or legal entity is prohibited from any act of gender discrimination in the fields of politics, law and government. <b>(2).</b> The government shall promote political education aimed at gender equality for women in politics and government.</li> </ul> <p><b>Article 9.</b></p> <ul style="list-style-type: none"> <li>• <b>(1).</b> Women as citizens or as human resources for development shall have equal rights, responsibilities and opportunities to men in all spheres of life. <b>(2).</b> All women shall have an equal opportunity to participate in government at national and local level. <b>(3).</b> All women shall enhance [their] ability and opportunity to maximise her role in society, the nation and the State.</li> </ul> <p><b>Article 11.</b></p> <ul style="list-style-type: none"> <li>• Every adult female shall have the right of assembly and to participate in public meetings, to organise and enter politics as guaranteed by the Constitution and applicable laws and regulations.</li> </ul> <p><b>Article 12.</b></p> <ul style="list-style-type: none"> <li>• Every adult female shall have the right to vote and be elected in a general election according to her political conviction.</li> </ul> <p><b>Article 13.</b></p> <ul style="list-style-type: none"> <li>• Every adult female shall have the right to a political opinion, to disseminate orally or in the mass media including written and electronic provided it is in accordance with the provisions of applicable laws and regulations.</li> </ul> <p><b>Article 14.</b></p> <ul style="list-style-type: none"> <li>• <b>(3).</b> Women and men shall have equal status in law and government in accordance with the willingness, social and religious norms that exist in society. <b>(4).</b> Women and men shall have equal opportunity to vote and be elected in a General Election. <b>(5).</b> Women shall have the right to the cheapest and easiest legal access and protection if their rights are violated.</li> </ul>	<ol style="list-style-type: none"> <li>1. Article 8(1) explicitly prohibits all gender discrimination in the field of politics and government. This provision, explicitly prohibiting discrimination, rare in GEL worldwide, is an important inclusion. The provision would be strengthened, however, by explicit extension to indirect and direct discrimination and the inclusion of other intersections of discrimination such as disability, marital status etc.</li> <li>2. Article 8(2) places a positive obligation on the government to promote political education targeted at women. This is a positive measure, requiring the government to actively target women. It would be strengthened by providing a more detailed and specific overview of how the government shall promote gender equality, what specific programmes and initiatives it shall be obligated to pursue, what the specific aims and objectives will be, and how success will be monitored.</li> <li>3. Article 9 and Article 14(3) implies through the use of the phrase 'equal opportunity' that not only is the State obligated to provide formal equality but it must take measures to ensure substantive equality. Whilst this is a positive inclusion it would be strengthened with an obligation on the State to investigate the <i>de facto</i> situation of women in public and political life and to develop temporary special measures if necessary in order to achieve substantive equality.</li> <li>4. Articles 11 &amp; 12 provide full formal equality for women in the area of politics in accordance with Article 7(a) of CEDAW.</li> <li>5. Article 13 is an important provision, unique in GEL worldwide, that guarantees women the right to articulate their political opinion and to disseminate that view in the media.</li> <li>6. The inclusion of a temporary special measures provision to facilitate substantive equality in public and political life for women would strengthen the GEL.</li> </ol>
Nationality and Citizenship	No nationality provision is included.	For a detailed discussion on the elements necessary for good practice GEL in the area of nationality and citizenship please refer to Part 2, 2.6.

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Education	<p><b>Act Concerning Gender Equality and Equity (draft).</b></p> <p><b>Article 15.</b></p> <ul style="list-style-type: none"> <li>• Every woman shall have an equal right with men to obtain education in all areas at any level and avenue of education in accordance with her interests and abilities.</li> </ul> <p><b>Article 16.</b></p> <ul style="list-style-type: none"> <li>• <b>(1).</b> All discrimination in education, social and cultural spheres that violates gender equality may constitute an act against the law according to applicable laws and regulations, social and religious norms and justice. <b>(2).</b> All forms of exploitation of women in educational, social and cultural spheres are prohibited.</li> </ul> <p><b>Article 17.</b></p> <ul style="list-style-type: none"> <li>• Men and women shall work together and balance their roles in the educational, social and cultural spheres and their roles in the family.</li> </ul> <p><b>Article 18.</b></p> <ul style="list-style-type: none"> <li>• <b>(1).</b> The government shall create programmes to promote equal rights between men and women in the educational, social and cultural spheres. <b>(2).</b> The programmes referred to in (1) shall be further addressed with a Government Regulation.</li> </ul>	<ol style="list-style-type: none"> <li>1. Article 15 guarantees women an equal right to obtain education at every level and Article 16(2) prohibits all exploitation in education. Whilst these are important guarantees they fall short of guaranteeing equal access to education and the phrase ‘in accordance with her interests and abilities’ suggests a formal equality approach.</li> <li>2. Article 16(1) states that discrimination in education may constitute an act against the law or other norms. This is a weak anti-discrimination clause as it merely defers to other law rather than setting the benchmarks. It is critical that GEL contain strong anti-discrimination provisions in relation to education including specific protection from expulsion or discrimination in relation to pregnancy.</li> <li>3. Article 17 states that men and women shall work together and balance their roles in the educational sphere. The reference to ‘balance their roles’ could imply the perpetuation of sex-role stereotypes and should be replaced by equality.</li> <li>4. Article 18 places a mandatory obligation on the government to introduce special measures. Although the provision would be strengthened with greater direction and clarity, such as an obligation to conduct research to determine the situation of women in relation to education, it is nevertheless a positive measure.</li> </ol> <p>For a detailed discussion on the elements necessary for good practice GEL in the area of education please refer to Part 2, 2.7.</p>
Employment	<p><b>Act Concerning Gender Equality and Equity (draft).</b></p> <p><b>Article 11.</b></p> <ul style="list-style-type: none"> <li>• Every adult female shall have the right to unionise.</li> </ul> <p><b>Article 19.</b></p> <ul style="list-style-type: none"> <li>• Men and women must work together and balance work and family.</li> </ul> <p><b>Article 20.</b></p> <ul style="list-style-type: none"> <li>• <b>(1).</b> All discrimination in economy and labour that violates gender equality may constitute an act against the law according to applicable laws and regulations, social and religious norms and justice. <b>(2).</b> All forms of exploitation of women in economy and labour are prohibited.</li> </ul> <p><b>Article 21.</b></p> <ul style="list-style-type: none"> <li>• Every adult female shall have an equal right with men to occupy a position in any profession according to her ability as determined under applicable laws and regulations.</li> </ul>	<ol style="list-style-type: none"> <li>1. Article 11 provides women with the right to participate in unions which is an important recognition of the importance of female presence in unions in achieving gender equality in employment.</li> <li>2. Article 19 provides that men and women must work together and balance work and family. The object of this provision appears to be that tasks public and private should be equally shared, however, this could be more clearly worded. It is unclear how this provision will be enforced.</li> <li>3. Article 20 states that discrimination in the economy and employment that violates gender equality may constitute an act against the law according to applicable laws and regulations, social and religious norms and justice, and prohibits all forms of exploitation of women in employment. Whilst the inclusion</li> </ol>

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	<p><b>Article 22.</b></p> <ul style="list-style-type: none"> <li>Every adult female shall have the right to acquire employment in accord with her ability.</li> </ul> <p><b>Article 23.</b></p> <ul style="list-style-type: none"> <li>Every adult female shall have the right to be elected, appointed, and promoted to a job, position or profession in accordance with equitable qualifications and requirements as stipulated under laws and regulations.</li> </ul> <p><b>Article 24.</b></p> <ul style="list-style-type: none"> <li>(1). Every working woman shall have the right to earn the same adequate income as men for all types of work, occupation and profession.</li> <li>(2). The government shall ensure adequate and equal income for all types of work, occupation and profession.</li> </ul> <p><b>Article 25.</b></p> <ul style="list-style-type: none"> <li>(1). The government will establish women's empowerment programmes to promote equality between men and women in the economy and employment (2). The programmes referred to in (1) shall be further addressed with a Government Regulation.</li> </ul> <p><b>Article 26.</b></p> <ul style="list-style-type: none"> <li>Every woman in employment public and private is guaranteed adequate health protection.</li> </ul> <p><b>Article 27.</b></p> <ul style="list-style-type: none"> <li>Every woman in employment shall receive special protection of her reproductive health and safety in the workplace.</li> </ul> <p><b>Article 28.</b></p> <ul style="list-style-type: none"> <li>Women's rights which arise because of her reproductive functions are guaranteed and protected by this law and other related laws and regulations.</li> </ul>	<p>of an anti-discrimination provision is positive, it is weakened by the phrase 'may constitute an act against the law according to applicable laws and regulations, social and religious norms and justice' rather than identifying employment benchmarks for the State to observe.</p> <p>4. Articles 21, 22 &amp; 23 provide women an equal right to any position in any profession and to promotion. However, the phrases 'according to her ability' and 'in accordance with equitable qualifications and requirements as stipulated under laws and regulations' are limiting and fail to recognise the barriers that prevent women from realising her abilities and potential.</p> <p>5. Article 24 guarantees the same income as men for all types of work, occupation and profession but falls short of a guarantee of equal treatment for work of equal value. Such a guarantee is important to ensure that women are equally rewarded for work of equal skill with men.</p> <p>6. Article 25 places a mandatory obligation on the government to introduce programmes in employment. Although the provision would be strengthened with greater direction and clarity, such as an obligation to conduct research to determine the situation of women in employment, it is nevertheless a positive measure.</p> <p>7. Articles 26 and 27 guarantee women health protection at work and special protection in relation to their reproductive health and safety in accord with Article 11(1)(f) of CEDAW. This is a good practice provision.</p> <p>8. Article 28 could be interpreted to mean protection from dismissal for pregnancy and maternity leave but this is not explicit. In its current form the provision is too vague to provide real protection for women in the workplace due to reproductive and child rearing functions.</p> <p>For a detailed discussion on further elements necessary for good practice GEL in the area of employment please refer to Part 2, 2.8.</p>
Equality in Access to Health Care	Although there is some health protection for women in employment, as discussed above, there are no general provisions in relation to equality in access to health care.	For a detailed discussion on elements necessary for good practice GEL in the area of health please refer to Part 2, 2.9.
Equality in Social and Economic Benefits	No equality in social and economic benefits provision is included.	For a detailed discussion on the elements necessary for good practice GEL in the area of equality in social and economic benefits please refer to Part 2, 2.10.

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Rural Women	No provision on rural women is included.	For a detailed discussion on the elements necessary for good practice GEL in relation to rural women please refer to Part 2, 2.11.
Equality Before the Law and in Civil Matters	No provision on equality before the law and in civil matters is included.	For a detailed discussion on the elements necessary for good practice GEL in the area of civil equality please refer to Part 2, 2.12.
Equality in Marriage and Family Relations	<p><b>Act Concerning Gender Equality and Equity (draft).</b></p> <p><b>Article 3.</b></p> <ul style="list-style-type: none"> <li>(1). The rights and responsibilities of men and women in family life shall be built on the basis of gender equality and equity according to the provisions of applicable laws and regulations.</li> <li>(2). The family shall be the central place to protect, develop and build gender equality and equity in accordance with the provisions of applicable laws and regulations.</li> </ul> <p><b>Article 4.</b></p> <ul style="list-style-type: none"> <li>(1). Men and women shall have balanced rights and obligations in caring for, educating and raising their children. (2). All decisions pertaining to family life shall be made with regard to women's rights to voice their opinions and the right of children to good treatment.</li> </ul> <p><b>Article 6.</b></p> <ul style="list-style-type: none"> <li>(1). It is mandatory for all persons, groups and communities to honour and maintain family rights both personal and private. (2). It is mandatory for all persons, groups and communities to respect the participation of women and men in family resilience.</li> </ul> <p><b>Article 7(1).</b></p> <ul style="list-style-type: none"> <li>(1). The government shall pursue and raise family resilience and welfare. (2). The form and mechanism of the government's responsibility in (1) shall be articulated in a Government regulation.</li> </ul> <p><b>Article 1.</b></p> <ul style="list-style-type: none"> <li>f. Family resilience means the quality of a family characterised by persistence and toughness and containing the physical, material, psychological, mental and spiritual ability to live independently, harmoniously and with an ability to cope with various changes around it in the pursuit of the enhancement of inner welfare and happiness. g. Family welfare means the fulfilment of the spiritual and material needs of the members of a family and harmonious relations between family members and within the community.</li> </ul>	<p>1. Article 3(1) states that rights and responsibilities in family life shall be built on equality and equity. This is weakened, however, by the phrase 'according to applicable laws and regulations.' A good practice GEL should identify the standards and benchmarks and direct the legislature to amend current laws to accord with those benchmarks.</p> <p>2. Article 4 states that men and women shall have balanced rights and obligations in relation to educating and raising children. The provision would be strengthened by replacing the term 'balanced' with 'equal' as use of the term balanced could imply that a division of labour between the public and private realms can and should remain, which is contrary to CEDAW and gender equality.</p> <p>3. Article 6 states that it is mandatory for all persons, groups and communities to honour and maintain family rights, but no benchmarks are set to determine what those family rights are.</p> <p>4. Article 7 obligates the government to pursue and raise family resilience and welfare which is defined in Article 1f as the ability to 'live independently, harmoniously and with an ability to cope with various changes around it in the pursuit of the enhancement of inner welfare and happiness'. Whilst these are important goals they do not equate to equality and do not accord with the obligations imposed by Article 16 of CEDAW.</p> <p>For a detailed discussion on the elements necessary for good practice GEL in the area of marriage and family relations please refer to Part 2, 2.13. However, note that Indonesia has a reservation on Article 16 of CEDAW.</p>

## Lao PDR : Law on the Development and Protection of Women 2004 and Decree on the Implementation of the Law on the Development and Protection of Women 2006

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Equality and Non-discrimination	<p><b>Law on the Development and Protection of Women 2004.</b></p> <p><b>Article 13.</b></p> <ul style="list-style-type: none"> <li>Women and men shall have the same value and opportunities in politics, economy, socio-culture, families, national defence and security and foreign affairs as stipulated in the constitution and laws.</li> </ul> <p><b>Decree on the Implementation of the Law on the Development and Protection of Women 2006.</b></p> <p><b>Article 12.</b></p> <ul style="list-style-type: none"> <li>Men and women shall have equality in political, economic, social, cultural and family spheres.</li> </ul> <p><b>Article 2.</b></p> <ul style="list-style-type: none"> <li>Discrimination against women is all forms of distinction, exclusion or restriction on women made on the basis of sex which has the effect of nullifying the recognition by society of the equality of men and women in the enjoyment of human rights and freedoms in the political, economical, cultural and social or any other fields.</li> </ul>	<ol style="list-style-type: none"> <li>Article 13 of the Law provides that men and women shall have the same opportunities in politics, economy, socio-culture, families, national defence and security and foreign affairs, which could be interpreted as a requirement for substantive equality in these areas.</li> <li>Article 12 of the Implementation Decree provides a guarantee of equality in political, economic, social, cultural and family spheres.</li> <li>Both articles would be strengthened by a clear guarantee of substantive equality as required by Article 1 and 2 of CEDAW.</li> <li>Article 2 provides a definition of discrimination that closely accords with CEDAW. However, although the definition of discrimination accords in large part to Article 1 of CEDAW there is no actual prohibition of discrimination in either the Law or the Implementation Decree. The inclusion of clearly defined anti-discrimination provisions providing protection against direct and indirect discrimination on the basis of all intersections of discrimination would greatly strengthen the GEL.</li> <li>The Law does not expressly bind public authorities, private organisations and individuals as required by Article 2 of CEDAW.</li> </ol>
Gender-Based Violence	<p><b>Decree on the Implementation of the Law on the Development and Protection of Women 2006.</b></p> <p><b>Article 39.</b></p> <ul style="list-style-type: none"> <li>Defines minor domestic violence as gossip, scorn, insults, defamation, preventing person from participating in social activities, not sharing parenting and severe domestic violence as beating, detention, tying, oppression, rape, adultery, illegal divorce, rudeness, burning, destruction of premises and possession, wasting family assets, not taking responsibility for family or protecting wife from harassment.</li> </ul> <p><b>Article 40.</b></p> <ul style="list-style-type: none"> <li>Family, relatives and neighbours must intervene, prohibit, mediate and educate in relation to minor domestic violence.</li> </ul> <p><b>Article 42.</b></p> <ul style="list-style-type: none"> <li>Establishes mediation sessions for severe domestic violence or minor domestic violence which has not been settled by mediation as per Article 40 which are run by village mediation unit. Procedure is detailed and if no settlement is reached the parties may go to the Peoples Court.</li> </ul> <p><b>Article 50.</b></p> <ul style="list-style-type: none"> <li>Penalties for domestic violence are education</li> </ul>	<ol style="list-style-type: none"> <li>The Law and the Implementation Decree establish procedures for resolving minor and severe domestic violence.</li> <li>Article 39 defines domestic violence but does not define the relationships within which domestic violence can occur, such as spouses, partners, children and parents etc. This would strengthen the scope of the provisions.</li> <li>The Law and the Implementation Decree sets up 2 processes for responding to domestic violence. The first process involves family members if it is minor and the second involves the village Mediation Unit if it is severe. The provisions do not clarify how the Mediation Unit is established and whether it is staffed by neutral persons with knowledge and training in domestic violence. This is critical to an effective and sensitive system of mediation, although mediation is not recommended generally in domestic violence situations due to the inherent power imbalances.</li> <li>Article 36 requires police proceedings to be instituted upon the receipt of a complaint and although this is mandatory, the GEL does not stipulate specific penalties for criminal charges but refers to existing penalties in the criminal</li> </ol>

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	<p>and warning or if criminal prosecuted as per the criminal law.</p> <p><b>Articles 28-37.</b></p> <ul style="list-style-type: none"> <li>Places various responsibilities on a range of Lao agencies, Ministries and private organisations to assist in the protection of domestic violence victims including temporary shelters, training and advice. Law on the Development and Protection of Women (2004)</li> </ul> <p><b>Article 36.</b></p> <ul style="list-style-type: none"> <li>Upon receiving complaint from victim, village mediation unit or victim's representative, the police shall conciliate if minor or if severe shall institute legal proceeding.</li> </ul> <p><b>Article 42.</b></p> <ul style="list-style-type: none"> <li>Women shall prevent and combat the use of domestic violence.</li> </ul>	<p>law. It is critical that serious penalties are specified for domestic violence to ensure that it is seriously regarded. If the police are to be used as mediators there should be mandatory gender training provided.</p> <p>5. Articles 28-37 establish a number of mechanisms to support victims of domestic violence which is a positive and important measure in line with recommendations from the CEDAW Committee.</p> <p>6. Article 42 which places a responsibility upon women to prevent and combat domestic violence is discriminatory and should be removed. It fails to recognise the power imbalance between men and women and implies that women can prevent such violence.</p> <p>For a detailed discussion on the elements necessary for good practice GEL in the area of gender violence please refer to Part 2, 2.2.</p>
Stereotyping of Women in Media	No media provision is included.	For a detailed discussion on the elements necessary for good practice GEL in the area of media please refer to Part 2, 2.3.
Exploitation of Prostitution of Women	<p><b>Prevention</b></p> <p><b>Law on the Development and Protection of Women 2004.</b></p> <p><b>Article 26.</b></p> <ul style="list-style-type: none"> <li>(2). Party organisations, State, National Construction Front, mass organisations, social organisations shall disseminate information about trafficking. (3). The government will establish a committee to prevent and combat trafficking in women and children.</li> </ul> <p><b>Decree on the Implementation of the Law on the Development and Protection of Women 2006.</b></p> <p><b>Article 31.</b></p> <ul style="list-style-type: none"> <li>National Committee for Combating Trafficking in Persons shall establish a plan to combat trafficking coordinate with neighbouring countries, conduct research and draft proposals for law reform.</li> </ul> <p><b>Article 36.</b></p> <ul style="list-style-type: none"> <li>Local administrations shall educate citizens in the dangers of trafficking.</li> </ul> <p><b>Prosecution</b></p> <p><b>Law on the Development and Protection of Women 2004.</b></p> <p><b>Article 24.</b></p> <ul style="list-style-type: none"> <li>(1). Trafficking in women means any act committed in the recruitment, harbouring, transportation of women within or across national borders by means of deception, threats, use of force, debt bondage or other forms for the purpose of labour exploitation, prostitution, pornography, substantive objects</li> </ul>	<p><b>Prevention</b></p> <p>1. Article 26 of the Law provides for the establishment of a Committee to work on the prevention of trafficking and places a mandatory obligation on Party organisations, the State, National Construction Front, mass organisations, social organisations to disseminate information about trafficking. Article 31 of the Implementation Decree obligates the Committee to establish a plan, conduct research and draft proposals for law reform. Whilst the GEL would be strengthened by more detail on the specific research to be conducted, for example, to gather data on both cross-border and internal trafficking and an obligation to develop and deliver mass media campaigns and education about trafficking, these are nevertheless good practice provisions.</p> <p><b>Prosecution</b></p> <p>1. Article 24 provides a good practice comprehensive definition of trafficking designating both trafficking and complicity in trafficking as criminal offences.</p> <p>2. Serious penalties are prescribed by the Law in accordance with the CEDAW Committee's recommendations.</p> <p><b>Protection.</b></p> <p>1. Article 25 of the Law provides victims of trafficking with comprehensive rights including safety, privacy, medical assistance, training, repatriation and compensation. Importantly,</p>

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	<p>that contradict national fine culture and tradition, illicit removal of human organs or to illegally gain other benefits. <b>(2)</b>. If under 18 any act above even without deception, threat or use of force or debt bondage. <b>(3)</b>. Providing ideas, property, transportation, concealment or destroying evidence of trafficking constitutes complicity in trafficking. <b>(4)</b>. Trafficking is a criminal act.</p> <p><b>Article 27.</b></p> <ul style="list-style-type: none"> <li>Police upon notification of an act of trafficking shall investigate and send the case to prosecutors if there is sufficient evidence. Confidentiality and safety of victims and witnesses will be maintained.</li> </ul> <p><b>Article 49.</b></p> <ul style="list-style-type: none"> <li>Serious penalties for a range of trafficking offences from 5 years imprisonment to capital punishment if trafficking causes permanent disability or loss of life. Large fines are also imposed.</li> </ul> <p><b>Protection</b>  <b>Law on the Development and Protection of Women 2004.</b></p> <p><b>Article 25.</b></p> <ul style="list-style-type: none"> <li>Victims have the right to ask for help from nearby people, report to officials, testify and present evidence, request compensation and rehabilitation, to protection and care to ensure personal safety, not to be prosecuted and detained on charges relating to the act of trafficking such as prostitution or illegal immigration, not to be photographed, filmed or broadcast, to receive suitable assistance such as shelter, food, clothes, medical service, vocational training, repatriation and others.</li> </ul> <p><b>Article 26.</b></p> <ul style="list-style-type: none"> <li><b>(1)</b>. Individuals and organisations shall report any trafficking information to authorities and give assistance to victims. <b>(2)</b>. Party organisations, State, National Construction Front, mass organisations, social organisations shall disseminate information about trafficking. <b>(3)</b>. The government will establish a committee to prevent and combat trafficking in women and children.</li> </ul> <p><b>Article 28.</b></p> <ul style="list-style-type: none"> <li><b>(1)</b>. During criminal proceedings police must deliver to victims medical and counselling assistance and safe shelter. <b>(2)</b>. Special treatment to children and create the conditions for return to family and society. <b>(3)</b>. For Lao victims abroad the Lao embassy will provide protection, assistance and repatriation. <b>(4)</b>. Foreign victims will co-ordinate with victims' country to repatriate.</li> </ul>	<p>Article 25 recognises victims of trafficking as victims of crime and provides them with immunity from criminal prosecution for prostitution or illegal entry. This is a strong positive provision.</p> <p>2. Article 28 compels the police to provide assistance to victims and establishes a process for repatriation. Repatriation is an important part of the protection of victims.</p> <p>3. Article 36 of the Implementation Law recognises that victims may not receive assistance upon returning home and that family members may have participated in their trafficking. Although it is unclear how successful this directive will be, it is nevertheless an important measure to ensure the safety of victims.</p>

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
	<p><b><i>Decree on Implementation of the Law on the Development and Protection of Women 2006.</i></b>  <b>Articles 25-37.</b></p> <ul style="list-style-type: none"> <li>Places various responsibilities on a range of Lao agencies, Ministries and private organisations to assist in the protection of victims.</li> </ul> <p><b>Articles 36.</b></p> <ul style="list-style-type: none"> <li>Lao Women's Union and the Labour and Social Welfare section shall search for families and parents to explore conditions for receiving victims and continue monitoring after sending.</li> </ul>	
Political and Public Life	<p><b><i>Law on the Development and Protection of Women 2004.</i></b>  <b>Article 14.</b></p> <ul style="list-style-type: none"> <li>The State shall ensure the enjoyment of equal political rights by men and women such as: the right to vote and to run for election, to participate in the conduct of public affairs and decisions on questions of national importance, to be appointed to the appropriate positions at all levels in the organisations of party, State, Lao Front for National Construction, mass and social organisations. Society and families shall create conditions for women to implement the rights above.</li> </ul>	<ol style="list-style-type: none"> <li>Article 14 represents a strong statement of formal equality guaranteeing equal political rights to women in accord with Article 7(a) of CEDAW.</li> <li>Article 14 implies that more than formal equality must be sought by the State since it guarantees the enjoyment of equality in particular, to be appointed to positions at all levels of public and private organisations. The provision would be strengthened however by a clear statement that substantive equality must be achieved (or at least worked towards).</li> <li>The inclusion of a temporary special measures provision to facilitate substantive equality in public and political life for women would strengthen the GEL.</li> <li>No mechanism is identified by which families and society should support women's political equality which leaves this part of Article 14 largely symbolic.</li> </ol>
Nationality and Citizenship	No nationality provision is included.	For a detailed discussion on the elements necessary for good practice GEL in the area of nationality and citizenship please refer to Part 2, 2.6.
Education	<p><b><i>Law on the Development and Protection of Women 2004.</i></b>  <b>Article 13.</b></p> <ul style="list-style-type: none"> <li>Women and men shall have an equal right to develop themselves.</li> </ul> <p><b>Article 11.</b></p> <ul style="list-style-type: none"> <li>Development includes the educational development of women which is creating the conditions for women to receive basic education on natural or social sciences, with the aim of increasing their knowledge and capability in all aspects and promoting their abilities.</li> </ul> <p><b>Article 17.</b></p> <ul style="list-style-type: none"> <li>All children shall have equal rights to receive education as specified in the laws.</li> </ul> <p><b><i>Decree on Implementation of the Law on the Development and Protection of Women 2006.</i></b>  <b>Article 7.</b></p> <ul style="list-style-type: none"> <li>Families shall ensure that daughters and sons have an equal education without any discrimination. Local administrative</li> </ul>	<ol style="list-style-type: none"> <li>Article 13 of the Law provides that women shall have an equal right to develop themselves and Article 11 defines development as providing the conditions to enable women to receive 'basic education on natural or social services'. These provisions could be strengthened by identifying how women should develop themselves in the area of education. The use of the term 'basic' education is also limiting.</li> <li>Article 17 states that all children shall have equal rights to receive education but the phrase 'as specified in the laws' weakens the provision. The GEL should set the standards and benchmarks rather than deferring to already existing laws. Thus the provision would be strengthened by stating that all children shall have equal access to free compulsory education, that they shall receive compulsory sex education at school, that there shall be no discrimination in schools on the basis of gender, that girls shall not be expelled for pregnancy, that the curricula will be free from sex-role stereotypes, and that girls will</li> </ol>

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
	<p>authorities shall encourage and promote more widespread enrolment by women in different schools including general and vocational education.</p> <p><b>Article 8.</b></p> <ul style="list-style-type: none"> <li>The Education sector shall guarantee women the same opportunities as men in general, high, technical and vocational education, vocational training and continuous education, choice of field of study, scholarships and non paid education; shall ensure systems of education reflect equality between men and women including teaching curriculum, student books and other educational materials; shall modify traditional practices and socio-cultural beliefs that hinder the educational development of women and their rights to education; shall respond to the specific needs of marginalised women including appropriate measures to reduce the rates of illiteracy or to provide formal or non-formal education to women.</li> </ul> <p><b>Article 13.</b></p> <ul style="list-style-type: none"> <li>The State shall issue measures to guarantee equality between men and women based on analysis of the situation and conditions of women in education.</li> </ul>	<p>have equal opportunity to participate in sports and leisure activities in schools.</p> <p>3. Article 7 of the Implementation Decree requires families to ensure daughters have an equal education. Providing rewards to parents who do send girls to school would strengthen this provision. Article 7 also imposes an obligation on administrative authorities 'to encourage and promote' more widespread enrolment by women. Although mandatory, the wording could be strengthened to 'shall ensure'. The provision would also be strengthened by clarifying how the authorities shall achieve greater enrolment.</p> <p>4. Article 8 of the Implementation Decree is the strongest provision in relation to education in the two Laws. It places a mandatory obligation on the education sector to guarantee women the same opportunities in many of the areas required by Article 10 of CEDAW, including the same opportunities in all levels of education and a guarantee that curriculum and texts shall be free of sex-role stereotypes. The provision would be further strengthened by also guaranteeing that all educational institutions shall be free from sexual harassment, and guaranteeing women equal access to sporting and leisure activities.</p> <p>5. Articles 8 and 13 of the Implementation Decree place a positive obligation on the State to introduce special measures in education particularly for marginalized women. Article 13 also requires the State to assess the <i>de facto</i> situation of women and to base measures on those results. Whilst the provision would benefit from the identification of the forms such measures could take this is a very strong provision.</p>
Employment	<p><b>Law on the Development and Protection of Women 2004.</b></p> <p><b>Article 19.</b></p> <ul style="list-style-type: none"> <li>Women have the following rights and interests in employment. Safe working conditions and environment, social welfare, remuneration and other benefits as stipulated in regulations and laws.</li> </ul> <p><b>Article 15.</b></p> <ul style="list-style-type: none"> <li>The State shall promote the rights of women to engage in all types of business and service which are permitted by the laws, the right to choose any career and employment and receive remuneration. Women who have the same positions, functions, employment, and responsibility as men shall receive remuneration and other benefits on an equal benefit with men.</li> </ul>	<p>1. Article 19 of the Law guarantees women safe working conditions, social welfare and remuneration and other benefits, although it does not guarantee equality in these areas. Article 15 does, however, guarantee women equality in remuneration and 'other benefits'. The GEL would be strengthened by a clear guarantee of equality in relation to all working conditions and with the inclusion of a provision for equal treatment in relation to work of equal value. For a detailed discussion of equal treatment in relation to work of equal value please refer to Part 2, 2.8.5.</p> <p>2. Articles 9 and 10 of the Implementation Decree places positive obligations on the State and the Labour and Social Welfare sector to develop women's skills and to encourage and promote women into more jobs at all levels. Whilst this is</p>

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
	<p><b>Article 22.</b></p> <ul style="list-style-type: none"> <li>When a woman gives birth or is sick her husband shall have a right to leave in order to care for his wife and children.</li> </ul> <p><b>Decree on Implementation of the Law on the Development and Protection of Women 2006.</b></p> <p><b>Article 9.</b></p> <ul style="list-style-type: none"> <li>The State and society shall expand vocational schools and develop women's work skills including ethics and encourage and promote women so that they gain more jobs in the public and private sector including procuring international and domestic labour markets for women.</li> </ul> <p><b>Article 10.</b></p> <ul style="list-style-type: none"> <li>Labour and Social Welfare shall develop the skills and capacities of women to enable them to have wider job opportunities, run training programmes on sex-role stereotypes and customs that hinder women's opportunities in vocational and skill development and encourage the private sector to run vocational and skill development programmes.</li> </ul> <p><b>Article 22.</b></p> <ul style="list-style-type: none"> <li>When a woman gives birth or is sick her husband shall have a right to leave in order to care for his wife and children.</li> </ul>	<p>a positive measure it lacks the detail required to ensure that the objectives of the provision are met. How will the State develop women's work skills? What is the timetable for such programs? How will the outcomes be measured?</p> <p>3. Article 10 requires the Labour and Social Welfare to run training programmes on sex-role stereotypes. Whilst this is a positive measure, it would be strengthened with the inclusion of detail of who the recipients of the programmes will be, clear objectives and a timeline for implementation.</p> <p>4. The Law and the Implementation Decree would be further strengthened by explicit guarantees of paid maternity leave (although note Article 22 which provides for paternity leave), childcare and flexible work conditions, the inclusion of comprehensive anti-discrimination provisions including a prohibition on discriminatory advertising, the inclusion of sexual harassment provisions and the inclusion of temporary special measures provisions requiring a systematic appraisal of the <i>de facto</i> situation of women in employment and the introduction of measures in public and private sectors in response.</p> <p>For a detailed discussion on further elements necessary for good practice GEL in the area of employment please refer to Part 2, 2.8.</p>
Equality in Access to Health Care	<p><b>Law on the Development and Protection of Women 2004.</b></p> <p><b>Article 22.</b></p> <ul style="list-style-type: none"> <li>The State shall ensure health care for mothers and children. The family has an obligation to ensure the good health of mothers and children.</li> <li>Women shall have a right to health care, health examination and vaccination according to the regulations, especially infant girls, the young and productive women including women in remote areas.</li> <li>A doctor or midwife shall be present during delivery. It is forbidden for individuals or organisations to force a woman to give birth in the forest or in an isolated place or to harm women or children because of superstition or for any other reason.</li> <li>In addition to the above rights women have other rights and interests as stipulated in regulations and laws.</li> </ul> <p><b>Decree on the Implementation of the Law on the Development and Protection of Women 2006.</b></p> <p><b>Article 3.</b></p> <ul style="list-style-type: none"> <li>The government, society and families shall provide counsel, basic health care education,</li> </ul>	<p>1. Article 22 places a positive obligation on the State and the family to 'ensure' health care for mothers and children. The Law would be strengthened by guaranteeing equal access to health care including information and education. It is unclear how the family shall ensure the health care of women and children and the GEL would be strengthened by sanctions for particular failures.</p> <p>2. Article 22 provides that a doctor or a midwife shall be present during deliveries and prohibits forcing women to give birth in isolated places. Whilst this is an important provision relevant to the particular context of Lao PDR it would be strengthened by a guarantee, in accord with GR 24 to access to comprehensive reproductive health services including a legal right to safe abortion.</p> <p>3. Article 3 of the Implementation Decree places an obligation on government, society and families to provide education and nutrition and to encourage women's access to health services. This is a weak provision since although it places a positive obligation on government the substance of the obligation is not high and there is no detail as to what the</p>

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
	<p>nutrition, favourable conditions and shall encourage women's access to health services such as: medical checkups as scheduled, vaccination as specified in the regulations, medical treatment and rest whilst sick, giving birth, or miscarrying, and shall encourage access to sport and exercise, healthy food and good living environment.</p>	<p>government must achieve and no guidance on how society and families might fulfil the obligation.</p> <p>4. The Law and the Implementation Decree would be additionally strengthened with the inclusion of anti-discrimination provisions prohibiting all discrimination against girls and women in any aspect of health care, positive obligations on the State to undertake research to assess the health needs of women and children, a prohibition on coercive medical procedures, specifically non-consensual sterilizations and mandatory pregnancy testing, mandatory protocols for all health-related services to prevent the sexual abuse of children, and temporary special measures to address the health needs of vulnerable groups of women, including women exploited in prostitution and refugee women.</p> <p>For a detailed discussion on elements necessary for good practice GEL in the area of health please refer to Part 2, 2.9.</p>
Equality in Social and Economic Benefits	<p><b>Law on the Development and Protection of Women 2004.</b></p> <p><b>Article 16.</b></p> <ul style="list-style-type: none"> <li>• <b>(1).</b> The State shall promote women and create the conditions for their enjoyment of equal cultural and social rights with men such as: the right to take part in activities of socio-culture, art, sport, education, public health, research, socio-cultural creation, science, technique and technology. <b>(2).</b> Society and families shall create conditions and opportunities for women to participate in all socio-activities identified above.</li> </ul>	<p>1. Article 16 obligates the State to 'promote' women and to create the conditions so that women can enjoy equal cultural and social rights. Society and families shall also create conditions and opportunities for women to participate in socio-activities such as sport, education, public health, research, socio-cultural creation, science, technique and technology. The provision would be strengthened with detail as to specifically what the State is required to do, how it will do it, a timetable and a system of measuring and monitoring results. It is unclear how society and families will create conditions for women to participate in activities.</p> <p>2. The Law would be additionally strengthened with the inclusion of a guarantee that women have an equal right to all forms of family benefits, that women have an equal right to bank loans, mortgages and credit, an equal right to own, enjoy and administer property, including a prohibition on discrimination in access to housing.</p> <p>For a detailed discussion on the further elements necessary for good practice GEL in the area of equality in social and economic benefits please refer to Part 2, 2.10.</p>
Rural Women	No provision on rural women is included.	For a detailed discussion on the elements necessary for good practice GEL in relation to rural women please refer to Part 2, 2.11.

