



Overview

Gender mainstreaming in the state's legal and constitutional institutions is a corollary to mainstreaming gender in development and ensuring equal opportunities and outcomes for men and women. Many states have taken important steps in this direction through legislative and social programmes. Constitutional guarantees and legislative reform are insufficient, however, unless they translate into positive action. Major factors for achieving real change include: political will and commitment of resources, concrete and realistic targets, programmes grounded at the national level based on local contexts, and evaluation.

The *Legal and Constitutional Affairs* manual makes the case for using a rights-based approach to gender mainstreaming. It emphasises the importance of understanding the international legal requirements to guarantee women's human rights, and that policies must be developed in the context of respect for those rights. International human rights offer a central framework that citizens can use to hold their states accountable for the provision of basic needs. A rights-based approach affirms the legitimacy of women's claims, allows progress to be measured against objective standards and upholds the state's international obligations.

The manual looks at the specifics of gender mainstreaming in the legal and constitutional sector. This calls for a gender audit of law and legal institutions for each state. Gender mainstreaming must change people's lives, not just change the formal legal structures and law on the books. Legal and consequent changes in society must be owned by the people and must be located within the context of their religion and culture.

The manual makes recommendations for action by government, grouped under five general headings: international agreements; national legislation; taking a holistic approach to violence against women; gender mainstreaming; and working with and educating civil society. It also provides a model of how to apply the GMS principles to the issue of violence against women. In addition, the manual offers practical tools for different spheres of activity: a checklist for gender mainstreaming, to establish a programme and assess progress; and a checklist for compliance with CEDAW, to check whether measures to ensure equality have been taken.

Points of entry

- A rights-based approach that affirms the legitimacy of women's claims; requires an understanding of the international level requirements for the guarantee of women's human rights, e.g. United Nations Charter, International Bill of Rights and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
- A gender audit of law and legal institutions for each state, in relation to government structures, judiciary and law-enforcement agencies; education and training for these stakeholders.
- Stakeholder involvement – to change people's lives, not just the formal legal structures and law on the books.
- Constitutional reform and legislative and customary law reform, examining the substance of the law on public life, nationality laws, labour laws, health and reproductive rights, violence against women and family law.
- Action to further implement the Beijing Platform for Action, covering international agreements, national legislation, taking a holistic approach to violence against women, gender mainstreaming, and working with and educating civil society.

Barriers

- Existing discriminatory laws, including legislation and customary laws.
- Societal structures that have come to be seen as 'natural'.

What's in this module?

The module follows through the rights-based approach to gender mainstreaming. Three activities address the broad issues of human rights and gender. The first clarifies key principles of human rights and reviews them in relation to gender mainstreaming (G1 'Principles of human rights'). The second sets issues of gender discrimination in this sector into a rights-based context (G2 'Tackling discrimination'). The third further explores key issues around gender and human rights (G3 'Women's rights are human rights'). There is then a more specific focus on CEDAW provisions, relating them to key areas for legal reform (G4 'CEDAW casino'). The final activity is a problem-solving exercise about incorporation and implementation of human rights agreements and principles into national law (G5 'Rights into actions').

Checklist

- Make sure you are familiar with the contents of the GMS *Legal and Constitutional Affairs* manual before you start to deliver the training activities in this module.
- The Toolkit Action Guide Unit 4 'Using the GMS sector manuals' will give you an overview and help you find out what is in the manual and where, and which sections will be most useful.
- Look through the 'To help you choose' table in the Introduction to this Trainer's Guide for activities, topics, methods and handouts from other modules and sectors that you can adapt to fit your purposes.
- Always start planning your training with an analysis of your learners and their needs.
- Use the 'How to' briefings in the Introduction to this Trainer's Guide to help you design your training.

Background

Besides *Legal and Constitutional Affairs*, relevant manuals are *Education* and *Information and Communications*.



ACTIVITY G1

Human rights principles

Aim To clarify the key principles of human rights and relate them to gender equality

Outcomes

- Identify the key principles of human rights
- Explain the meaning of the principles and relate them to gender equality

Time 1 hour

Materials Prepared OHPs, projector, screen (if available), flipcharts and pens, Handout G.1 'Human rights principles'

Steps

- 1 Explain the aim of the exercise – that it is important to understand some of the key principles of human rights for gender mainstreaming generally, and especially in the field of legal and constitutional affairs.
- 2 In the plenary, lead a brainstorm on participants' views of the key principles of human rights. At the end of the brainstorm, follow with a short discussion, making sure that the following key principles come out:
 - indivisibility and interdependence of rights
 - inalienability of rights
 - universality of rights
 - accountability – rights and duties
 - participation (15-20 min)
- 3 Divide the participants into five groups. Each group explores what these principles mean, and prepares a way of presenting this to the whole group. This can be verbally, or in a role-play, a song, a drawing or whatever form they choose. Ask them to think about these principles in relation to gender equality. (30 mins)
- 4 Each group makes their presentation to the plenary. Allow time for discussion. (30 mins)
- 5 Give out Handout G.1. Sum up with a short input, based on the handout, on the principles of human rights, bringing out the issue of gender equality. (5-10 mins)

Notes

- Prepare OHP in advance on the basis of Handout G.1, for presentation at the end.
- Encourage the groups to use creative ways of presenting the key rights principles.
- This activity is adapted from an exercise in *Save the Children's Tools for Child Rights Programming: A Training Manual*.

Key human rights principles

- *Human rights are indivisible and interdependent.* Economic, social and cultural rights, and civil and political rights are all necessary for life, security and dignity. For example, the denial of civil and political rights, such as personal security, freedom to meet and freedom to speak, can undermine people's ability to demand the realisation of their right to health or education. People who are poor, ill and homeless face huge obstacles to exercising their rights to freedom of movement, to vote and to participate in political life.
- *Human rights are universal.* This means that all people have access to the same rights, wherever they live. The non-discrimination clauses in the main human rights instruments guarantee this. However, individuals depend on others (the state, institutions, other individuals) to uphold their rights, and this differs from one context to another.
- *Human rights are inalienable.* A key feature of human rights theory is the notion of natural rights – those rights that belong to people by virtue of their humanity. All women, men and children are born with the same rights. These cannot be taken away from them. People cannot give up their rights.
- *Accountability.* Human rights imply and entail duties and responsibilities on the part of others. Rights have corresponding duties to fulfil them. These legal 'duty-bearers' are primarily states, but other institutions and individuals also bear responsibility for the realisation of human rights. States can be held accountable to the international standards of human rights agreements, beyond the confines of their own national law.
- *Participation and citizenship.* The active participation of citizens and groups is essential for the claiming of rights, and their realisation. It is often non-governmental organisations (NGOs) and civil society groups who advocate to ensure that governments and supra-national organisations fulfil their duties to protect and promote the human rights of individuals.

