

# Glossary

## Abet

To encourage and assist in the commission of crime.

## Abortion

The premature termination of pregnancy and the expulsion of an embryo or a foetus.

## Adoption

A legal proceeding that creates a parent-child relation between persons not related by blood. Adoption results in the severing of the parental responsibilities and rights of the biological parents and the placing of those responsibilities and rights onto the adoptive parents.

## Affirmative action (also known as temporary special measures)

A policy or a program that seeks to redress past discrimination through active measures (e.g. quotas) to ensure equal opportunity, such as in education and employment. Article 4 of CEDAW mandates the adoption of temporary special measures to accelerate de facto equality.

## Amicus curiae

Latin term meaning “a friend of the court”. An amicus curiae has no personal interest in the case and does not advocate a point of view in support of one party or another. The court may hear an amicus curiae if it considers it in the interests of justice to do so.

## 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.

## Bangalore Principles

The *Bangalore Principles on the Judicial Application of International Human Rights Law* formulated at a high level colloquium of Commonwealth judges in 1988, state that if legislation is ambiguous, it is consistent with the function of a judge in a common law system to resolve the ambiguity by reference to international human rights principles.

## Bigamy

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

## Citizenship

Membership of a state or nation which carries with it duties, rights, and privileges.

## Common law

Historically, a body of unwritten law derived from the traditional laws of England based on case law precedents and judicial interpretation rather than legislation.

## 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 State 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 for sexual offences and paternity.

## Custody

Custody refers to the daily care and control of a child. It typically encompasses the rights and duties related to the upbringing of children. These rights include the power to make decisions about a child’s education, religion and property as well as a personal power of physical control. The corresponding duties include providing the child with food, clothing, shelter, education and other necessities of life.

## Custom

A practice in society or rule of conduct established by long use, 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. It may run counter to the common law but cannot contravene existing statute law unless validated by the constitution. 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.

## Defendant

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

## De jure

Latin term meaning ‘according to the law’ and in contrast to *de facto* which means ‘in fact’.

### 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.

### Domicile

A person's fixed, principal and permanent home to which that person intends to return and remain even if they are currently residing elsewhere.

### Equal pay

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

### Executor

A person named by a testator to carry out the provisions of her/his will.

### Formal equality

Formal equality is 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.

### General recommendations

General Recommendations are detailed commentary on CEDAW's articles issued by the CEDAW Committee to assist States Parties to 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 of February 2007:

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

**Guardian**

In relation to a child, a person with the right to make decisions about the long-term needs of the child, as opposed to the day-to-day care of the child. A guardian has responsibility for such matters as decisions about a child's religion or education.

**Guardianship**

A legal arrangement where one person has been appointed to take care of another person or the property of another.

**Incest**

Sexual intercourse between persons who are related to each other within the degrees of blood where marriage is prohibited by law.

**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).

**Infanticide**

Infanticide is a criminal offence by which a mother causes the death of her child as a result of post natal depression. It is an alternate offence to murder or manslaughter, with a reduced sentence.

**Inheritance**

The practice of passing on property, titles, debts, and obligations upon the death of an individual to designated beneficiaries.

**Intestacy**

The rules governing the inheritance of the property of a person who dies without a valid will.

**Legal standing/locus standi**

The entitlement of a person or entity to commence legal proceedings.

**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.

**Matrilineal**

The practice of tracing title and inheritance through the maternal line.

**Minimum quota system**

Quotas that require 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.

**Minor**

A child who has not attained the age of having full legal capacity. The CEDAW Committee recommends 18 as the requisite age.

**No-fault divorce**

A no-fault divorce is the dissolution of a marriage, upon petition to the court by either party, without the requirement that the petitioner 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.

**Party**

One of the participants in a legal proceeding who has an interest in the outcome. Parties include the plaintiff (person filing suit), defendant (person sued or charged with a crime), petitioner (files a petition asking for a court ruling) or respondent (usually in opposition to a petition or an appeal).

**Patrilineal**

The practice of tracing title and inheritance through the paternal line.

**Pay equity**

Pay equity refers to a situation in which work which is different in nature but requires comparable similar skills, experience and qualifications and is carried out in comparably similar circumstances, attracts the same rate of pay.

**Plaintiff**

A person or entity who initiates legal proceedings against another in a civil dispute.

**Polygamy**

Marriage to more than one spouse at the same time or multiple marriages.

**Preamble**

An introductory statement at the beginning of legislation or an instrument providing information relating to the reason for the enactment, and intent, of the legislation.

**Precedent**

A prior reported judgment of a court which establishes the legal rule (authority) for future cases on similar facts or the same legal question. It is also a legal principle or rule created by one or more decisions of a higher court. These rules provide a point of reference or authority for judges deciding similar issues in later cases. Lower courts are bound to apply these rules when faced with similar legal issues.

**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**

Proof of resistance is a common law rule which requires sexual assault victims to establish that they physically resisted the perpetrator and is used to determine consent.

**Public law**

The body of law dealing with the rights, powers, obligations and responsibilities of the government including public officers and the governed (the public). It is composed of criminal, international, environmental, administrative and constitutional law.

**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 the convention.

**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, by which the state party excludes or modifies the legal effect of certain provisions of the Convention in their application to that state, i.e., a formal declaration that the State Party does not accept as binding, certain parts of the 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 an appellant. It is analogous to the term defendant, which is used in many jurisdictions.

**Restitution of conjugal rights**

A court order which directs a person to resume sexual relations with a spouse.

**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.

**Sexual harassment**

Unwanted sexual approaches or 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 and 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.

**Statute**

A law made by parliament.

**Stereotyping**

An over-generalised and preconceived idea or impression of what characterises someone or something. Stereotyping is discriminatory because it reduces a person to an oversimplified category, image or idea, especially one that does not allow for any individuality or variation. Article 5 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.

**Substantive equality**

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

**Testator**

A person who makes a will.

**Tort**

A wrongful act from which injury occurs to another. The law of tort attempts through the payment of compensation to restore the injured person to the position they were in before the tort was committed.

**Trafficking of women**

Global Alliance Against Trafficking in Women defines trafficking as all acts involved in the recruitment or transportation of a woman, within or across national borders, for work or services, by means of violence or threat of violence, debt bondage, deception or other coercion.

**Tribunal**

A body with 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.

**Wardship**

The state of being under the charge of a guardian, usually a minor.

**Will**

A written document in which a person (testator) specifies what is to be done with their property (estate) upon their death. A will usually names an executor who carries out the wishes of the deceased and distributes the estate to named persons or entities.

## Acronyms

<b>BPFA</b>	Beijing Platform for Action 1995
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women 1979
<b>CRC</b>	Convention on the Rights of the Child 1989
<b>DEVAW</b>	Declaration on the Elimination of Violence against Women 1993
<b>FSM</b>	Federated States of Micronesia
<b>GR</b>	General Recommendation
<b>ILO</b>	International Labour Organisation
<b>MI</b>	Marshall Islands
<b>MDG</b>	Millennium Development Goals
<b>NGO</b>	Non-Government Organisation
<b>para</b>	paragraph
<b>PNG</b>	Papua New Guinea
<b>s</b>	Section
<b>UNDP</b>	United Nations Development Programme

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