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
Equality Before the Law and in Civil Matters	No provision on equality before the law and in civil matters is included.	For a detailed discussion on the elements necessary for good practice GEL in the area of civil equality please refer to Part 2, 2.12.
Equality in Marriage and Family Relations	<p><b>Law on the Development and Protection of Women 2004.</b></p> <p><b>Article 17.</b></p> <ul style="list-style-type: none"> <li>• The State and society shall promote and protect the equality of women and men in the family. Women and men shall have equal rights in all matters of familial relationships.</li> <li>• At 18 women have the right to a family and to choose their husband.</li> <li>• Married women have the right to choose the family name of their husband or to keep their own.</li> <li>• Women have equal rights with their husband regarding common assets.</li> <li>• Spouses shall have equal rights in discussion, decision-making, choosing place of residence, employment, having children and other matters. Spouses must love, respect and support each other, bring up and educate children together.</li> <li>• All children shall have equal rights to inherit heritage and to receive education as specified in the laws.</li> </ul> <p><b>Article 20.</b></p> <ul style="list-style-type: none"> <li>• If married woman is pregnant or has a child under one her husband cannot request divorce.</li> <li>• In case of divorce the wife has priority in child custody.</li> <li>• Upon the end of a <i>de facto</i> relationship or when a woman has a child outside of marriage she has the right to maintenance for herself and for the child until the child is 18.</li> <li>• A pregnant woman has the right to represent her unborn child to inherit and to manage heritage in the event of a heritage division.</li> </ul>	<ol style="list-style-type: none"> <li>1. Article 17(1) guarantees women equality in the family in accord with Article 16 of CEDAW.</li> <li>2. Article 17(2) guarantees women the right to choose their husband at 18 which is a positive provision in accord with Article 16(b), although the provision would be strengthened with an explicit guarantee of full and free consent.</li> <li>3. Article 17(3) guarantees women the right to choose their family name in accord with Article 16(g) of CEDAW.</li> <li>4. Article 17(4) guarantees women equal rights regarding common assets. Whilst this does not guarantee the recognition of non-financial contributions at property division it is a positive inclusion.</li> <li>5. Article 17(6) and Article 20(4) provide for equal inheritance, although the provision would benefit from greater clarity.</li> <li>6. Article 20 provides that a man cannot request a divorce if his wife is pregnant and if they have a child under one. Whilst this provision is aimed at protecting women, a more effective approach is to guarantee women full support for themselves and children, including occupation of the family home, upon divorce or separation.</li> <li>7. Article 20(2) creates a maternal presumption in custody disputes, however, the CEDAW Committee has recommended that the best interests of the child should be paramount.</li> <li>8. Article 20(3) protects women in <i>de facto</i> relationships and women who have children outside of relationships and is a positive good practice provision. The provision would be strengthened by identifying the criteria that should be applied in the calculation of maintenance such as needs, means of both parties and assets.</li> </ol> <p>For a detailed discussion on the further elements necessary for good practice GEL in the area of marriage and family relations please refer to Part 2, 2.13.</p>

## Philippines : Magna Carta for Women (draft)

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
Equality and Non-discrimination	<p><b>Magna Carta for Women (draft).</b>  <b>Section 2.</b></p> <ul style="list-style-type: none"> <li>The State recognises the role of women in nation building and shall ensure the substantive equality of women and men. It shall pursue equal opportunities and access as well as ensure equal results and outcomes for women and men.</li> <li>It condemns discrimination against women in all its forms and will pursue by all appropriate means and without delay a policy of eliminating discrimination against women in accord with CEDAW. The State shall accord to women the rights, protections and opportunities available to every member of society.</li> <li>The State recognises and affirms women's rights as human rights and shall intensify its efforts to respect, protect and fulfil all fundamental rights and freedoms of women especially in the marginalised sectors of society to guarantee their economic, social and cultural well-being without distinction or discrimination on account of class, age, sex, gender, sexual orientation, language, ethnicity, culture, religion, ideology, disability, education or status.</li> </ul>	<ol style="list-style-type: none"> <li>Section 2 contains a very strong guarantee of equality which expressly includes substantive equality and places a positive obligation on the State to achieve it.</li> <li>The definition of discrimination is in accord with the definition in Article 1 of CEDAW. It does not however expressly include direct and indirect discrimination as recommended by the CEDAW Committee. A comprehensive anti-discrimination provision explaining fully the concepts of direct and indirect discrimination and their application would strengthen the Magna Carta.</li> <li>Section 2 recognises a comprehensive array of intersections of discrimination which lead to multiple discriminations against women. Whilst this is a very positive measure it would be strengthened by the addition of the phrase 'or any other characteristic' in order to provide a discretion for additional intersections such as HIV status.</li> <li>Section 2 is contained in a section entitled 'Policy' and is couched (in places) in general terms such as 'condemns' 'shall pursue' 'shall intensify its efforts', rather than prohibiting discrimination by any person, private institution public authority or their representatives in accord with Article 2(d) &amp; (e) of CEDAW.</li> </ol>
Gender-Based Violence	<p><b>Magna Carta for Women (draft).</b>  <b>Section 4 A.</b></p> <ul style="list-style-type: none"> <li>The State shall ensure that all women shall be protected from all violence as provided for in existing laws. The prevention of gender-based violence and the protection of women from such violence shall be given priority by government agencies including the recruitment of women in the police-force, forensics and medico-legal services and other victim focused services.</li> </ul> <p><b>Section 4 A(1).</b></p> <ul style="list-style-type: none"> <li>Every province and city shall establish community based women's crisis centres to provide women victims of violence with counselling, legal assistance, temporary shelter and medical services. Local government units and NGOs shall co-ordinate to strengthen crisis centres. NGO run crisis centres with appropriate accreditation and that comply with basic criteria shall be given assistance by LGUs.</li> </ul> <p><b>Section 4 A(2).</b></p> <ul style="list-style-type: none"> <li>Women have the right to protection and security in periods of armed conflict and militarization.</li> </ul>	<ol style="list-style-type: none"> <li>Article 4A obligates the State to protect women from all violence. Violence is comprehensively and effectively defined in s 3F.</li> <li>The Magna Carta, however, lacks the specificity required to effectively protect women from gender-based violence. Section 4A states 'as provided for in existing laws'. The Magna Carta would be further strengthened by identifying the benchmarks required in the domestic legislation.</li> <li>Article 4 A(1) creates a mandatory obligation on the State to establish crisis centres in all provinces and cities. This is a strong and useful provision and in accord with the CEDAW Committee's recommendations. It would be strengthened however with a clear statement of what assistance LGUs shall provide to the crisis centres, e.g. sufficient funding.</li> <li>Women typically experience gender-based violence during periods of conflict and crisis. Thus, although s 4A(2) and 4H(1) would be strengthened with more specific detail, it is nevertheless an excellent provision recognising the impact of armed conflicts on women in particular.</li> </ol>

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
	<p><b>Section 4H(1).</b></p> <ul style="list-style-type: none"> <li>The State shall protect women from gender-based violence during disasters, calamities and other crisis situations.</li> </ul> <p><b>Section 3F.</b></p> <ul style="list-style-type: none"> <li>Violence against women refers to any act of gender-based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty in public and private life. It encompasses but is not limited to:               <ul style="list-style-type: none"> <li>(a) physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.</li> <li>(b) physical, sexual and psychological violence occurring within the general community including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and prostitution, physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.</li> </ul> </li> </ul>	<p>For a detailed discussion on the elements necessary for good practice GEL in the area of gender violence please refer to Part 2, 2.2.</p>
Stereotyping of Women in Media	<p><b>Magna Carta for Women (draft).</b></p> <p><b>Section 34.</b></p> <ul style="list-style-type: none"> <li>The State shall formulate policies and programs for the advancement of women in collaboration with media-related organisations from the private sector. It shall pursue through the strategic use of mass media consciousness-raising in the general public to recognise the dignity of a woman, her role and contribution to family, community and society.</li> <li>Programming policies shall appropriately present women's need, issues and concerns in movies, television shows, advertisements and print media with the support of watch groups, media professional associations and women's organisations.</li> <li>Gender sensitivity programs for all media practitioners including producers, directors, managers, journalists, news editors, news reporter, publishers as well as those in the movie and advertising industries shall be organised to encourage the use of non stereotyped, balanced, diverse and positive images of women in media. The use of gender-fair language shall also be encouraged.</li> </ul>	<ol style="list-style-type: none"> <li>Section 34(1) is broadly worded requiring the State to pursue through mass media, consciousness-raising in relation to the dignity of women, their role and contributions to the family, community and society. The wording in this section appears to be contrary to Article 5 of CEDAW, which requires the breakdown of sex roles and stereotypes. Instead, the section implies that women's current role in family and society should be highlighted.</li> <li>Section 34(2) does not specifically discuss gender equality. Instead it discusses 'needs, issues and concerns' of women which could be interpreted in a range of different ways and not necessarily in line with gender equality.</li> <li>Section 34(3) provides for all media persons to attend gender sensitivity training. Specifically and commendably, unlike the two previous sections, the workshops are aimed at encouraging non-stereotyped and positive images of women.</li> <li>It is unclear how these workshops will be run, who will run them, how they will be funded and whether participation will be mandatory. Such clarification would strengthen the provision.</li> <li>Whilst s 34(4) is a positive measure, it would</li> </ol>

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
	<ul style="list-style-type: none"> <li>The MTRCB shall revise its rules and regulations to discourage unfair or derogatory portrayal of women in both media and film</li> </ul>	be strengthened with a more strongly worded approach. Rather than 'discourage' unfair or derogatory portrayal of women in both media and film such portrayal should be prohibited.
Exploitation of Prostitution of Women	No exploitation of women in prostitution provision is included.	For a detailed discussion on the elements necessary for good practice GEL in the area of exploitation of women in prostitution please refer to Part 2, 2.4.
Political and Public Life	<p><b>Magna Carta for Women (draft).</b></p> <p><b>Section 4B 1.</b></p> <ul style="list-style-type: none"> <li>National and local governments shall ensure the equitable distribution of power and decision-making at all levels of the bureaucracy               <ol style="list-style-type: none"> <li>Appointive positions in national and local governments at all levels shall be open to all qualified women regardless of how many elected women hold positions in local political units.</li> <li>Women shall have equal opportunity for promotion in all government positions.</li> <li>Every government agency shall conduct gender equality training for all positions. It shall provide equal access to managerial, entrepreneurial, technical and leadership training to women in the public service.</li> <li>Every government agency shall provide women with equal access to scholarships to develop their potential.</li> </ol> </li> </ul> <p><b>Section 4B 3.</b></p> <ul style="list-style-type: none"> <li>All political parties shall encourage the recruitment of 33% women members and encourage the representation of women in internal policy-making structures, appointive and electoral nominating processes. They shall work towards equal representation of women in their official candidates for local and national positions.</li> </ul> <p><b>Section 4B 4.</b></p> <ul style="list-style-type: none"> <li>To ensure the participation of women in all levels of development planning and program implementation, all development councils from regional, provincial, municipal and barangay levels shall include a representative from the women's sector. Women's groups shall also be represented in national and local special and decision-making bodies.</li> </ul>	<ol style="list-style-type: none"> <li>Section 4B 1 provides a process for giving women access to positions of power at all levels of government. This is an innovative approach to gender equality in public life since rather than focusing merely on parliamentary representation it focuses on all levels of government. The wording throughout the provision (equitable and equal opportunity) implies substantive and not merely formal equality which is positive although the express use of the term substantive equality would clarify and strengthen the provision.</li> <li>Section 4B 3 requires political parties to encourage the recruitment of 33% of women in aspects of their internal structure. Although 33% is less than an equal representation it is a reasonable starting figure. The wording 'encourage', however, could be strengthened by a stronger term such as achieve (within a specified time period).</li> <li>Section 4B 3 also requires political parties to 'work towards' equal representation of women in official candidates in local and national positions. This is a good practice measure and although the phrasing 'work towards' could be strengthened, this is nevertheless a positive start.</li> <li>Section 4B 4 requires a representative from the women's sector at all levels of governance. This is a very good provision which could be strengthened by specifically detailing how this representative would be chosen and their role on the council.</li> <li>The Magna Carta would be strengthened with a guarantee of the right to vote and the right to stand for election. Although these may be already guaranteed in other domestic law they are important foundational rights.</li> <li>The Magna Carta would be strengthened with a temporary special measures provision requiring an assessment of women's participation in political processes and positive action to remedy any <i>de facto</i> inequalities.</li> </ol>
Nationality and Citizenship	No nationality provision is included.	For a detailed discussion on the elements necessary for good practice GEL in the area of national and citizenship please refer to Part 2, 2.6.

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
Education	<p><b><i>Magna Carta for Women (draft).</i></b>  <b>Section 4E.</b></p> <ul style="list-style-type: none"> <li>Women shall receive equal access to quality education, scholarships, skills training and economic resources regardless of differences in socio-cultural practices and beliefs as well as religious and political affiliations in order to develop their self-reliance and to participate fully in all aspects of life.</li> </ul> <p><b>Section 32.</b></p> <ul style="list-style-type: none"> <li>(1). The State shall pursue measures to eliminate all forms of discrimination against girl-children in education. (3). Equal access of Macro and indigenous girl children in the Madaris, in the schools of living culture and traditions, and the regular schools shall be developed. (4). Gender-sensitive curriculum, including legal literacy books and curriculum in the Madaris and school of living culture and traditions shall be developed. (5). Sensitivity of regular schools to particular Moro and indigenous practices, such as fasting in the month of Ramadan, choice of clothing (including the wearing of hijab), haram food shall be ensured.</li> </ul> <p><b>Section 36.</b></p> <ul style="list-style-type: none"> <li>Education-related institutions both public and private, shall integrate a gender and development perspective into the school curricula. They shall establish mechanisms, systems and procedures for the effective implementation of the gender-responsive curricula.</li> </ul>	<ol style="list-style-type: none"> <li>Section 32 places a positive obligation on the State to introduce measures to eliminate discrimination against girl-children in education. This is a strong provision that includes targeted measures for marginalised girls e.g., indigenous girls, and also provides for the development of gender-sensitive curricula in the Madaris and in the schools of living culture and traditions, in accord with Article 10(c) of CEDAW. It is weakened, however, by its narrow scope as it does not target rural girls or authorise special measures for women generally.</li> <li>Section 36 places a mandatory duty on education institutions to integrate a gender and development perspective into the curricula. This provision would be strengthened by a requirement to integrate the principles of gender equality (rather than gender and development) including removing sex-role stereotypes from the curricula and courses.</li> <li>Section 4E states that women shall receive equal access to quality education and scholarships. The section would be strengthened by placing an obligation on either the State and/or educational authorities to achieve equal access and to include benefits as well as access.</li> <li>The Magna Carta would be strengthened by first, including a broad anti-discrimination provision that protects all girls from expulsion from school on the grounds of pregnancy and all women and girls from direct and indirect discrimination on the grounds of multiple intersections of discrimination, second, by prohibiting sexual harassment in all educational facilities, and third, obligating the State and educational institutions to ensure equal opportunity to sport and leisure activities to girls in educational facilities.</li> </ol> <p>For a detailed discussion on the additional elements necessary for good practice GEL in the area of education please refer to Part 2, 2.7.</p>
Employment	<p><b><i>Magna Carta for Women (draft).</i></b>  <b>Section 4D(1).</b></p> <ul style="list-style-type: none"> <li>(a). The employer especially in hazardous workplaces shall provide the necessary protection and protective equipment and facilities to each worker depending on the nature of the work. (b). The employer shall establish appropriate facilities in order to promote their efficiency and privacy such as proper seats, separate toilet rooms, dressing rooms, day-care centres and breastfeeding stations in the workplace. The employer shall provide railings and other assistive devices for</li> </ul>	<ol style="list-style-type: none"> <li>Section 4D provides for appropriate facilities in all workplaces to accommodate any special needs of women including breast feeding stations, separate toilets and assistive devices for women with disabilities. The provision, whilst positive and aimed at substantive equality, is very specific and other important protections in employment are not included as discussed below.</li> <li>Section 4I(2) prohibits discrimination against women in recruiting, hiring, dismissal retrenchment, giving of assignments, benefits and other conditions of employment. Whilst</li> </ol>

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
	<p>women with disabilities. <b>(c)</b>. The State and the employer shall guarantee women's protection from banned or harmful chemicals and toxic wastes.</p> <p><b>Section 41(2).</b></p> <ul style="list-style-type: none"> <li>It shall be the right of every woman to be free from any form of discrimination with respect to recruiting, hiring, promotion, dismissal, retrenchment, giving of assignments, benefits and other conditions of employment. They shall be informed of their rights under existing law and of grievance processes. They shall not be subjected to coercive recruitment, bonded labour or other debt servitude. They shall be protected from sexual harassment.</li> </ul> <p><b>(a)</b>. Women in the workforce, regular, seasonal or contractual shall be entitled to at least minimum wage or wage levels prescribed under existing laws. <b>(c)</b>. A Women's Livelihood Resource Centre shall be established in every province. LGU in coordination with government agencies shall develop livelihood and entrepreneurial training programs to increase women's skills and encourage the participation of the private sector.</p> <p><b>Section 25.</b></p> <ul style="list-style-type: none"> <li><b>(6)</b>. Equal wages for the same kind of work <b>(7)</b>. Support services that will enable women to balance family obligations and work responsibilities <b>(8)</b>. Membership in unions regardless of status and place of employment <b>(10)</b>. Freedom from sexual harassment <b>(13)</b>. Protection from discrimination in wages, conditions of work and employment opportunities in host countries <b>(14)</b>. Protection from all forms of abuse and exploitation by employers. The State shall address the causes of out-migration by developing local employment and other economic opportunities for women, by addressing violence against women and forced involuntary displacement of local women. <b>(15)</b>. Employment opportunities for returning women migrant workers taking into account their skills and qualifications. The State shall promote the skills and entrepreneurship development of returning migrant workers.</li> </ul>	<p>the inclusion of an anti-discrimination provision is positive, the provision could be direct and indirect discrimination, including discrimination on the grounds of other intersections particularly maternity, marital status and family responsibilities.</p> <ol style="list-style-type: none"> <li>Section 41(2) states that women shall be free from sexual harassment. Whilst this is a positive inclusion (and not included in many GEL worldwide), it would benefit from a clear and comprehensive definition of sexual harassment, a clear procedure for lodging and hearing complaints and specified remedies. Alternatively the GEL could direct the State to introduce legislation to meet identified benchmarks.</li> <li>Section 41(2)(c) provides for a Women's Livelihood Resource Centre to be established to increase women's skills. Whilst this is a positive initiative, it lacks the specificity to be effective. It would be strengthened by clarification as to who will establish the Centre, what its objectives will be, how it will be funded, and a clear timetable of operation.</li> <li>Section 25(6) provides a number of protections for marginalised women. It is unclear, however, on whom the obligations are placed. If it is the State, this should be clearly identified. Further, some of the protections are not provided anywhere else in the Magna Carta, such as equal wages for the same kind of work, support services that will enable women to balance family obligations and work responsibilities, and the right to membership in unions regardless of status and place of employment. It is therefore unclear whether these protections apply only to women defined in the Magna Carta as marginalised women, or to all women.</li> <li>The Magna Carta would be strengthened by a more clearly-defined and succinct approach to employment. Whilst the Magna Carta provides strong employment protection for specific women in specific circumstances, some fundamental aspects of Article 11 of CEDAW are omitted. It should additionally include explicit guarantees of paid maternity leave and childcare and a guarantee of flexible work conditions (rather than the provision of support services), and the inclusion of temporary special measures provisions requiring a systematic appraisal of the <i>de facto</i> situation of women in the public and private sectors in response.</li> </ol> <p>For a detailed discussion on further elements necessary for good practice GEL in the area of employment please refer to Part 2, 2.8.</p>

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
Equality in Access to Health Care	<p><b><i>Magna Carta for Women (draft).</i></b>  <b>Section 4G.</b></p> <ul style="list-style-type: none"> <li>• The State shall at all times provide comprehensive gender responsive health services and programs covering all stages of a woman's life cycle and ensure access to maternal care services, nutrition package, reproductive health service, adolescent and youth health services, women and children protective services, screening and appropriate management of reproductive tract infections including sexually transmitted infections, HIV/ AIDS, breast and reproductive tract cancers and other gynaecological conditions, healthy lifestyle activities, care of the elderly, health services for women with disabilities, post-menopausal services.</li> <li>• The State shall provide women in all sectors with timely, complete and accurate information and education on all above-stated aspects of women's health, in government education and training programs. Education programs on reproductive health shall include (a) the important roles of parents in the total formation of children (b) the formation of a person's sexuality affirms human dignity (c) Natural and artificial family planning methods including fertility awareness.</li> </ul>	<ol style="list-style-type: none"> <li>1. Section 4G(1) obligates the State to provide 'comprehensive gender responsive' health services and programmes in a range of areas but focusing primarily on all aspects of reproductive health. The section does not, however, include a more general guarantee of equal access to all health-related services and a guarantee of access to family planning methods including safe legal abortions as required by the CEDAW Committee.</li> <li>2. Section 4G(2) obligates the State to provide women with timely, complete and accurate information on all aspects of women's health as defined in s 4G(1). This section does require information on family planning which is a positive measure. However without an obligation on the State to provide access to family planning facilities it will have limited value.</li> <li>3. The Magna Carta would be additionally strengthened in the area of health with the inclusion of anti-discrimination provisions prohibiting all discrimination against girls and women in any aspect of health care, positive obligations on the State to undertake research to assess the health needs of women and children, a prohibition on coercive medical procedures, specifically non-consensual sterilisations and mandatory pregnancy testing, mandatory protocols for all health related services to prevent the sexual abuse of children, and temporary special measures to address the health needs of vulnerable groups of women including women exploited in prostitution and refugee women.</li> </ol> <p>For a detailed discussion on the further elements necessary for good practice GEL in the area of health please refer to Part 2, 2.9.</p>
Equality in Social and Economic Benefits	<p><b><i>Magna Carta for Women (draft).</i></b>  <b>Section 4I.</b></p> <ul style="list-style-type: none"> <li>• Women shall have access to social security and housing (D) The State shall provide safety nets and take other necessary steps to offset the negative impact of globalization. It shall provide support for skills development for retrenched women workers, skills improvement for low-skilled women workers, entrepreneurship development and access to information on the labour market.</li> </ul> <p><b>Section 4J.</b></p> <ul style="list-style-type: none"> <li>• Women shall have equal rights to properties and resources, whether titled or not.</li> </ul> <p><b>Section 23.</b></p> <ul style="list-style-type: none"> <li>• Provides that the State shall ensure a range of rights to women and in particular</li> </ul>	<ol style="list-style-type: none"> <li>1. Section 4I guarantees women access to social security, s 25(8) provides that women shall have equal access to social security, particularly in cases of retirement, unemployment, sickness, disability, old age and other incapacity to work as well as the right to paid leave, and s 29(3) provides for alternative social security systems and health insurance programs for older women. This is a comprehensive response to Article 13(a) of CEDAW. It does not, however, require that social security be at any particular level; note also that s 25(8) refers to marginalised women and it is unclear whether this provision applies to all women. It is also unclear whether s 29(3) places the obligation to develop alternative social security systems and health insurance</li> </ol>

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
	<p>indigenous women in the agrarian sector including access to seed production, in the management and stewardship of fisheries and aquatic resources, and the management and enjoyment of land. It also provides that the State shall provide information, training and scholarships in all the above areas and develop technologies catering to women's needs, preferences and accessibility.</p> <p><b>Section 24.</b></p> <ul style="list-style-type: none"> <li>The State shall develop housing programs for women that are localized, simple, accessible, and secure and with viable employment opportunities in compliance with law. The State shall consult with women and involve them in community planning and development especially in matters pertaining to land use, zoning and relocation.</li> </ul> <p><b>Section 25.</b></p> <ul style="list-style-type: none"> <li>(1). Women shall be given equal access to formal sources of credit and capital. (2). Wider credit schemes and opportunities shall be made available to women. (3). Women shall be given an equal share of the produce of the farm, household and to savings and services of the organisation to which they belong. (4). Government agencies, financial institutions and units shall ensure that all their programs for credit, training, technical and marketing assistance and housing shall be made available to women workers in the informal economy on easy terms. (8). Women shall have equal access to social security, particularly in cases of retirement, unemployment, sickness, disability, old age and other incapacity to work as well as the right to paid leave.</li> </ul> <p><b>Section 29.</b></p> <ul style="list-style-type: none"> <li>(1). The Social Security System and the Philippine Health Insurance shall conduct membership campaigns among women in the marginalised sector in partnership with their organisations. (3). Alternative social security systems and health insurance programs for older women.</li> </ul>	<p>programs for older women on the State. Such clarifications would strengthen the GEL.</p> <ol style="list-style-type: none"> <li>Section 4I guarantees women access to housing and s 24 obligates States to develop housing programs for women that are localised, simple, accessible, secure and with viable employment opportunities in compliance with the law. These are positive provisions which would be generally strengthened by a prohibition on any discrimination in access to housing.</li> <li>Section 4I (D) requires the State to provide safety nets and other necessary steps to offset the negative impact of globalisation. This is a vague provision which does not set any particular benchmarks or place specific obligations on the State and is unlikely to be effective.</li> <li>Section 4J guarantees women equal rights to property and resources which is a strong provision in accord with Article 16(1)(h) of CEDAW.</li> <li>Section 25(1) guarantees women equal access to credit and capital, and an equal share of farm produce in accord with Article 13(b) of CEDAW.</li> <li>Section 25(2) states that wider credit schemes and opportunities shall be made available to women and whilst this is a positive provision it would be strengthened with clarification of whom the obligation is placed upon and a timetable for implementation.</li> <li>Section 29(1) obligates the Social Security System and Philippine Health Insurance to conduct membership campaigns among women in the marginalised sectors. Whilst this is a positive obligation it would be strengthened with a clear timetable.</li> <li>The Magna Carta would be strengthened with a more succinct approach to equality in economic benefits and inclusion of a guarantee of equality in social benefits such as recreation, sports and all aspects of cultural life.</li> </ol> <p>For a detailed discussion on the further elements necessary for good practice GEL in the area of equality in social and economic benefits please refer to Part 2, 2.10.</p>
Rural Women	<p><b>Magna Carta for Women (draft).</b></p> <p><b>Section 22.</b></p> <ul style="list-style-type: none"> <li>The State shall at all times provide for the protection, participation and empowerment of A. Women small farmers and rural workers B. Women Fishers G. Indigenous women H. Moro women.</li> </ul> <p><b>Section 26.</b></p> <ul style="list-style-type: none"> <li>Agricultural and environmental agencies shall</li> </ul>	<ol style="list-style-type: none"> <li>Section 22 places an obligation on the State to provide for the 'protection, participation and empowerment' of a variety of designated rural women. The provision would be strengthened by a requirement to achieve equality as well as 'protection, participation and empowerment'. The provision would also be strengthened by specifically identifying the objectives, the responsibilities of the State, the programmes it</li> </ol>

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
	<p>ensure women's participation in agriculture and sustainable use.</p> <p><b>Section 28.</b></p> <ul style="list-style-type: none"> <li>Obligates the State to provide for the promotion of women's participation in policy-making and processes in agricultural industry plans including 33% representation of women farmers, women fishers, indigenous women in various planning and management bodies.</li> </ul>	<p>is required to implement and the inclusion of timetables.</p> <ol style="list-style-type: none"> <li>Section 28 obligates the State to ensure the participation of women in the development and implementation of plans in the agricultural industry including a quota of 33% representation in the various bodies. Whilst not requiring equal representation this is a positive measure in accord with Article 14(2) of CEDAW recognising an incremental approach is sometimes necessary.</li> <li>The Magna Carta would benefit from a more succinct approach to rural women focusing on equality that includes guarantees of equal access to health care, equal benefits from social security, the right to equal access to economic opportunities including loans and credit, and the right to enjoy adequate living conditions.</li> </ol> <p>For a detailed discussion on the elements necessary for good practice GEL in relation to rural women please refer to Part 2, 2.11.</p>
Equality Before the Law and in Civil Matters	<p><b>Magna Carta for Women (draft).</b></p> <p><b>Section 4C.</b></p> <ul style="list-style-type: none"> <li>Women shall have equal treatment before the law.</li> </ul>	<ol style="list-style-type: none"> <li>Section 4C guarantees women equality before the law in accord with Article 15(1) of CEDAW.</li> <li>The Magna Carta does not include any other guarantees of civil equality and would be strengthened by guaranteeing women an equal right with men to participate in courts and tribunals at all stages, an equal right with men to conclude contracts and administer property, an equal right with men to be executors or administrators of estates and including a specific statement that all contracts and instruments that limit women's legal capacity are void in accordance with Article 13 of CEDAW.</li> </ol> <p>For a detailed discussion on the further elements necessary for good practice GEL in the area of civil equality please refer to Part 2, 2.12.</p>
Equality in Marriage and Family Relations	<p><b>Magna Carta for Women (draft).</b></p> <p><b>Section 4F.</b></p> <ul style="list-style-type: none"> <li>The State shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and shall ensure             <ol style="list-style-type: none"> <li>The same right to enter into marriage;</li> <li>The same right freely to choose a spouse and to enter into marriage only with their free and full consent. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to make the registration of marriages in an official registry;</li> </ol> </li> </ul>	<ol style="list-style-type: none"> <li>Article 4F is in most part a replica of the text of Article 16 of CEDAW and therefore this is a strong good practice provision.</li> <li>CEDAW, however, like all international conventions is written in broad language and its translation into domestic law is an important part of a country's <i>de jure</i> obligations. Some of Article 16 therefore requires more specific detail as outlined in General Recommendation 21. Additional components could include the following: a minimum equal age of marriage of 18 for men and women, a prohibition on bigamy and polygamy, that upon separation of married and unmarried persons and divorce, a maintenance order can be issued on the basis</li> </ol>

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
	<ol style="list-style-type: none"> <li>3) The same rights and responsibilities during marriage and at its dissolution;</li> <li>4) 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;</li> <li>5) 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;</li> <li>6) 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;</li> <li>7) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;</li> <li>8) 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;</li> <li>9) Customary laws shall be respected provided however that they do not contradict the above-enumerated rights;</li> <li>10) Equal rights to inheritance, whether formal or customary.</li> </ol>	<p>of need, earning capacity, and the means of the two parties, provision for occupations orders when women have dependant children or relatives or in situations of domestic violence, a no-fault system of divorce, an equal division of property that includes recognition of women's unpaid contribution, and the calculation of future needs and the future earning capacity of all parties, and the extension of all rights and responsibilities to women in <i>de facto</i> relationships, including same-sex relationships.</p> <p>For a detailed discussion on the further elements necessary for good practice GEL in the area of marriage and family relations please refer to Part 2, 2.13.</p>

## Thailand : Promotion of Opportunity and Gender Equality Act (draft)

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
Equality and Non-discrimination	<p><b>Promotion of Opportunity and Gender Equality Act (draft).</b></p> <p><b>Section 4(3).</b></p> <ul style="list-style-type: none"> <li>Unfair gender discrimination means any illegal commission or omission which is a direct or indirect distinction, exclusion or restriction on the basis of sex, with or without intention; resulting in a non-recognition or inability to exercise inherent individual fundamental rights merely on the basis of sex.</li> </ul> <p><b>Section 6.</b></p> <ul style="list-style-type: none"> <li>The purposes of this Act are, for the public sector, private agencies and communities to promote opportunity and gender equality; to protect from and prevent unfair gender discrimination; to help, compensate and redress the Aggrieved Person affected by unfair discrimination under this Act; whether it be the discrimination in public or private sectors at all levels, by providing coordination with other organisations in public, private, and people's sectors, independent organisations, and others so as to truly bring about the enforcement of this Act.</li> </ul> <p><b>Section 7.</b></p> <ul style="list-style-type: none"> <li>No one shall practise unfair gender discrimination in relation to facilitation or services or any other discrimination with regards to rights or other benefits stipulated in Ministerial Regulations.</li> </ul>	<ol style="list-style-type: none"> <li>Section 6 states that a purpose of the Act is to promote opportunity and gender equality. Whilst this is a positive measure it falls short of placing an obligation on the State to achieve substantive equality. Inclusion of such a guarantee would strengthen the Act.</li> <li>Section 4(3) contains a comprehensive definition of discrimination which includes direct and indirect discrimination in accord with Article 1 of CEDAW. It is unclear, however, what 'illegal' means in this context and this should be clarified.</li> <li>Section 7 states that 'no one shall practice unfair gender discrimination' and therefore both public and private institutions and actors appear to be bound by the Act in accordance with Article 2(d) &amp; (e) of CEDAW.</li> <li>The definition of discrimination does not protect women who experience intersections of discrimination such as marital status, pregnancy, race, disability, HIV status, sexual orientation or any other status. Inclusion of these intersections would strengthen the Act.</li> <li>The Act does not expressly protect women from discrimination in all areas of their lives (political, economic, social, cultural, civil or any other field) in the exercise of their fundamental rights and freedoms. Inclusion of these guarantees would strengthen the Act.</li> </ol>
Gender-Based Violence	No gender-based violence provision is included.	For a detailed discussion on the elements necessary for good practice GEL in the area of gender violence please refer to Part 2, 2.2.
Stereotyping of Women in Media	No media provision is included.	For a detailed discussion on the elements necessary for good practice GEL in the area of media please refer to Part 2, 2.3.
Exploitation of Prostitution of Women	No exploitation of women in prostitution provision is included.	For a detailed discussion on the elements necessary for good practice GEL in the area of exploitation of women in prostitution please refer to Part 2, 2.4.
Political and Public Life	No political and public life provision is included.	For a detailed discussion on the elements necessary for good practice GEL in the area of political and public life please refer to Part 2, 2.5.
Nationality and Citizenship	No nationality provision is included.	For a detailed discussion on the elements necessary for good practice GEL in the area of nationality and citizenship please refer to Part 2, 2.6.
Education	<p><b>Promotion of Opportunity and Gender Equality Act (draft).</b></p> <p><b>Section 7.</b></p> <ul style="list-style-type: none"> <li>No one shall practice unfair gender discrimination in relation to education or training.</li> </ul>	<ol style="list-style-type: none"> <li>Section 7 provides a general anti-discrimination provision which includes direct and indirect discrimination. However, section 7 lacks the specificity required to make the GEL effective in eliminating discrimination in education.</li> </ol>

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
		For a detailed discussion on the elements necessary for good practice GEL in the area of education please refer to Part 2, 2.7.
Employment	<b><i>Promotion of Opportunity and Gender Equality Act (draft).</i></b> <b>Section 7.</b> <ul style="list-style-type: none"> <li>No one shall practice unfair gender discrimination in relation to work.</li> </ul>	<p>Section 7 prohibits direct and indirect discrimination in employment. However, s 7 lacks the specificity required to make the GEL effective in eliminating discrimination in employment.</p> <p>For a detailed discussion on the elements necessary for good practice GEL in the area of employment please refer to Part 2, 2.8.</p>
Equality in Access to Health Care	No equality to access in health care provision is included.	For a detailed discussion on elements necessary for good practice GEL in the area of health please refer to Part 2, 2.9.
Equality in Social and Economic Benefits	No equality in social and economic benefits provision is included.	For a detailed discussion on the elements necessary for good practice GEL in the area of equality in social and economic benefits please refer to Part 2, 2.10.
Rural Women	No provision on rural women is included.	For a detailed discussion on the elements necessary for good practice GEL in relation to rural women please refer to Part 2, 2.11.
Equality Before the Law and in Civil Matters	No provision on equality before the law and in civil matters is included.	For a detailed discussion on the elements necessary for good practice GEL in the area of civil equality please refer to Part 2, 2.12.
Equality in Marriage and Family Relations	No provision on equality in marriage and family relations is included.	For a detailed discussion on the elements necessary for good practice GEL in the area of marriage and family relations please refer to Part 2, 2.13.