Gender equality in rights

Every major international human rights treaty from the Universal Declaration of Human Rights (1948) onwards has expressly prohibited discrimination on the basis of sex. 'Women's rights are human rights' was a central theme at the UN World Conference on Human Rights in Vienna (1993). However, in a world where women make up the majority of poor people, and lack access to political power and voice, gender is a key determinant of who is able to realise what kinds of rights.



ACTIVITY G2

Tackling discrimination

Aim To set the context of a rights-based approach in addressing gender discrimination in legal and constitutional affairs

Outcomes

- Define what is meant by a rights-based approach, and the human rights instruments and mechanisms available
- Give examples of gender inequalities and discrimination in the legal and justice system
- Relate instruments and issues of accountability to real-life examples

Time: 1 1/2 hrs

Materials OHPs, projector, screen (if available), flipcharts, pens, Handouts G.2a 'Rights-based approach' and G.2b 'International and regional human rights instruments'

Steps

- 1 Explain the objectives and structure of the session.
- 2 Give a quick input on what is meant by a rights-based approach. Outline the main instruments in the human rights framework, and mechanisms, based on Handouts G.2a and G.2b, using prepared OHPs or flipcharts. (10-15 mins)
- 3 Lead a quick brainstorm on specific examples of gender inequalities and ways in which women are discriminated against in the national legal and justice system. Draw out examples with which participants are familiar. (5 mins)
- 4 Write all examples on a flipchart. In the group select four or five main issues for further discussion in small groups.
- 5 Divide the group into four or five small groups. Allocate one of the issues to each one. Give each group a copy of Handout G2b, or of the OHP version prepared for the presentation.
- 6 Explain to the groups that they will examine the issue and gather more examples. They should answer two questions, and capture the main points on flipchart to present to the plenary:
 - What rights and international agreements are violated or not realised in these examples?
 - Who should be held accountable for the violation or non-realisation of these rights in the examples, and how? (15 mins)
- 7 In the plenary, each group presents the main points from their discussion, illustrating with the examples they found, in five minutes each. (20-25 mins)
- 8 Give out the handouts. Sum up issues of rights, responsibilities and accountability. Clear up any areas of misunderstanding. (5-10 mins)

Notes

- For this exercise you must be familiar with the materials and feel confident about explaining human rights to the group, especially if they are not very familiar with the concepts. You may need to allow time for a longer input with questions at the beginning if this is the case.
- Make OHPs based on the handouts. Handout G2b could be simplified for the group work, depending on how familiar people are with human rights instruments. Give the complete Handout b to participants at the end of the session. Refer to the *Legal and Constitutional Affairs* manual, Chapter 3.
- Because human rights can seem very technical, it is important to keep participants focused on real-life examples, so they move from these to understanding the legal and human rights implications. Some of these examples will be useful further on in the training.
- Make sure discussion includes the issue of responsibility and accountability for human rights abuses in the private sphere (e.g. domestic violence).

HANDOUT
G.2a

A rights-based approach

A rights-based approach is based on human rights principles, is situated within the framework of human rights instruments and mechanisms, and calls for the accountability and responsibility of public institutions to human rights obligations. The emphasis placed on these elements differs from one institution to another.

Policies for gender mainstreaming in the legal and constitutional sector must be developed in the context of respect for human rights for all. It should be understood that it is only recently that women's rights have been accorded the status of full human rights, and that women are systematically excluded from exercising their human rights in many parts of the world and in different contexts:

- Certain rights are foundational. These include equality before the law without distinction based on sex, race, ethnicity, religion or political belief (non-discrimination); the independence of the judiciary; freedom of expression and a free press; and procedures for a fair trial.
- All rights — civil, political, social, economic and cultural — are indivisible and interdependent. States are required to respect and ensure respect for all human rights and freedoms to all people in their jurisdiction.
- International human rights offer an important framework that citizens can use to hold their states accountable for the provision of basic needs. A rights-based approach affirms the legitimacy of women's claims, allows progress to be measured against objective standards and upholds the state's international obligations.

Gender mainstreaming in legal and constitutional affairs means that:

- Gender analysis and equality must be integral to all legislative programmes, judicial decision-making, administrative policy and decision-making.
- Since the forms and manifestations of inequality differ among states, the implementation of gender mainstreaming must be context-specific and take account of social and economic variables, political and governmental institutions, local structures, religion and the place of customary law.
- An individualised and localised gender audit of law and legal institutions for each state and sub-state unit will be needed to identify these specific features, as well as factors that will facilitate or impede gender mainstreaming in the particular socio-political context.
- Gender mainstreaming must bring about actual change, going beyond changes to the formal legal structures and law on the books. Legal and social changes must be owned by the people, located in the context of their culture and religion, and be relevant to their everyday lives.
- Strategies must therefore be worked out within those frameworks through co-ordination and consultation with women and men at the grassroots level.



International and regional human rights instruments



International instruments that prohibit discrimination

The obligation of non-discrimination on the grounds of sex has been laid down in a number of international instruments, including:

- The United Nations Charter, 1945, Articles 1 (3), 55 and 56;
- The Universal Declaration of Human Rights (UDHR), 1948, articles 1 and 2;
- The International Covenant on Civil and Political Rights (ICCPR), 1966, articles 2, 3 and 26;
- The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, articles 2 and 3; and
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Commonwealth member states are UN members and thus are bound by the provisions of the Charter. In addition many are parties to at least some of the other relevant international instruments. The UDHR, ICCPR and ICESCR are collectively known as the International Bill of Rights.

The UN Charter, Article 55 states, for example:

“With a view to creating conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote...

(c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.”

The ICESCR, article 2 (2) states that:

“The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Article 26 of the ICCPR goes further by establishing a free standing right of equality before the law: *“it prohibits discrimination in law or in fact in any field regulated and protected by public authorities.”* (HRC General Comment no. 18).

CEDAW has as its explicit objective the elimination of discrimination between women and men and the achievement of women’s equality. The Convention had 166 State Parties at the time of writing, including most members of the Commonwealth.

CEDAW, article 1 defines discrimination against women 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.”