## Vietnam : Law on Gender Equality 2006

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
Equality and Non-discrimination	<p><b>Law on Gender Equality 2006.</b></p> <p><b>Article 6.</b></p> <ul style="list-style-type: none"> <li>(1). Men and women shall be equal in all aspects of social and family life. (2). Men and women shall not be discriminated against on the basis of gender.</li> </ul> <p><b>Article 5.</b></p> <ul style="list-style-type: none"> <li>(1). Gender equality means that men and women have equal positions and roles, are offered equal conditions and opportunities to develop their capabilities for the development of the community and families and to equally benefit from this development. (2). Gender discrimination is the restriction, exclusion, non recognition or disregarding of the roles and positions of men and women causing inequality between men and women in various aspects.</li> </ul> <p><b>Article 8.</b></p> <ul style="list-style-type: none"> <li>Every person or legal entity is prohibited from any act of gender discrimination in the fields of politics, law and government.</li> </ul> <p><b>Article 2.</b></p> <ul style="list-style-type: none"> <li>Binds all public and private institutions and actors.</li> </ul>	<ol style="list-style-type: none"> <li>Article 6(1) states that men and women shall be equal in all aspects of 'social and family life'. Article 5(1) does not explicitly extend the meaning of equality to include substantive equality, although the definition of gender equality does refer to equal benefit which could be interpreted as substantive equality. The Law would be strengthened with a clear statement that equality refers to substantive equality and that equality must be achieved in all areas of women's lives (political, economic, cultural, civil or any other field) and not limited to social and family life.</li> <li>Article 6(1) prohibits discrimination and Article 5(2) provides a definition of discrimination. Although it contains some of the components of Article 1 of CEDAW it would be strengthened by an express inclusion and definition of indirect and direct discrimination and protection of women who experience intersections of discrimination such as marital status, pregnancy, race, disability, HIV status, sexual orientation or any other status.</li> <li>Article 8 prohibits discrimination in politics, law and government. This would be strengthened by prohibiting discrimination in the economical, cultural and social or any other field as required by Article 1 of CEDAW.</li> <li>Article 2 states that the Law binds all actors and institutions public and private in accord with Article 2(d) &amp; (e) of CEDAW.</li> </ol>
Gender-Based Violence	<p><b>Law on Gender Equality 2006.</b></p> <p><b>Article 10(3).</b></p> <ul style="list-style-type: none"> <li>Gender-based violence is a forbidden act.</li> </ul>	<ol style="list-style-type: none"> <li>Many GEL do not incorporate gender-based violence so its inclusion and strong prohibition is positive.</li> <li>Article 10(3) however lacks the specificity required to protect women from gender-based violence. The GEL would be strengthened by providing detailed benchmarks that should be met in the domestic legislation.</li> </ol> <p>For a detailed discussion on the elements necessary for good practice GEL in the area of gender violence please refer to Part 2, 2.2.</p>
Stereotyping of Women in Media	<p><b>Law on Gender Equality 2006.</b></p> <p><b>Article 23(3).</b></p> <ul style="list-style-type: none"> <li>Information, education and communication on gender and gender equality shall be conducted through learning programmes, publications, radio broadcasts, and television programmes and other forms.</li> </ul>	<ol style="list-style-type: none"> <li>Article 23(3) creates a duty to communicate and educate on gender equality through a variety of media outlets/media. It is unclear, however, on whom the duty is placed. Such clarification would strengthen the GEL.</li> <li>A prohibition on media representations of women that perpetuates sex-role stereotypes would strengthen the Law.</li> </ol>

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
Exploitation of Prostitution of Women	No exploitation of women in prostitution provision is included	For a detailed discussion on the elements necessary for good practice GEL in the area of exploitation of women in prostitution please refer to Part 2, 2.4.
Political and Public Life	<p><b>Law on Gender Equality 2006.</b></p> <p><b>Article 11.</b></p> <ul style="list-style-type: none"> <li>• Men and women shall be equal in the management of the State.</li> <li>• Men and women shall be equal in the formulation and implementation of village codes, community conventions, and rules and regulations of agencies and organisations.</li> <li>• Men and women can self-nominate or nominate candidates to the National Assembly, Peoples Councils, leading bodies or political, socio-political, professional, social and socio-professional organisations.</li> <li>• Measures for promoting gender equality in politics include               <ul style="list-style-type: none"> <li>(a) Ensuring appropriate proportions of females in the National Assembly and Peoples Councils in accordance with national gender equality goals.</li> <li>(b) Ensuring appropriate proportions of females appointed as officials in state agencies in accordance with national gender equality goals.</li> </ul> </li> </ul>	<ol style="list-style-type: none"> <li>1. Article 11(1)-(2) guarantees women an equal role in the management of the State and the formulation and implementation of the rules of villages and other organisations, which implies substantive equality in accord with CEDAW.</li> <li>2. Article 11(3) provides women with an equal right to stand for Parliament, Councils and any other organisation in accord with Article 7(a) of CEDAW.</li> <li>3. Article 11(5) authorises the use of temporary special measures to ensure appropriate proportions of females in the National Assembly and People's Councils. This is a positive measure although the provision would be strengthened by identifying what percentage of women would be 'appropriate' and identifying the particular measures that might be adopted to achieve that result.</li> <li>4. The GEL would be strengthened with a guarantee of the right to vote. Although this may be already guaranteed in other domestic law it is an important foundational right.</li> </ol>
Nationality and Citizenship	No nationality provision is included.	For a detailed discussion on the elements necessary for good practice GEL in the area of nationality and citizenship please refer to Part 2, 2.6.
Education	<p><b>Law on Gender Equality 2006.</b></p> <p><b>Article 14.</b></p> <ul style="list-style-type: none"> <li>• Men and women shall receive schooling, training and retraining at the same age.</li> <li>• Men and women shall have equal opportunity to choose professions or occupations for learning and training.</li> <li>• Men and women shall have equal access and receive equal benefits from education, professional training and retraining policies.</li> <li>• Female officials and public servants with children under 36 months shall be provided with government support when attending training or retraining courses.</li> <li>• Measures for promoting gender equality in education and training.               <ul style="list-style-type: none"> <li>(a) To set the proportions of men and women who will participate in learning and training.</li> <li>(b) To support female labourers in rural areas in their vocational training in accordance with the law.</li> </ul> </li> </ul> <p><b>Article 15.</b></p> <ul style="list-style-type: none"> <li>• (1). Men and women shall have equal opportunity to access and apply science and technology. (2). Men and women shall have</li> </ul>	<ol style="list-style-type: none"> <li>1. Article 14(1) provides that girls and women shall receive education at the same age. Whilst this is a positive measure it could be improved by guaranteeing free compulsory education to all children aged 5-16. Article 14(1) provides women with equal opportunities to receive training in the professions or occupations they choose, in accord with Article 10(a) of CEDAW. Article 14(3) guarantees women equal access and equal benefit from education which implies substantive equality in accord with CEDAW. Article 14(5) authorises the use of quotas to ensure women receive equal opportunities in education. Although setting a percentage (e.g. 30%) would strengthen the GEL, nevertheless cumulatively these are good practice provisions.</li> <li>2. Article 14(4) provides for government support for public sector workers with children less than 36 months old to enable them to attend training and retraining. This is a very good measure not commonly adopted in GEL, recognising the childcare responsibilities of women. It would be strengthened by greater detail of what the support is (i.e. minimum level) and extending it to those in the private sector (or at least a subsidy).</li> </ol>

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
	<p>equal opportunity to participate in training courses on science and technology and to disseminate research, innovations and patents.</p> <p><b>Article 23(2).</b></p> <ul style="list-style-type: none"> <li>Information, education and communication on gender and gender equality shall be included in the education syllabus in schools, in the activities of agencies, organisations and the community</li> </ul>	<p>3. Article 23(2) requires information on gender equality to be included in the education syllabus in schools and in the activities of other organisations. Whilst this is a good provision it would be strengthened by including an obligation to remove sex-role stereotypes in accord with Article 10(c) of CEDAW.</p> <p>4. Article 14(5) provides for temporary special measures for rural women. This is a positive measure (also in accord with Article 14 of CEDAW) although it would be strengthened with stronger wording, for example, replace 'support' with 'ensure.' It would also be strengthened through the placement of an obligation on the State to conduct research into the educational needs of rural women.</p> <p>5. General anti-discrimination provisions prohibiting discrimination in education, particularly on the grounds of pregnancy, marital status and family responsibilities, and a prohibition on sexual harassment in all educational facilities would greatly strengthen the Law.</p>
Employment	<p><b>Law on Gender Equality 2006.</b></p> <p><b>Article 11(4).</b></p> <ul style="list-style-type: none"> <li>Men and women shall be promoted and appointed to managerial or leading posts in agencies and organisations on an equal basis in terms of age and qualifications.</li> </ul> <p><b>Article 13.</b></p> <ul style="list-style-type: none"> <li>(1). Men and women shall be recruited on the basis of equality in terms of qualifications and age. They will receive equal treatment in terms of jobs, pay, reward, social insurance, labour conditions and other working conditions.</li> <li>(2). Men and women shall be promoted or appointed to hold titles in sectors and professions that have title status on the basis of equality in terms of qualifications and age.</li> <li>(3). Measures for promoting gender equality in labour include (a) Setting the proportions of men and women to be recruited (b) Providing training and retraining to raise female worker's capacity (c) Employers shall create safe and hygienic working conditions for female employers in dangerous professions and occupations or where there is contact with toxic substances.</li> </ul>	<p>1. Article 13(1) provides for equality in recruitment and equal conditions of work including pay, insurance and other working conditions. This is a positive provision in accord with Article 1(c) of CEDAW. It does not, however, provide for equal treatment in relation to work of equal value. For a detailed discussion of this please refer to Part 2, 2.8.5.</p> <p>2. Article 13(2) provides that promotion and recruitment in sectors and professions that have title status must be on the basis of equality and Article 11(4) provides that women shall be promoted to managerial or leading posts in agencies and organisations on an equal basis in accord with Article 11(1)(b) of CEDAW. A prohibition on discriminatory advertising would strengthen the GEL.</p> <p>3. Article 13(3) authorises temporary special measures provisions which can include quotas and training or retraining. Whilst this is a positive measure, it would be strengthened by explicitly requiring the State and private and public employers to research the <i>de facto</i> situation of women and to introduce temporary special measures in response. The identification of actual proportions of women required, for example 40%, would also strengthen the temporary special measures provisions.</p> <p>For a detailed discussion on further elements necessary for good practice GEL in the area of employment please refer to Part 2, 2.8.</p>

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
Equality in Access to Health Care	<p><b>Law on Gender Equality 2006.</b>  <b>Article 17.</b></p> <ul style="list-style-type: none"> <li>• (1). Men and women shall have equal opportunity to participate in activities relating to education and communication on healthcare, reproductive health and the use of healthcare services. (2). Men and women shall be equal in choosing and deciding on the use of contraceptive measures, measures to ensure safe sex and to prevent and control HIV/Aids and sexually transmitted diseases.</li> </ul>	<ol style="list-style-type: none"> <li>1. Article 17(1) guarantees women equal opportunity to education and communication on health care, reproductive health and the use of healthcare services. Whilst access to information is important and satisfies part of the obligations placed by Article 12 of CEDAW, the provision falls short of a guarantee of equal access to all health-related services.</li> <li>2. Article 17(2) guarantees women an equal right to choose contraceptive measures and to ensure safe sex. However, there is no mechanism in this provision that establishes how such a right will be enforced. The provision would be strengthened by a guarantee of access to family planning services including safe legal abortions.</li> <li>3. The Law would be additionally strengthened in the area of health with the inclusion of anti-discrimination provisions prohibiting all discrimination against girls and women on in any aspect of health care, positive obligations on the State to undertake research to assess the health needs of women and children, a prohibition on coercive medical procedures, specifically non-consensual sterilisations and mandatory pregnancy testing, mandatory protocols for all health-related services to prevent the sexual abuse of children, and special measures to address the health needs of vulnerable groups of women, including women exploited in prostitution and refugee women.</li> </ol> <p>For a detailed discussion on the further elements necessary for good practice GEL in the area of health please refer to Part 2, 2.9.</p>
Equality in Social and Economic Benefits	<p><b>Law on Gender Equality 2006.</b>  <b>Article 12(1).</b></p> <ul style="list-style-type: none"> <li>• Men and women shall have equal opportunity to set up enterprises, carrying out production and business activities, and administering business, in accessing information, capital, market and labour sources.</li> </ul> <p><b>Article 12(2)(b).</b></p> <ul style="list-style-type: none"> <li>• Measures for promoting gender equality include provision of credit support, agricultural, forestry or fishery extension to female labourers in rural areas in accordance with the law.</li> </ul> <p><b>Article 16(1).</b></p> <ul style="list-style-type: none"> <li>• Men and women shall have equal opportunity to participate in cultural, information, physical training and sports activities.</li> </ul> <p><b>Article 16(2).</b></p> <ul style="list-style-type: none"> <li>• Men and women shall receive equal benefits from culture and accessing and using information.</li> </ul>	<ol style="list-style-type: none"> <li>1. Article 12(1) provides women with equal opportunity to set up enterprises, carry out production and business activities, to administer business, and to access information, capital, market and labour sources. Whilst this is a good provision, it would be strengthened by a prohibition on any discrimination on women in the provision of bank loans or credit.</li> <li>2. Article 12(2)(b) authorises the use of measures to provide credit support, and agriculture, forestry or fishery extension to female labourers in rural areas. Whilst this is a positive initiative in accord with 13(b) of CEDAW, it is limited to female labourers in rural areas. It would be further strengthened by more detail in relation to the measures including concrete objectives and timetables.</li> <li>3. Article 16 and 11 provide that women shall have equal opportunity and benefits in cultural,</li> </ol>

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
	<p><b>Article 11(1).</b></p> <ul style="list-style-type: none"> <li>Men and women shall have equal opportunity to participate in social activities.</li> </ul>	<p>sports and social activities. These are positive provisions since they clearly imply, through the use of the phrases 'opportunity' and 'benefit' that substantively equality is required. They would be strengthened however by identifying specific programmes to be introduced with a timeline.</p> <p>4. The Law would be additionally strengthened with the inclusion of a guarantee that women have an equal right to all forms of family benefits, and an equal right to own, enjoy and administer property, including a prohibition on discrimination in access to housing.</p> <p>For a detailed discussion on the further elements necessary good practice GEL in the area of equality in social and economic benefits please refer to Part 2, 2.10.</p>
Rural Women	<p><b>Law on Gender Equality 2006.</b></p> <p><b>Article 12(2)(b).</b></p> <ul style="list-style-type: none"> <li>Measures for promoting gender equality include the provision of credit support, agricultural, forestry or fishery extension to female labourers in rural areas in accordance with the law.</li> </ul> <p><b>Article 14(5)(b).</b></p> <ul style="list-style-type: none"> <li>Measures for promoting gender equality in education and training include supporting female labourers in rural areas in their vocational training in accordance with the law.</li> </ul> <p><b>Article 17(3).</b></p> <ul style="list-style-type: none"> <li>Poor women residing in deep-lying and remote areas and ethnic minority women, excluding those participating in compulsory social insurance, when giving birth in accordance with the population policy, shall be provided with support according to Government regulations.</li> </ul>	<p>1. Article 12(2)(b) and Article 14(5)(b) provides for the adoption of measures to assist female labourers in rural areas to obtain credit and education and training. This is a good practice initiative. However, it is unclear what 'in accordance with the law' means and this should be clarified.</p> <p>2. Article 17(3) provides targeted support to rural and ethnic women. However they can only receive this support if they give birth in accordance with the population policy. This is contrary to CEDAW and discriminatory.</p> <p>3. The Law would be additionally strengthened with the inclusion of a guarantee that women have an equal right to all forms of family benefits, a guarantee of equal access to health care, an equal right to own, enjoy and administer property including a prohibition on discrimination in access to housing, and the introduction of temporary special measures to assist all rural women in all areas where a <i>de facto</i> inequality is determined after research.</p> <p>For a detailed discussion on the elements necessary for good practice GEL in relation to rural women please refer to Part 2, 2.11.</p>
Equality Before the Law and in Civil Matters	<p><b>Law on Gender Equality 2006.</b></p> <p><b>Article 17(1).</b></p> <ul style="list-style-type: none"> <li>Spouses shall be equal in civil relations</li> </ul>	<p>1. Article 17(1)(b) guarantees spouses equality in civil relations which is a positive provision in that it is broad enough to include the right to participate in courts and tribunals at all stages, an equal right with men to conclude contracts and administer property, an equal right with men to be executors or administrators of estates. However, it would be strengthened by an explicit inclusion of these aspects of civil equality. The reference to spouse is narrow and should be replaced by 'women and men'.</p>

SUBSTANTIVE AREA	RELEVANT PROVISION	COMMENTARY
		<p>2. The Law would be additionally strengthened with the inclusion of a guarantee of equality before the law and a specific statement that all contracts and instruments that limit women's legal capacity are void, in accordance with Article 13 of CEDAW.</p> <p>For a detailed discussion on the further elements necessary for good practice GEL in the area of civil equality please refer to Part 2, 2.12.</p>
Equality in Marriage and Family Relations	<p><b>Law on Gender Equality 2006.</b>  <b>Article 18.</b></p> <ul style="list-style-type: none"> <li>• Spouses shall be equal in civil relations and other relations relating to marriage and family.</li> <li>• Spouses have equal rights and duties in owning common property and are equal using common income and deciding on family resources.</li> <li>• Sons and daughters shall receive equal treatment in all aspects of their upbringing.</li> <li>• Female and male family members have a duty to share housework.</li> </ul>	<ol style="list-style-type: none"> <li>1. Article 18(1) provides a guarantee of equality for women in marriage and family relations. The provision, however, lacks the specificity required for effective implementation of Article 16 of CEDAW.</li> <li>2. Article 18(2) provides that spouses have equal rights in property and income in accordance with Article 16(h) of CEDAW.</li> <li>3. Article 18(3) provides for equality in family planning, but it is unclear how this will be achieved.</li> <li>4. Article 18(4) requires that sons and daughters shall receive equality in their upbringing and Article 18(5) requires that male and female family members share housework. It is unclear, however, how such provisions will be enforced.</li> </ol> <p>For a detailed discussion on the further elements necessary for good practice GEL in the area of marriage and family relations please refer to Part 2, 2.13.</p>





## Part 3 IMPLEMENTATION AND MONITORING: GOOD PRACTICE IN GLOBAL GEL

A foundational and crucial element of an effective Gender Equality Law (GEL) is the presence of clear and detailed legislative provisions which establish strong machinery and procedures to enable, as emphasised by the CEDAW Committee, the ‘effective implementation, monitoring and enforcement of such legislation’.<sup>176</sup> Without such a framework, a GEL, although symbolic, will be purely declarative and potentially impotent, since the establishment of legal rights and obligations is insufficient on its own unless the law also establishes and creates mechanisms and institutions equipped with appropriate powers and duties to ensure their realisation in practice.<sup>177</sup>

This Part identifies seven implementation, monitoring and enforcement components indicative of good practice GEL.

The inclusion of all seven components in a GEL not only ensures the effective implementation of the GEL framework but also engenders more effective implementation of CEDAW. The seven components are, first, a mechanism ensuring that existing and future domestic legislation accords with its provisions, second, the placing of a positive obligation on public and private institutions to implement the GEL, third, the establishment of mechanisms to monitor both public authorities and private organisations and individuals in their implementation and observance of the GEL, fourth, a complaints process to ensure victims of GEL violations can bring actions and receive appropriate remedies; fifth, a mechanism to facilitate the collection of gender statistics in all areas of women’s lives, sixth, the incorporation of a review process to determine whether the GEL is working effectively, and finally, the establishment of a funding mechanism for all GEL implementation, monitoring and enforcement activities.

Each of the seven implementation and monitoring good practice components are considered individually in the following sections and are accompanied by a commentary on the rationale underpinning their inclusion. Some of the seven components identified give rise to further sub-components which represent the range of possible approaches that could be utilised to achieve good practice, recognising that whilst some approaches are potentially more effective than others, it may not always be strategically possible to enact the strongest option. For example, human rights monitoring, implementation and enforcement procedures, as stated in the Paris Principles, are best administered by an independent institution.<sup>178</sup> However, independence is not always achievable, and if this is so, a non-independent or partially independent body might present a weaker but viable alternative option. Thus, where there is a range of possible mechanisms which have been utilised by global GEL, they are considered and evaluated in accordance with the anticipated effectiveness of each. In other words, the option the authors consider to be the most effective is discussed first, followed in descending order by the list of possible alternatives. In some cases a combination of approaches might be required to achieve good practice, and if so it is noted by the authors. Finally, for each good practice component

or sub-component identified, this section also provides good practice examples drawn from existing enacted and draft GEL worldwide, followed by a commentary discussing the strengths and weaknesses of the example(s) considered.

At the end of the overview of the seven good practice implementation and monitoring components required in GEL, this Part provides an analysis of the GEL of five Southeast Asian (SEA) countries, namely Indonesia, Lao PDR, the Philippines, Thailand and Vietnam. The results of the analysis of the five countries are considered in table form in light of the template of good practice examples identified in Part 3.1, and each is accompanied by a commentary identifying its strengths and weaknesses, as well as suggestions for improvement.

### 3.1 Harmonisation of Existing and Future Legislation

**Does the GEL ensure that existing and future domestic legislation accords with its provisions?**

Ratification or accession to an international treaty places an obligation on States parties to ensure that their domestic laws accord with the treaty's provisions.<sup>179</sup> The enactment of a GEL that incorporates the substantive rights outlined in articles 1-16 of CEDAW can represent, therefore, an effective response to this requirement. To ensure effective implementation, however, the CEDAW Committee has urged States parties introducing GEL to ensure 'the speedy harmonisation of existing legislation with the objectives of the Convention and the Gender Equality Law'.<sup>180</sup> In order to achieve harmonisation, mechanisms or procedures must be put in place which, first, systematically review and revise all existing legislation for consistency<sup>181</sup> and, second, scrutinise all proposed future legislation and amendments to ensure that they are in accord with the GEL. Without such harmonisation mechanisms the GEL will be limited in its practical effect and occupy only a symbolic place in the legal system.

There are a range of mechanisms that can be employed in a GEL to facilitate the harmonisation of other domestic laws. The following sections [3.1.1-3.1.6] identify six such mechanisms that could be, or have typically been, incorporated into GEL (and in other similar legislation such as human rights acts) to facilitate the harmonisation of domestic laws with the provisions of the GEL. The approaches are arranged in order of their anticipated effectiveness. The first and most effective option is to equip the GEL with constitutional status. A second option is to include an inconsistency clause in the GEL which expressly states that laws or provisions that are inconsistent with its provisions are repealed or amended. A third option is to establish a body (ideally an independent institution) to administer the mandatory review of existing legislation for compliance and through which recommendations are made to the legislature to undertake appropriate reform. A fourth

option is to establishment of a body or mechanism to conduct mandatory pre-enactment scrutiny of all proposed legislation and amendments for GEL consistency. A fifth and final alternative is to empower courts to strike down or declare as incompatible legislation that is inconsistent with the GEL and finally, an interpretative clause requiring the courts to interpret legislation in line with the GEL.

### 3.1.1 *Constitutional Status*

**Does the GEL have constitutional status?**

A GEL that is afforded constitutional status will invalidate any inconsistent law since a constitution (usually) has supremacy over ordinary statute law. Thus under this approach, if there is a conflict between legislation and the constitution, all or part of the legislation can be declared unlawful by a court and struck down as unconstitutional.<sup>182</sup> Additionally, a GEL that has entrenched constitutional status will be protected from amendment or repeal. An entrenched constitution is one which is legally protected from modification without a procedure of constitutional amendment. Typically an extraordinary procedure is required to make a constitutional amendment. Such procedures may involve obtaining a two-thirds majority in the national legislature, a referendum process or some other procedure that makes obtaining a constitutional amendment more difficult than passing a simple law.<sup>183</sup> In countries where it does not have constitutional status, the GEL can be altered or repealed by a simple majority in Parliament. However, whilst a GEL that has constitutional status is a powerful mechanism, it is nevertheless difficult to achieve and, to date, the only country that has afforded constitutional status to its GEL is Spain (Constitutional Act for Effective Equality Between Men and Women 2007).

### 3.1.2 *Inconsistency Provision*

**Does the GEL have a provision that renders invalid all inconsistent national laws?**

An inconsistency provision is a specific provision that renders all national laws inconsistent with the GEL invalid. Whilst the inclusion of an inconsistency provision is not as strong as providing a GEL with constitutional status (as the GEL remains subject to repeal or amendment), it is nevertheless a powerful means of ensuring that the provisions of the GEL take precedence over other domestic legislation. If the inconsistency provision does not take immediate effect, a realistic time-frame, as illustrated by the example of Bosnia below, should be included to facilitate the efficient harmonisation of domestic law with the GEL.

## Good Practice Examples Incompatibility Provisions

### **Philippines: Magna Carta for Women (draft).**

#### **Section 48.**

- Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.

### **Bosnia: Law on Gender Equality 2003.**

#### **Article 30.**

- All State and Entity laws and other relevant regulations shall be brought into conformity with the provisions of this Law within six months at the latest.

## Commentary

- The explicit and clear wording of the Philippines' legislation represents a good example of an inconsistency provision.
- The breadth of the Philippines' approach, in extending the provision to a range of governmental actions, is particularly noteworthy as it does not only apply to legislation but also to decrees, orders and other administrative actions.
- The inconsistency provision in the Philippines' GEL has an immediate effect on other legislation (i.e., 'hereby repealed') and is therefore a strong measure.
- In the Bosnian example, the inclusion of a six-month period for domestic law to be brought into accord with the GEL, whilst not as strong as the Philippines provisions, nevertheless provides an efficient, realistic and strategic approach.

### *3.1.3 Duty to Revise Existing Legislation*

**Does the GEL require the systematic revision of existing legislation to assess consistency?**

The two options discussed above, namely affording constitutional status to the GEL, and requiring the inclusion of an inconsistency provision may in practice not prevent laws from continuing to operate in their discrete fields. Hence the adoption of a systematic process to review the law, identify inconsistencies and repeal or amend them is an important addition to either of the first two harmonisation mechanisms. Ideally, the review mechanism would be administered by an independent institution and provided with a mandatory duty to undertake a systematic appraisal of all existing legislation. After conducting a systematic appraisal the review mechanism would be required to make recommendations for reform, which Parliament, in turn, should be obliged to implement or at least consider.

## Good Practice Examples Independent Review Mechanisms

### **Kosovo: Law on Gender Equality 2004.**

#### **Section 5.2(b).**

- The Office for Gender Equality shall propose before the government and ministries the compilation, alteration and amendment of laws and regulations.

**Ukraine: Equal Rights and Opportunities for Men and Women 2005.****Article 43.**

- The Commissioner for Gender Equality shall submit to the Cabinet of Ministers of Ukraine and other public agencies recommendations to revise statutes or create new acts on the issues of equality of men and women, their equal rights and opportunities.

**Australia: Sex Discrimination Act 1984.****Section 48(1)(f).**

- The Human Rights and Equal Opportunity Commission (now the Australian Human Rights Commission HRC) shall examine enactments for the purpose of ascertaining whether the enactment is inconsistent or contrary to the objects of the Act and to report to the Minister the results.

**Commentary**

- All three countries establish independent institutions and allocate review duties to each.
- None of the three countries, however, impose a duty to systematically review all legislation.
- Although all three are required to report their findings to parliament, there is no corresponding duty on parliament to incorporate or even consider the recommendations.
- Ukraine and Kosovo enable the bodies established to propose amendments or new legislation which is a positive measure not extended to the Australian Human Rights Commission.

**3.1.4 Pre-Enactment Scrutiny**

**Does the GEL require that all proposed draft legislation and amendments are scrutinised for consistency?**

As with existing legislation, it is essential that any draft laws or amendments proposed for enactment should be consistent with the GEL. If the GEL has constitutional status or contains a statutory inconsistency provision (as described at 4.1 & 4.2 above) all enacted legislation that is not in accordance with the GEL will have no effect. However, effective pre-enactment scrutiny of all proposed legislation is still crucial because if legislation is enacted that is inconsistent with the GEL, it may require a (lengthy) judicial or legislative process to declare it invalid. Thus, pre-enactment scrutiny is both a time- and cost-efficient means of ensuring that domestic legislation accords with the GEL. To ensure the full implementation of GEL a pre-enactment scrutiny mechanism should contain the following components. First, pre-enactment scrutiny of all draft legislation and amendments should be mandatory; second, it should be administered by an independent institution (a weaker option adopted by some GEL is to delegate the task to a government or parliamentary institution); and third, the legislature should be obligated to amend any provisions identified as inconsistent with the GEL.

### **Good Practice Examples Pre-Enactment Scrutiny**

**Ukraine: Equal Rights and Opportunities for Men and Women 2005.****Article 8.**

- Having regard to the equality of men and women is mandatory for any law making activity.

**Spain: Constitutional Act for Effective Equality Between Men and Women 2007.****Article 19.**

- Bills of a general nature and plans with particular economic, social, cultural and artistic relevance submitted to the Council of Ministers for approval must include a report on their gender impact.

**Australia: Sex Discrimination Act 1984.****Section 48(1)(f).**

- The Human Rights and Equal Opportunity Commission (now the Australian Human Rights Commission 'HRC') when requested to do so by the Minister shall examine proposed enactments for the purpose of ascertaining whether the enactment is inconsistent or contrary to the objects of the Act and to report to the Minister the results.

**Commentary****Ukraine:**

- Article 8 places a mandatory obligation to consider gender equality in any law making activity, which is a positive measure. However, the clause is weakened by the wording 'having regard to the equality of men and women'. A stronger version would state that laws must accord with the GEL. Finally, the clause also implies that a parliamentary institution will scrutinise the Bill rather than an independent institution.

**Spain:**

- Article 19 places a mandatory obligation for Bills 'of a general nature' to include a gender impact report. It is unclear why the Article applies only to Bills of a general nature. It is also unclear who will be conducting the gender impact review and it also does not appear from the provision that scrutiny will be conducted by an independent institution.

**Australia:**

- The HRC is an independent institution although scrutiny will only occur when a request is made by the Minister. This detracts from the independence of the HRC and does not result in a systematic appraisal of all new laws. There is also no obligation on the Minister to respond to the any inconsistency identified by the HRC.

**3.1.5 Declaration of Incompatibility**

**Does the GEL enable courts to declare legislation incompatible and/or strike it down?**

The inclusion of a provision in GEL which enables courts to declare legislation that cannot be construed in accord with the GEL to be either struck down as invalid or declared incompatible and referred to the legislature for action is one of two court-based approaches (see also 4.1.6 below) that have been adopted by some GEL and human rights acts as a mechanism to assist the harmonisation of legislation. However, court-based options are weaker alternatives to those previously outlined (see 3.1.1-3.1.4 above) because they rely solely on litigation to highlight inconsistencies and to invalidate the legislation or declare it incompatible. A court can therefore only act when an action comes before it which makes harmonisation reliant on a resourced complainant with access to legal expertise.<sup>184</sup> This option does not therefore facilitate a systematic appraisal of domestic laws for compatibility with GEL.

### Good Practice Example Declaration of Incompatibility

#### **Australia: Human Rights Act (ACT) 2004.**

##### **Section 32(2).**

- If the Supreme Court is satisfied that the Territory law is not consistent with the human right, the court may declare that the law is not consistent with the human right.

##### **Section 32(4).**

- The registrar of the Supreme Court must promptly give a copy of the declaration of incompatibility to the Attorney-General.

##### **Section 33(2).**

- The Attorney-General must present a copy of the declaration of incompatibility to the Legislative Assembly within 6 sitting days after the day the Attorney-General receives the copy.

##### **Section 33(3).**

- The Attorney-General must prepare a written response to the declaration of incompatibility and present it to the Legislative Assembly not later than 6 months after the day the copy of the declaration is presented to the Legislative Assembly.

### Commentary

- Section 32(2) does not make it mandatory for the court to declare a provision inconsistent.
- However, once a declaration of incompatibility is issued, it must be presented to the Legislative Assembly.
- The specified time-frame in s 33(3) ensures change can be effected in an efficient and timely manner.
- The provisions would be strengthened by placing an obligation on the legislature to respond to the incompatibility.