CEDAW substantive provisions

CEDAW identifies areas where gender-based discrimination is most marked, covering civil and political rights and economic and social rights. It includes provisions on:

- the suppression of prostitution and trafficking in women (article 6);
- the participation of women in the public life of states (articles 7 and 8);
- equality in nationality laws (article 9);
- equality in access to, and in all other aspects of, education (article 10);
- equality in employment (article 11);
- equality in access to health services (article 12);

HANDOUT
G.2b

- equality in other areas of economic and social life (article 13);
- equality before the law (article 15); and
- equal rights in the family, in particular before, during and after marriage (article 16).

Of particular relevance to many Commonwealth states is the attention given to the specific needs of rural women (article 14).

Entering the private sphere

Unlike the ICCPR and ICESCR, CEDAW is not limited to discrimination in the public sector. Article 2 (d) requires states to ensure that public authorities refrain from discrimination and 2 (e) take appropriate measures to eliminate discrimination by any "person, organisation or enterprise". Other provisions, notably articles 5 and 16, explicitly relate to discrimination in private arenas, for example the family. Article 2 also sets out the obligations on States Parties, who must condemn discrimination against women in all its forms. This is absolute, allowing for no exceptions or justifications. States agree to pursue a policy of elimination of discrimination "by all appropriate means and without delay" through:

- constitutional and legislative inclusion (2 (a));
- legislative measures, including sanctions (2 (b));
- competent tribunals to ensure implementation (2 (c));
- appropriate measures to abolish existing discriminatory laws, regulations, customs and practices (2 (f)); and
- repeal of discriminatory penal laws (2 (g)).

The Optional Protocol

In 2000 CEDAW was strengthened by an Optional Protocol that allows individuals and groups claiming violations of the Convention to bring petitions before the CEDAW Committee, which monitors its implementation. NGOs and groups can represent individuals with the consent of the individuals but the Committee can conclude that consent is not necessary if the author can justify acting without it. The Committee can make recommendations to the government concerned but cannot make a binding decision. The Optional Protocol also gives the Committee investigative powers if it receives reliable evidence of grave or systematic violations.

Other relevant international conventions

Other international treaties contain provisions that address matters of particular concern to women, although these are not always presented in human rights terms.

The Constitution of the International Labour Organisation (ILO), 1919, Article 41 asserts the "special and urgent importance" of the principle of equal remuneration for work of equal value for men and women. ILO Conventions are particularly valuable as there are procedures for their implementation. Relevant ILO Conventions include:

- No. 3 on Maternity Protection, 1919; No. 103 on Maternity Protection, 1952
- No. 100 on Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951
- No. 111 on Discrimination with Respect to Employment and Occupation, 1958
- No. 156 on Equal Opportunities and Equal Treatment for Men and Women Workers, Workers with Family Responsibilities, 1981
- No. 175 on Part-time Work, 1994
- No. 177 on Home Work, 1996 (supplemented by Recommendation No. 184)
- No. 183 Maternity Protection Convention, 2000

Other international conventions of importance for women include:

- Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1951
- Convention Relating to the Status of Refugees, 1951 (and 1967 Protocol)
- Convention on the Political Rights of Women, 1954
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1957
- Convention on the Nationality of Married Women, 1957



- UNESCO Convention on Discrimination in Education, 1960
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, 1964
- International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- International Convention on the Rights of the Child, 1989
- International Convention on Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 2003

Human rights mechanisms

Mainstreaming women's human rights throughout UN human rights bodies was emphasised by the Vienna World Conference on Human Rights in 1993, and ways of achieving this are being worked on by the Secretary-General and the UN High Commissioner for Human Rights. The Human Rights Committee and the Committee on Economic, Social and Cultural Rights are increasingly asking for information about gender differences with respect to the rights in the Covenants and the steps states have taken to address them. States can anticipate and contribute to this process by co-ordinating their reports to the Human Rights Committee and the Committee on Economic and Social Rights with those to the CEDAW Committee.

The International Criminal Court

The International Criminal Court (ICC) is a global judicial institution that will investigate and bring to justice individuals, but not states or corporations, who commit the most serious crimes of international concern. Its particular importance for women lies in the affirmation that rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and other forms of sexual violence constitute war crimes and, in defined circumstances, crimes against humanity.

Regional human rights treaties that prohibit discrimination

Regional human rights treaties include:

- the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 (to which the United Kingdom became a party in 1953, and which it incorporated into national law with the Human Rights Act of 1998; Cyprus became a party in 1962 and Malta in 1967);
- the American Convention on Human Rights, 1969
- the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 1994 (to which states in the Americas are party); and
- the African Charter on Human and Peoples' Rights, 1981 (to which African states are party).

All these treaties prohibit discrimination on the grounds of sex. The African Charter, Article 18 (3) states that:

"The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions."

This provision appears to assert that incorporation of the Africa Charter into national law carries with it incorporation of CEDAW and other relevant human rights instruments. In addition, Article 25 of the Charter imposes a duty on States Parties to promote the rights contained in the Charter through education and publication and to ensure understanding of both the rights and obligations.

Other international instruments

In addition to the treaties mentioned above, other UN human rights instruments are also relevant in determining what responsibility states have in ensuring and protecting the rights of women. While they do not have the force of law, these agreements by governments set a moral standard and provide a framework for international and national actions, monitoring and accountability.

- **The Vienna Declaration and Programme of Action (1993)**

For the first time violence against women is recognised as a human rights abuse. It also states that:

"The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in the political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on the grounds of sex, are priority objectives of the international community."

- **The Declaration on the Elimination of All Forms of Violence Against Women (1993)**

This defines violence against women as:

"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, whether occurring in public or in private life."

It asserts that states should "exercise due diligence to prevent, investigate and in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or by private persons." In addition, states "should not invoke any custom, tradition or religious consideration to avoid their obligations" with respect to violence against women.

- **The Cairo Programme of Action (1994)**

The International Conference on Population and Development (ICPD) agreed on a Programme of Action that, in Principle 4, declares that advancing gender equality and equity and the empowerment of women, the elimination of all kinds of violence against women and ensuring women's ability to control their own fertility are cornerstones of population and development-related programmes. It also asserts that states should act to empower women and to eliminate inequalities between women and men.

- **The Beijing Declaration and Platform for Action (1995)**

The Platform for Action (PFA), the major policy document produced by the Fourth UN World Conference on Women, reaffirms that all human rights – civil, cultural, political and social, including the right to development – are universal, indivisible, interdependent and interrelated, and that the human rights of women and the girl-child are an inalienable, integral and indivisible part of human rights. The PFA sets out strategic objectives, and actions to be taken by states to achieve those objectives, in each of twelve areas of critical concern: poverty, education, health, violence, armed conflict, economy, power and decision-making, institutional mechanisms, human rights, media, environment and the girl child. It therefore provides an action plan for states.

- **The Beijing +5 Outcome Document (2000)**

Five years after Beijing, governments met in New York at a Special Session of the General Assembly entitled 'Women 2000: Gender Equality, Development and Peace for the Twenty-first Century' (popularly known as Beijing +5). The Ad Hoc Committee of the Whole produced a Political Declaration and Outcome Document: Further Actions and Initiatives to Implement the Beijing Declaration and the Platform for Action. This recognises that:

"the full realisation of all human rights and fundamental freedoms is essential for the empowerment of women. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms." (para. 3)



Commonwealth mandates



In 1995 the Commonwealth adopted the Commonwealth Plan of Action on Gender and Development in which governments reaffirmed that women's rights are human rights and urged member governments to adopt legislation and develop national strategies to promote the advancement of women.

They also urged governments to ratify and implement other relevant human rights treaties and instruments including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and to implement the principles and standards contained in the Declaration on the Elimination of Violence Against Women (1993), the Convention on the Rights of the Child (1990) and the Declaration and Programme for Action of the World Congress on the Commercial and Sexual Exploitation of Children (1996).

ACTIVITY G3

Women's rights are human rights

Aim To increase understanding of some of the key issues around gender and human rights

Outcomes

- Identify some obstacles to women's achievement of human rights
- Develop and evaluate arguments around the key issues

Time 1 1/4 hours

Materials Flipcharts, pens, Handout G.3 'Women's rights are human rights: issues for discussion'

Steps

- 1 Explain the objectives of the session, and divide the group into three small groups. Briefly go through the discussion topics the groups will address. (5 mins)
- 2 Give each group a discussion topic from Handout G3 and the relevant question to guide their discussions. Ask each small group to hold their discussion in the form of a debate, with group members taking opposing views. Explain that they will then come back into plenary and a spokesperson from each side of the debate will present their views. Spokespersons should be appointed in the groups early on and write their points on flipchart for presentation.
- 3 Small groups debate the issues. (20 mins)
- 4 Back in plenary, each small group presents their opposing views to the plenary. Each person has up to five minutes to present their arguments. (30 mins)
- 5 Allow some discussion in plenary. Then ask everyone, with a show of hands, to vote for the view on each topic they agree with. (10 minutes)
- 6 Sum up, drawing out key points of agreement and disagreement, and affirming the universality of human rights.

Notes

- Read through the handouts before the session, and ensure you are familiar with the arguments and have some examples to contribute if necessary.
- As this activity is set up as a debate, strong and opposing feelings can come out. Set the scene by explaining that a rights-based approach means that the universality of human rights is accepted as the point of departure and sets universal standards, but context has to be taken into account to find the way for these rights to be realised.
- At the end of the session, if there has been heated argument use a group-building energiser to draw the group together again.



Women's rights are human rights: issues for discussion

HANDOUT

G.3

- 1 **Women's rights are human rights.** Women's rights have only recently been explicitly articulated as an integral part of international human rights law. Although the UN Charter, International Bill of Rights and every major human rights treaty clearly states that there should be no discrimination on the basis of sex, "tradition, prejudice and social and economic interests have generally excluded women from prevailing definitions and interpretations of these basic human rights and relegated women to secondary and/or 'special interest' status in human rights matters" (Bunch, 1999). The growth of the international women's movement has been a significant factor in the growing acceptance that 'women's rights are human rights'. In 1993 women's groups from all over the world successfully demanded that the UN General Assembly adopt a Declaration on the Elimination of Violence Against Women and that the UN Human Rights Commission appoint a Special Rapporteur on violence against women, its causes and consequences.

Question:

Does the recognition of women's specific rights empower or marginalise women in their pursuit of equal rights?

- 2 **Cultural relativism.** The Vienna Declaration and Programme of Action, signed in 1993 by 171 governments, emphasises the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms. Despite this, debate continues concerning whether human rights are universal and indivisible or represent 'Western' values. Claims are made for cultural and traditional particularity. Central to this debate has been women's rights in the family, around such issues as polygamy, divorce, free and full consent to and in marriage, 'honour' killings, dowry and child custody, as well as regarding female genital mutilation, property and inheritance rights, and employment rights. "Cultural relativism is usually asserted when someone is trying to assert the rights of women. Women's rights activists argue that once states sign the United Nations Charter, they are obligated to respect human rights as set out in the Universal Declaration of Human Rights and that they cannot suddenly claim cultural relativism in certain areas" (Coomaraswamy, 2000).

Question:

Is the notion of women's universal human rights a Western imposition on other societies, upsetting social agreements and creating disharmony between the sexes?

- 3 **Beyond non-discrimination.** Despite the consistency in international instruments, which provides a sound basis for the assertion that the principle of non-discrimination on the ground of sex constitutes customary international law and as such is binding on all states, gender discrimination has persisted around the world. For example, violence and the threat of violence restrict the range of choices open to women in almost every sphere of life; world-wide, women hold only 10 per cent of parliamentary seats; women's unequal status is enshrined explicitly or implicitly in legal systems; women have unequal access to health, education, property ownership, employment and income. However, prohibiting discrimination is not of itself enough to ensure that women have the same opportunities for advancement and full enjoyment of their rights as men. Full equality of access to opportunity, supported by social policies and programmes, is also required. CEDAW specifically notes that "temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination" (article 4).

Question:

Is positive action in favour of women a good and effective strategy for addressing continuing discrimination against women?

ACTIVITY G4

CEDAW casino

Aim To help participants become familiar with the provisions in CEDAW and know how to apply them to key areas for legal reform

Outcomes

- Relate provision in CEDAW to key areas for legal reform
- Evaluate relative importance of articles
- Identify ways in which particular sets of rights are inter-dependent

Time 1 1/4 – 1 1/2 hours

Materials Two sets of prepared cards each with the articles of CEDAW on it, plus the General Recommendations, flipcharts, pens, OHP, beans/stones/matchsticks, Handouts G.4 a, G.4b, G.4c, G.4e, G.4f 'Key areas for legal reform'

Steps

- 1 Explain the objectives of the session. Briefly present on OHP or flipchart the key areas for legal reform the participants will be looking at. Explain there may be issues within these areas that they would like to add when in their groups. (5 mins)
- 2 Divide the group into two smaller groups. Give each group a pack of cards. Allocate three key issues to each group. Explain that one person will be the croupier. The rapporteur will report back to plenary using a chart prepared on flipchart. Another person will be the presenter of the issues, and will call the bidding. Everyone is dealt a card.
- 3 The game:
 - The croupier deals out the cards to the players. The players have 5 minutes to read and arrange their hands.
 - Each player has 10 beans (or stones or matchsticks) as currency.
 - The presenter reads out the issue against which stakes will be laid.
 - Players in turn place a card on the table and explain why it is important for that issue. They place their bids as a value between 1 as lowest, and 4 as highest
 - They play until all the cards are on the table. When all the rounds have been played, the presenter asks players to look at all the cards on the table and re-assess the value of their bids. They must discuss until they come to agreement, leaving their revised bids on the table in front of them. The rapporteur notes on the chart which cards were given the highest value for the issue.
 - The croupier gathers up the cards, shuffles, and deals them out again.
 - The game is repeated with the next issue.
 - At the end, the rapporteur makes sure that all the cards are accounted for on the charts of the issues. (45 mins)
- 4 In plenary, the rapporteur presents the results of the game, explaining why the group thought certain articles of CEDAW were more important than others for the issues discussed. (5-10 mins each)
- 5 Wrap up, reminding participants of the importance of the interdependence of rights.