### 3.1.6 Interpretative Clause

**Does the GEL  
require the courts  
to interpret legisla-  
tion in accordance  
with its provisions?**

The inclusion of an interpretative clause in a GEL requires the courts to interpret any legislation that is the subject of litigation in accordance with the GEL's provisions. Generally, this is a weak means of ensuring the harmonisation of legislation with a GEL if it stands alone, for similar reasons to the mechanisms described in 4.1.5 above, as it is reliant on actions being brought before the courts. However, an interpretative clause, whilst insufficient on its own, can be a useful addition to the stronger mechanisms outlined above in 3.1-3.1.4, and is also in concurrence with the Bangalore Principles, which require judges to favour decision-making that is in accord with human rights norms.<sup>185</sup>

### Good Practice Example Interpretative Clause

#### **United Kingdom: Human Rights Act 1998.**

##### **Section 3(1).**

- So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

## Good Practice Example Interpretative Clause

### South Africa: Equality Act 2000. Section 5(2).

- If any conflict relating to a matter dealt with in this Act arises between this Act and the provisions of any other law, other than the Constitution or an Act of Parliament expressly amending this Act, the provisions of this Act must prevail.

### Commentary

- Both the United Kingdom and South Africa provide good practice examples of interpretative clauses.
- The South African clause in its direction to the courts, however, makes an interpretation in favour of the Equality Act mandatory, whilst in the United Kingdom's legislation, in s 3(1) the phrasing 'so far as it is possible to do so' is considerably weaker.

## 3.2 Positive Obligations on Public and Private Institutions

### Does the GEL Place Positive Obligations on Public and Private Institutions to Implement the GEL?

Placing positive obligations and duties on the State, public institutions and private organisations to implement GEL has been recommended by commentators as an important measure for achieving real and substantive equality of outcomes for girls and women,<sup>186</sup> and by the CEDAW Committee as a proactive means of removing 'structural barriers to women's equality.'<sup>187</sup> Whilst the State, public institutions, employers both public and private and other organisations may not be the instigators of particular gender inequalities, they are often best placed to take the steps necessary to reduce or eliminate inequalities.<sup>188</sup> For example, the public sector fulfils a range of roles and engages with civil society in many capacities, including as an employer and as a service provider (councils, utilities, schools etc.). Likewise, the private sector employs large numbers of people and interacts with numerous other institutions and individuals. Placing positive obligations and duties on both sectors to take positive and active measures ensures that the principles of gender equality are integrated internally throughout public and private institutions as well as being reflected in their relationships with citizens and other institutions.<sup>189</sup>

Positive obligations have been incorporated into many GEL and typically take three forms. The first is an obligation to develop and implement a gender equality plan, the second (which might form part of a gender equality plan) is an obligation to institute gender mainstreaming, and the third is an obligation to introduce temporary special measures wherever substantive inequalities are identified. All three mechanisms are discussed in full below and accompanied by good practice examples drawn from the global GEL considered in this review.

### 3.2.1 Gender Equality Plans

**Does the GEL place a positive obligation on the State, public institutions and private organisations to develop and implement gender equality plans?**

A gender equality plan is an operational road map which identifies the key steps an institution will take to implement gender equality. Placing an obligation on the State to develop a national gender equality plan encompassing all levels and sectors of government and on other public institutions as well as obligating private organisations to develop and implement gender equality plans is a measure endorsed by the CEDAW Committee<sup>190</sup> and adopted by many GEL worldwide to enhance implementation. Crucially, the Committee has identified the key components of an effective gender equality plan, stating that ‘It should cover legal, policy and programme measures and contain clear goals, benchmarks and timetables, a mechanism for regular and systematic monitoring and evaluation of progress in its implementation including the development of indicators for assessing compliance with all the provisions of the convention.’<sup>191</sup> Additionally, the CEDAW Committee has emphasised that sufficient resources must be allocated to ensure the full implementation of the gender equality plan.<sup>192</sup> To date, a number of GEL have placed positive obligations to develop and execute gender equality plans, typically on public authorities and institutions and, in selected examples, also on private institutions. Whilst an obligation on private authorities might be harder to monitor, the example of Spain below illustrates the capacity of GEL to impose on the private sector an obligation to implement gender equality plans, to further the implementation of the GEL.

#### **Good Practice Example** **Public Authority ‘Gender Equality Plan’ Duty**

**United Kingdom: The Sex Discrimination Act 1975 Public Authorities (Statutory Duties) Order 2006. Sections 1-6.**

- The specific duties are, first, to prepare and publish a Gender Equality Scheme. In preparing a scheme the authority must consult employees, service users and others, gather relevant information and establish how the scheme will meet its general and special duties, identify its gender objectives and assess the extent to which the plan will promote equality; second, to implement the gender plan within three years; third, to review the gender equality scheme within three years of its publication; and fourth, to report annually on the steps taken to achieve the objectives in the plan (summarised).

#### **Commentary**

- The Act places a positive mandatory duty (rather than a recommendation) on public authorities to develop and execute a gender equality plan.
- The preparation of the gender equality plan involves the CEDAW Committee’s recommended components of an equality plan, including clear planning and goals, implementation deadline,

and a system of review. The duty to review would be strengthened by more detailed guidance, such as a directive to develop indicators to ensure standardised and systematic review procedures, as required by the CEDAW Committee.

- The plan must be implemented within three years. A requirement for a more detailed implementation timetable with defined steps would strengthen the provision
- Although the duty to develop an equality plan pertains to private and voluntary organisations carrying out public functions (e.g. operating prisons), the duty does not extend to other private institutions. Such an extension would greatly strengthen the duty.

### Good Practice Example

#### Private Institution ‘Gender Equality Plan’ Duty

##### **Spain: Constitutional Act for Effective Equality Between Men and Women (2007).\***

##### **Article 45(2).**

- In companies with over 250 employees the formulation and implementation of an equality plan is mandatory. Article 45(5) Equality plans are voluntary in all other companies.

##### **Article 46.** Corporate equality plans, definition and content

- Corporate equality plans comprise an orderly series of measures adopted after a diagnosis of the situation and designed to attain equal treatment and opportunities for women and men in the company and to eliminate discrimination on the grounds of sex.
- Equality plans will stipulate the specific equality objectives to be reached, the strategies and practices to be adopted to attain them and the establishment of effective monitoring and assessment systems.
- Equality plans may cover different issues to achieve the objectives set, including inter alia access to employment, occupational classification, promotion and training, remuneration, organization of working hours to favour reconciliation of working, personal and family life on equal terms for women and men, and the prevention of sexual harassment and harassment on the grounds of sex.
- Equality plans will cover the entire company, without prejudice to the establishment of special action tailored to certain sites.

##### **Article 49(1).**

- The Government will establish measures, geared particularly to small and medium-sized companies, to foster the voluntary adoption of equality plans, which will include the necessary technical support.

*\*refer to Act for more detail, in particular, Articles 45-49.*

### Commentary

- The Act places a mandatory duty on employers to develop and execute gender equality plans, which is a positive measure. It is weakened, however, by the requirement that only employers with 250 employees or larger are obligated to do so. Whilst the need not to burden small businesses is understandable, the fact remains that small to medium-sized businesses employ large numbers of people and medium-sized businesses, in particular, are unlikely to be burdened by such a commitment. Further, if small and medium-sized businesses are indeed the largest employers, then this a substantial section of the labour force that will be deprived of the benefits of the legislation. Thus the reference to ‘over 250 employees’ is high and could be reduced. The compromise measures in Article 49 (1), however, are noteworthy.
- The plan effectively meets the requirements set by the CEDAW Committee including clear goals, benchmarks and timetables, and the establishment of a mechanism for monitoring and

assessment. It does not specifically nominate the development of indicators to ensure standardised and systematic review procedures, nor does it specify a requirement for a clear and focused timetable for implementation, which, if utilised, would improve the measures.

### 3.2.2 Gender Mainstreaming

**Does the GEL place a positive obligation on public and private institutions to gender mainstream?**

Gender mainstreaming can be defined as the (re)organisation, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies, at all levels and at all stages, by the actors normally involved in policy-making.<sup>193</sup> Its rationale is to ensure that questions of gender are taken ‘seriously in central, mainstream “normal” institutions’ and not left in non-mainstream marginalised specialist women’s organisations’.<sup>194</sup> Placing an obligation on public authorities and private organisations to gender mainstream is another mechanism endorsed by the CEDAW Committee<sup>195</sup> and adopted by some global GEL, which can be utilised to achieve implementation. The CEDAW Committee has identified the key components for effective gender mainstreaming, recommending first, a full mandatory and systematic ‘gender equality’ analysis of all policies and programmes so as to identify inequalities,<sup>196</sup> second, the incorporation of the principles of equality between women and men in all aspects of operations including agenda-setting, policy-making, planning, budgeting and in all decision-making procedures,<sup>197</sup> and finally (and crucially), the inclusion of monitoring mechanisms and regular evaluation of results achieved.<sup>198</sup>

#### Good Practice Example Gender Mainstreaming

##### **Philippines: Magna Carta For Women (draft).**

##### **Section 38.**

- All agencies, national and local, State colleges and universities, government owned and controlled corporations including local government units shall adopt GAD mainstreaming as a strategy to make their systems, processes and procedures gender responsive. Each must establish policies, programs, tools and services or establish systems that include (a) plan and budget (b) GAD focal point system (c) sex-disaggregated data (d) women/GAD related policies.

##### **Section 41.**

- All GAD plans shall include budgets included in their approved budget and each agency shall develop performance indicators.

#### Commentary

- Article 38 provides for the introduction of gender mainstreaming and places a positive obligation on the State and its representatives, including universities, to adopt the practice. This is strong good practice gender mainstreaming provision.
- Article 38 also identifies a clear process including the development of a plan and budget, the collection of sex-disaggregated data and the development of performance indicators by which to measure implementation.
- Whilst these are strong gender mainstreaming provisions, their breadth could be strengthened by including the private sector.

### 3.2.3 Temporary Special Measures

**Does the GEL place a positive obligation on public and private institutions to implement temporary special measures?**

Placing an obligation on public authorities and private organisations to implement temporary special measures (also known as ‘affirmative action’) in areas of gender inequality is another important mechanism for securing the implementation of GEL. Temporary special measures, described in Article 4(1) of CEDAW as measures ‘to accelerate *de facto* equality between men and women’ and defined in General Recommendation 5 as ‘positive action, preferential treatment or quota systems to advance women’s integration into education, into the economy, politics and employment’<sup>199</sup> should be utilised, according to the CEDAW Committee in a variety of ways. They should be utilised to increase women’s political participation in parliament and also in other elected and appointed decision-making positions;<sup>200</sup> to provide ‘*de facto* equal opportunities for women in the labour market’ in both public and private sectors<sup>201</sup> to create ‘opportunities to represent their Government at the international level to participate in the work of international organisations’<sup>202</sup> and to ‘reduce the illiteracy rate of women.’<sup>203</sup> Temporary special measures should include a provision that states that any such measures are not themselves discrimination to prevent any argument that a program designed to redress historical disadvantage faced by women disadvantages men<sup>204</sup> and should be discontinued when the practical realisation of equality has been achieved as required by Article 4(1).

Significant numbers of GEL worldwide have temporary special measures provisions, although few have placed mandatory positive obligations on public authorities and private institutions to adopt such measures, despite encouragement by the CEDAW Committee to do so.<sup>205</sup> As well as placing an obligation to institute temporary special measures, public authorities and relevant private organisations (such as employers) should be directed to undertake research, data collection and analysis to ascertain the *de facto* situation of women and to respond to such research with appropriate temporary special measures.

## Good Practice Example

### Temporary Special Measures

#### **Croatia: Gender Equality Act 2003.**

##### **Article 9(1).**

- Affirmative actions are specific privileges whereby members of a particular gender are enabled to participate equally in public life, the existing inequality is eliminated or the rights previously denied to them are guaranteed. (2) Affirmative actions are introduced on a temporary basis with the aim of achieving full equality of women and men and they are not considered acts of discrimination.

##### **Article 11(1).**

- All government bodies, legal entities vested with public authority and legal entities whose majority shareholders are the State and units of local and regional self-government shall be obliged to apply affirmative actions and adopt action plans for the promotion and realisation of gender equality (2) Bodies from Paragraph 1 of this Article shall adopt action plans for their domain on the basis of an analysis of the position of women and men, determine grounds for the introduction of affirmative actions, as well as their aims, methods of their implementation and methods of implementation monitoring. (3) Action plans from Paragraph 1 of this Article shall be approved by the Office for Gender Equality of the Government of the Republic of Croatia.

### Commentary

- Article 9 defines temporary special measures and specifically exempts them from any action in discrimination in accord with Article 5 of CEDAW.
- Article 11 creates an obligatory duty upon all government bodies and legal entities with majority state shareholders to analyse the *de facto* situation of women and to adopt temporary special measures in response to those findings in accord with good practice.
- Whilst the above two measures are positive, the Act would be strengthened by identifying a timetable and time-frame, identifying specific outcomes (such as a percentage of women on public bodies etc.), extension to the private sector and sanctions for failure to implement temporary special measures.

## Good Practice Example

### Temporary Special Measures

#### **Slovenia: Act on Equal Opportunities for Women and Men 2002.**

##### **Article 7.**

- **(1).** Special measures are temporary measures aimed at establishing equal opportunities for women and men as well as promoting gender equality in specific fields of social life in which non-balanced representation of women and men or unequal status of persons of one gender is ascertained. **(2).** Non-balanced representation referred to in the previous paragraph shall be given when the representation of one gender in a specific field of social life or in a part of such a field is lower than 40%. **(3).** Special measures shall be used to remove objective obstacles that bring about a non-balanced representation of women and men or an unequal status of persons of one gender as well as to give special benefits in the form of incentives to the underrepresented gender or to the gender experiencing unequal status. These incentives must be justified and in proportion to the purpose of the special measure. **(4).** Special measures shall include above all:
  - positive measures that give priority, in the case of an equal degree of fulfilment of the prescribed standards and conditions, to persons of that gender which is underrepresented or which is experiencing unequal status, until balanced or equal representation is achieved,

- encouraging measures that provide special benefits or introduce special incentives for the purpose of eliminating non-balanced representation of women and men or unequal status on account of gender, and
- programme measures in the form of awareness-raising activities and action plans for the promotion and establishment of equal opportunities and gender equality.

#### Article 8.

- **(1).** Positive measures may be adopted in the fields of education, employment, professional life, public or political activity and elsewhere within the framework of specific fields of social life where reasons stated in Article 7 of this Act are given for their introduction. **(2).** Positive measures may be adopted by state authorities in accordance with their structure and procedures, other bodies in the public sector, economic operators, political parties and civil society organisations. **(3).** Bodies referred to in the previous paragraph shall provide positive measures within the framework of action plans for the promotion and establishment of equal opportunities, based on an analysis of the status of women and men within their field of work. An action plan shall specify the reasons for the adoption of positive measures, aims to be achieved by means of these measures, the commencement of the implementation of the measures, the method of monitoring as well as the cessation of the implementation and the supervision of the implementation of the measures. **(4).** Action plans referred to in the previous paragraph shall be submitted to the Office for Equal Opportunities for preliminary approval before the commencement of the implementation of positive measures.

### Commentary

- Article 7 defines special measures and states that the aim is to establish equal opportunities for women and to promote equal representation, which is specifically nominated as 40%. This is a strong provision which sets a firm benchmark, and whilst the percentage is less than 50%, it nevertheless identifies a designated figure which falls only marginally short of the desirable percentage. It is also illustrative of the reality that in some cases equal representation can only be achieved incrementally.
- Article 7 also specifies a range of measures which can be introduced, ranging from first, positive measures (such as quotas); second, encouraging measures (such as rewards), and third, programme measures (such as awareness raising), which provide clarity to the State party. The identification of three types of measures provides flexibility to the State party, recognising the need to use a range of approaches to achieve such targets.
- Article 8 provides a clear and detailed process by which the *de facto* situation of women is to be analysed, a timeline, and a process of monitoring in accord with the CEDAW Committee's recommendations.
- Article 8 states that measures can be introduced in the fields of education, employment, professional life, public or political activity, and elsewhere within the framework of specific fields of social life where there is unequal representation (i.e. less than 40%), and although the wording is not completely clear, it appears to be a mandatory duty and extends to both private and public institutions and organisations.
- Although no sanctions are identified for the failure to introduce measures, and further, whilst such measures are not expressly excluded from discrimination, this is nevertheless a strong example of good practice temporary special measures.

### 3.3 Monitoring Mechanisms

**Does the GEL establish mechanisms to monitor public authorities and private organisations and individuals in their implementation and observance of the GEL?**

Placing a positive obligation on public authorities, their representatives, and private organisations to implement the GEL is an important means of ensuring implementation. However to be effective, the GEL must also conduct ‘systematic monitoring and evaluation of all measures aimed at promoting gender equality’<sup>206</sup> in order to ensure that all actors perform their duties and obligations with the desired and intended results, and to ensure further that the provisions of the GEL are not breached. There are a range of mechanisms that have been adopted by GEL globally to monitor public authorities, private organisations and individuals so as to ensure that the GEL is implemented and to punish and deter those who breach its provisions. These include, as discussed in full below, the establishment of a system of rewards or incentives the establishment of a system of disincentives, such as the denial of credit, government tenders or the publication of names of violators, an obligation to report, and finally more punitive measures such as fines or imprisonment.

#### 3.3.1 Rewards and Incentives

**Does the GEL provide a system of rewards and incentives to compliant bodies?**

Incorporating into a GEL a system of providing rewards and incentives to public authorities and their representatives and to private organisations and individuals who fulfil their obligations of implementing the GEL is an important means of encouraging compliance.<sup>207</sup> Rewards or incentives offered by some GEL to public institutions, such as those illustrated in the example from the Philippines below, have included public awards and medals, payment bonuses and access to promotion. Rewards or incentives offered by some GEL to private institutions have included priority access to state funding and contracts, such as those illustrated in the example from Kyrgyzstan below, or the placement in a public list of compliant employers which can then be used to market the company, as illustrated below in the example from Spain.

#### Good Practice Example Public Authorities

**Philippines: Magna Carta For Women (draft).  
Section 46.**

- There shall be established an incentives and awards system which shall be administered by the board under such rules and regulations as may be promulgated by the Philippine Commission of Women to deserving entities, government agencies and local government units for their outstanding performance in upholding the rights of women and effective implementation of gender-responsive programs.

### Commentary

- Section 46 provides for the mandatory establishment of a system of incentives and awards to be administered by an independent institution, which is a positive measure.
- Another positive feature is the independent nature of the institution, which reduces opportunities for favouritism and corruption.
- The section would be strengthened by specific details on what the incentives will be and how they will be implemented.

### Good Practice Example Private Organisations

#### **Kyrgyzstan: Law on Gender Equality (draft).**

**Article 30.** Employer following the Law on Gender Equality:

- will have a priority right for access to development credits;
- will have priority to receive state support for the social development of the enterprise;
- will have priority access to information from governmental agencies on enterprise development;
- has the right to test employee and to obtain the decision of the qualification commission on the issues of hiring or promotion;
- has the opportunity to conduct additional training for women-employees in case of performing their reproductive functions.

#### **Spain: Constitutional Act for Effective Equality Between Men and Women (2007).**

**Article 50.** Corporate Equality Mark.

- The Ministry of Labour and Social Affairs will create a mark to distinguish employers for outstanding achievement in the implementation of equal treatment and opportunities policies for their workers, which may be used in the company's commercial dealings and for advertising purposes.
- Any State-owned or private company may submit to the Ministry of Labour and Social Affairs a balance sheet of equality parameters in place in its labour relations and in the advertising of its goods and services to obtain this mark.
- Mark denomination, the procedures and conditions for its award, the entitlements deriving from its acquisition and the conditions for the institutional dissemination of the companies to which it is awarded together with the equality policies implemented thereby will be established in the respective regulations.
- The criteria to be taken into account for the award of this mark will include, among others, the balanced presence of women and men in the company's management bodies and occupational groups and categories, the adoption of equality plans or other innovative measures to further equality, and non-sexist advertising of company goods and services.
- The Ministry of Labour and Social Affairs will monitor the companies awarded the mark to ensure they implement equal treatment and opportunities policies for their workers on an ongoing basis, withdrawing the mark from non-compliant organisations.

### Commentary

#### **Kyrgyzstan:**

- In contrast to Spain, the Kyrgyzstan Law provides concrete incentives and may be more effective in organisations for whom financial and information access rewards are critical.

#### **Spain:**

- The award of a mark is premised on the importance of reputation. This will be an effective measure only for companies for whom reputation is important, but it does not carry any concrete rewards (such as priority for government contracts or funding).

### 3.3.2 Disincentives

**Does the GEL incorporate a system of disincentives to encourage GEL compliance?**

Disincentives such as denying private organisations access to government benefits or publishing a public list of violators of the law (for both public and private actors) may also be used in conjunction with, or instead of, rewards to encourage the implementation of and compliance with GEL. Whilst this is a controversial measure it can nevertheless be an effective means of ensuring that both public and private actors fulfil their GEL obligations. In the private sector in particular, it is evident that negative publicity causing damage to reputation, which may affect future profits, is a strong disincentive for companies and organisations.<sup>208</sup>

#### Good Practice Example Disincentives

**Kyrgyzstan: Law on Gender Equality (draft).**

**Article 28.**

- In case of finding the facts of infringement of gender equality, the Ombudsman has the authority to use the threat of imposing the fine or including the organisation (enterprise) into the list of violators of the Law.

**Article 29.**

- The entities included into the list of breaching the Law shall be subjects of pressure from the State in the form of closing access to credits, participation in tenders and other procedures.

#### Commentary

- Articles 28 and 29 together provide a good practice example of a strong system of disincentives.
- Article 28 provides for the publication of violators which could provide a strong disincentive for companies concerned about their reputation.
- Article 29 provides for direct and concrete measures in the form of refusing credit and not permitting participation in tenders.
- The Law appears to apply to the private sector only and would be strengthened by extension to the public sector.

### 3.3.3 Reporting

**Does the GEL establish a system of reporting by public and private institutions?**

An obligation on all public and private institutions to report on the measures they have taken to implement the GEL is a frequently employed and effective monitoring mechanism. An effective reporting process has a number of key components. First, reporting should be mandatory and regular; second, the report should review in detail the measures adopted to implement the GEL, such as gender mainstreaming, gender equality plans and temporary special measures; third, it should demonstrate the progress made towards the objectives of each adopted measure and identify obstacles to the full achievement of the objectives, and fourth, a clear mandatory follow-up procedure should be established to respond to the reports. For public authorities, the process should ensure the reports are collated and centralised

for examination by government – from which an appropriate direction should be mandatory. For private organisations, whilst monitoring is more difficult to coordinate, reporting could be tied to incentives such as those described in 3.3.1.

### Good Practice Example Reporting Process

#### **Denmark: Gender Equality (Consolidation) Act 2002.**

##### **Section 5(1).**

- Prior to 1 September of every second year, ministries, state institutions and state-owned undertakings shall prepare a report on gender equality. State institutions and state-owned undertakings shall prepare reports only if their number of employees exceeds 50.

##### **Section 5 a(1).**

- At least every second year, the local council and the county council shall submit a report on gender equality among local and county authority employees to their citizens. Such reports shall be subject to adoption by the local council and the county council.

##### **Section 5(2).**

- Such reports shall include information on: (i) whether the ministry, the institution or the undertaking has formulated a policy on gender equality and if so, the detailed contents of such policy; (ii) the gender distribution across job categories; and (iii) any other matter deemed to be of importance for an evaluation of the efforts made by the ministry, the institution or the undertaking in respect of gender equality.

##### **Section 5(3).**

- The reports from the institutions and undertakings specified in subsection (1) above shall be submitted to the responsible minister.

##### **Section 5(4).**

- The responsible minister shall edit the said reports and submit an overall report accompanied by the individual reports to the Minister for Gender Equality not later than 1 November of the years in which such reports are prepared and submitted to the responsible minister.

##### **Section 5(5).**

- The responsible minister shall edit the said reports and submit an overall report accompanied by the individual reports to the Minister for Gender Equality not later than 1 November of the years in which such reports are prepared.

##### **Section 5(6).**

- The Minister for Gender Equality is authorised to lay down rules in respect of the contents of the reports set out in section 5(1) and section 5a hereof.

##### **Section 7(1).**

- Prior to 1 March of each year, the Minister for Gender Equality shall submit a report and a perspective and action plan for gender equality to Folketinget (the Danish Parliament).

### Commentary

- Every year a report and action plan for gender equality must be submitted to the Danish Parliament. This is positive because the process identified makes reporting mandatory and regular.
- The Minister of gender equality is authorised to issue rules in relation to the contents of the reports, although it is unclear who those rules will bind, or even the nature of the rules.
- The provisions only apply to state institutions and state-owned undertakings (not private organisations), and only if their staff exceeds 50.
- The provisions could be strengthened by identifying consequences for the failure to develop policies or achieve gender equality.

### 3.3.4 Fines and Imprisonment

**Does the GEL create penalties such as fines and imprisonment to punish breaches of GEL?**

Article 2(b) of CEDAW expressly states that legislation condemning discrimination against women must incorporate sanctions ‘where appropriate’. Further to this, the CEDAW Committee has repeatedly emphasised the importance of ‘adequate sanctions for acts of discrimination against women’.<sup>209</sup> Sanctions and penalties such as fines and imprisonment, which have been utilised by many GEL, and which operate to deter those who breach such laws from future violations are therefore an important monitoring mechanism.<sup>210</sup> It is beyond the capacity of this report to stipulate what is an appropriate fine and imprisonment period in specific countries and therefore no examples have been provided. However, sanctions should be considered ‘severe’ in the context of each individual country in order to ensure that violations of GEL are not disregarded or ignored. Thus, the appropriateness of particular measures should be considered in detail, since a pecuniary fine, for example, may be more effective for private institutions than for the public sector due to its direct impact on the profitability of a company.

### 3.4 Complaints Process

**Does the GEL incorporate a complaints process to ensure individuals can bring actions for breach and receive appropriate remedies?**

An individual complaints process, identified as key to effective gender equality and non-discrimination legal frameworks<sup>211</sup> and mandated by the CEDAW Committee, is an essential component of a GEL.<sup>212</sup> The central purpose of a complaints process, in comparison to the monitoring mechanisms described above in 3.1.3, is to provide victims of gender-based discrimination with appropriate remedies. However, whilst complaints processes are primarily focused on victims, they also play an important role in deterring both public and private actors from future acts of discrimination, either by requiring them to pay compensation or through orders preventing them from committing future violations. GEL worldwide, both enacted and draft, utilise a wide range of mechanisms and bodies with the capacity to receive and investigate complaints and award remedies to victims. These include the establishment of Offices of the Ombud, Councils, Commissions, Offices and Tribunals.

A good practice complaints process requires the incorporation of a number of key components as follows: (1) It should be facilitated by a funded independent body; (2) It should be staffed by gender experts; (3)

The complaints process should be free of charge to complainants; (4) The complaints process should extend to violations by both public authorities and private institutions and individuals (5) Standing should be open, enabling the lodgement of complaints by those not personally harmed by violations; (6) There should be a clear procedure for establishing liability; (7) The burden of proof should be placed on the violator rather than the complainant; (8) The complaints body should have the power to award appropriate and adequate remedies; (9) Information about victims should be confidential and retaliation prohibited; (10) Requests for an opinion should be accepted from a person or institution concerned with whether their action will or has caused a breach, and (11) An effective appeals process should be incorporated.

Each of the above subcomponents of a good practice complaints process is detailed in the following sections accompanied by a discussion of the rationale for its inclusion and examples of good practice taken from GEL worldwide.

### 3.4.1 Funded Independent Body

**Is the complaints process administered by a funded independent body?**

A complaints process is ideally administered by an independent body equipped with appropriate and adequate funding.<sup>213</sup> The Paris Principles stress adequate funding as a fundamental feature and precondition for independence of any human rights institution. The Principles state that ‘the national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding is to enable it to have its own staff and premises, in order to be independent of the government and not be subject to financial control which might affect this independence.’<sup>214</sup>

#### Good Practice Example Funded Independent Body

##### **Croatia: Gender Equality Act 2003.**

##### **Article 19(1).**

- Gender Ombudsman (hereinafter the Ombudsman) shall be appointed and dismissed by the Croatian Parliament on the proposal of the Government of the Republic of Croatia.

##### **Article 21(1).**

- The Ombudsman shall act autonomously and independently.

##### **Norway: The Anti-Discrimination Ombud Act 2006.**

##### **Section 2.**

- The Equality and Anti-Discrimination Ombud is an independent public administrative agency administratively subordinate to the King and the Ministry. Neither the King nor the Ministry may give instructions to the Ombud regarding the way in which individual cases are to be dealt with or regarding any other aspects of the Ombud’s professional activities. Nor may the King or the Ministry reverse any administrative decisions made by the Ombud.

### Commentary

- Croatia and Norway both establish independent institutions (Ombuds) to facilitate the complaints mechanism in accord with good practice.
- Norway, in particular, specifically states that neither the King nor the Ministry may give instructions to the Ombud regarding how individual cases are to be dealt with and that they may not over-ride any decisions of the Ombud. This is a very strong provision.

### 3.4.2 Staffed by Gender Experts

**Is the complaints process staffed in full or in part by gender experts?**

In order to be able to accurately and effectively assess breaches of GEL, the complaints body should be staffed, at least in part, by ‘personnel well-trained in gender equality issues’<sup>215</sup> with particular expertise in CEDAW and the relevant GEL. Such expertise is essential to ensure that the provisions of the GEL are interpreted in line with CEDAW and according to the ILO, such expertise is also crucial to the credibility and effectiveness of the complaints process.<sup>216</sup> Despite the need for such a measure, few GEL require the complaints process to be staffed, even in part, by gender experts.

### Good Practice Example Staffed by Gender Experts

**Denmark: Gender Equality (Consolidation Act) 2002.  
Section 18(1).**

- The Gender Equality Board shall consist of a chairperson and two other members to be appointed by the Minister for Gender Equality for terms of three years. Members shall be eligible for reappointment. The chairperson shall be a professional judge. The other members shall hold an MA degree in law, and one member shall have knowledge about gender equality issues, whereas the other member shall have knowledge about industrial relations. Both genders shall be represented on the Board.

### Commentary

- Although only one member of the Board is required to have knowledge of gender equality issues it is a positive acknowledgement of the importance of expertise in gender equality related matters to an effective GEL complaints process.
- The requirements would be strengthened by requiring the judge and other members of the Board to be trained in gender equality.

### 3.4.3 Complaints Process Free of Charge

**Is the complaints process free of charge?**

A lack of resources can be a significant barrier for victims of breaches of GEL who wish to pursue an action. To ensure access to remedies, the process should therefore be free of any fees or charges.

### Good Practice Example

#### Complaints Process Free of Charge

**Slovenia: Equal Opportunities for Women and Men (2004).**  
**Article 21(2).**

- Hearing a case shall be informal and free of charge.

### 3.4.4 Complaints Process for Violations by Public and Private Actors

**Does the complaints process extend to violations by public authorities private organisations and individuals?**

To ensure the comprehensive implementation of GEL, redress for violations should extend to breaches by the State, public authorities, private institutions and individuals, in accordance with Article 2(d) of CEDAW, which explicitly obligates States parties to themselves refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions act in conformity with this obligation. Further, Article 2(e) of CEDAW requires that discrimination is prohibited not just by the law, government, and government authorities but also by any person, organisation or enterprise. The extension of a GEL to 'acts of both public and private actors in accordance with Article 2'<sup>217</sup> is indicative of the recognition that to effectively combat discrimination in all areas of women's lives, the regulation of both state and non-state actors throughout the public and private spheres of women's lives is required.<sup>218</sup>

### Good Practice Example

#### Available for Violations by Public and Private Actors

**Kosovo: Law on Gender Equality 2004.**  
**Section 6.6.**

- The Gender Equality Attorney shall review all cases of gender rules violations, cases of gender discrimination against individuals or groups of individuals committed by government bodies, other bodies of public authority, employees of such bodies, employers or other legal and physical persons.

#### Commentary

- This is a good practice provision as it covers a wide range of bodies and persons. It could be strengthened, however, by explicit reference to the private sector.

### 3.4.5 Open Standing

**Does the complaints process accept complaints by any person or organisation?**

Standing is the set of rules that determines whether a person who starts legal proceedings is a proper person to do so. Open standing, which refers to a system in which any person or organisation can lodge a complaint (and not just victims), is an important feature of an effective complaints system for GEL. This is supported by the Paris Principles which call on governments to create national institutions that are equipped to investigate

any human rights matter at their own initiative, at the suggestion of government, and at the request of any petitioner.<sup>219</sup> This is important because discrimination complaints often involve systemic rather than individual harms, because victims of GEL violations may often be persons or groups who do not have the financial or social resources to lodge individual complaints, and because lodgement may involve risk or reprisal to the individual victim.<sup>220</sup> As well as extending standing to individuals and organisations who are not themselves victims of GEL violations, the additional ability of the GEL monitoring institution to initiate enquiries on its own behalf is a significant measure of its overall strength and potential effectiveness.<sup>221</sup> This is particularly important as the relevant authority may in some circumstances be in the best position to bring an anti-discrimination claim.<sup>222</sup>

### Good Practice Example Open Standing

#### **Kosovo: Law on Gender Equality 2004. Section 7.1.**

- Any individual, non governmental organization, association or other organization may submit before the Gender Equality Attorney a request in writing for the review of an alleged gender equality violation.

#### **Section 7.2.**

- The Gender Equality Attorney shall also accept anonymous requests in writing, provided that they contain a reasonable amount of information.

### Commentary

- Section 7.1 provides full open standing without any requirement that the individual or organisation seeking review of a violation has themselves been discriminated against.
- Enabling anonymous requests is a positive measure recognising that victims may not always be best placed to lodge complaints or may be in situations of risk.

### 3.4.6 Clear Procedure for Establishing Liability

**Does the complaints process have clear and defined procedures?**

A clear and well-defined procedure is an important component of an effective complaints process, including clear direction on information-gathering powers, witnesses, rules, and powers and time-frames for resolving complaints.<sup>223</sup> Since good practice examples of procedural guidelines in complaints processes are too extensive and detailed to include in this report, the following good practice examples should be consulted for illustration; Lithuania: Law on Equal Opportunities (Article 18-25) South Africa: Promotion of Equality and Prevention of Unfair Discrimination Act 2000 (Chapter 4); Thailand: Promotion of Opportunity and Gender Equality Act (draft) (Chapter 5).

### 3.4.7 *Burden of Proof on the Defendant*

**Does the complaints process place the burden of proof on the defendant?**

The term ‘burden of proof’ refers to whether a complainant or the alleged violator (defendant) has to prove on the balance of probabilities whether a violation occurred. Generally in civil law, the burden of proof lies on the person asserting the claim and not on the party denying it. In practice, however, in allegations of discrimination, placing on the complainant the burden of proving that the discrimination occurred may be an insurmountable obstacle to obtaining remedies for the harm suffered. Whilst at times the evidence can be collected without undue difficulty (for example, in cases involving advertisements for job vacancies where the discrimination is obvious), in many instances it can be difficult for victims to prove the occurrence of a GEL violation because both information and power lies with the violator. Further, the discrimination typically involves an action or activity that is suspected rather than established and is therefore usually difficult to prove. For example, when a person alleges discrimination in an employment selection process, information concerning the criteria for selection, the qualifications and assessment of the various candidates for the position usually lies mainly within the knowledge of the employer. In these circumstances, the employer may be able to win the case simply by saying nothing and merely challenging the inferences drawn by the complainant.<sup>224</sup>

In view of the difficulties experienced by complainants in gaining access to data, and in what appears to be an increasing trend,<sup>225</sup> several of the global GEL examined have reversed the burden of proof in the complaints process. The reversal of the onus onto the violator to prove the discrimination did not occur is a significant development and one much more likely to lead to substantive equality outcomes.<sup>226</sup> Thus, if the complainant can establish the facts from which discrimination may be presumed to exist, it is for the alleged violator to prove that either the apparent discrimination is due to objective factors unrelated to the sex of the claimant, or that there was no violation of the GEL.

#### **Good Practice Example** **Burden of Proof on the Defendant**

##### **Norway: Gender Equality Act 2005. Section 16.**

- If there are circumstances that give reason to believe that there has been direct or indirect differential treatment in contravention of the provisions of this Act, such differential treatment shall be assumed to have taken place unless the person responsible proves on a balance of probabilities that such differential treatment nonetheless did not take place.

See also Denmark (Part 2, Section 2a(1)), Tajikistan (Article 14), Estonia (Article 4), Sweden (Section 21), Spain (Article 13) which also place the burden of proof on the alleged violator.

### 3.4.8 Appropriate and Adequate Remedies

#### Does the complaints process enable the award of appropriate and adequate remedies?

The capacity to award appropriate and adequate remedies is an essential part of a complaints process.<sup>227</sup> The ability to identify acts of discrimination, although symbolic, is insufficient without concrete remedies for the wronged individual and the removal of the offending provision or prevention of any future acts.<sup>228</sup> The United Nations Human Rights Commission has stated that an effective remedy requires ‘reparation to individuals’ and that reparation can include ‘restitution, rehabilitation and measures of satisfaction such as public apologies, public memorials, and guarantees of non-repetition.’<sup>229</sup> In sum, the victims of discrimination and breaches of GEL should benefit from suitable remedies, which should also have a dissuasive effect upon those who may consider engaging in discriminatory practices. The GEL examined varied considerably in their capacity to award remedies as well as in the range of remedies provided, as seen below.

#### Good Practice Example Appropriate and Adequate Remedies

##### **South Africa: Promotion of Equality and Prevention of Unfair Discrimination Act (2000).\*** **Section 21(2).**

- After holding an inquiry, the court may make an appropriate order in the circumstances including :
  - (a) an interim order;
  - (b) a declaratory order;
  - (c) an order making a settlement between the parties to the proceedings an order of court;
  - (d) an order for the payment of any damages in respect of any proven financial loss, including future loss, or in respect of impairment of dignity, pain and suffering or emotional and psychological suffering, as a result of the unfair discrimination, hate speech or harassment in question;
  - (e) after hearing the views of the parties or, in the absence of the respondent the views of the complainant in the matter, an order for the payment of damages in the form of an award to an appropriate body or organisation;
  - (f) an order restraining unfair discriminatory practices or directing that specific steps be taken to stop the unfair discrimination, hate speech or harassment;
  - (g) an order to make specific opportunities and privileges unfairly denied in the circumstances available to the complainant in question;
  - (h) an order for the implementation of special measures to address the unfair discrimination, hate speech or harassment in question;
  - (i) an order directing the reasonable accommodation of a group or class of persons by the respondent;
  - (j) an order that an unconditional apology be made;
  - (k) an order requiring the respondent to undergo an audit of specific policies or practices as determined by the court;
  - (l) an appropriate order of a deterrent nature, including the recommendation to the appropriate authority, to suspend or revoke the licence of a person;

- (m) a directive requiring the respondent to make regular progress reports to the court or to the relevant constitutional institution regarding the implementation of the court's order;
- (n) an order directing the clerk of the equality court to submit the matter to the Director of Public Prosecutions having jurisdiction for the possible institution of criminal proceedings in terms of the common law or relevant legislation;
- (o) an appropriate order of costs against any party to the proceedings;
- (p) an order to comply with any provision of the Act.

*\*not a GEL but an Equality and Anti-Discrimination Act*

### Commentary

- This is a very comprehensive provision providing a wide range of remedies. Note, however, that the mechanism set up under the SA Equality Act is a court with far more powers than the bodies typically incorporated into a GEL. Nevertheless the provision provides an excellent example of the array of potential remedies for GEL.

### 3.4.9 Information Confidential and Protection from Victimisation

**Is the complaints process confidential and are victims protected from victimisation?**

To enable and encourage victims of GEL violations to lodge complaints, it is essential that any information they provide is confidential and that they are protected from any retaliation or victimisation on the part of the violator. This is particularly important in situations of employment or where there is a continuing relationship between the victim and the violator.

### Good Practice Example Information Confidential and Protection from Victimisation

**Kosovo: Law on Gender Equality 2004.**

**Section 6.11.**

- The Gender Equality Attorney and his/her employees shall protect and hold all information obtained during their exercise of their advocacy duty as an official secret.

**Mauritius: Equal Opportunities Act 2005.**

**Section 41.**

- A person commits an act of victimisation if they subject or threaten another person to detriment because that person (i) has made or proposes to make a complaint under this act (ii) has brought or proposes to bring proceedings under this Act against any person (iii) has furnished or proposes to furnish any information or has produced any documents to a person exercising or performing any power of function under this act (iv) has attended or proposes to intend an inquiry under the Act, or to provide evidence or testimony as a witness (v) has made in good faith an allegation that a person has committed an act of discrimination in contravention of the Act. Victimisation is subject to penal penalties of a fine or imprisonment.

### Commentary

- The Mauritius Act provides strong protection for both victims and others who participate in the complaints process for violations of the Act. Part of its strength lies in its coverage of both past and anticipated behaviour, making it a comprehensive provision.

### 3.4.10 Advisory Opinion

**Does the complaints process enable a person, organisation or institution to request an opinion about whether its actions have breached, or could breach, the GEL?**

The opportunity for a person, organisation or institution to request an opinion of an adjudicatory body on whether its actions have constituted a breach of the GEL or alternatively whether any proposed action may constitute a breach is an important aspect of a complaints process, enabling actors to take proactive responsibility for their actions. It is rarely, however, incorporated into GEL.

#### Good Practice Example Advisory Opinion

**Slovenia: Act on Equal Opportunities for Men and Women.**

**Article 28.**

- An individual or legal person may turn to the Advocate for equal opportunities with a request for an opinion on whether it will cause or has caused by any of its actions unequal treatment of women and men in terms of this Act.

#### Commentary

- This is a positive inclusion in the Slovenia Act enabling individuals or legal persons to assess its own actions and, in particular, future actions.

### 3.4.11 Appeals Process

**Does the complaints process have an appeals process?**

An independent appeals process, either to a judicial or non-judicial body is an important addition to a complaints mechanism to ensure fairness, transparency and impartiality in the process. See Mauritius: Equal Opportunities Bill s 39 for an example of an appeals process from the Equality Tribunal to the Supreme Court.

## 3.5 Collection of Gender Statistics and Data

**Does the GEL contain a mechanism to facilitate the collection of gender statistics and data in all areas of women's lives?**

The collection of statistics and data disaggregated by sex and the gender dimensions of other intersections such as ethnicity, disability, sexual orientation and age<sup>230</sup> is 'absolutely necessary in order to understand the real situation of women in each of the States parties to the Convention'<sup>231</sup> and is therefore also critical for the effective implementation of GEL. The compilation of gender statistics and data is essential to enable targeted law reform as well as policy and programme development that accurately pinpoints the substantive inequalities

experienced by women in all areas of their lives.<sup>232</sup> Accordingly, in General Recommendation 9 (specifically dedicated to the collection of statistical data concerning the situation of women), the CEDAW Committee urges States parties to ‘make every effort to ensure that their national statistical services responsible for planning national census and other social and economic surveys formulate their questions in a such a way that data can be disaggregated according to gender, with regard to both absolute numbers and percentages, so that interested users can easily obtain information on the situation of women in the particular sector in which they are interested.’ However, the CEDAW Committee has also recognised the need to collect gender statistics in all areas of women’s lives and not just those areas designated in existing national data collection processes. Areas recommended by the CEDAW Committee include the ‘extent, causes and effects of violence and ...the effectiveness of measures to prevent and deal with violence’;<sup>233</sup> data in relation to the situation of women in employment ‘in both the formal and informal sectors’;<sup>234</sup> on the extent of the unremunerated domestic activities of women;<sup>235</sup> on the incidence of abortion;<sup>236</sup> on the ‘*de facto* position of rural women in all sectors’;<sup>237</sup> in relation to HIV/AIDS;<sup>238</sup> and on the ‘sexual exploitation and trafficking of women and girls’;<sup>239</sup> including cross-border and internal trafficking.<sup>240</sup>

Many of the GEL considered in this review do make provision for the collection of sex-disaggregated data. Essential features of a good practice provision include first, the establishment of a mandatory and systematic process to gather data disaggregated by sex and the gender dimensions of other intersections such as ethnicity, disability, sexual orientation and age, and second, that the duty to collect data is imposed on a range of public and private bodies to ensure that data collection occurs in all areas of women’s lives and is not merely an additional aspect of existing data collection.

### Good Practice Example Collection of Gender Statistics

#### **Bosnia: Law on Gender Equality 2003.**

##### **Article 18.**

- **(1).** All statistical data and records collected, recorded and processed in state bodies at all levels, public services and institutions, state and private corporations and other entities must be gender disaggregated. **(2).** Statistical data and information collected, recorded and processed pursuant to para. 1 of this Article must be an integral part of statistical records and accessible to the public.

##### **Article 28(4).**

- Imposes a fine on a juristic person who fails to differentiate by gender statistical data and information collected recorded and processed.

### Commentary

- Article 18 provides for all data currently collected by any state institution to be gender-disaggregated in accordance with the CEDAW Committee's recommendations.
- However, it does not require direct statistical collection to be instigated in new areas integral to women's lives and is instead reliant on current data collection regimes.

### Good Practice Example Collection of Gender Statistics

#### **Spain: Constitutional Act for Effective Equality Between Men and Women 2007.**

##### **Article 20.**

- When formulating their studies and statistics in their endeavour to ensure the effectiveness of the provisions of the present Act and of the integration of the gender perspective in their ordinary activities, public authorities will:
  - a) Systematically include the sex variable in any statistics, surveys or data gathering in which they engage.
  - b) Establish and include new statistical indicators that provide for a fuller understanding of the differences in values, roles, situations, conditions, aspirations and needs of women and men, and their expression and interaction in the reality analysed.
  - c) Design and introduce the indicators and mechanisms required to ascertain the effect of other variables whose concurrence generates multiple discrimination in the different domains where action is taken.
  - d) Take sufficiently large samples for the variables studied to be exploited and analysed in terms of the sex variable.
  - e) Mine the data available to acquire an understanding of the different situations, conditions, aspirations and needs of women and men in the various areas where action is taken.
  - f) Review and as necessary revise existing statistical definitions to contribute to the recognition and revaluation of women's work and avoid the adverse stereotyping of certain communities of women.
- Failure to comply with any of the above obligations may be justified, only exceptionally, after the submission of a reasoned report to the competent body.

### Commentary

- Although limited to public authorities, Article 20 provides for comprehensive mandatory collection of data disaggregated by sex and other intersections of discrimination.

### Commentary

- It also obliges public authorities to establish new measures and indicators in order to assess ‘the differences in values, roles, situations, conditions, aspirations and needs of women and men’. Although this could be more clearly directed to include violence against women, health, participation in education etc., it is nevertheless an important recognition that current data collection may not fully assess women’s *de facto* situation and may in itself be gendered.

## 3.6 Self-Reviewing Process

**Does the GEL incorporate a self-reviewing process to determine whether it is working effectively?**

The incorporation of a mandatory review process within a GEL which obligates the implementation and monitoring mechanism of the GEL to ‘regularly conduct impact assessments of its legislative reforms, policies and programmes to ensure that the measures taken have led to the desired goals’<sup>241</sup> has been recommended by the CEDAW Committee in relation to all implementation mechanisms. Although it is an important component of a GEL, few contain such a mechanism.

### Good Practice Example Self-Reviewing Process

**Ireland: Equal Status Act 2000.  
Section 39(c).**

- The Equality Authority shall ‘provide information to the public and to keep under review the working of this Act and whenever the Authority thinks it necessary to make proposals for its amendment’.

### Commentary

- Section 39(c) is a good practice example of a review mechanism, namely the Equality Authority, which is an independent institution.
- The Act could be further strengthened by more specific directions on the manner of review and fixed timelines for review.

## 3.7 Adequate Means of Funding

**Does the GEL establish an adequate means of funding for its implementation and monitoring functions?**

The provision of ‘adequate human and financial resources’ to support the implementation and monitoring functions established in the GEL is essential so that it can effectively implement its mandate.<sup>242</sup> A good practice funding provision should contain the following components. First, the level of funding should be adequate and should include a designated amount from government revenue, second, the funding should ideally be managed and distributed by an independent institution, and third, a detailed guide should include what the monies can be spent on. The activities the funding could be spent on should include: the review of existing law and future enactments for compliance with GEL, the development

and drafting of new laws and amendments, assistance for or compensation to a victim of a breach of the GEL, the monitoring of the performance of state officials, government agencies and private institutions in the implementation of the GEL, the promotion of education, research and dissemination of knowledge in relation to the implementation of the GEL, the development and implementation of special measures, the gathering of sex disaggregated data, and for any other activity in relation to the promotion of opportunity, gender equality and the implementation of the GEL.

### Good Practice Example

#### Adequate Means of Funding

##### **Thailand: Promotion of Opportunity and Gender Equality Act (draft).**

##### **Section 41(1-6).**

- The Promotion of Opportunity and Gender Equality Fund for the promotion of opportunity and gender equality shall be established. It shall be funded by the government, the revenue of the agencies concerned with the Act, fines received under the Act, money donated to the Fund, interest from the Fund, other revenues of the Fund.

##### **Section 43.**

- The Office of Women's Affairs shall be the caretaker of the Fund, the OGE shall be the administrator.

##### **Section 44.**

- Money shall be spent according to the following purposes (1) activities or affairs in relation to the promotion of opportunity and gender equality (2) protection from and prevention of unfair gender discrimination (3) help, assistance or alleviation for an aggrieved person affected by unfair discrimination (4) for the monitoring, recommendations or consultations concerning the performance of state officials and government agencies in the enforcement of this act (5) for the promotion of education, research and dissemination of knowledge in relation to the prevention of unfair discrimination (6) for the contact and coordination with other agencies in public, private, people's sectors and independent agencies.

### Commentary

- Article 41 provides for the establishment of a Fund and identifies the sources of funding. It could be strengthened further by specifying that the amount from government will be 'appropriate' or 'adequate', to ensure the sustainability of the body responsible for overseeing the GEL.
- Article 44 provides a detailed guide on how the budgeted monies shall be spent. This is a strong and positive provision as it clearly defines the activities that the Fund can be spent on and includes a wide array of alternatives. The inclusion of temporary special measures would strengthen the GEL.



# ANALYSIS OF IMPLEMENTATION AND MONITORING IN GENDER EQUALITY LAWS AND DRAFTS LAWS

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- Indonesia : Act Concerning Gender Equality and Equity (draft)
- Lao PDR : Law on the Development and Protection of Women 2004 and Decree on the Implementation of Law on the Development and Protection of Women 2006
- Philippines : Magna Carta for Women (draft)
- Thailand : Promotion of Opportunity and Gender Equality Act (draft)
- Vietnam : Law on Gender Equality 2006

## Indonesia : Act Concerning Gender Equality and Equity (draft)

GOOD PRACTICE COMPONENT	RELEVANT PROVISION	COMMENTARY
1. Does the GEL contain a mechanism or provision to ensure existing or future domestic legislation accords with its provisions?	<p><b>Act Concerning Gender Equality (draft).</b>  <b>Article 33(1).</b></p> <ul style="list-style-type: none"> <li>All implementing regulations in the field of gender equality and gender equity in effect continue to be applicable unless they are inconsistent with this Act or have been replaced by a new law or regulation made pursuant to this Act.</li> </ul> <p><b>Article 33(2).</b></p> <ul style="list-style-type: none"> <li>All existing laws and regulations remain applicable unless exempted (made inapplicable) under this Act.</li> </ul>	<ol style="list-style-type: none"> <li>Article 33 is unclear in its wording and should be more clearly defined so as to explicitly render all laws inconsistent with the GEL invalid.</li> <li>There is no mechanism established by the GEL to systematically review all laws for consistency with the Act and no provision for pre-enactment scrutiny.</li> </ol> <p>For a detailed discussion on good practice approaches to harmonisation please refer to Part 3, 3.1.</p>
2. Does the GEL place a positive obligation on public and private institutions to implement the GEL?	<p><b>Act Concerning Gender Equality (draft).</b>  <b>Article 18.</b></p> <ul style="list-style-type: none"> <li>(1). The government shall create programmes to promote equality of rights between men and women in educational, social and cultural spheres. (2). A government regulation will address the arrangements under (1).</li> </ul> <p><b>Article 25.</b></p> <ul style="list-style-type: none"> <li>(1). The government shall create programmes to promote equality of rights between men and women in the fields of economy and labour. (2). A government regulation will address the arrangements under (1).</li> </ul> <p><b>Article 29.</b></p> <ul style="list-style-type: none"> <li>(1)-(2). Gender mainstreaming in development at the national level shall be conducted under the co-ordination of the minister who shall determine the guidelines for its implementation. (2)-(4). At Provincial, District and City level gender mainstreaming shall be conducted by Governor, District Chief and Mayor who shall further delegate the operational activities to appointed government officials. (5). Governor, District Chief and Mayor shall establish implementing task force units that are responsible to appointed government officials who shall be responsible to Governor, District Chief and Mayor.</li> </ul> <p><b>Article 31.</b></p> <ul style="list-style-type: none"> <li>(1)-(4). The Minister and at [the] local level the Head of the Local Legislative Council are charged with coordinating the 'planning, implementation, monitoring, supervision, evaluation and reporting' of the promotion of gender equality and equity. (5). The Minister shall determine the guidelines concerning the mechanisms for the implementation of gender equality and equity promotion programs.</li> </ul>	<p><b>Temporary Special Measures</b></p> <ol style="list-style-type: none"> <li>Articles 18 and 19 place positive obligations on the government to create programs aimed at promoting equality in the fields of education and employment and in social and cultural spheres. This is a positive measure.</li> <li>The Act would be strengthened by extending the use of measures beyond programmes to quotas, scholarships or other forms of special measures as recommended by the CEDAW Committee, by explicitly excluding measures from a claim of discrimination as required by Article 4 of CEDAW, by including a broader range of fields and areas of women's lives such as, for example, the political sphere. Finally, the special measures provisions would be strengthened by placing a mandatory obligation on the public authorities and private institutions to conduct research to establish the <i>de facto</i> situation of women and to base special measures on the results of that research.</li> </ol> <p><b>Gender Mainstreaming</b></p> <ol style="list-style-type: none"> <li>Article 29 provides for the introduction of gender mainstreaming and places a positive obligation on the State and its representatives to introduce it. However, no process for analysing current policies and programs is identified. This is essential before effective mainstreaming can occur.</li> </ol> <p><b>Gender Equality Plans</b></p> <ol style="list-style-type: none"> <li>Article 31 obligates the Minister and the Head of the Local Legislative Council to coordinate 'planning' which is a positive step, but this does not equate to an obligation to development of a gender equality plan including a timetable of implementation, a clear process of implementation and a mechanism for assessing the effectiveness of the implementation of the plan.</li> </ol> <p>For a detailed discussion on good practice positive obligations please refer to Part 3, 3.2.</p>

GOOD PRACTICE COMPONENT	RELEVANT PROVISION	COMMENTARY
3. Does the GEL establish a mechanism to monitor public authorities and their representatives and individuals and private institutions in their implementation of GEL?	<b>Act Concerning Gender Equality (draft).</b> <b>Article 31(1)(4).</b> <ul style="list-style-type: none"> <li>The Minister and at local level the Head of the Local Legislative Council are charged with coordinating the 'monitoring, supervision, evaluation and reporting' of the promotion of gender equality and equity.</li> </ul>	<ol style="list-style-type: none"> <li>The Minister and Head of the Local Legislature are charged with coordinating the 'monitoring, supervision, evaluation and reporting', but no actual mechanisms or benchmarks are established to guide the process such as rewards and incentives, disincentives, reporting mechanisms, or sanctions such as fines or imprisonment.</li> <li>The provision would be strengthened by explicitly extending the responsibilities of the Minister and the Head to public institutions and their representatives as well as to private persons and authorities.</li> </ol> <p>For a detailed discussion on good practice monitoring mechanisms please refer to Part 3, 3.3.</p>
4. Does the GEL incorporate a complaints process to ensure individuals can bring actions for breaches of the GEL and receive appropriate remedies?	No complaints process is included in the Act.	For a detailed discussion on good practice complaints processes please refer to Part 3, 3.4.
5. Does the GEL establish a process for the collection of statistics disaggregated by sex and other intersections of discriminations?	No process for the collection of statistics disaggregated by sex and other intersections of discriminations is included in the Act	For a detailed discussion on good practice statistics gathering please refer to Part 3, 3.5.
6. Does the GEL incorporate a mandatory regular review process to determine whether the GEL is working effectively?	No review process to determine whether the GEL is working effectively is included.	For a detailed discussion on good practice review processes please refer to Part 3, 3.6.
7. Does the GEL provide a means of adequate funding for its implementation and monitoring functions?	<b>Act Concerning Gender Equality (draft).</b> <b>Article 32.</b> <ul style="list-style-type: none"> <li>(1). Gender equality and promotion activities shall be funded by (a) the budget allocated for each Ministry (b) the budget allocated to the local government service (c) the community (d) voluntary aid from third parties. (2). Financial aid by a third party can be received only with permission from government or local government.</li> </ul>	<ol style="list-style-type: none"> <li>Article 32(1) identifies sources of funding for gender equality and promotion activities. However, all state sources are from pre-allocated budgets rather than specifying a designated (extra) budget. The funding mechanism could be strengthened by specifying that an extra, 'appropriate' or 'adequate', amount will be supplied from government sources.</li> <li>The Act does not identify what the budgeted monies shall be spent on and the inclusion of a broad array of implementation and monitoring activities, as identified in 3.7 would strengthen the GEL.</li> </ol> <p>For a detailed discussion on good practice funding mechanisms please refer to Part 3, 3.7.</p>

## Lao PDR : Law on the Development and Protection of Women 2004 and Decree on the Implementation of Law on the Development and Protection of Women 2006

GOOD PRACTICE COMPONENT	RELEVANT PROVISION	COMMENTARY
1. Does the GEL contain a mechanism or provision to ensure existing or future domestic legislation accords with its provisions?	<p><b>Law on the Development and Protection of Women 2004.</b>  <b>Article 45(1).</b></p> <ul style="list-style-type: none"> <li>The Lao Women's Union has the following duty to study, to formulate draft policy, plans, projects, regulations and laws that are related to the development and protection of women in order to submit to organisations concerned for consideration.</li> </ul>	<ol style="list-style-type: none"> <li>The Law places a positive and mandatory duty on the Lao Women's Union to study the laws related to the development and protection of women and to submit proposals to 'organisations' concerned. Article 45(1) would be strengthened by expressly requiring the Union to identify inconsistencies and clarify which 'organisations' are 'concerned'. There is no obligation for inconsistencies to be tabled in Parliament nor remedied by the legislature, and the inclusion of these measures would strengthen the Act. It is also unclear whether the Lao Women's Union (a mass organisation) has sufficient expertise and resources to undertake the tasks allocated.</li> <li>The Act does not require a designated body to undertake a systematic revision of all existing laws to determine whether they are consistent with the GEL. Such an obligation would strengthen the Act.</li> <li>There is no mechanism for the pre-enactment scrutiny of amendments and Bills. An independent institution with sufficient expertise and resources should be assigned this duty.</li> </ol>
2. Does the GEL place a positive obligation on public and private institutions to implement the GEL?	<p><b>Law on the Development and Protection of Women 2004.</b>  <b>Article 39.</b></p> <ul style="list-style-type: none"> <li>The State shall systematically formulate policy, regulations, laws, mechanisms and measures on development, protection of the rights and benefits of women, including the prevention of trafficking in women and children, combating domestic violence and delegate it to the concerned sectors for implementation.</li> </ul> <p><b>Article 40.</b></p> <ul style="list-style-type: none"> <li>The National Construction Front, mass and social organisations, shall participate in the implementation of policy, regulations, laws, mechanisms and measures on development and protection of the rights and benefits of women.</li> </ul> <p><b>Article 41.</b></p> <ul style="list-style-type: none"> <li>The family shall enhance gender equality and protect women from domestic violence and trafficking.</li> </ul> <p><b>Article 42.</b></p> <ul style="list-style-type: none"> <li>Women shall be in charge of their development in all areas and in charge of the</li> </ul>	<ol style="list-style-type: none"> <li>The Lao Law and Implementation Law adopt special measures and equality plans for the implementation of the GEL but have no provisions for gender mainstreaming.</li> </ol> <p><b>Special Measures</b></p> <ol style="list-style-type: none"> <li>Article 39 obligates the State to systematically formulate measures to protect the rights and benefits of women, including the prevention of trafficking in women and children and combating domestic violence, and Article 13(1) places a mandatory duty on the State to conduct research into women's <i>de facto</i> situation in a variety of areas and to issue measures in response. These are strong good practice provisions.</li> <li>Article 13 also requires regular assessment of those measures, which is also a positive and important provision.</li> <li>Measures are not, however, explicitly excluded from a claim of discrimination as required by Article 4 of CEDAW.</li> <li>Article 40 obligates the National Construction Front and mass and social organisations to participate in the</li> </ol>

GOOD PRACTICE COMPONENT	RELEVANT PROVISION	COMMENTARY
	<p>protection of their rights and be aware of 'not to become victims of trafficking' and shall prevent and combat trafficking in women and children.</p> <p><b><i>Decree on Implementation of the Law on the Development and Protection of Women 2006.</i></b></p> <p><b>Article 13.</b></p> <ul style="list-style-type: none"> <li>• <b>(1).</b> The State shall issue measures to guarantee equality between men and women based on analysis of the <i>de facto</i> situation of women on the grounds of ethnicity, birth, class, education, environment and other factors. <b>(2).</b> Measures [issued by the State] shall aim to improve the status of women in society, meet women's needs and to change the social and cultural structure to prevent discrimination against women. <b>(3).</b> Regular assessment of the measures shall be conducted in various sectors with the participation of women.</li> </ul> <p><b>Article 4.</b></p> <ul style="list-style-type: none"> <li>• The Public Health Sector has a duty to translate the Law on the Development and Protection of Women relating to health issues into detailed regulations, action plans, projects, measures to promote mental development of women and children and to supervise, encourage and monitor its implementation.</li> </ul> <p><b>Article 6.</b></p> <ul style="list-style-type: none"> <li>• The Information and Culture Sector and the Lao Women's Union have a duty to translate the Law on the Development and Protection of Women relating to their sectors into detailed regulations, action plans, projects, measures to promote mental development of women and children and to supervise, encourage and monitor its implementation.</li> </ul>	<p>implementation of measures, Article 4 places an obligation on the public health sector to translate the law into measures to promote the mental development of women, and Article 6 obligates the Information and Culture Sector and the Lao Women's Union to translate the Law into measures. These are vague obligations, however, and do not provide the detail required to determine how they will participate in the development and participation of measures.</p> <p><b><u>Gender Equality Plan</u></b></p> <p>6. Articles 4 and 6 place mandatory obligations on the Public Health Sector, Information and Culture Sector and the Lao Women's Union to translate the law into action plans in several areas. This falls short of a requirement to establish a gender equality plan, and is limited by its imposition only on limited organisations (and not, for example, the State and all state agencies) and it does not clearly establish timetables or clear objectives.</p> <p>7. The obligation in Article 42 on women 'not to become victims of trafficking' is both unreasonable and discriminatory as it ignores the circumstances and power imbalances that may result in women being trafficked.</p> <p>For a detailed discussion on good practice positive obligations please refer to Part 3, 3.2.</p>
<p>3. Does the GEL establish a mechanism to monitor public authorities and their representatives and individuals and private institutions in their implementation of GEL?</p>	<p><b><u>Reporting</u></b></p> <p><b><i>Law on Development and Protection of Women 2004.</i></b></p> <p><b>Article 43.</b></p> <ul style="list-style-type: none"> <li>• The government shall manage and monitor the implementation of development and protection of women, shall delegate its powers to concerned sectors, and the Lao Women's Union shall coordinate the parties.</li> </ul> <p><b>Article 45(7), Article 46(7).</b></p> <ul style="list-style-type: none"> <li>• The Central Lao Women's Union, and the Lao Women's Union of the sectors and local levels has the right and duty to conduct an evaluation and report on the implementation</li> </ul>	<p>1. The two Lao PDR Acts (Law and Decree on Implementation) incorporate a range of measures to monitor public authorities and their representatives including reporting, rewards and sanctions which is a comprehensive and positive response to monitoring. Each of the measures adopted could be strengthened, however, as discussed below.</p> <p><b><u>Reporting.</u></b></p> <p>2. Articles 45(7) &amp; 46(7) impose on the Lao Women's Union a duty to report, but an equivalent duty is not placed on each of the Ministries, agencies and committees</p>

GOOD PRACTICE COMPONENT	RELEVANT PROVISION	COMMENTARY
	<p>of guidelines, policy, regulations and laws on development and protection of women and children.</p> <p><b><i>Decree on the Implementation of the Law on Development and Protection of Women 2006.</i></b></p> <p><b>Article 70.</b></p> <ul style="list-style-type: none"> <li>Managing and monitoring shall include consideration of the strengths and weaknesses of the proposed methodology and measures for resolving problems (in relation to the development and protection of women and children).</li> </ul> <p><b>Article 71.</b></p> <ul style="list-style-type: none"> <li>Monitoring shall be held once a year or earlier if necessary.</li> </ul> <p><b>Rewards</b></p> <p><b><i>Law on Development and Protection of Women 2004.</i></b></p> <p><b>Article 47.</b></p> <ul style="list-style-type: none"> <li>Rewards (shall be awarded) to those implementing, participating, managing and monitoring the development, protection of rights and benefits of women and children, and preventing and combating trafficking or domestic violence including those who provide consultation.</li> </ul> <p><b><i>Decree on the Implementation of the Law on Development and Protection of Women 2006.</i></b></p> <p><b>Article 72(1-4).</b></p> <ul style="list-style-type: none"> <li>Outstanding individuals shall be awarded Labour medal and Labour insignia, Certificate of Merits, Certificates of Congratulations and other rewards. Concerned authorities to consider and carry out the procedures of rewarding individuals or organisations.</li> </ul> <p><b>Sanctions</b></p> <p><b><i>Law on Development and Protection of Women 2004.</i></b></p> <p><b>Article 48.</b></p> <ul style="list-style-type: none"> <li>Individuals and organisations that violate GEL shall be subject to educational or criminal measures, depending on the gravity of the violation.</li> </ul> <p><b><i>Decree on the Implementation of the Law on Development and Protection of Women 2006.</i></b></p> <p><b>Article 73.</b></p> <ul style="list-style-type: none"> <li>Individuals or organisations that discriminate against women, deter women's rights, do not promote the development and protection of women shall be warned, educated and punished based on severity of violation.</li> </ul>	<p>responsible for the implementation of the GEL. Such a duty should be imposed in order to ensure that all concerned sectors are implementing the GEL as required. It is also unclear whether the Lao Women's Union has sufficient resources, expertise and power to coordinate a monitoring exercise throughout the concerned sectors since they are a mass organisation without executive power. The GEL should also clarify who the report is to be submitted to and what the outcome and response to the report should incorporate.</p> <p>3. Articles 70 &amp; 71 provide for an annual and mandatory assessment process of the methodology and measures used for the development and protection of women. It is unclear whom this duty is placed upon, to whom the results shall be presented and what steps must be taken if the implementation process is ineffective or unsatisfactory.</p> <p><b>Rewards</b></p> <p>4. The provision of a system of rewards is an important good practice monitoring initiative. Article 47 of the Law and Article 72 of the Decree, however, do not clearly identify the procedure for granting rewards, nor are the 'concerned authorities' identified. Although this may be indicative of an intention to have a broad, flexible and non-exhaustive approach, the identification of clear benchmarks would strengthen the provisions, such as the inclusion of a procedure for assessment of outstanding individuals and a timetable for rewards.</p> <p><b>Sanctions</b></p> <p>5. Articles 8 (Law) &amp; 3 (Decree) would be strengthened by a clearer identification of the sanctions involved, such as the criminal measures to be imposed, the educational programs to be conducted, and for whom and in what circumstances.</p>