ACTIVITY G4

Notes

- Make sure everyone understands the game!
- Prepare the cards on large index cards, as some of the CEDAW articles are quite long, even when split on two cards. Give each card a large number on the top left and right-hand corners. See suggestions for cards on next page.
- Some of the areas covered by CEDAW are not identified as key areas for legal reform. Participants will need to make connections between areas and rights and allocate their cards on these issues to the ones they discuss. For example, access to education is essential to participation in public life, and gender stereotyping transmitted through education affects the ways women are seen and treated in all aspects of life.
- Suggest rapporteurs make a chart like the one on the next page to record the bidding. **CEDAW card pack**

- | | |
|------------------------------|--------------------------------------------------------------------------------|
| 1. Article 1 | 18. Article 16 |
| 2. Article 2 | 19. Article 17 para 1, and Article 21 |
| 3. Article 3 | 20. Article 18 |
| 4. Article 4 | 21. Article 23 |
| 5. Article 5 | 22. Article 28 |
| 6. Article 6 | 23. General Recommendation 18, 1991: Disabled women |
| 7. Article 7 | 24. General Recommendation 19, 1992: Violence against women |
| 8. Article 8 | 25. General Recommendation 21, 1994: Equality in marriage and family relations |
| 9. Article 9 | 26. General Recommendation 23, 1997: Political and public life |
| 10. Article 10 | 27. General Recommendation 24, 1999: Women and health |
| 11. Article 11, part 1 | 28. CEDAW Optional Protocol Articles 1, 2 and 3 |
| 12. Article 11, part 2 and 3 | 29. CEDAW Optional Protocol Articles 8 and 9 |
| 13. Article 12 | 30. CEDAW Optional Protocol Articles 11, 12 and 17 |
| 14. Article 13 | |
| 15. Article 14 part 1 | |
| 16. Article 14 part 2 | |
| 17. Article 15 | |

Chart for rapporteurs

Cards/Issues	Value: 4	Value: 3	Value: 2	Value: 1
Issue 1				
Issue 2				
Issue 3				

Key areas for legal reform 1: public life

Some of the issues

- The participation of women in public life must be encouraged to ensure gender balance at all levels of government. Having women in decision-making positions, particularly in parliament, is essential for law reform.
- Positive action may be needed to promote and protect the advancement of women (e.g. by establishing targets or quotas both for a specified percentage of women candidates in winnable seats and for parliamentarians). Quotas can be problematic if they are set low, as they can become a maximum rather than the minimum objective, and are not enough. Suitable candidates need encouraging, training and continued support or mentoring.
- Political life should be reorganised to facilitate women's participation. All-night parliamentary sittings and lack of childcare facilities in government institutions are obvious examples where changes are needed.
- Women should not be allocated only to committees or working groups addressing 'women's matters' but should be active in the entire range of governmental or opposition affairs, including 'hard' matters such as national security, defence and public expenditure.
- Public participation does not only take place at the national level, but there should be equal representation and participation of women and men in the work of international organisations, such as UN bodies, specialised agencies and other institutions.
- Women should be encouraged to join and be active in transnational professions and organisations, for example, organisations of women judges, lawyers, diplomats and legislators.



Key areas for legal reform 2: labour laws



Some of the issues

- Much of labour law is directed at the urban workforce, which does not protect the vast number of women who work in the agricultural sector and in rural areas – e.g. in Sri Lanka this constitutes 87 per cent of women workers.
- In relation to paid work, discrimination is common in all aspects of labour relations. The recruitment process, including advertising, job specifications, interviewing procedures, and selection criteria should ensure equality of opportunity for women.
- There are still wide discrepancies in pay for men and women, not only in relation to work of equal value, but in relation to the same jobs. Promotion and training opportunities are often skewed towards males. Women are still under-represented worldwide in management positions in both the public and private sectors.
- Working conditions should take into account childbearing and women's caring responsibilities, as well as parental leave for men and women, and provide not only flexibility but positive help such as day-care.
- Sexual harassment in the workplace (public and private) must be recognised as a form of adverse discrimination that affects people's ability to perform tasks at work and that may cause stress-related illness. Employers must take responsibility for harassment in the same way as they would for providing a safe work environment. One problem is defining sexual harassment in a way that is culturally sensitive and captures the essence of the behaviour from the point of view of the recipient. Useful criteria are: the behaviour is unwanted by the recipient, and is threatening or offensive to the recipient.
- Women's unpaid work must also be acknowledged, for example, with respect to rights in the family property on dissolution of marriage and entitlement to maternity leave. The double burden that women bear, because even those who work full-time in paid employment assume a major burden of domestic work and child care, must be recognised to combat stereotyping and to present a true picture of women's work .
- Patterns of paid employment, especially with regard to mobility, are undergoing rapid change through economic globalisation. Migrant workers are particularly vulnerable to exploitation, abuse and violence. Where there is evidence of trafficking, women should not be subjected to criminal sanctions for illegal residency, but their human rights must be protected.



Key areas for legal reform 3: health and reproductive rights

Some of the issues

- A holistic approach to health and health care for women and girls and gender sensitivity in the provision of health information and services are needed. The right to health must be seen in the framework of women's overall development, for health is a "state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity" (Beijing Platform for Action). This includes reproductive and sexual health, at all ages.
- The right to health can only be realised in the wider context of women's empowerment in family relations, women's access to education, property and inheritance laws and criminal laws on rape and domestic violence. Attention must be paid to the social and economic factors that affect women's health. Gender-specific health research and technology is lacking.
- Women's health is negatively affected by the unequal power relationships between women and men, which often leave women unable to insist on safe and responsible sex. This increases their susceptibility to sexually transmitted infections, including HIV/AIDS. Health-care officials and family planning officers and providers may abuse women's rights by refusing to provide information or supplies without the consent of the male partner. In some Caribbean countries, for example, the husband's consent is required prior to tubal ligation and/or hysterectomy, a practice grounded in custom rather than law.
- Colombia has introduced constitutional guarantees on health that provide a useful model. These support the principal of women's rights to active participation in decisions related to their personal health, lives, bodies and sexuality. They include women's right to health care and services, to found a family, to decide the number of their children, to have access to health education information, and to enjoy a healthy environment.