GOOD PRACTICE COMPONENT	RELEVANT PROVISION	COMMENTARY
<p>4. Does the GEL incorporate a complaints process to ensure individuals can bring actions for breaches of the GEL and receive appropriate remedies?</p>	<p><b><i>Law on the Development and Protection of Women 2004.*</i></b>  <b>Article 45(5), Article 46(4).</b></p> <ul style="list-style-type: none"> <li>The Central Lao Women's Union and the Lao Women's Union of the sectors and local levels have a right and a duty to give advice to concerned parties, to resolve unlawful acts and report back about resolution within 30 days of receiving a complaint. If there is no solution or the solution is inappropriate they have the right to put the matter before higher authorities for consideration. If it is serious they can refer the matter to the police for criminal investigation.</li> </ul> <p><b>Article 48.</b></p> <ul style="list-style-type: none"> <li>Individuals and organisations that violate the GEL will be subject to measures including compensation of civil damages.</li> </ul> <p><b><i>Decree on the Implementation of the Law on the Development and Protection of Women 2006.</i></b>  <b>Article 52 (7-11), Article 55 (5-9), Article 57 (5-9), Article 59 (2-4).</b></p> <ul style="list-style-type: none"> <li>The Centre, the Provincial Office, the District Office and the Village Unit for Counselling and Protection of Women and Children, has the right and the duty to receive information, study appeals and requests of women and children, coordinate with concerned authorities to collect data, analyse statistics, monitor the settlement of appeals and proposals related to the legitimate rights of women, inform victims of outcomes and organise short-term training for victims.</li> </ul> <p>* Note that the mechanisms established for domestic violence and trafficking is dealt with in Part 2.</p>	<ol style="list-style-type: none"> <li>The Law and the Implementation Decree provide a number of agencies with the right and the duty to receive complaints.</li> <li>The Central Lao Women's Union and the Lao Women's Union can receive complaints and must report back to the complainant within 30 days. They do not, however, have the power to provide remedies other than 'giving advice' and 'resolving unlawful acts'. Whilst they can then refer the matter to the police or 'higher authorities' there is no obligation on either to provide remedies.</li> <li>Article 48 provides for compensation but without a clear complaints procedure this is unlikely to be effective.</li> <li>The Implementation Decree requires a number of authorities to hear complaints and 'monitor' the settlement of appeals and inform victims of results. However, the detail required for an effective complaints procedure is absent.</li> <li>The complaints mechanism would be strengthened in the following ways: <ul style="list-style-type: none"> <li>Creating a single institution to hear complaints staffed by gender experts.</li> <li>Clearly defining the procedure by which an individual who alleges a rights violation under the Act lodges a complaint.</li> <li>Clarification as to who can bring a complaint, for example, the victim and a concerned person or organisation.</li> <li>Identify specific remedies, in particular a mechanism by which recurrence of the discriminatory behaviour will be prevented</li> <li>Protection from retaliation for victims.</li> <li>A clear appeals process.</li> </ul> </li> </ol> <p>For a detailed discussion on good practice complaints processes please refer to Part 3, 3.4.</p>
<p>5. Does the GEL establish a process for the collection of statistics disaggregated by sex and other intersections of discriminations?</p>	<p><b><i>Decree on the Implementation of the Law on the Development and Protection of Women 2006.</i></b>  <b>Article 52(11), Article 55(9), Article 57(9), Article 59(4).</b></p> <ul style="list-style-type: none"> <li>The Centre, the Provincial Office, the District Office and the Village Unit for Counselling and Protection of Women and Children, have the right and the duty to summarise statistics and data relating to women and children who come in for counselling.</li> </ul>	<ol style="list-style-type: none"> <li>The Implementation Decree provides that various counselling and 'protection of women and children' agencies have the right and the duty to 'summarise statistics and data' relating to women and children who come in for counselling. This duty only relates to women who choose to participate in counselling and does not provide for the systematic and mandatory collection of data in relation to all aspects of women's lives throughout Lao PDR.</li> </ol>

GOOD PRACTICE COMPONENT	RELEVANT PROVISION	COMMENTARY
		<p>2. The provision of a systematic process (within designated time-frames) for the collection of statistics disaggregated by sex and the gender dimensions of other intersections such as ethnicity, disability, age and sexual orientation in all areas of women's lives would greatly strengthen the law and enable plans, policies, measures and laws to be developed based on the <i>de facto</i> situation of women as well as facilitating effective monitoring of the measures already in place.</p>
<p>6. Does the GEL incorporate a mandatory regular review process to determine whether the GEL is working effectively?</p>	<p>No review process to determine whether the GEL is working effectively is included.</p>	<p>For a detailed discussion on good practice review processes please refer to Part 3, 3.6.</p>
<p>7. Does the GEL provide a means of adequate funding for its implementation and monitoring functions?</p>	<p><b>Decree on Implementation of the Law on the Development and Protection of Women 2006.</b></p> <p><b>Article 66.</b></p> <ul style="list-style-type: none"> <li>The government of the Lao PDR shall create the Women's Development Fund to ensure that the development and protection of women and children shall be more effective.</li> </ul> <p><b>Article 67.</b></p> <ul style="list-style-type: none"> <li>The Fund shall be sourced from the government budget, Lao Front for National reconstruction, mass organisations, social organisations, international organisations and other activities.</li> </ul> <p><b>Article 68.</b></p> <ul style="list-style-type: none"> <li>The Fund will be utilised to develop and protect women especially in physical, mental, educational, vocational and work skill development, in propagating law, regulations and technical principles related to the development of women, in upgrading knowledge and capacity of women, in counselling, in providing necessary and urgent assistance to women and children victims of trafficking and domestic violence, in managing the Fund and in rewarding individuals for outstanding performance in the development of women.</li> </ul>	<ol style="list-style-type: none"> <li>Article 66 provides for the establishment of a Fund and Article 67 identifies the sources of the Fund. Whilst this is a strong measure it could be strengthened by specifying that the amount from government will be 'sufficient' or 'adequate'.</li> <li>Article 68 provides a detailed guide as to what the budgeted monies shall be spent on. This is a strong and positive provision as it clearly defines the activities that the Fund can be spent on and includes a wide array of activities. It is weakened by the references to 'development' of women rather than 'equality'.</li> <li>The Implementation Decree would be further strengthened by extending the uses of the Fund to: <ul style="list-style-type: none"> <li>The development and implementation of special measures.</li> <li>The monitoring of the performance of state officials, government agencies and private institutions in the enforcement of this Law.</li> </ul> </li> </ol>

## Philippines : Magna Carta for Women (draft)

GOOD PRACTICE COMPONENT	RELEVANT PROVISION	COMMENTARY
1. Does the GEL contain a mechanism or provision to ensure existing or future domestic legislation accords with its provisions?	<p><b><i>Magna Carta For Women (draft).</i></b></p> <p><b>Section 48.</b></p> <ul style="list-style-type: none"> <li>Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.</li> </ul> <p><b>Section 42.</b></p> <ul style="list-style-type: none"> <li>Establishes a Gender Equality Council.</li> </ul> <p><b>Section 43(1).</b></p> <ul style="list-style-type: none"> <li>The GEC shall monitor and oversee the strict implementation of the Act.</li> </ul>	<ol style="list-style-type: none"> <li>Section 48 is an excellent example of a 'good practice' incompatibility provision. It provides that existing laws and any new laws that are inconsistent with the GEL are automatically repealed. It applies not only to legislation but also decrees, orders and other administrative regulations extending the provision to a range of governmental action.</li> <li>There is no mechanism for the systematic review of all existing law to ensure that it complies with the GEL. This is necessary because laws may in practice continue to be applied until challenged through court action. Thus, whilst the inclusion of s 48 in the Magna Carta is important, without a mechanism for the systematic appraisal of current laws it is unlikely to be fully effective as it will rely on court processes to declare laws invalid.</li> <li>There is no mechanism for the pre-enactment scrutiny of Bills or amendments. Although the gender equality Council (which appears to be independent) has a duty to oversee the 'strict' implementation of the Act, a more effective way of ensuring that legislation inconsistent with the Magna Carta is not enacted is to have a mechanism whereby all Bills are considered for compatibility by an independent institution before enactment.</li> </ol>
2. Does the GEL place a positive obligation on public and private institutions to implement the GEL?	<p><b><i>Magna Carta For Women (draft).</i></b></p> <p><b>Section 2.</b></p> <ul style="list-style-type: none"> <li>The State shall adopt and undertake steps to include temporary special measures which can include a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices aimed at accelerating the equal participation of women in the political, economic, social, cultural civil or any other field. Temporary special measures must be discounted when their desired results have been achieved and sustained for a period of time</li> </ul> <p><b>Section 38.</b></p> <ul style="list-style-type: none"> <li>All agencies, national and local, state colleges and universities, government owned and controlled corporations including local government units shall adopt GAD mainstreaming as a strategy to make their systems, processes and procedures gender responsive. Each must establish policies, programs, tools and services or establish systems that include (a) plan and budget (b) GAD focal point system (c) sex-disaggregated data (d) women/GAD related policies.</li> </ul>	<p><b><u>Temporary Special Measures</u></b></p> <ol style="list-style-type: none"> <li>Section 2 places a positive obligation on the State to adopt temporary special measures in the political, economic, social, cultural, civil or any other field and identifies a range of measures that can be adopted. This is a positive good practice provision in accord with Article 4 of CEDAW.</li> <li>The provisions would be further strengthened by establishing a mechanism by which the systematic measurements of women's <i>de facto</i> status shall be assessed in order to determine whether and what special measures should be adopted, and by explicitly excluding special measures from a claim of discrimination as required by Article 4 of CEDAW.</li> </ol> <p><b><u>Gender Mainstreaming</u></b></p> <ol style="list-style-type: none"> <li>Article 38 provides for the introduction of gender mainstreaming and places a positive obligation on the State and its representatives, including universities, to adopt such measures. A clear and detailed process is identified including the development of a plan and budget, the collection of sex-disaggregated</li> </ol>

GOOD PRACTICE COMPONENT	RELEVANT PROVISION	COMMENTARY
	<p><b>Section 39.</b></p> <ul style="list-style-type: none"> <li>In partnership with all relevant government agencies and institutions NGOs and the private sector, the PCW shall develop a comprehensive national medium term plan for women that shall empower women as well as men to achieve gender equality.</li> </ul> <p><b>Section 41.</b></p> <ul style="list-style-type: none"> <li>All GAD plans shall include budgets included in their approved budget and each agency shall develop performance indicators.</li> </ul>	<p>data and the development of performance indicators by which to measure implementation. This is strong provision and whilst it could be strengthened further by including the private sector, it nevertheless is an excellent example of a good practice gender mainstreaming provision.</p> <p><b>Gender Equality Plans</b></p> <p>4. Article 39 provides for the development of a national gender equality plan which is a good practice measure. The partnership approach it adopts ensures that the plan is developed with input from all sectors which is much more likely to lead to successful implementation. It could be strengthened with more detail including timetables, clearer objectives and a clear assessment process.</p> <p>5. The inclusion of budgets in all GAD plans provides concrete means of achieving the plans' aims; the development of performance indicators is a clear and transparent means of measuring success.</p>
<p>3. Does the GEL establish a mechanism to monitor public authorities and their representatives and individuals and private institutions in their implementation of GEL?</p>	<p><b>Magna Carta For Women (draft).</b></p> <p><b>Rewards</b></p> <p><b>Section 46.</b></p> <ul style="list-style-type: none"> <li>An incentives and awards system shall be established for rewarding deserving entities, government agencies and local government units for their outstanding performance in upholding the rights of women and effective implementation of gender-responsive programmes.</li> </ul> <p><b>Sanctions</b></p> <p><b>Section 43.</b></p> <ul style="list-style-type: none"> <li>(2). The GEC shall on its own or on report or complaint have the power to require information, investigate or hear administrative complaint involving possible violations of this act. (3). The council shall use every and all reasonable means to ascertain the facts in the report or process, in all instances observing due process. (4). recommend administrative action based on failure to implement the provisions of this Act.</li> </ul> <p><b>Section 44.</b></p> <ul style="list-style-type: none"> <li>Any person who intentionally violates the rights of women in the act and its implementing rules shall suffer imprisonment of 3-5 years or a fine (50,000–100,000 pesos) or both. If the violation is by a juridical person the penalty shall be imposed on the entity's responsible officers. If the violation is by a government agency or unit for failure to allocate 5% of budget to GAD then an administrative sanction shall be imposed on the head of the agency or unit.</li> </ul>	<p>1. The Act adopts rewards and sanctions as the main measures to monitor public authorities and their representatives and private organisations and individuals, which is a positive response to monitoring.</p> <p><b>Rewards</b></p> <p>2. Section 46 provides for the establishment of a system of incentives and awards for public and private organisations, which is a positive mechanism. The provision would be strengthened by the inclusion of more detail including a procedure for assessment of outstanding performance, a system of measurement, a timetable for rewards and the identification of specific rewards. The provision should also set a time-frame for the establishment of the system and for identifying which authority is charged with responsibility of establishing the system.</p> <p><b>Sanctions</b></p> <p>3. Section 43(2) gives the GEC a general power to investigate administrative breaches of the Act and to recommend administrative remedies. This could be strengthened with the identification of specific remedies.</p> <p>4. Section 44 establishes serious penalties for breaches of the Magna Carta and is a strong and important provision.</p>

GOOD PRACTICE COMPONENT	RELEVANT PROVISION	COMMENTARY
4. Does the GEL incorporate a complaints process to ensure individuals can bring actions for breaches of the GEL and receive appropriate remedies?	<p><b>Magna Carta For Women (draft).</b>  <b>Section 43.</b></p> <ul style="list-style-type: none"> <li>• <b>(2).</b> The GEC shall on its own or on report or complaint have the power to require information, investigate or hear an administrative complaint involving the possible violations of the Act. <b>(3).</b> The Council shall use every and reasonable means to ascertain the facts in the report or complaint. <b>(4).</b> Recommend administrative action based on non-compliance. <b>(5).</b> Direct agencies to immediately respond to the problems brought to their attention in relation to the implementation of this Act and report to the Council on action taken. <b>(6).</b> The GEC shall assist in the filing of cases against individuals, agencies, institutions or establishments that violate the provisions of this Act.</li> </ul>	<ol style="list-style-type: none"> <li>1. The Magna Carta provides for the Gender Equality Council to hear complaints regarding violations of the Act. However, s 43(2) appears only to establish an administrative review process rather than an individual complaints system. Instead, individual complaints must be brought in the court system and although the GEC shall assist such individuals in bringing their case, this is a weak mechanism.</li> <li>2. The Magna Carta would be greatly strengthened with the introduction of a comprehensive complaints system, as detailed in Part 3, 3.4.</li> <li>3. Section 43(6), which provides that the GEC shall provide assistance in the filing of matters, is a positive measure that enables the GEC to identify and monitor problems that complainants may face in the system and improvements that could be made.</li> </ol>
5. Does the GEL establish a process for the collection of statistics disaggregated by sex and other intersections of discriminations?	<p><b>Magna Carta For Women (draft).</b>  <b>Section 38.</b></p> <ul style="list-style-type: none"> <li>• Agencies, national and local, state colleges and universities, government owned and controlled corporations including local government units must adopt mainstreaming which shall include sex-disaggregated data.</li> </ul>	<p>Article 38 requires government agencies including universities to 'include sex-disaggregated data.' This provision could be improved by making it more targeted. For example the provision currently does not specifically obligate agencies to collect statistics disaggregated by sex and the gender dimensions of other intersections such as ethnicity, disability, age and sexual orientation in all areas of women's lives. This would enable plans, policies, measures and laws to be developed based on the <i>de facto</i> situation of women and enable effective monitoring of the measures already in place.</p>
6. Does the GEL incorporate a mandatory regular review process to determine whether the GEL is working effectively?	<p>No review process to determine whether the GEL is working effectively is included.</p>	<p>For a detailed discussion on good practice review processes please refer to Part 3, 3.6.</p>
7. Does the GEL provide a means of adequate funding for its implementation and monitoring functions?	<p><b>Magna Carta For Women (draft).</b>  <b>Section 41.</b></p> <ul style="list-style-type: none"> <li>• All concerned government agencies and LGUs shall formulate GAD plans and budgets and shall incorporate the cost of implementing GAD activities in their approved budget.</li> </ul>	<ol style="list-style-type: none"> <li>1. Section 41 directs concerned government agencies to incorporate the cost of implementing the Magna Carta into their budgets. State resources are however derived from pre-allocated budgets rather than specifying a designated (extra) budget. The funding mechanism could be strengthened by specifying that an extra amount 'appropriate' or 'adequate' will be supplied from government sources.</li> <li>2. The Magna Carta does not identify what the budgeted monies shall be spent on; the inclusion of a broad array of implementation and monitoring activities, as identified in Part 3, 3.7, would strengthen the GEL.</li> </ol>

## Thailand : Promotion of Opportunity and Gender Equality Act (draft)

GOOD PRACTICE COMPONENT	RELEVANT PROVISION	COMMENTARY
<p>1. Does the GEL contain a mechanism or provision to ensure existing or future domestic legislation accords with its provisions?</p>	<p><b>Promotion of Opportunity and Gender Equality Act (draft).</b>  <b>Section 15(6).</b></p> <ul style="list-style-type: none"> <li>The OGE Commission shall have the power and duty to submit proposals with respect to the revision of laws, Rules or Regulations to Cabinet in order to end unfair discrimination.</li> </ul>	<p>1. Section 15(6) provides that the Commission (which must have half of its staff members with expertise in gender issues) has a duty to examine laws and to submit proposals for reform in line with gender equality objectives. Whilst this is a positive measure since it is a mandatory process, the provision does not obligate Cabinet to amend legislation that is non-compliant. Such an obligation would strengthen the provision.</p> <p>2. The Act does not require the Commission or any other body to undertake a systematic revision of all existing laws to determine whether they are consistent with the gender equality. An obligation to revise all existing laws would strengthen the Act.</p> <p>3. There is no mechanism for the pre-enactment scrutiny of amendments and Bills. The OGE Commission, although not fully independent, could be given the power to scrutinise pending Bills and amendments.</p>
<p>2. Does the GEL place a positive obligation on public and private institutions to implement the GEL?</p>	<p><b>Promotion of Opportunity and Gender Equality Act (draft).</b>  <b>Section 6.</b></p> <ul style="list-style-type: none"> <li>The purposes of this Act are, for the public sector, private agencies and communities, to promote the establishment of temporary special measures as necessary.</li> </ul> <p><b>Section 15(1).</b></p> <ul style="list-style-type: none"> <li>The Commission on the Promotion of Opportunity and Gender Equality shall have the have the power and the duty to set policies, measures, mechanisms, action plans, temporary special measures as necessary in order to promote opportunity and gender equality in all public and private sectors and at national, regional, provincial and local levels.</li> </ul> <p><b>Section 21(3).</b></p> <ul style="list-style-type: none"> <li>The Office of Women's Affairs and Family Development shall have the power and the duty to study and support the education and dissemination of knowledge pertaining to the protection from unfair discrimination.</li> </ul>	<p>1. Section 6 states that a purpose of the Act is to promote the establishment of temporary special measures in the public and private sector as necessary. This provision would be strengthened by placing a positive obligation on public authorities and private organisations to introduce special measures in the political, economic, social, cultural civil or any other field rather than as a purpose of the Act.</p> <p>2. Section 6 would also be strengthened by establishing a mechanism by which a systematic assessment of women's <i>de facto</i> status shall be conducted in order to determine whether and what special measures should be adopted. Identification of specific special measures, such as quotas, that can and should be introduced would further strengthen the provision.</p> <p>3. Temporary special measures are not explicitly excluded from a claim of discrimination as required by Article 4 of CEDAW.</p> <p>4. Section 15(1) places a positive and mandatory obligation on the OGE to set policies, action plans and temporary special measures in both public and private sectors at all levels. However, it does not provide the detail necessary to ensure that such plans and measures are implemented with the intended results. A stronger provision would obligate the Commission to actively investigate the <i>de facto</i> situation of women and formulate a gender equality plan including timetables, objectives and outcomes, and to implement specific special measures to achieve substantive equality.</p>

GOOD PRACTICE COMPONENT	RELEVANT PROVISION	COMMENTARY
<p>3. Does the GEL establish a mechanism to monitor public authorities and their representatives and individuals and private institutions in their implementation of GEL?</p>	<p><b>Promotion of Opportunity and Gender Equality Act (draft).</b></p> <p><b>Reporting</b></p> <p><b>Section 15(3).</b></p> <ul style="list-style-type: none"> <li>The OGE has the power and duty to monitor, and recommend or advise in relation to the performance of state officials and agencies in the enforcement of this Act; and the power to summon individuals to give statements or deliver objects, documents or evidence for its consideration.</li> </ul> <p><b>Article 15(8).</b></p> <ul style="list-style-type: none"> <li>The OGE Commission shall have the power and duty to prepare an assessment report in relation to the enforcement of this Act to the Cabinet periodically as appropriate, but no less than once per annum.</li> </ul> <p><b>Sanctions</b></p> <p><b>Section 45.</b></p> <ul style="list-style-type: none"> <li>Whoever violates s 7 - one year imprisonment or fine (100,000 baht) or both. If the violator is a juristic person the fine is five times greater. Fine imposed if aggrieved party agrees.</li> </ul> <p><b>Section 46.</b></p> <ul style="list-style-type: none"> <li>For state actors, double the penalties in s 45.</li> </ul> <p><b>Section 47.</b></p> <ul style="list-style-type: none"> <li>Violator of order issued by OGE under s 31 or did not give statements etc. as required under s 35 or violation of order by RGD - 6 months or 50,000 baht or both.</li> </ul> <p><b>Section 48.</b></p> <ul style="list-style-type: none"> <li>Obstruction of the process of information gathering by the RGD Commission – one year imprisonment or 100, 000 baht or both.</li> </ul>	<p><b>Reporting</b></p> <ol style="list-style-type: none"> <li>Section 15(3) places a general duty on the OGE to monitor state officials and agencies and provides it with the power to summon individuals to provide evidence. Article 15(8) provides for a mandatory assessment report by the OGE which must be presented to Cabinet at least annually. This is a strong and important provision to ensure the measures adopted by the OGE are working effectively. It could be strengthened by obligating Cabinet to act upon the Report.</li> <li>The provision would also be strengthened by requiring all agencies, public and private, to report regularly on the implementation of the Act and providing the OGE with the ability to take action if implementation is unsatisfactory.</li> </ol> <p><b>Sanctions</b></p> <ol style="list-style-type: none"> <li>Sections 45–48 provide for sanctions as a means of monitoring public authorities and their representatives as well as private organisations and individuals. Whilst the penalties are not severe, in a positive measure actions by state actors are more seriously regarded.</li> <li>The monitoring capacity and the effectiveness of the Act would be further strengthened by the inclusion of rewards or disincentives for both the public and private sectors.</li> </ol>
<p>4. Does the GEL incorporate a complaints process to ensure individuals can bring actions for breaches of the GEL and receive appropriate remedies?</p>	<p><b>Promotion of Opportunity and Gender Equality Act (draft).</b></p> <p><b>Section 23.</b></p> <ul style="list-style-type: none"> <li>Aggrieved person can lodge a complaint for unfair discrimination</li> </ul> <p><b>Section 24.</b></p> <ul style="list-style-type: none"> <li>Complaint goes via the OGE to the Ruling Commission on Gender Discrimination (RGD)</li> </ul> <p><b>Section 17.</b></p> <ul style="list-style-type: none"> <li>The appointment of the RGB Commission shall be according to different fields of expertise relating to the promotion of opportunity and gender equality.</li> </ul> <p><b>Section 31(1)-(4).</b></p> <ul style="list-style-type: none"> <li>Remedies include to order head of government agency or state official or private agency to repeal rule or order; to commit or omit certain acts; to assist or aid the aggrieved person (see below), to prescribe temporary measures to protect complainant from harm during the procedural process</li> </ul>	<ol style="list-style-type: none"> <li>The Thailand Act establishes a comprehensive complaints system which provides a good practice example. It is administered by an independent institution staffed by gender experts, it provides a clear procedure for lodging complaints and pursuing actions, it provides assistance and aid for complainants and a range of remedies can be awarded.</li> <li>The complaints mechanism could, however, be strengthened by: <ul style="list-style-type: none"> <li>Enabling non-aggrieved applicants to lodge complaints</li> <li>Shifting the burden of proof to the defendant</li> <li>Including an appeals process</li> <li>Clarifying the role of the OWAFD which has the power to receive complaints but no guidance on procedure or outcomes is provided.</li> </ul> </li> </ol>

GOOD PRACTICE COMPONENT	RELEVANT PROVISION	COMMENTARY
	<p><b>Section 36.</b></p> <ul style="list-style-type: none"> <li>Aggrieved person can receive assistance or aid from the OEC</li> </ul> <p><b>Section 38.</b></p> <ul style="list-style-type: none"> <li>Compensation can include lost earnings, lost commercial opportunity, medical expenses, and other damages as appropriate.</li> </ul> <p><b>Section 21(2).</b></p> <ul style="list-style-type: none"> <li>The Office of Women's Affairs and Family Development has the power to receive complaints or requests relating to gender discrimination.</li> </ul>	
5. Does the GEL establish a process for the collection of statistics disaggregated by sex and other intersections of discriminations?	No process for the collection of statistics disaggregated by sex and other intersections of discriminations is included in the Act.	For a detailed discussion on good practice data collection please refer to Part 3, 3.5.
6. Does the GEL incorporate a mandatory regular review process to determine whether the GEL is working effectively?	No review process to determine whether the GEL is working effectively is included.	For a detailed discussion on good practice review processes please refer to Part 3, 3.6.
7. Does the GEL provide a means of adequate funding for its implementation and monitoring functions?	<p><b>Promotion of Opportunity and Gender Equality Act (draft).</b></p> <p><b>Section 41(1-6).</b></p> <ul style="list-style-type: none"> <li>The Promotion of Opportunity and Gender Equality Fund for the promotion of opportunity and gender equality shall be established. It shall be funded by the government, the revenue of the agencies concerned with the Act, fines received under the Act, money donated to the Fund, interest from the Fund, other revenues of the Fund.</li> </ul> <p><b>Section 43.</b></p> <ul style="list-style-type: none"> <li>The Office of Women's Affairs shall be the caretaker the Fund, the OGE shall be the administrator.</li> </ul> <p><b>Section 44.</b></p> <ul style="list-style-type: none"> <li>Money shall be spent according to the following purposes (1) activities or affairs in relation to the promotion of opportunity and gender equality (2) protection from and prevention of unfair gender discrimination (3) help, assistance or alleviation for an aggrieved person affected by unfair discrimination (4) for the monitoring, recommendations or consultations concerning the performance of state officials and government agencies in the enforcement of this act (5) for the promotion of education, research and dissemination of knowledge in relation to the prevention of unfair discrimination (6) for the contact and coordination with other agencies in public, private, peoples sectors and independent agencies.</li> </ul>	<p>1. Article 41 provides for the establishment of a Fund and identifies the sources of the Fund. Whilst this is a positive measure, it could be strengthened by specifying that the amount from government will be 'sufficient' or 'adequate'.</p> <p>2. Article 44 provides a detailed guide on what the budgeted monies are to be spent on. This is a strong and positive provision as it clearly defines the activities that the Fund can be spent on and includes a wide array of implementation and monitoring activities. It could also, however, include temporary special measures.</p>

## Vietnam : Law on Gender Equality 2006

GOOD PRACTICE COMPONENT	RELEVANT PROVISION	COMMENTARY
<p>1. Does the GEL contain a mechanism or provision to ensure existing or future domestic legislation accords with its provisions?</p>	<p><b>The Law on Gender Equality 2001.</b></p> <p><b>Article 20.</b></p> <ul style="list-style-type: none"> <li>• <b>(1).</b> Development, amendment and supplementation of legal documents (law) must guarantee the basic principles of gender equality. <b>(2).</b> The basic principles of gender equality are an important ground for reviewing, amending and supplementing legal documents (law).</li> </ul> <p><b>Article 21(1-4).</b></p> <ul style="list-style-type: none"> <li>• Gender equality must be integrated into law by drafting agencies, in consultation with the state management agency on gender equality, including consideration of impact, defining responsibilities and resources and considering feasibility.</li> </ul> <p><b>Article 22(1)(2).</b></p> <ul style="list-style-type: none"> <li>• The National Assembly Committee in charge of gender issues and the Ethnic Minority Council and other National Assembly Committees shall verify the integration of gender equality issues into the draft laws before they are submitted to the National Committee for consideration and adoption.</li> </ul> <p><b>Article 22(2)(a)-(b).</b></p> <ul style="list-style-type: none"> <li>• Verification includes identifying the gender issues in the Bill, ensuring it contains a guarantee of basic principles of gender equality; ascertaining compliance with procedures to assess gender equality principles in the Bill; assessing the feasibility of the Bill to guarantee gender equality.</li> </ul> <p><b>Article 26.</b></p> <ul style="list-style-type: none"> <li>• Gender equality state management agency must formulate and submit to the government, law on gender equality.</li> </ul> <p><b>Article 27(1).</b></p> <ul style="list-style-type: none"> <li>• Ministries and ministerial agencies must review law in order to amend, supplement, annul or enact law to guarantee gender equality in area of their expertise.</li> </ul> <p><b>Article 28(2).</b></p> <ul style="list-style-type: none"> <li>• Peoples Committees must submit Gender Equality Bills to Peoples Councils.</li> </ul>	<ol style="list-style-type: none"> <li>1. Article 20 states that development, amendment and supplementation of law must guarantee basic principles of gender equality. Whilst mandatory, the provision is weakened, by the phrases 'basic' principles of gender equality' and 'important ground'. A stronger provision would state that domestic law must accord with the GEL.</li> <li>2. Article 21 details the issues that the drafting agencies, in consultation with the state management agency on gender equality, must consider. These include impact, determining and identifying who is responsible for ensuring gender equality, ensuring there are appropriate resources, and assessing the feasibility of achieving gender equality. This is a strong measure, although it is unclear whether the state management agency is independent and whether it is staffed by gender equality experts. Clarification of these issues would strengthen the GEL.</li> <li>3. Article 22 provides a process for pre-enactment scrutiny by which the draft laws and amendments are considered in Parliament and verified. Such verification should be conducted by an independent institution staffed by experts in gender equality. Whilst verification is not conducted by an independent institution and there is no requirement for the National Assembly Committee on gender equality to be staffed by gender equality experts, this is nevertheless a positive measure.</li> <li>4. Articles 26 and 28 place a mandatory obligation on gender equality state management agencies and Peoples Committees to formulate law on gender equality and submit to various authorities. As noted previously, the legislation does not provide for experts in gender equality to administer this process.</li> <li>5. Article 27 places a mandatory obligation on Ministries and agencies to review law for 'amendment, supplementation, annulment or enactment'. This revision of existing laws is an important task, and although the provision provides for this, it does not put in place a mechanism to ensure that all laws are systematically reviewed or a process to monitor that review process. The provision would be strengthened by such additions.</li> <li>6. Overall the Law does detail a process for the mandatory review, amendment and supplementation of the law including pre-enactment scrutiny so that it incorporates</li> </ol>

GOOD PRACTICE COMPONENT	RELEVANT PROVISION	COMMENTARY
		gender equality. Although these provisions could be strengthened, as detailed above, this is nevertheless a positive measure.
2. Does the GEL place a positive obligation on public and private institutions to implement the GEL?	<p><b>The Law on Gender Equality 2001.</b></p> <p><b>Article 5(6).</b></p> <ul style="list-style-type: none"> <li>Measure for promoting gender equality is a measure set forth by a competent state agency to guarantee substantive gender equality in cases where there exists considerable disparity between men and women in terms of position, role, conditions and opportunities. Such measures are intended so that women can exercise their capacity and enjoy the benefits of development when formal equality is insufficient. A measure for gender equality will be implemented for a specified time and end when gender equality goals are achieved.</li> </ul> <p><b>Article 6(3).</b></p> <ul style="list-style-type: none"> <li>The application of measures for promoting gender equality shall not be regarded as discrimination.</li> </ul> <p><b>Article 19(1).</b></p> <ul style="list-style-type: none"> <li>Measures to promote gender equality include (a) Prescribing the proportions or ensuring the appropriate proportions of women or men who should participate and benefit. (b) To train or retrain to improve the qualifications of men or women (c) To support the creation of conditions and opportunities for women or men (d) To prescribe specific standards and conditions for women or men (e) To prescribe the right of women to be selected when women and men have similar qualifications.</li> </ul> <p><b>Article 19(2).</b></p> <ul style="list-style-type: none"> <li>The National Assembly, the Standing Committee and the Government have the authority to stipulate special measures to promote gender equality and the responsibility to review the implementation of measures and to decide to end the measures when gender equality has been achieved.</li> </ul> <p><b>Article 25(1).</b></p> <ul style="list-style-type: none"> <li>Government has the responsibility to promulgate national gender equality strategies, policies, goals, and to (6) coordinate with other agencies to propagate, disseminate and educate about the GEL and raise awareness.</li> </ul> <p><b>Article 26(1).</b></p> <ul style="list-style-type: none"> <li>The state management agency in charge of gender equality must formulate strategies, policies, goals and submit to government.</li> </ul> <p><b>Article 27(2).</b></p> <ul style="list-style-type: none"> <li>Ministries and Ministerial-level agencies must conduct research and make recommendations to relevant state agencies to implement gender equality measures in response.</li> </ul>	<p><b>Special Measures</b></p> <ol style="list-style-type: none"> <li>Article 5(6) establishes special measures as a mandatory and legal mechanism to be employed by the National Assembly, the Standing Committee, the government and state agencies in accord with Article 4 of CEDAW.</li> <li>Article 19(1) specifies particular measures which can be employed, including quotas, preferential treatment, programmes and policies, as recommended by the CEDAW Committee.</li> <li>Article 6(3) explicitly excludes special measures from a claim of discrimination, as required by Article 4 of CEDAW.</li> <li>Article 19(2) gives authority to the National Assembly, the Standing Committee and the Government to stipulate special measures and creates a review mechanism to review the effectiveness of temporary special measures.</li> <li>The Law provides a good practice temporary special measures provision. It would be strengthened by the removal of the requirement for a 'considerable' disparity before measures can be implemented.</li> <li>A number of other agencies are also charged with developing measures (as discussed below) but these obligations are vague and require clearer direction for effective implementation.</li> </ol> <p><b>Gender Equality Plans &amp; Gender Mainstreaming</b></p> <ol style="list-style-type: none"> <li>Article 25(1) &amp; (6) places the ultimate responsibility for gender equality strategies on the government. This is a vague provision and does not require the government to develop a gender equality plan or to gender mainstream. The number of agencies and organisations, however, obligated by the Act to perform various gender equality duties suggests that the intent is for these tasks to be delegated to other agencies. This process, and particularly the coordination of this process, should be much more clearly outlined with timetables, with much more specific obligations placed on the different organisations and agencies, and with a systematic process by which government collates and responds to the results.</li> <li>Article 26(1) obligates the gender equality state management agency to formulate strategies and submit them to government, and Article 35(2) requires it to develop measures. These are vague provisions and</li> </ol>