Key areas for legal reform 4: nationality laws



Some of the issues

- Many states have discriminatory nationality laws. Typically these have two aspects: discrimination against women who marry non-nationals in that their spouses cannot acquire nationality in the same way as can foreign women who marry male nationals, and restrictions on women passing their nationality to their children. Given the large and growing numbers of women migrants, the ability for women to bequeath their nationality to their children and to maintain their own is increasingly important, especially in the case of marital breakdown. Social benefits may depend on citizenship, for example, employment in the public sector, free state education and access to health services.
- Gender stereotypes and undervaluing of women underlie assumptions that women will live in the place of their husband's nationality and do not need their own, and that children 'belong' to the father.
- Immigration laws are frequently discriminatory, for example, as regards alien spouses or fiancés. The adverse impact may fall directly on the man, although the discrimination is against the woman. In a number of states the foreign wives or fiancés of national men may enter the state while the foreign husbands or fiancés of national women may not. Such discrimination is based on gendered (and often racist) prejudice and stereotypes.



Key areas for legal reform 5: family law

Some of the issues

- Family law has been described as the “litmus test in any society with regard to legal norms and the status of women” (Coomaraswamy, 1994). The public sphere and private sphere are intimately linked, and rights formally granted to women in the public sphere will have little effect unless women enjoy equality and their full human rights in the private sphere.
- Issues related to marriage include: age of marriage, women’s rights to consent to marriage, marital property; rights and duties with respect to children whether or not they are born in the marriage; responsibilities in marriage; grounds for dissolution and annulment; and custody and maintenance proceedings.
- Studies show that financially women suffer more from divorce than men and that divorce is a contributing factor to the feminisation of poverty. Women’s post-divorce poverty has also been linked to judicial misunderstanding of the economic and social realities of the cost of raising children (Mahoney, 1999). Divorce laws need to be looked at from a gender perspective to determine the likely financial repercussions of divorce, for example, the availability of paid income, pensions, distribution of property and custody of children.
- Rights within families also need to extend to differently constituted family units, for example, cohabitation without marriage, same sex relationships, single parent households or extended families. While legal regulation can be interventionist, exclusion can leave the more vulnerable members of the arrangements without legal protection for themselves or their property. Laws giving people in cohabitational relationships similar rights to married persons exist, for example, in Barbados, Guyana and Trinidad and Tobago.



Key areas for legal reform 6: violence against women



Some of the issues

- Commonwealth governments agreed in the 1995 Commonwealth Plan of Action on Gender and Development that women's human rights and the elimination of violence against women, the protection of the girl-child and the outlawing of all forms of trafficking in women and girls would be priority areas for action.
- Gender-based violence is violence that is committed against women because they are women, and that does not occur to men or occurs disproportionately to women. It may include violence that occurs in:
 - the home (e.g. domestic violence, marital rape, sexual assaults, dowry deaths, female infanticide, 'honour' killings)
 - the community (workplace violence, traditional practices, street violence, trafficking, sex tourism)
 - state institutions and/or is perpetuated by state officials (in prisons, police stations, immigration officers and places of detention, state hospitals, including mental hospitals)

These must be considered separately, and attempts made to gain an accurate, national statistical profile of the nature and occurrence of each, in order to formulate strategies to tackle them.

- Some of the factors that foster an environment of violence against women and girls include:
 - women regarded as inferior, emotional or irrational
 - women regarded as the property of men
 - son preference for cultural and economic reasons
 - the failure of police and other authorities to act when violence is reported
 - high rates of acquittal of perpetrators
 - a lower value given to women's evidence in cases of sexual attack
 - perception of such violence as private
 - double standards of morality for women and men, which blames women even when they are victims of sexual attack
 - impunity, when states fail to ensure that perpetrators are held accountable
- Multi-sectoral strategies are required to tackle violence against women, involving the law and judiciary, health personnel and institutions, professionals in the fields of education, media, employment and the social services, and community workers and activists.
- A holistic approach means tackling both the causes of violence against women, and providing protection, as well as the effects of it on women, and providing safety, recovery services, access to justice and reparations.
- Sometimes customary law, with mediation, is used rather than the legal system to address violence against women, and reconciliation may be encouraged. These measures should be carefully examined, as they may only shore up patriarchal notions of the family and community, and not guarantee women justice or protection in the future.

ACTIVITY G5

Rights into action

Aim To share ideas about incorporating human rights agreements and principles that promote gender equality into national law and implementing strategies for gender-sensitive laws

Outcomes

- Identify problems of incorporation and implementation
- Offer advice and solutions drawing on handouts and own ideas and experience

Time 1 1/2 hours

Materials Flipcharts and pens, OHP and slides, Handouts G.5a, G.5b, G.5c, G.5d, G.5e, enough chairs and a space to arrange them in circles

Steps

- 1 Explain the objectives of the session to participants. Tell them they will be acting as consultants to each other. One group of consultants will advise on incorporating human rights agreements and principles into national law. The other group will advise on implementation strategies. Explain how the consultant's wheel works (step 5). Allow participants to choose which group they want to be in, but even up numbers if necessary. (5 mins)
- 2 Give the incorporation consultants copies of Handouts G.5a and G.5b, and give the implementation consultants copies of Handouts G.5c and G.5d. Allow them to read and discuss. (10-15 mins)
- 3 Depending on the size of the group, create two 'consultants' wheels' in the room. Place four to six chairs in an inner circle, facing outwards, and four to six chairs facing them. For the first part of the activity, the implementation consultants will sit on the inner chairs, and the incorporation consultants will advise them.
- 4 Each person in the inner circle will think up a problem (real or possible). It should relate to incorporating into national law human rights principles and agreements that promote gender equality. Give them 2 minutes to formulate their question.
- 5 Each of the incorporation consultants sits in one of the chairs in the outer circle. When you give the signal, they will have 3 minutes to offer advice on the question raised by the client opposite them. On the next signal, each consultant in the outer circle moves to the chair on the right, to respond to the question of the client now in front of them, for another 3 minutes.
- 6 Continue until each consultant has spoken to each client. Then ask them to change places, with the incorporation consultants on the inner chairs. Repeat the process. (20-30 mins)
- 7 Give all participants 2-3 minutes to note down the problems they raised, and some of the solutions that were suggested, to feed back to the plenary.
- 8 Back in the plenary, lead a discussion on what the participants learned from each other. Did they find that their understanding of their initial problem changed as they got more ideas for solutions? Note down on flipchart any action points that came up. (15 mins)

Notes

- Before this activity do the one on CEDAW (G4) and one or both of G1 and G2, depending on the level of understanding of the participants. Participants need to have been thinking about the issues to make this a useful activity.
- Give out each handout to each participant at the end of the session.
- If you haven't the space to arrange chairs in circles for the wheels, you can adapt this to small groups – no more than six to a group, with three of each type of consultant. The clients can raise questions, and all consultants can respond, then change over roles.