GOOD PRACTICE COMPONENT	RELEVANT PROVISION	COMMENTARY
	<p><b>Article 28.</b></p> <ul style="list-style-type: none"> <li>People's Committee must make plans for and organise implementation of GEL in localities; direct education on GEL amongst the local people.</li> </ul> <p><b>Article 29.</b></p> <ul style="list-style-type: none"> <li>Vietnam Fatherland Front and member organisations must ensure gender equality in their organisation, participate in overseeing the implementation of GEL, and advocate and mobilize the people and their members to exercise gender equality.</li> </ul> <p><b>Article 30 (1-4).</b></p> <ul style="list-style-type: none"> <li>Vietnam Women's Union must implement Article 29 and conduct activities to assist women in achieving gender equality, co-ordinate training and the nomination of women as candidates in parliament and leading posts in the political system; represent the legitimate rights + interests of women and girls and conduct social debate on gender equality policies and laws.</li> </ul> <p><b>Articles 31 &amp; 32.</b></p> <ul style="list-style-type: none"> <li>State agencies, political and socio-political organisations and any other organisation are obligated to exercise gender equality in their organisations including ensuring equality amongst all members, assessing the situation of gender equality, developing plans and projects, and developing measures and producing annual reports.</li> </ul> <p><b>Article 33.</b></p> <ul style="list-style-type: none"> <li>(1-4). Families have a responsibility to raise awareness of gender equality, to educate members to share and divide housework, to take care of reproductive health and provide equally for sons and daughters.</li> </ul>	<p>do not provide the specificity required to successfully implement the Law.</p> <p>9. Article 27(2) obligates Ministries and ministerial-level agencies to conduct research and make recommendations. Researching women's <i>de facto</i> situation in the community and analysing the impact of ministerial policies and programmes is an important task in the implementation of the GEL. However, this provision, whilst enabling such research, does not provide sufficient detailed guidance such as the specific areas of research, clear objectives, or a timetable.</p> <p>10. Articles 28-32 obligate a variety of state agencies and institutions and private organisations to make plans, ensure gender equality in their organisations, assess the situation of gender equality, and develop measures. These provisions are positive, since they obligate (and authorise) the different organisations to develop gender equality plans, to gender mainstream and to develop measures. The provisions would be strengthened, however, with more specific detail including timetables and objectives.</p> <p>11. Articles 33 &amp; 34 place an obligation on families as a unit and male and female citizens individually to raise awareness of gender equality, to educate other family members and to provide equally for sons and daughters. Such an obligation, although difficult to monitor, and ignoring the real situation of many women who are unable to influence the division of labour or to make choices within the family, is noteworthy for encouraging gender equality within the family unit where women are most likely to suffer discrimination.</p>
<p>3. Does the GEL establish a mechanism to monitor public authorities and their representatives and individuals and private institutions in their implementation of GEL?</p>	<p><b>The Law on Gender Equality 2001.</b></p> <p><b>Reporting</b></p> <p><b>Article 25.</b></p> <ul style="list-style-type: none"> <li>(1). The government must report annually to the National Assembly on the implementation of the gender equality goals. (4). The government must direct and organise the inspection and examination of the implementation of the GEL.</li> </ul> <p><b>Article 26(4).</b></p> <ul style="list-style-type: none"> <li>State management agency must review and report to government on the implementation of gender equality.</li> </ul> <p><b>Article 31(2)(a), Article 32(1)(b).</b></p> <ul style="list-style-type: none"> <li>State agencies, political organisations, socio-political organisations must make annual reports and other agencies and organisations must supply in time information on the real situation of gender equality and their progress in achieving gender equality goals in their organisations.</li> </ul>	<p>1. The Law adopts reporting and sanctions as the main measures to monitor public authorities and their representatives and private organisations and individuals, which is a positive response to monitoring.</p> <p><b>Reporting</b></p> <p>2. Article 25(1) requires the government to report annually to the National Assembly on the implementation of gender equality goals. Whilst this is a positive measure, it could be strengthened by a clearer statement of what the report must contain. It would also be strengthened by specifying what the National Assembly must do if the report shows unsatisfactory results.</p> <p>3. Article 25(4) provides a mandatory duty for the government to 'direct and manage' the implementation of the Law. This is weak because there is no timeline or specific direction placed on the government outcomes.</p>

GOOD PRACTICE COMPONENT	RELEVANT PROVISION	COMMENTARY
	<p><b>Article 35(2).</b></p> <ul style="list-style-type: none"> <li>State management agency on GE must inspect the implementation of the law; national target program and measures to guarantee gender equality; handling violations in accordance with the law on handling administrative violations; proposing measures to ensure implementation.</li> </ul> <p><b>Sanctions</b></p> <p><b>Article 42(1).</b></p> <ul style="list-style-type: none"> <li>Sanctions shall include disciplinary measures, administrative sanctions or criminal prosecutions depending on the nature and severity of the violations.</li> </ul>	<p>4. Article 26(4) &amp; Article 35(2) requires the state management agency on gender equality to inspect and report on the implementation of GE but there is no obligation on the government to respond to their report. The GEL would be strengthened therefore by a clearer statement of what the report must contain, and by specifying what the government must do if the report shows unsatisfactory results.</p> <p>5. Articles 31(2)(a) &amp; 32(1)(b) require state agencies, political organisations and socio-political organisations to make annual reports and other agencies and organisations to supply in-time information. This is a positive measure that could be strengthened by clarifying what should be contained in the reports, to whom the reports are directed and what responses are required if progress is unsatisfactory.</p> <p><b>Sanctions</b></p> <p>6. Articles 42(1) would be strengthened by a clearer identification of the sanctions. What disciplinary measures will be imposed? What sanctions, for whom, and in what circumstances?</p> <p>7. The inclusion of rewards or disincentives for both the public and private sectors would strengthen the monitoring capacity and the effectiveness of the Act.</p>
<p>4. Does the GEL incorporate a complaints process to ensure individuals can bring actions for breaches of the GEL and receive appropriate remedies?</p>	<p><b>The Law on Gender Equality 2001.</b></p> <p><b>Article 27(3), Article 28(4).</b></p> <ul style="list-style-type: none"> <li>Ministerial-level agency assigned by government and Peoples Committees shall inspect, examine, handle violations of the law and settle complaints and denunciations related to gender equality.</li> </ul> <p><b>Article 25(6), Article 35(2)(c).</b></p> <ul style="list-style-type: none"> <li>The state management agency on gender equality shall examine, inspect, handle and settle complaints and denunciations in accordance with GEL and the law on complaints and denunciations.</li> </ul> <p><b>Article 37.</b></p> <ul style="list-style-type: none"> <li>(1). Agencies, organisations and individuals have the right to complain about decisions and acts of other agencies, organisations or individuals when they have grounds to believe they have violated the GEL or infringed on their legitimate rights and interests (2). Complaints shall be settled in accordance with the law on complaints and denunciations.</li> </ul>	<p>1. The Law enables a number of agencies to receive complaints but does not clearly define the procedure by which an individual who alleges a rights violation under the Act lodges a complaint; nor does it identify the procedures for hearing complaints. Creating a single institution to hear complaints, staffed by gender experts, and identifying a clear procedure would strengthen the Law.</p> <p>2. Article 37(1) provides that complaints can be received from anyone who believes the Act has been violated, which is a strong and positive provision enabling persons and organisations other than the victim to lodge complaints. This is positive because violations of the Act may result in systemic harm rather than harm to a specific individual, or they may harm persons without the ability to lodge complaints.</p>

GOOD PRACTICE COMPONENT	RELEVANT PROVISION	COMMENTARY
	<p><b>Article 38(1).</b></p> <ul style="list-style-type: none"> <li>Individuals have the right to denounce acts of violation of the GEL.</li> </ul> <p><b>Article 39.</b></p> <ul style="list-style-type: none"> <li>All violations shall be detected and stopped in time. They shall be handled in a prompt, just and thorough manner in accordance with the law.</li> </ul> <p><b>Article 42(2).</b></p> <ul style="list-style-type: none"> <li>Agencies, organisations or individuals that violate the Law shall pay compensation.</li> </ul>	<p>3. Article 37(1) provides for remedies generally, Article 42(2) provides for compensation payable by those who breach the law, and Article 39 provides for the cessation of the discriminatory behaviour. These are both positive good practice measures.</p> <p>4. The complaints process would be further strengthened by including protection from retaliation for victims.</p> <p>5. The complaints process would also be further strengthened by including a clear appeals process.</p>
5. Does the GEL establish a process for the collection of statistics disaggregated by sex and other intersections of discriminations?	<p><b>The Law on Gender Equality 2006.</b></p> <p><b>Article 8(7).</b></p> <ul style="list-style-type: none"> <li>The state management (government, ministerial-level agencies, Peoples Committees) shall make statistics on gender equality.</li> </ul> <p><b>Article 25(5).</b></p> <ul style="list-style-type: none"> <li>The government shall prescribe and direct the application of indicators for gender classification in state statistical data and information.</li> </ul>	<p>1. Article 8(7) obligates a variety of agencies to gather statistics on gender equality. This provision would be strengthened by directing the agencies to methodically and systematically (within designated time-frames) collect statistics disaggregated by sex and the gender dimensions of other intersections such as ethnicity, disability, age and sexual orientation in all areas of women's lives. This would enable plans, policies, measures and laws to be developed based on the <i>de facto</i> situation of women and would enable effective monitoring of the measures already in place.</p> <p>2. Article 25(5) requires the government to identify indicators for gender classification in state statistical information. This is an important provision which would be strengthened with more detailed guidance, including direction to include when gathering data information.</p>
6. Does the GEL incorporate a mandatory regular review process to determine whether the GEL is working effectively?	No review process to determine whether the GEL is working effectively is included.	For a detailed discussion on good practice review processes please refer to Part 3, 3.6.
7. Does the GEL provide a means of adequate funding for its implementation and monitoring functions?	<p><b>The Law on Gender Equality 2001.</b></p> <p><b>Article 24.</b></p> <ul style="list-style-type: none"> <li>(1). Financial sources for GE activities include the state budget, voluntary contributions from organisations and individuals, other lawful funding sources. (2). The management and use of financial sources for gender equality activities must be for proper purposes, efficient and lawful.</li> </ul>	<p>1. Article 24(1) identifies sources of funding for 'gender equality activities'. Whilst this is a positive measure, it could be strengthened by specifying that the amount from government will be 'sufficient' or 'adequate'.</p> <p>2. The GEL would be further strengthened by clearly identifying what the budgeted monies shall be spent on and the inclusion of a broad array of implementation and monitoring activities as identified in Part 3, 3.7.</p>



# GLOSSARY

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## **accession**

Act by which a State signifies its agreement to be legally bound by the terms of a particular treaty. It has the same legal effect as ratification, but is not preceded by an act of signature, since the treaty is already in force.

## **bail**

The release from custody of a person who has been charged with a criminal offence, on condition that they will appear in court as required and sometimes subject to other conditions. Bail can also refer to the amount of money that may be promised or deposited as a condition of release.

## **balance of probabilities**

The standard of proof applicable in civil law cases, requiring an adjudicator to weigh up all the material before them and decide, on balance, whether a claim has 'more likely than not' been proved.

## **bigamy**

The act of marrying one person while legally married to another.

## **bill**

A draft law that has not yet been passed by parliament.

## **burden of proof**

The responsibility of proving a disputed charge, allegation or violation. In civil cases it refers to whether a complainant or the alleged violator (defendant) has to prove on the balance of probabilities whether a violation or breach has occurred.

## **complainant**

Generally, a person who lodges a complaint with a court or other decision maker. In criminal proceedings it is a person, not necessarily the victim, who begins a prosecution by laying a complaint.

## **Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW)**

A multilateral agreement recognising the civil, political, economic, social and cultural rights of women. It was adopted by the General Assembly of the United Nations on 18 December 1979 and entered into force generally on 3 September 1981 in accordance with Article 27(1). The Convention sets out, in legally binding form, internationally accepted principles on the rights of women which are applicable to all women in all fields.

## **CEDAW Committee**

The CEDAW Committee was established by the Convention on the Elimination of all Forms of Discrimination against Women. The CEDAW Committee, elected by States parties to CEDAW, is made up of twenty-three experts on women's rights and is entrusted with the task of overseeing the implementation of the Convention by States parties. The Committee considers reports submitted by States parties in accordance with the reporting obligations laid down by the Convention and issues General Recommendations, which elaborate the CEDAW Committee's view of the treaty's obligations.

**corroboration**

In criminal proceedings, corroboration is independent evidence that connects the accused person to the crime. In the common law, judges are typically required to advise the jury that it is dangerous to convict the accused on uncorroborated evidence in relation to sexual offences and paternity.

**custom**

A practice in society or rule of conduct established by long usage, which binds those under it. In order for a custom to constitute a valid law, it must date back to time immemorial, and be certain and obligatory. A custom can be general, particular or local.

**de facto**

As it applies to personal relationships, it describes an association which resembles a marriage, but which has not been formalised through a ceremony of marriage. It can include both heterosexual and same-sex relationships.

**de facto obligation**

As it pertains to international and human rights law, a requirement that the obligations of a State party to observe a convention or treaty are not merely reflected in the laws of the country but implemented in practice with the intended results.

**de jure obligation**

As it pertains to international and human rights law, requiring the laws of the State party to accord with the obligations created by a convention or treaty.

**defendant**

A person sued in a civil proceeding or accused in a criminal proceeding.

**discrimination**

Discrimination in general terms is the act of making prejudicial distinctions among individuals or groups by taking irrelevant matters into consideration resulting in unequal treatment. It is treating a person or persons less favourably; distinguishing, excluding, restricting, or preferring another on the prohibited basis of a certain or several features or attributes that the person or persons possess. The definition of discrimination contained in Article 1 of CEDAW explicitly states that discrimination against women means 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.

**direct discrimination**

Direct discrimination results from less favourable treatment in comparison with a real or hypothetical comparator from the mainstream group in the same or similar circumstances on a prohibited ground.

**domestic violence**

Past or present physical, sexual, psychological or economic violence between former or current intimate partners, adult household members, or a parent and children.

**dualism**

The view that international law, including the application of conventions, is separate from domestic law, i.e., where a State's constitutional legal arrangements provide that treaties have no domestic effect without implementing legislation.

**equality act**

Legislation that focuses on equality and multiple grounds of discrimination, including sex, but not exclusively. Therefore, for the purposes of this report, an equality act is not a GEL.

**equal pay**

Equal pay requires that workers are paid at the same rate of pay for doing the same job irrespective of sex.

**entrenched constitutional status**

An entrenched constitution is one which is legally protected from modification without a procedure of constitutional amendment, usually a two-thirds majority vote in parliament or a referendum.

**formal equality**

The requirement that legal rules should apply in the same way to all members of the community regardless of sex, race, sexuality or any other characteristic.

**gender-based violence**

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 equality law**

Legislation that is solely focused on gender equality rather than the amendment or insertion of gender equality provisions into existing legislation or constitutions.

**gender equality plan**

An operational road map which identifies the key steps an institution will take to implement gender equality.

**gender mainstreaming**

The (re)organisation, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies, at all levels and at all stages by the actors normally involved in policy-making.

**general recommendation**

As it pertains to CEDAW, general recommendations are detailed commentary on the articles of CEDAW issued by the CEDAW Committee to assist States parties comply with the Convention. For example, at the 1989 session, the Committee discussed the high incidence of violence against women, requesting information on this problem from all countries. In 1992, the Committee adopted General Recommendation 19 which requires national reports to the Committee to include statistical data on the incidence of violence against women, information on the provision of services for victims, and

legislative and other measures taken to protect women against violence in their everyday lives, such as harassment at the workplace, abuse in the family and sexual violence. The following 25 general recommendations have been adopted by the Committee as at 1 October 2008:

General recommendation No. and Year	Issue
General recommendation No. 1, 1986	Reporting guidelines
General recommendation No. 2, 1987	Reporting guidelines
General recommendation No. 3, 1987	Education and public information programs
General recommendation No. 4, 1987	Reservations
General recommendation No. 5, 1988	Temporary special measures
General recommendation No. 6, 1988	Effective national machinery and publicity
General recommendation No. 7, 1988	Resources
General recommendation No. 8, 1988	Article 8
General recommendation No. 9, 1989	Statistical data
General recommendation No. 10, 1989	Tenth anniversary of the adoption of CEDAW
General recommendation No. 11, 1989	Technical advisory services for reporting
General recommendation No. 12, 1989	Violence against women
General recommendation No. 13, 1989	Equal remuneration for work of equal value
General recommendation No. 14, 1990	Female circumcision
General recommendation No. 15, 1990	Women and AIDS
General recommendation No. 16, 1991	Unpaid women workers in rural and urban family enterprises
General recommendation No. 17, 1991	Measurement and quantification of the unremunerated domestic activities of women and their recognition in the GNP
General recommendation No. 18, 1991	Disabled women
General recommendation No. 19, 1992	Violence against women
General recommendation No. 20, 1992	Reservations
General recommendation No. 21, 1994	Equality in marriage and family relations
General recommendation No. 22, 1995	Article 20 of the Convention
General recommendation No. 23, 1997	Women in political and public life
General recommendation No. 24, 1999	Article 12 - women and health
General recommendation No. 25, 2004	Article 4 paragraph 1 - Temporary special measures

### indirect discrimination

Indirect discrimination results where there is a requirement that appears to be neutral and fair, but which actually impacts disproportionately on one individual or group as compared with another (and the requirement or condition is not reasonable in the circumstances). As it relates to women, indirect discrimination refers to a situation where laws, policies or programs, apparently based on gender-neutral criteria, disadvantage women because they fail to take account of women's real biological differences such as birthing or differences that exist because of stereotypical expectations, attitudes and past discrimination.

### interpretive clause

In this report, a requirement that the courts interpret any legislation that is the subject of litigation in accord with the GEL's provisions.

**intersectional or multiple discrimination**

A concept introduced by African American feminist scholars recognising that people can belong to several disadvantaged groups at the same time and suffer aggravated and specific forms of discrimination in consequence. The concept initially explored the fact that African American women suffered specific forms of discrimination not suffered by African American men or white women in general, but the term has gained increasing universal acceptance since the 1990s and is now commonly utilised in the international human rights arena. Intersections that may impact additionally upon sex include marital status, pregnancy, race, disability, HIV status, sexual orientation or any other status, attribute or characteristic.

**legal standing/locus standi**

The set of rules that determines whether a person who starts legal proceedings is a proper person to do so.

**litigation**

The act or process of taking a case to court.

**maintenance**

The provision of the means of existence or financial support for a minor or adult.

**mandatory prosecution**

Obligatory prosecution of an accused in a criminal proceeding (i.e. where police discretion to prosecute or not prosecute is removed).

**maternity leave**

The period of leave that a woman is entitled to from her employer before and after childbirth. Article 11(2)(e) of CEDAW requires States parties to introduce maternity leave with pay or with comparable social benefits. The International Labour Organisation recommends a minimum of 14 weeks maternity leave in both the private and public sectors.

**minimum quota system**

Quotas that require that women constitute a certain number or percentage of the members of a body, whether it is a candidate list, a parliamentary assembly, a committee, or a government. The quota system places the burden of recruitment not on the individual woman, but on those who control the recruitment process.

**minor**

A child who has not attained the age of having full legal capacity.

**monism**

The view that the international law system and the domestic law system constitute a single system of law, i.e. where constitutional legal arrangements provide that treaties ratified by the State party automatically become the law of that State. In monist countries, courts can interpret the Convention directly in line with their judicial responsibilities and duties.

**multi-area GEL**

A GEL that legislates on a range of the 13 substantive areas identified in this report.

**no-fault divorce**

A no-fault divorce is the dissolution of a marriage, upon application to the court by either party, without the requirement that the applicant show fault on the part of the other party. Either party may request and receive the dissolution of the marriage, despite the objections of the other party.

**occupation order**

An order issued by the court enabling a person (e.g., a victim of violence) to retain possession of their home, to the exclusion of any other party.

**open standing** (see also legal standing)

A system in which any person or organisation (i.e., not just a victim) can lodge a complaint or claim in a court or tribunal.

**pay equity**

Where work which is different in nature but requires comparably similar skills, experience and qualifications, and is carried out in comparably similar circumstances, attracts the same rate of pay.

**polygamy**

Marriage to more than one spouse at the same time.

**positive obligation**

A duty or obligation to take action, as opposed to a duty or obligation to refrain from a particular prohibited act.

**pre-enactment scrutiny**

In this report, pre-enactment scrutiny refers to the mandatory pre-enactment examination and assessment of all draft legislation and amendments to ensure that they are consistent with the GEL.

**prior sexual conduct**

The common-law rule of using the prior sexual conduct of a victim to establish that she consented to the sexual act in question.

**procurement**

To obtain (a sexual partner) for another without their consent.

**proof of resistance**

A common-law rule which requires sexual assault victims to establish that they physically resisted the perpetrator, used to determine consent.

**ratification**

The adoption or confirmation by a State of a convention or treaty. Ratification places an obligation on a State party to the convention to comply with its provisions and principles.

**repeal**

The deletion, omission, or reduction in scope of an existing law by a subsequent law.

**reservations**

A unilateral statement made by a State party when signing or ratifying a treaty or convention, by which the State party excludes or modifies the legal effect of certain provisions of their application to that State, i.e., a formal declaration that the State party does not accept as binding, certain parts of the treaty or convention.

**respondent**

A person or entity required to answer a petition for a court order. It is also a party to court proceedings against whom relief is claimed by an applicant, complainant or appellant. It is analogous to the term 'defendant' which is used in many jurisdictions.

**restraining order**

An order from a court directing one person not to do something, such as make contact with another person, enter the family home etc. It tells one person to stop harassing or harming another. Restraining orders are typically issued in cases in which spousal abuse or stalking is feared or has occurred in an attempt to ensure the victim's safety.

**sex-disaggregated data**

Data that is cross-classified by sex, presenting information separately for women and men, boys and girls.

**sexual harassment**

Unwanted sexual approaches, an unwelcome request for sexual favours, or engaging in other unwelcome conduct of a sexual nature, usually in an employment context. General Recommendation 19 defines sexual harassment as unwelcome sexually-determined behaviour such as physical contact and advances, sexually-coloured remarks, showing pornography, or sexual demands whether by words or actions. It constitutes violence against women and is discriminatory.

**soliciting**

To approach someone with an offer of sexual services in return for payment.

**standard of proof**

Level of proof required in a case, established by assessing the associated evidence. In civil matters this is the balance of probabilities, in criminal matters this is beyond reasonable doubt.

**standing**

See legal standing and open standing.

**State party**

A country that has ratified or acceded to a particular convention or treaty and is therefore legally bound by the provisions in the instrument.

**statute**

A law passed by parliament and enacted.

**stereotyping**

An over-generalised and preconceived idea or impression of what characterises a person or community. Stereotyping is discriminatory because it reduces a person or community to an oversimplified category, image or idea, especially one that does not allow for any individuality or variation. Article 5 of CEDAW requires States parties to take all appropriate measures to modify and eliminate social and cultural patterns of conduct or customary practices that are based on the idea of the inferiority or superiority of either of the sexes or on the stereotyped roles for men and women.

**subordinate legislation**

A collective term for statutory rules, regulations, ordinances, by-laws and rules.

**substantive equality**

Real or actual equality. Whereas formal equality merely requires the equal application of rules, substantive equality requires equality of access, equality of opportunity and crucially, equality of results.

**substantive area**

Substantive area in this report refers to each different area of women's lives where a framework of legal rights and obligations is required by CEDAW. Substantive areas include equality and non-discrimination, gender-based violence, stereotyping of women in media, exploitation of women in prostitution, political, public and international life, education, nationality and citizenship, employment, health, social and economic benefits, rural women, civil equality and marriage and family relations.

**'targeted' GEL**

A gender equality law focused on a particular area or article(s) of CEDAW, typically equality and non-discrimination, employment and/or education.

**temporary special measures**

Temporary special measures (also known as 'affirmative action') are described in Article 4(1) of CEDAW as measures 'to accelerate *de facto* equality between men and women' and are defined in General Recommendation 5 as 'positive action, preferential treatment or quota systems to advance women's integration into education, economy, politics and employment.'

**trafficking of women**

All acts involved in the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

**tribunal**

A body with a judicial or quasi-judicial function set up by statute and existing outside the usual judicial hierarchy of courts. Tribunals are usually specialised (i.e., operate in a particular area of law) and procedures may be much more informal than those followed by courts.

# ENDNOTES

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- <sup>1</sup> 1979 G.A. Res 34/180 (UN Doc A/34/46) hereinafter CEDAW or 'the Convention'.
- <sup>2</sup> See UN Division for the Advancement of Women: Online: <http://www.un.org/womenwatch/daw/cedaw>.
- <sup>3</sup> Y Brunelle, CEDAW Your Bill of Rights: Online: [http://www.saidit.org/archives/feb00/feb\\_article1.html](http://www.saidit.org/archives/feb00/feb_article1.html).
- <sup>4</sup> Vienna Convention on the Law of Treaties 1969, UN Treaty Series, Vol 1,155, p 351.
- <sup>5</sup> CEDAW note 1 Article 2 (a).
- <sup>6</sup> J Crawford, *The International Law Commission Articles on State Responsibility, Introduction, Text and Commentaries* (Cambridge: 2002 Cambridge University Press, 2002), p 28.
- <sup>7</sup> See Concluding Comments of the CEDAW Committee: Samoa (2005) 32nd Session at para [21] (UN Doc CEDAW/C/WSM/CC/1-3). See also Nigeria (2008) 41<sup>st</sup> Session at para [12] (UN Doc CEDAW/C/NGA/CO/6); Morocco (2008) 40<sup>th</sup> Session at para [13] (UN Doc CEDAW/C/MAR/CO/4); Saudi Arabia (2008) 40<sup>th</sup> Session at para 12] (UN Doc CEDAW/C/SAU/CO/2).
- <sup>8</sup> S Dairiam, *The Status of CEDAW Implementation in ASEAN and Selected Muslim Countries* (Kuala Lumpur: IWRAW, 2004), p 7.
- <sup>9</sup> For the purposes of this report further distinctions within gender equality laws have not been made. For example, whilst this report identifies as GEL legislation that seeks exclusively to address a substantive area or article of CEDAW (such as employment), legislation which covers a specific topic within an article or substantive area, such as equal pay or maternity leave is not.
- <sup>10</sup> The Copenhagen Criteria were established by the European Council in 1993. The Criteria require that candidate countries have stability of institutions guaranteeing democracy, the rule of law, human rights, respect for and protection of minorities and the existence of a functioning market economy.
- <sup>11</sup> S Velluti, "Implementing Gender Equality and Mainstreaming in an Enlarged European Union. Some Thoughts on Prospects and Challenges for Central Eastern Europe" (2005) 27(2) *Journal of Social Welfare and Family Law* 213, p 218.
- <sup>12</sup> See Concluding Comments of the CEDAW Committee: Lithuania (2008) 41<sup>st</sup> Session at para [5] (UN Doc CEDAW/C/LTU/CO/4); Iceland (2008) 41<sup>st</sup> Session at para [4] (UN Doc CEDAW/C/ICE/CO/6); Finland (2008) 41<sup>st</sup> Session at para [4] (UN Doc CEDAW/FIN/CO/6); Estonia (2007) 39<sup>th</sup> Session at para [4] (UN Doc CEDAW/C/EST/CO/4); Bosnia and Herzegovina (2006) 35<sup>th</sup> Session at para [8] (UN Doc CEDAW/C/BIH/CO/3); Croatia (2005) 32nd Session at para [14] (UN Doc CEDAW/C/CRO/CC/2-3), Vietnam (2007) 37<sup>th</sup> Session at para [8] (UN Doc CEDAW/C/VNM/CO/6).
- <sup>13</sup> Concluding Comments of the CEDAW Committee: Iceland (2008) 41<sup>st</sup> Session at para [12] (UN Doc CEDAW/C/ICE/CO/6); Azerbaijan (2007) 37<sup>th</sup> Session at para [14] (UN Doc CEDAW/C/AZE/CO/3); Democratic People's Republic of Korea (2005) 33<sup>rd</sup> Session at para [21] (UN Doc CEDAW/C/PRK/CO/1).
- <sup>14</sup> J Mertus & J Helsing, *Human Rights and Conflict: Exploring the Links Between Rights, Law, and Peacebuilding* (Washington DC: US Institute of Peace Press, 2006), p 310.

- <sup>15</sup> Concluding Comments of the CEDAW Committee: Sweden (2008) 40<sup>th</sup> Session at para [17] (UN Doc CEDAW/C/SWE/CO/7; Morocco (2008) 40<sup>th</sup> Session at para [11] (UN Doc CEDAW/C/MAR/CO/4); Lebanon (2008) 40<sup>th</sup> Session at para [13] (UN Doc CEDAW/C/LBN/CO/3).
- <sup>16</sup> H Schopp-Schilling (ed), "The Nature and the Scope of the Convention" in *The Circle of Empowerment* (New York: The Feminist Press, 2007), p 18.
- <sup>17</sup> Concluding Comments of the CEDAW Committee: United Kingdom of Great Britain and Northern Ireland (2008) 41<sup>st</sup> Session at para [18] (UN Doc CEDAW/C/GBR/CO/6); Slovakia (2008) 41<sup>st</sup> Session at para [8] (UN Doc CEDAW/C/SVK/CO/4); Serbia (2007) 38<sup>th</sup> Session at para [16] (UN Doc CEDAW/C/SCG/CO/1); Peru (2007) 37<sup>th</sup> Session at para [13] (UN Doc CEDAW/C/PER/CO/6); Saudi Arabia (2008) 40<sup>th</sup> Session at para [14] (UN Doc CEDAW/C/SAU/CO/2); Azerbaijan (2007) 37<sup>th</sup> Session at para [14] (UN Doc CEDAW/C/AZE/CO/3); Kazakhstan (2007) 37<sup>th</sup> Session at para [12] (UN Doc CEDAW/C/KAZ/CO/2).
- <sup>18</sup> M Graterol, *Addressing Intersectional Discrimination with Temporary Special Measures* (Kuala Lumpur: IRAW, 2006), p 4.
- <sup>19</sup> Concluding Comments of the CEDAW Committee: Iceland (2008) 41<sup>st</sup> Session at para [12] (UN Doc CEDAW/C/ICE/CO/6); Yemen (2008) 41<sup>st</sup> Session at para [11] (UN Doc CEDAW/C/YEM/CO/6); Saudi Arabia (2008) 40<sup>th</sup> Session at para [14] (UN Doc CEDAW/C/SAU/CO/2); Morocco (2008) 40<sup>th</sup> Session at para [11] (UN Doc CEDAW/C/MAR/CO/4).
- <sup>20</sup> Concluding Comments of the CEDAW Committee: United Republic of Tanzania (2008) 41<sup>st</sup> Session at para [15] (UN Doc CEDAW/C/TZA/CO/6); Saudi Arabia, (2008) 40<sup>th</sup> Session at para [13] (UN Doc CEDAW/C/SAU/CO/2); Mauritania (2007) 38<sup>th</sup> Session at para [14] (UN Doc CEDASW/C/MRT/CO/1); Maldives (2007) 38<sup>th</sup> Session at para [14] (UN Doc CEDAW/C/MDV/CO/3).
- <sup>21</sup> See Schopp-Schilling note 3, p 17.
- <sup>22</sup> Concluding Comments of the CEDAW Committee: Sweden (2008) 40<sup>th</sup> Session at para [17] (UN Doc CEDAW/C/SWE/CO/7); Mauritania (2007) 38<sup>th</sup> Session at para [14] (UN Doc CEDAW/C/MRT/CO/1); Romania (2006) 35<sup>th</sup> Session at para [27] (UN Doc CEDAW/C/ROM/CO/6).
- <sup>23</sup> See Schopp-Schilling note 3, p 18.
- <sup>24</sup> A Clapham, *Human Rights in the Private Sphere* (Oxford: Oxford University Press, 1993), p 100.
- <sup>25</sup> UN Secretary-General, *In-Depth Study on all Forms of Violence Against Women* 2006 (UN Doc A/61/122/Add.1) at para [1].
- <sup>26</sup> Report of the Fourth World Conference on Women, *The Beijing Declaration and Platform for Action*, Beijing, 1995, at para [112] (UN Doc A/CONF.177/20/REV.1).
- <sup>27</sup> See *Law on Gender Equality 2003, Article 17* (Bosnia and Herzegovina); *Law of the People's Republic of China on the Protection of Rights and Interests of Women* (1992), Article 46.
- <sup>28</sup> See, in particular, V Jivan & C Forster, *Translating CEDAW into Law: Legislative Compliance in Nine Pacific Countries* (Suva: UNDP Pacific Center, UNIFEM Pacific, 2007), pp 12-17.
- <sup>29</sup> Concluding Comments of the CEDAW Committee Democratic Republic of Congo (2006) 36<sup>th</sup> Session at para [13] (UN Doc CEDAW/C/COD/CO/5).
- <sup>30</sup> Concluding Comments of the CEDAW Committee: United Republic of Tanzania (2008) 41<sup>st</sup> Session at para [25] (UN Doc CEDAW/C/TZA/CO/4); India (2007) 37<sup>th</sup> Session at para [23] (UN Doc CEDAW/C/IND/CO/3).

- <sup>31</sup> R Bolen, *Child Sexual Assault: Its Scope and Our Failure* (New York: Springer, 2001), p 119.
- <sup>32</sup> Concluding Comments of the CEDAW Committee: Lebanon, 40<sup>th</sup> Session (2008) at para [27] (UN Doc CEDAW/C/LBN/CO/3); Morocco (2008) 40<sup>th</sup> Session at para [21] (UN Doc CEDAW/C/MAR/CO/4); Syrian Arab Republic (2007) 38<sup>th</sup> Session at para [20] (UN Doc CEDAW/C/SYR/CO/1); Singapore (2007) 39<sup>th</sup> Session at para [28] (UN Doc CEDAW/C/SGP/CO/3); Kazakhstan (2007) 37<sup>th</sup> Session at para [16] (UN Doc CEDAW/C/KAZ/CO/2).
- <sup>33</sup> See B McSherry, "Constructing Lack of Consent" in P Eastal (ed) *Balancing the Scales. Rape: Law Reform and Australian Culture* (Sydney: Federation Press, 1998) 26, p 32.
- <sup>34</sup> J Temkin, *Rape and the Legal Process* (Oxford: Oxford University Press, 2002), p 187.
- <sup>35</sup> See I Jalal, *Law for Pacific Women. A Legal Rights Handbook* (Suva: Fiji Women's Rights Movement: 1998), p 114.
- <sup>36</sup> See the Council of Europe, *Recommendation of the Committee of Ministers to Member States on the Protection of Women against Violence* (30 April 2002) at [35] in which the Council stated that national law should penalise any sexual act committed against non-consenting persons, even if they do not show signs of resistance.
- <sup>37</sup> See S Goonesekere (ed), *Violence, Law and Women's Rights in South Asia* (New Delhi: Sage, 2004), p 68.
- <sup>38</sup> P Lundberg-Love & S Marmion, *Intimate Violence Against Women. When Spouses, Partners or Lovers Attack* (Orlando: Greenwood Publishing Group, 2006), p 160.
- <sup>39</sup> J Sarkin-Hughes, J Sarkin, Y Haeck & J Lanotte, *Resolving the Tension Between Crime and Human Rights: An Evaluation of European and South African Issues* (Antwerp: Maklu, 2001), p 162.
- <sup>40</sup> R Davis, *Domestic Violence: Intervention, Prevention, Policies and Solutions* (Boca Raton: CRC Press, 2008), p 213.
- <sup>41</sup> Concluding Comments of the CEDAW Committee: Brunei (2008) 40<sup>th</sup> Session at para [24] (UN Doc CEDAW/C/BDI/CO/4); Suriname (2007) 37<sup>th</sup> Session at para [37] (UN Doc CEDAW/C/SUR/CO/3); Guinea (2007) 39<sup>th</sup> Session at para [27]; Serbia (2007) 38<sup>th</sup> Session at para [22] (UN Doc CEDAW/SCG/CO/3); Vietnam (2007) 37<sup>th</sup> Session at para [17] (UN Doc CEDAW/C/VNM/CO/6); Algeria (2005) 32<sup>nd</sup> Session at para [32] (UN Doc CEDAW/C/DZA/CC/2).
- <sup>42</sup> Concluding Comments of the CEDAW Committee: Mexico (2006) 36<sup>th</sup> Session at para [15] (UN Doc CEDAW/C/MEX/CO/6).
- <sup>43</sup> Concluding Comments of the CEDAW Committee: Philippines (2006) 36<sup>th</sup> Session at para [16] (UN Doc CEDAW/C/PHI/CO/5-6).
- <sup>44</sup> See In-Depth Study on all Forms of Violence Against Women note 12 at para [311]. See also Translating CEDAW into Law note 15, p 13.
- <sup>45</sup> See In-Depth Study on all Forms of Violence Against Women note 12 at para [269].
- <sup>46</sup> See In-Depth Study on all Forms of Violence Against Women note 12 at para [269].
- <sup>47</sup> See *A.T v Hungary*, Communication No 2 (2003) 32<sup>nd</sup> Session at para 9.6 I(b) and para 9.6 II(g).
- <sup>48</sup> Concluding Comments of the CEDAW Committee: Jordan (2007) 39<sup>th</sup> Session at [26] (UN Doc CEDAW/C/JOR/CO/4). See also Luxembourg (2008) 40<sup>th</sup> Session at para [20] (UN Doc CEDAW/C/LUX/CO/5).

- <sup>49</sup> Concluding Comments of the CEDAW Committee: Finland (2008) 41<sup>st</sup> Session at para [16] (UN Doc CEDAW/C/FIN/CO/6); Sweden (2008) 41<sup>st</sup> Session at para [29] (UN Doc CEDAW/C/SWE/CO/6).
- <sup>50</sup> United Republic of Tanzania (2008) 41<sup>st</sup> Session at para [25] (UN Doc CEDAW/C/TZA/CO/4).
- <sup>51</sup> United Republic of Tanzania (2008) 41<sup>st</sup> Session at para [25] (UN Doc CEDAW/C/TZA/CO/4); Burundi (2008) 40<sup>th</sup> Session at para [16] (UN Doc CEDAW/C/BDI/CO/4).
- <sup>52</sup> Concluding Comments of the CEDAW Committee: Serbia (2007) at para [20] (UN Doc CEDAW/C/SBA/CO/6). See also Lithuania (2008) 41<sup>st</sup> Session at para [15] (UN Doc CEDAW/C/LTU/CO/6); Morocco (2008) 40<sup>th</sup> Session at para [19] (UN Doc CEDAW/C/MAR/CO/4); France (2008) 40<sup>th</sup> Session at para [19] (UN Doc CEDAW/C/FRA/CO/6).
- <sup>53</sup> Concluding Comments of the CEDAW Committee: China (2006) 36<sup>th</sup> Session at para [18] (UN Doc CEDAW/C/CHN/CO/6).
- <sup>54</sup> Concluding Comments of the CEDAW Committee: New Zealand (2007) 39<sup>th</sup> Session at para [23] (UN Doc CEDAW/C/NZL/CO/6). See also Finland (2008) 41<sup>st</sup> Session at para [20] (UN Doc CEDAW/C/FIN/CO/6).
- <sup>55</sup> General Recommendation 3, *Consideration of Reports* 1987, 6<sup>th</sup> Session (CEDAW/C/7/Rev.1).
- <sup>56</sup> *Law on the Development and Protection of Women 2004; Implementation of the Law on the Development and Protection of Women 2006* (Lao PDR).
- <sup>57</sup> J Halley, P Kotiswaran, H Shamir & C Thomas, "From the International to the Local in Feminist Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism" (2006) 29 *Harvard Journal of Law and Gender* 335, p 347.
- <sup>58</sup> B Hernandez-Truyol & J Larsen, "Sexual Labour and Human Rights" (2005-2006) 37 *Columbia Human Rights Law Review* 391, p 400.
- <sup>59</sup> B Sullivan, "Rape Prostitution and Consent" (2007) 40(2) *The Australian and New Zealand Journal of Criminology* 127, p 139.
- <sup>60</sup> See Hernandez-Truyol & Larsen, note 45, p 402.
- <sup>61</sup> Article 23(1) of the Universal Declaration of Human Rights 1948 (UDHR) declares that 'everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment' and Article 6(1) of the *International Covenant on Economic, Social and Cultural Rights* 1966 (ICESCR) provides for 'the right to work which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts'.
- <sup>62</sup> See for example the Beijing Platform note 13 at paras [123] & [224] and the UN *Declaration on the Elimination of Violence against Women* (1993) G.A. Res 48/104 (UN Doc A/RES/48/104) which both condemn only forced prostitution.
- <sup>63</sup> Concluding Comments of the CEDAW Committee: Yemen (2008) 41<sup>st</sup> Session at para [21] (UN Doc CEDAW/C/YEM/CO/6); Nigeria (2008) 41<sup>st</sup> Session at para [26] (UN Doc CEDAW/C/NGA/CO/6) Peru (2007) 37<sup>th</sup> Session at para [21] (UN Doc CEDAW/C/PER/CO/6).
- <sup>64</sup> Concluding Comments of the CEDAW Committee: Finland (2008) 41<sup>st</sup> Session at para [18] (UN Doc CEDAW/C/FIN/CO/6); Bolivia (2008) 40<sup>th</sup> Session at para [27] (UN Doc CEDAW/C/BOL/CO/4); Luxembourg (2008) 40<sup>th</sup> Session at para [30] (UN Doc CEDAW/C/LUX/CO/5); Sweden (2008) 40<sup>th</sup> Session at para [33] (UN Doc CEDAW/C/SWE/CO/7).

- <sup>65</sup> Concluding Comments of the CEDAW Committee: Mexico (2006) 36<sup>th</sup> Session at para [26] (UN Doc CEDAW/C/MEX/CO/6). See also Translating CEDAW into Law note 15, pp 20-21.
- <sup>66</sup> Concluding Comments of the CEDAW Committee: China (2006) 36<sup>th</sup> Session at para [20] (UN Doc CEDAW/C/CHN/CO/6).
- <sup>67</sup> Concluding Comments of the CEDAW Committee: Nigeria (2008) 41<sup>st</sup> Session at para [26] (UN Doc CEDAW/C/NGA/CO/6).
- <sup>68</sup> Concluding Comments of the CEDAW Committee: United Republic of Tanzania (2008) 41<sup>st</sup> Session at para [29] (UN Doc CEDAW/C/TZA/CO/6).
- <sup>69</sup> Concluding Comments of the CEDAW Committee: Nigeria (2008) 41<sup>st</sup> Session at para [26] (UN Doc CEDAW/C/NGA/CO/6); Viet Nam (2007) 37<sup>th</sup> Session at para [19] (UN Doc CEDAW/C/VNM/CO/6).
- <sup>70</sup> Concluding Comments of the CEDAW Committee: United Republic of Tanzania (2008) 41<sup>st</sup> Session at para [29] (UN Doc CEDAW/C/TZA/CO/6).
- <sup>71</sup> *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000, Article 3(a).
- <sup>72</sup> Concluding Comments of the CEDAW Committee: Kazakhstan (2007) 37<sup>th</sup> Session at para [18] (UN Doc CEDAW/C/MRT/CO/1); Mauritania (2007) 38<sup>th</sup> Session at para [32] (UN Doc CEDAW/C/KAZ/CO/2).
- <sup>73</sup> Concluding Comments of the CEDAW Committee: Yemen (2008) 41<sup>st</sup> Session at para [21] (UN Doc CEDAW/C/YEM/CO/6); Finland (2008) 41<sup>st</sup> Session at para [24] (UN Doc CEDAW/C/FIN/CO/6); United Republic of Tanzania (2008) 41<sup>st</sup> Session at para [29] (UN Doc CEDAW/C/TZA/CO/6).
- <sup>74</sup> M Mattar, "Incorporating the Five Basic Elements of a Model Anti-trafficking in Persons Legislation in Domestic Laws: From the United Nations Protocol to the European Convention" (2006) 14(1) *Tulane Journal of International and Comparative Law* 2. See also Concluding Comments of the CEDAW Committee: United Kingdom of Great Britain and Northern Ireland (2008) 41<sup>st</sup> Session at para [36] (UN Doc CEDAW/C/GBR/CO/6).
- <sup>75</sup> F Gaspard, "Unfinished Battles: Political and Public Life" in Circle of Empowerment note 3, p 145.
- <sup>76</sup> General Recommendation 23(9), *Women in Public Life*, 16<sup>th</sup> Session at para [15] (UN Doc A/52/38/REV.1).
- <sup>77</sup> See General Recommendation 23(13) note 63.
- <sup>78</sup> See General Recommendation 23(13) note 63.
- <sup>79</sup> Suffrage has been achieved in most countries worldwide. Exceptions include Lebanon (partial), Brunei (no one can vote), Saudi Arabia, United Arab Emirates (expected in 2010), and Vatican City. Online: <http://www.globalissues.org/HumanRights/WomensRights.asp>.
- <sup>80</sup> Concluding Comments of the CEDAW Committee: United Republic of Tanzania (2008) 41<sup>st</sup> Session at para [31] (UN Doc CEDAW/C/TZA/CO/6).
- <sup>81</sup> L Edwards & M Roces, *Women's Suffrage in Asia: Gender, Nationalism and Democracy* (Oxford: Routledge, 2004), p 1.
- <sup>82</sup> Concluding Comments of the CEDAW Committee: Lithuania (2008) 41<sup>st</sup> Session at para [27] (UN Doc CEDAW/C/LTU/CO/4).

- <sup>83</sup> Concluding Comments of the CEDAW Committee: Jordan (2007) 39<sup>th</sup> Session at para [38] (UN Doc CEDAW/C/JOR/CO/4); Netherlands (2007) 37<sup>th</sup> Session at para [39] (UN Doc CEDAW/C/NLD/CO/4).
- <sup>84</sup> Concluding Comments of the CEDAW Committee: Nigeria (2008) 41<sup>st</sup> Session at para [24] (UN Doc CEDAW/C/NGA/CO/6); Greece (2007) 37<sup>th</sup> Session at para [24] (UN Doc CEDAW/C/GRC/CO/6); Chile (2006) 38<sup>th</sup> Session at para [14] (UN Doc CEDAW/C/CHI/CO/4); Suriname (2007) 37<sup>th</sup> Session at para [26] (UN Doc CEDAW/C/SUR/CO/3); Poland (2007) 37<sup>th</sup> Session at para [15] (UN Doc CEDAW/C/POL/CO/6).
- <sup>85</sup> General Recommendation 23(15) note 63.
- <sup>86</sup> The CEDAW Committee has increasingly recommended the adoption of temporary special measures to address low numbers of women in public and political life. See Concluding Comments of the CEDAW Committee: Yemen (2008) 41<sup>st</sup> Session at para [23] (UN Doc CEDAW/C/YEM/CO/6); Slovakia (2008) 41<sup>st</sup> Session at para [25] (UN Doc CEDAW/C/SVK/CO/4); Finland (2008) 41<sup>st</sup> Session at para [26] (UN Doc CEDAW/C/FIN/CO/6); Norway (2007) 39<sup>th</sup> Session at para [24] (UN Doc CEDAW/C/NOR/CO/7); Indonesia (2007) 39<sup>th</sup> Session at para [27] (UN Doc CEDAW/C/IDN/CO/5).
- <sup>87</sup> S Pradhan-Malla & P Gautam, *Women's Right to Nationality and Citizenship* (IWWAW: Kuala Lumpur: 2006), p 18.
- <sup>88</sup> Concluding Comments of the CEDAW Committee: United Republic of Tanzania (2008) 41<sup>st</sup> Session at para [33] (UN Doc CEDAW/C/TZA/CO/6); Indonesia (2007) 39<sup>th</sup> Session at para [29] (UN Doc CEDAW/C/IDN/CO/5); Ghana (2006) 36<sup>th</sup> Session at para [26] (UN Doc CEDAW/C/GHA/CO/5).
- <sup>89</sup> Concluding Comments of the CEDAW Committee: Indonesia (2007) 39<sup>th</sup> Session at para [28] (UN Doc CEDAW/C/IDN/CO/5).
- <sup>90</sup> Concluding Comments of the CEDAW Committee: Niger (2007) 38<sup>th</sup> Session at para [15] (UN Doc CEDAW/C/NER/CO/2). See also Ghana (2006) 36<sup>th</sup> Session at para [35] (UN Doc CEDAW/C/GHA/CO/5); Saudi Arabia (2008) 40<sup>th</sup> Session at para [27] (UN Doc CEDAW/C/SAU/CO/2).
- <sup>91</sup> See Pradhan-Malla & Gautum note 74, p 18.
- <sup>92</sup> See ICESCR Committee, General Comment 13, *The Right to Education*, 21<sup>st</sup> Session, 1999, at para [1] on ICESCR (UN Doc E/C 12/1999/10).
- <sup>93</sup> Concluding Comments of the CEDAW Committee: United Republic of Tanzania (2008) 41<sup>st</sup> Session at para [34] (UN Doc CEDAW/C/TZA/CO/6); Democratic Republic of Congo (2006) 36<sup>th</sup> Session at para [33] (UN Doc CEDAW/C/COD/CO/3).
- <sup>94</sup> S Aikman & E Unterhatter (eds) *Beyond Access: Transforming Policy and Practice for Gender Education* (Oxford: Oxfam, 2005) at 6 for discussion on the importance of education in achieving gender equality.
- <sup>95</sup> See Translating CEDAW into Law note 15, pp 24-25.
- <sup>96</sup> Concluding Comments of the CEDAW Committee: Yemen (2008) 41<sup>st</sup> Session at para [25] (UN Doc CEDAW/C/YEM/CO/6); United Republic of Tanzania (2008) 41<sup>st</sup> Session at para [35] (UN Doc CEDAW/C/TZA/CO/6).
- <sup>97</sup> See M Mehra & S Priya, *Sexual Harassment in the Workplace: Opportunities and Challenges for Legal Redress in Asia and the Pacific* (Kuala Lumpur: IWWAW, 2005), p 17.
- <sup>98</sup> Concluding Comments of the CEDAW Committee: Nigeria (2008) 41<sup>st</sup> Session at para [12] (UN

- Doc CEDAW/C/NGA/CO/6); Bolivia (2008) 40<sup>th</sup> Session at para [42] (UN Doc CEDAW/C/BOL/CO/4) Morocco (2008) 40<sup>th</sup> Session at para [31] (UN Doc CEDAW/C/MAR/CO/4); Honduras (2007) 39<sup>th</sup> Session at [24] (UN Doc CEDAW/C/HON/CO/6), Colombia (2007) 37<sup>th</sup> Session at para [23] (UN Doc CEDAW/C/COL/CO/6); Maldives (2007) 37<sup>th</sup> Session at para [34] (UN Doc CEDAW/C/MDV/CO/3); Mozambique (2007) 38<sup>th</sup> Session at para [33] (UN Doc CEDAW/C/MOZ/CO/2); Vanuatu (2007) 38<sup>th</sup> Session at para [35] (UN Doc CEDAW/C/VUT/CO/3).
- <sup>99</sup> Concluding Comments of the CEDAW Committee: Mauritius (2006) 36<sup>th</sup> Session at para [25] (UN Doc CEDAW/C/MAR/CO/3-4).
- <sup>100</sup> Concluding Comments of the CEDAW Committee: Republic of Moldova (2006) 36<sup>th</sup> Session at para [19] (UN Doc CEDAW/C/MDA/CO/3). See also Yemen (2008) 41<sup>st</sup> Session at para [25] (UN Doc CEDAW/C/YEM/CO/6); Finland (2008) 41<sup>st</sup> Session at para [24] (UN Doc CEDAW/C/FIN/CO/6).
- <sup>101</sup> Concluding Comments of the CEDAW Committee: Estonia (2007) 39<sup>th</sup> Session at para [13] (UN Doc CEDAW/C/EST/CO/4).
- <sup>102</sup> Concluding Comments of the CEDAW Committee: Mauritania (2007) 38<sup>th</sup> Session at para [36] (UN Doc CEDAW/C/MRT/CO/1).
- <sup>103</sup> Concluding Comments of the CEDAW Committee: Vanuatu (2007) 38<sup>th</sup> Session at para [31] (UN Doc CEDAW/C/VUT/CO/3).
- <sup>104</sup> Concluding Comments of the CEDAW Committee: Lithuania (2008) 41<sup>st</sup> Session at para [15] (UN Doc CEDAW/C/LTU/CO/4).
- <sup>105</sup> Division for the Advancement of Women Department of Economic and Social Affairs, *Assessing the Status of Women* (UN: 2000), p 26.
- <sup>106</sup> Article 23(1) of the Universal Declaration of Human Rights 1948 (UDHR) declares that 'everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment' and Article 6(1) of the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) provides for 'the right to work which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts'.
- <sup>107</sup> See the Beijing Platform note 13 at para [150].
- <sup>108</sup> Concluding Comments of the CEDAW Committee: United Republic of Tanzania (2008) 41<sup>st</sup> Session at para [37] (UN Doc CEDAW/C/TZA/CO/6).
- <sup>109</sup> Concluding Comments of the CEDAW Committee: Finland (2008) 41<sup>st</sup> Session at para [26] (UN Doc CEDAW/C/FIN/CO/6).
- <sup>110</sup> See *Translating CEDAW into Law* note 15, pp 25-29.
- <sup>111</sup> See Beijing Platform note 13 at para [178(c)].
- <sup>112</sup> Concluding Comments of the CEDAW Committee: Nigeria (2008) 41<sup>st</sup> Session at para [30] (UN Doc CEDAW/C/NGA/CO/6); United Republic of Tanzania (2008) 41<sup>st</sup> Session at para [37] (UN Doc CEDAW/C/TZA/CO/6).
- <sup>113</sup> The ILO recorded in a recent 2008 report that female family workers often lack economically independence and basic employment rights. ILO, *Global Employment Trends for Women* (Geneva: ILO, 2008), p 3.
- <sup>114</sup> Concluding Comments of the CEDAW Committee: Serbia (2007) 38<sup>th</sup> Session at para [30] (UN Doc CEDAW/C/SCG/CO/1).
- <sup>115</sup> Concluding Comments of the CEDAW Committee: Liechtenstein (2007) 39<sup>th</sup> Session at para [16]

- (UN Doc CEDAW/C/LIE/CO/3).
- <sup>116</sup> General Recommendation 13, *Equal Treatment in Respect of Work of Equal Value* 1989 (UN Doc A/44/38).
- <sup>117</sup> Women are typically employed in lower paying sectors and occupy lower status positions worldwide. See ILO, *Global Employment Trends for Women* (Geneva: ILO, 2008), p 1-4.
- <sup>118</sup> ILO, *The Role of Trade Unions in Promoting Gender Equality: Report of the ILO-ICFTU Survey* (Geneva, ILO, 2000), p 10.
- <sup>119</sup> Concluding Comments of the CEDAW Committee: Saudi Arabia (2008) 40<sup>th</sup> Session at para [32] (UN Doc CEDAW/C/SAU/CO/2).
- <sup>120</sup> Concluding Comments of the CEDAW Committee: Finland (2008) 41<sup>st</sup> Session at para [26] (UN Doc CEDAW/C/FIN/CO/6); Lithuania (2008) 41<sup>st</sup> Session at para [21] (UN Doc CEDAW/C/LTU/CO/4).
- <sup>121</sup> Concluding Comments of the CEDAW Committee: United Kingdom of Great Britain and Northern Ireland (2008) 41<sup>st</sup> Session at para [40] (UN Doc CEDAW/C/GBR/CO/6); Jordan (2007) 39<sup>th</sup> Session at para [16] (UN Doc CEDAW/C/JOR/C/3-4).
- <sup>122</sup> Concluding Comments of the CEDAW Committee: Slovakia (2008) 41<sup>st</sup> Session at para [27] (UN Doc CEDAW/C/SVK/CO/4); Yemen (2008) 41<sup>st</sup> Session at para [27] (UN Doc CEDAW/C/YEM/CO/6); Finland (2008) 41<sup>st</sup> Session at para [26] (UN Doc CEDAW/C/FIN/CO/6).
- <sup>123</sup> Concluding Comments of the CEDAW Committee: Finland (2008) 41<sup>st</sup> Session at para [26] (UN Doc CEDAW/C/FIN/CO/6); Lithuania (2008) 41<sup>st</sup> Session at para [21] (UN Doc CEDAW/C/LTU/CO/6).
- <sup>124</sup> Concluding Comments of the CEDAW Committee: Nigeria (2008) 41<sup>st</sup> Session at para [30] (UN Doc CEDAW/C/NGA/CO/6); United Kingdom of Great Britain and Northern Ireland (2008) 41<sup>st</sup> Session at para [30] (UN Doc CEDAW/C/GBR/CO/6).
- <sup>125</sup> General Recommendation 5, *Temporary Special Measures*, 1988, 7<sup>th</sup> Session UN Doc A/43/38).
- <sup>126</sup> General Recommendation 25, *Temporary Special Measures*, 2004, 30<sup>th</sup> Session.
- <sup>127</sup> General Recommendation 25 note 113.
- <sup>128</sup> General Recommendation 25 note 113.
- <sup>129</sup> UN General Assembly, *The Right of Everyone to Enjoy the Highest Attainable Standard of Physical and Mental Health*, 2003 (UN Doc A/58/527).
- <sup>130</sup> C Shalev, "Women's Health: Accommodating Difference" in Circle of Empowerment note 3, p 199.
- <sup>131</sup> Concluding Comments of the CEDAW Committee: United Republic of Tanzania (2008) 41<sup>st</sup> Session at para [33] (UN Doc CEDAW/C/TZA/CO/6); United Kingdom of Great Britain and Northern Ireland (2008) 41<sup>st</sup> Session at para [42] (UN Doc CEDAW/C/GBR/CO/4); Nigeria (2008) 41<sup>st</sup> Session at para [32] (UN Doc CEDAW/C/NGA/CO/6); Indonesia (2007) 39<sup>th</sup> Session at para [29] (UN Doc CEDAW/C/IDN/CO/5).
- <sup>132</sup> Concluding Comments of the CEDAW Committee: Vietnam (2007) 37<sup>th</sup> Session at para [25] (UN Doc CEDAW/C/VNM/CO/6).
- <sup>133</sup> See General Recommendation 24, *Women and Health*, 1999, 20<sup>th</sup> Session (UN Doc A/54/38/Rev.1) at para [14].
- <sup>134</sup> Concluding Comments of the CEDAW Committee: Nigeria (2008) 41<sup>st</sup> Session at para [34] Burundi (2008) 40<sup>th</sup> Session at para [37] (UN Doc CEDAW/C/BDI/CO/4).
- <sup>135</sup> Concluding Comments of the CEDAW Committee: Nigeria (2008) 41<sup>st</sup> Session at para [34] (UN Doc CEDAW/C/NGA/CO/6).

- <sup>136</sup> Concluding Comments of the CEDAW Committee: Nigeria (2008) 41<sup>st</sup> Session at para [34]; Burundi (2008) 40<sup>th</sup> Session at para [37] (UN Doc CEDAW/C/BDI/CO/4).
- <sup>137</sup> Concluding Comments of the CEDAW Committee: Nigeria (2008) 41<sup>st</sup> Session at para [34] (UN Doc CEDAW/C/NGA/CO/6).
- <sup>138</sup> See General Recommendation 24(27) note 120.
- <sup>139</sup> Concluding Comments of the CEDAW Committee: Yemen (2008) 41<sup>st</sup> Session at para [29] (UN Doc CEDAW/C/YEM/CO/6).
- <sup>140</sup> Concluding Comments of the CEDAW Committee: Vanuatu (2007) 38<sup>th</sup> Session at para [35] (UN Doc CEDAW/C/VUT/CO/3); Slovakia (2008) 41<sup>st</sup> Session at para [29] (UN Doc CEDAW/C/SVK/CO/4); Tajikistan (2007) 37<sup>th</sup> Session at para [32] (UN Doc CEDAW/C/TJK/Co/3); Peru (2007) 37<sup>th</sup> Session at para [25] (UN Doc CEDAW/C/PER/CO/6); India (2007) 37<sup>th</sup> Session at para [41] (UN Doc CEDAW/C/IND/CO/3); Suriname (2007) at para [30] (UN Doc CEDAW/C/SUR/CO/3).
- <sup>141</sup> Concluding Comments of the CEDAW Committee: United Kingdom of Great Britain and Northern Ireland (2008) 41<sup>st</sup> Session at para [42] (UN Doc CEDAW/C/GBR/CO/4); Lithuania (2008) 41<sup>st</sup> Session at para [25] (UN Doc CEDAW/C/LTU/CO/4).
- <sup>142</sup> The CEDAW Committee has recommended the removal of all punitive measures imposed on women who seek abortions. See Concluding Comments of the CEDAW Committee: United Kingdom of Great Britain and Northern Ireland (2008) 41<sup>st</sup> Session at para [42] (UN Doc CEDAW/C/GBR/CO/4); Honduras (2007) 39<sup>th</sup> Session at para [25] (UN Doc CEDAW/C/HON/CO/6); Liechtenstein (2007) at [26] 41, Pakistan, (2007) 38<sup>th</sup> Session at para [41] (UN Doc CEDAW/C/PAK/CO/3); Brazil (2007) 39<sup>th</sup> Session at para [30] (UN Doc). See also Indonesia (2007) at [17] where the Committee urges the removal of the requirement that a woman must obtain her husband's consent regarding sterilisation and abortion.
- <sup>143</sup> Concluding Comments of the CEDAW Committee: United Republic of Tanzania (2008) 41<sup>st</sup> Session at para [33] (UN Doc CEDAW/C/TZA/CO/6); United Kingdom of Great Britain and Northern Ireland (2008) 41<sup>st</sup> Session at para [42] (UN Doc CEDAW/C/GBR/CO/4); Nigeria (2008) 41<sup>st</sup> Session at para [32] (UN Doc CEDAW/C/NGA/CO/6); Indonesia (2007) 39<sup>th</sup> Session at para [29] (UN Doc CEDAW/C/IDN/CO/5).
- <sup>144</sup> UN Division for the Advancement of Women Department of Economic and Social Affairs, *Assessing the Status of Women* (Geneva: UN, 2000), p 35.
- <sup>145</sup> Concluding Comments of the CEDAW Committee: Mozambique (2007) 38<sup>th</sup> Session at para [35] (UN Doc CEDAW/C/MOZ/CO/2); Cambodia (2006) 34<sup>th</sup> Session at para [28] (UN Doc CEDAW/C/KHM/CO/3).
- <sup>146</sup> General Recommendation 16, *Unpaid Women Workers in Rural and Urban Family Enterprises*, 1991, 10<sup>th</sup> Session (UN Doc A/46/38).
- <sup>147</sup> Concluding Comments of the CEDAW Committee: Nigeria (2008) 41<sup>st</sup> Session at para [36] (UN Doc CEDAW/C/NGA/CO/6).
- <sup>148</sup> Concluding Comments of the CEDAW Committee: Nigeria (2008) 41<sup>st</sup> Session at para [36] (UN Doc CEDAW/C/NGA/CO/6); United Republic of Tanzania (2008) 41<sup>st</sup> Session at para [37] (UN Doc CEDAW/C/TZA/CO/6).
- <sup>149</sup> Concluding Comments of the CEDAW Committee: Georgia (2006) 36<sup>th</sup> Session at [28] (UN Doc CEDAW/C/GEO/CO/3); Mozambique (2005) 38<sup>th</sup> Session at para [35] (UN Doc CEDAW/C/MOZ/

- CO/2); Cook Islands (2007) 39<sup>th</sup> Session at para [7] (UN Doc CEDAW/C/COK/CO/1; Malawi (2006) 35<sup>th</sup> Session at para [30] (UN Doc CEDAW/C/MWI/CO/5).
- <sup>150</sup> Concluding Comments of the CEDAW Committee: India (2007) 37<sup>th</sup> Session at para [37] (UN Doc CEDAW/C/IND/CO/3).
- <sup>151</sup> A Cotter, *Gender Injustice: An International Comparative Analysis of Equality in Employment* (Hampshire: Ashgate Publishing, 2004) at 101; M Ferree, J Lorber & B Hess, *Revisioning Gender* (Lanham: Rowman Altamira: 1999), p 354.
- <sup>152</sup> Concluding Comments of the CEDAW Committee: United Republic of Tanzania (2008) 41<sup>st</sup> Session at para [44] (UN Doc CEDAW/C/TZA/CO/6).
- <sup>153</sup> Division for the Advancement of Women Department of Economic and Social Affairs, *Assessing the Status of Women* (UN: 2000), p 36.
- <sup>154</sup> Concluding Comments of the CEDAW Committee: Yemen (2008) 41<sup>st</sup> Session at para [36] (UN Doc CEDAW/C/YEM/CO/6); Nigeria (2008) 41<sup>st</sup> Session at para [35] (UN Doc CEDAW/C/NGA/CO/6).
- <sup>155</sup> Concluding Comments of the CEDAW Committee: United Republic of Tanzania (2008) 41<sup>st</sup> Session at para [33] (UN Doc CEDAW/C/TZA/CO/6); United Kingdom of Great Britain and Northern Ireland (2008) 41<sup>st</sup> Session at para [42] (UN Doc CEDAW/C/GBR/CO/4); Nigeria (2008) 41<sup>st</sup> Session at para [32] (UN Doc CEDAW/C/NGA/CO/6).
- <sup>156</sup> Concluding Comments of the CEDAW Committee: United Republic of Tanzania (2008) 41<sup>st</sup> Session at para [44] (UN Doc CEDAW/C/TZA/CO/6).
- <sup>157</sup> Concluding Comments of the CEDAW Committee: Nigeria (2008) 41<sup>st</sup> Session at para [36] (UN Doc CEDAW/C/NGA/CO/6).
- <sup>158</sup> Concluding Comments of the CEDAW Committee: Nigeria (2008) 41<sup>st</sup> Session at para [36] (UN Doc CEDAW/C/NGA/CO/6).
- <sup>159</sup> Concluding Comments of the CEDAW Committee: United Republic of Tanzania (2008) 41<sup>st</sup> Session at para [45] (UN Doc CEDAW/C/TZA/CO/6).
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- <sup>162</sup> General Recommendation 21, *Equality in Marriage and Family Relations*, 1994, 13<sup>th</sup> Session Article 15 at para [8] (UN Doc A/49/38).
- <sup>163</sup> See also Translating CEDAW into Law note 15, pp 33-39.
- <sup>164</sup> Concluding Comments of the CEDAW Committee: Tanzania (2008) 4<sup>st</sup> Session at para [51] (UN Doc CEDAW/C/TZA/CO/6).
- <sup>165</sup> General Recommendation 21(16) note 149.
- <sup>166</sup> Concluding Comments of the CEDAW Committee: Serbia (2007) 38<sup>th</sup> Session at para [36] (UN Doc CEDAW/C/SCG/CO/1).
- <sup>167</sup> Concluding Comments of the CEDAW Committee: Cape Verde (2006) 36<sup>th</sup> Session at para [33] (UN Doc CEDAW/C/CPV/CO/6).

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- <sup>169</sup> Concluding Comments of the CEDAW Committee: Slovakia (2008) 41<sup>st</sup> Session at para [32] (UN Doc CEDAW/C/SVK/CO/4).
- <sup>170</sup> Concluding Comments of the CEDAW Committee: and Northern Ireland (2008) 41<sup>st</sup> Session at para [44] (UN Doc CEDAW/C/GBR/CO/4). See also General Recommendation 21(21) note 149.
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- <sup>172</sup> Concluding Comments of the CEDAW Committee: Lithuania (2008) 41<sup>st</sup> Session at para [22] (CEDAW/C/LTU/CO/4).
- <sup>173</sup> See General Recommendation 21(13) note 149.
- <sup>174</sup> See General Recommendation 21(34) note 149.
- <sup>175</sup> Concluding Comments of the CEDAW Committee Azerbaijan (2007) 37<sup>th</sup> Session at para [30] (UN Doc CEDAW/C/AZE/CO/3); Malawi (2006) 35<sup>th</sup> Session at para [28] (UN Doc CEDAW/MWI/CO/5); Sierra Leone 38<sup>th</sup> Session at para [35] (UN Doc CEDAW/C/SLE/CO/5).
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- <sup>177</sup> The Office of the High Commissioner for Human Rights Fact Sheet No.19, National Institutions for the Promotion and Protection of Human Rights: Online: <http://www.unhchr.ch/html/menu6/2/fs19.htm>.
- <sup>178</sup> Article B2, *Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights* (Paris Principles); HRC Resolution 1992/54, 1992 and GA Resolution 48/134, 1993 (UN Doc A/RES/48/134).
- <sup>179</sup> See the *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, Maastricht, 1997 at para [6]. Online: [http://www.escr-net.org/resources\\_more/resources\\_more\\_show.htm?doc\\_id=425803](http://www.escr-net.org/resources_more/resources_more_show.htm?doc_id=425803).
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- <sup>183</sup> L Chappell, *Gendering Government: Feminist Engagement with the State in Australia and Canada* (Vancouver: British Columbia Press, 2002), p 126.
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- <sup>199</sup> General Recommendation 5, *Temporary Special Measures*, 1988, 7<sup>th</sup> Session UN Doc A/43/38).
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- <sup>202</sup> General Recommendation 8, *Implementation of Article 8 of the Convention*, 1988, 7<sup>th</sup> Session (UN Doc A/43/38).
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- <sup>204</sup> Article 4(1) of CEDAW specifically states that ‘the 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.’
- <sup>205</sup> Concluding Comments, of the CEDAW Committee: Honduras, (2007) 39<sup>th</sup> Session at para [23] (UN Doc CEDAW/C/HON/CO/6).
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- <sup>207</sup> J Zerk, *Multinationals and Corporate Social Responsibility* (Cambridge: Cambridge University Press, 2006), p 38.
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- <sup>210</sup> R Gruner, *Corporate Criminal Liability and Prevention* (New York: Law Journal Press, 2004) at 2.59.
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- <sup>221</sup> See Dairiam note 41, p 11.
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- <sup>232</sup> L Corner, *From Margins to Mainstream. From Gender Statistics to Engendering Statistical Systems*, (Bangkok UNIFEM 2003), p 3.
- <sup>233</sup> General Recommendation 12(4), *Violence against Women* 1989, 8<sup>th</sup> Session (UN Doc A/44/38). See also Concluding Comments of the CEDAW Committee: Morocco (2008) 40<sup>th</sup> Session at para [21] (UN Doc CEDAW/C/MAR/CO/4).
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United Nations Development Fund for Women



Discrimination against women and the pursuit of gender equality remains one of the most pressing challenges for the global community in the 21<sup>st</sup> century. Gender equality laws that reflect the norms of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) offer a means of incorporating the principles of gender equality and non-discrimination into national law, and represent an increasingly popular means of fulfilling state party obligations to achieve *de jure* compliance with the Convention.

The first publication of its kind, *Gender Equality Laws: Global Good Practice and a Review of Five Southeast Asian Countries* comprehensively examines and analyses gender equality laws from around the world, providing a range of CEDAW-informed good practice examples. This timely publication addresses the need for international research on gender equality laws, considering amongst other things the benefits or disadvantages of such laws and what constitutes good practice in gender equality laws. It will be an invaluable resource to both government and non-governmental actors alike in the development of new gender equality laws and the implementation of existing gender equality laws.

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