Some constitutional guarantees of women's rights (for incorporation consultants)



India

Adopted: 26 Jan 1950

Article 15 [Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth]

- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Namibia

Adopted: Feb 1990

Article 10 [Equality and Freedom from Discrimination]

- (1) All persons shall be equal before the law.
- (2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.

South Africa

Adopted: 8 May 1996 (Amended: 11 Oct 1996)

Section 1 [The Republic of South Africa]

The Republic of South Africa is one sovereign democratic state founded on the following values:

- (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.
- (b) Non-racialism and non-sexism.

Section 9 [Equality]

- (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
- (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

Source: <http://www.uni-wuerzbur g.de/law/home.html>

HANDOUT
G.5b

Incorporating international human rights agreements into national law (for incorporation consultants)

Under the domestic law of some states, treaties to which the state has become a party automatically become part of national law. In others, including those based on the Westminster system, treaties have to be expressly incorporated into domestic legislation. Implementing legislation is therefore required to incorporate the CEDAW Convention (and other human rights treaties) into the domestic law of many Commonwealth states, either through a general implementation statute or by subject specific legislation, where appropriate.

Legislation can be informed by international obligations without incorporation. International law (including CEDAW) does not need to be formally incorporated for judges to use it as an interpretative aid to achieve gender equality. In order to achieve such rulings, the Convention and relevant legislation must be argued before judges. The work of legal clinics and women's advocacy groups is enormously important in this regard, as are judicial decisions from other Commonwealth jurisdictions.

There are good arguments for asserting that the principle of non-discrimination on the grounds of sex constitutes customary international law and as such is binding on all states. All Commonwealth member states are also UN members and thus bound by the provisions of the Charter. In addition, many are parties to at least some of the other instruments prohibiting discrimination (see Activity G2)

Types of law-making Constitutional reform

Constitutionalism provides a framework for good governance in the rule of law and support for human rights. Constitutional guarantees of formal equality on the grounds of sex provide a 'baseline' for rights protections, bring a state into line with its international obligations and assist in transforming women from passive beneficiaries to active agents. Using CEDAW gives clarity and legitimacy to demands for gender equality and the language to express them.

In some states the constitutional prohibition of discrimination does not include sex or gender, while in others certain areas may be excluded from the protection, for example, personal status law, inheritance and abortion. Where there is no constitutional guarantee of equality, it may be difficult for discrimination to be combated through courts or tribunals.

Constitutional reform is a sign of broad societal and structural restructuring and frequently follows political transformation, for example, from military to democratic government, in post-conflict reconstruction or post-apartheid South Africa. It is generally a rare event. Where constitutional reform is on the agenda, it is vital that women's participation is ensured in all possible consultations at all levels of society. If this is not provided for in the process, women's groups will have to take the initiative in lobbying and demanding access, as was done for example in South Africa and Uganda. Consultations must take place in arenas to which women have free and easy access and where they are able to express their views openly and without mediation through male participants. One approach is to hold meetings between constitutional advisers and women through community organisations and women's NGOs. The use of media, including local media outlets, to express such demands is another.

It is essential that the constitution include a broadly worded equality/non-discrimination clause. The South African Constitution has the broadest such clause (See Handout G5a) and allows for decisions that take account of multiple forms of discrimination.

It is also vital that any constitutional court includes provision for gender balance in appointments. Without such provisions it is likely that judicial appointments will continue to be made from a small group of elite, mainly male lawyers. While men can make judicial decisions favourable to gender equality there is some evidence to suggest that women may be more alert to or ready to address this issue.

**HANDOUT**
G.5b

While most Commonwealth states have guarantees of non-prohibition on the basis of sex, these do not of themselves enhance the position of women and remain empty promises unless they are supported by detailed legal provisions throughout all areas of law and include steps to ensure service delivery. Also, constitutional guarantees of non-discrimination generally bind only state actors; therefore, in any event, sex discrimination legislation is also imperative.

Legislative reform

CEDAW article 2 recognises the pivotal role of law reform in achieving gender equality. Primary responsibility for this lies with the government. The Commonwealth Secretariat has developed model legislation for the Caribbean region that can be used by governments in developing domestic legislation to address women's rights issues.

A holistic approach to the integration of gender in legal programmes requires a gender analysis of existing laws (statute and statutory interpretation through case law). This will identify directly discriminatory laws, laws that adversely impact on women (indirect discrimination) and apparently neutral laws that fail to take account of women's circumstances and are therefore largely irrelevant to them. CEDAW provides a useful guide in this exercise.

The Committee on Economic, Social and Cultural Rights in its General Comment No. 3 has stated that removal of discriminatory measures is an immediate obligation for States Parties, not one of progressive achievement.

Examples of apparently neutral laws are those that offer protection against publicly committed violence, such as criminal laws relating to public order and personal injury. If such laws or their application by law enforcement officials disregard violence committed in private spaces (e.g. the home) or by private actors (family members), their ability to protect women against violence is greatly limited. While gender-neutral language (avoidance of the male noun or pronoun to include the female in legislation and administrative policies) is desirable, it should not be assumed that because the language of a law is gender-neutral, it will also automatically be gender-neutral in application.

Gender-sensitive analysis, making full use of the data described above, will also reveal where the legal system is based on gender-biased assumptions and myths that need to be dispelled by sociological and empirical research. Examples of such myths are:

- the notion of 'bad' women in opposition to that of 'good' women;
- that prostitutes are bad women;
- that 'bad' women are sexually promiscuous and therefore cannot be raped;
- the model of 'ideal' motherhood; and
- the depiction of women as emotional and irrational and not capable of legal acts such as providing accurate and honest evidence, owning and managing property, having and maintaining bank accounts or assuming legal guardianship of children as opposed to their nurturing.

Gender analysis of existing laws will clarify which ones promote such stereotypes and require amendment or repeal, and where new legislation is required. Human rights and gendered assumptions cut across accepted categories of law. For instance, providing adequate responses to gender-based violence is directly relevant to family and criminal law but also impacts on issues of civil procedure and civil remedies, criminal procedure, social security law (payment of benefits, pension systems), property law, taxation and torts (medical malpractice). It is thus essential that all those involved in the law-making, application and enforcement processes receive training in gender analysis and planning to enable them to recognise and understand prejudice and stereotypes.

Good starting points for law reform could be areas that are not controversial. Building up an expectation of reform through pilot projects in identified contexts can also be useful. The entire legal system cannot be overhauled in one go and attempting to do so can be counter-productive. What is important is that initial steps do not become the only steps as attention is turned elsewhere. It is also important that the impact of change in one area of law on other areas is examined. A planned programme of law reform requires an ongoing timetable for research, analysis, reform design, drafting of legislation, implementation and evaluation.

HANDOUT
G.5b

Preparation of reports for the CEDAW Committee, through an article by article consideration of the application of CEDAW in the state, can provide valuable guidance as to priorities and approaches. This can be enhanced by seeking NGO input to the state's report, or through consideration of an NGO alternative (or 'shadow') report.

Law reform must be carried out in the context of broader social and economic policies. Legislative reform on its own will not achieve gender equality, especially where gendered roles are rooted in custom, tradition or religion, or in deeply held philosophical beliefs about 'proper' social ordering. Article 5 of CEDAW requires that:

States Parties shall take all appropriate measures: (a) to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Customary law

Customary law can provide a major obstacle to gender mainstreaming. Research on the understanding of customary law and its effects on gender equality is required. A good model is the South African process, and the work of the South African Law Reform Commission.



Judicial training: examples from Canada and India (for implementation consultants)

HANDOUT
G.5c

The Western Judicial Education Centre (WJEC)

The WJEC, a project of the Canadian Association of Provincial Court Judges, organises continuing education programmes for judges from Western and North-western Canada. A key element of their judicial education programmes is peer leadership, that is, judges are trained by other judges and 'outsiders' to instruct and lead other judges. This method of delivery challenges judges to participate and to take responsibility for their own continuing training while respecting the fundamental principle of judicial independence. At the same time, members of the broader community who are interested in improving the quality of justice delivery are able to participate in the workshops and other sessions. Women, aboriginal people, children, members of racial, cultural and ethnic minorities and other people very unlike judges describe and discuss the problems they experience in their daily lives as well as in the courts, supplying knowledge that judges need but seldom receive.

A WJEC workshop held in 1991 in Yellowknife, Northwest Territories, for example, spent two days focusing on gender equality. The workshop used a variety of teaching methods including lectures, dramatisations, panels and question-and-answer sessions. In small groups, other techniques such as discussions, brainstorming, buzz groups, videos and video commentary were used. Survivors of sexual assault as well as crisis centre workers provided the judges with first-hand information about the consequences of poverty and violence against women. Other topics on the programme looked at the issues of sexist language and credibility of men as a group compared to women as a group.

Source: Mahoney, 1999

Sakshi

Sakshi, an NGO based in New Delhi, India, organised a meeting in 1997 of 26 superior court judges and 12 lawyers from the Asia Pacific region to discuss gender bias in the courtroom. The meeting grew out of a study conducted by Sakshi in five Indian cities on the nature and extent of such bias among the judiciary, the findings from which challenged the notion of judicial neutrality. For example, 68 per cent of the 109 judges interviewed believed that provocative dress was an invitation to rape and about half felt that women who were abused by their partners were partly to blame if they stayed in the relationship. At the same time, most judges also thought domestic violence was underreported and many expressed a willingness to participate in a training programme.

The meeting, Regional Perspectives on Gender Equality, brought together judges, lawyers and NGOs from Bangladesh, Fiji Islands, India, Nepal, Pakistan and Sri Lanka, as well as from Australia and Canada. Judges chaired the sessions, putting their colleagues at ease, while NGOs provided perspectives on the realities women face. The meeting ended in the creation of the Asia Pacific Advisory Forum on Judicial Education on Equality Issues, which has begun organising country level workshops. These bring together judges, NGOs, health-care professionals and women complainants and use a wide variety of techniques including theatre, role-play and puppets. Judges are encouraged to explore the reasons behind their decisions and develop greater empathy for survivors of gender-based violence through visits to shelters and to women in prison.

Source: Spindel et al, 2000



Creating a more gender-sensitive policing system (for implementation consultants)

The acknowledgement of the seriousness of crimes of violence against women through informal police force norms and formal force policy interact to produce a more sensitive policing system. Different strategies being followed in different jurisdictions to achieve this result include:

- The recruitment of women and ethnic minority officers.
- The recruitment of officers with particular skills for responding to crimes involving violence against women. This includes, for example, the recruitment of women not only as officers but also forensic scientists and police surgeons.
- Gender-sensitive training at recruit level and later on in officer training, and placing recruits with trained partners who can act as role models.
- A rise in status for police work involving these crimes. There can be financial and promotional incentives for officers at all levels who reveal appropriate responses to training.
- The setting up of domestic violence and child protection units. These facilitate the development of expertise in investigation and can provide a career move from uniformed to criminal investigation as well as offering apprentice-type training.
- A formal policy that acknowledges the seriousness of the behaviour, including evidence-gathering approaches that remove the onus of laying a charge against the offender by the woman.
- The adoption of a pro-arrest policy for offenders who commit crimes in domestic settings.
- The development of peer pressure in police forces to shape informal attitudes to reflect the seriousness of the formal force policy.
- A formal policy that stresses the maintenance of careful records, so that the seriousness of the behaviour and the adverse effects on individual women and children and the wider community become clearer.
- Record keeping that provides information for attitudinal change in the force, as the police will acknowledge the existence of a problem if it is revealed by records.
- The introduction of victim-friendly systems for investigating and gathering evidence of crimes of violence, such as victim examination suites.
- The definition of annual objectives, such as specifying greater attention to domestic violence, that focus the organisation in directions that are in particular need of attention.

Source: Commonwealth Secretariat, 1999c



Strategies for implementation (for implementation consultants)

HANDOUT
G.5e

1 The judiciary

- Judges are expected to be impartial, knowledgeable, independent, practical, sensitive and fair. However, the judiciary is everywhere overwhelmingly male as well as generally well-educated, middle-class and middle-aged, which conditions their perspectives. The majority of judges and lawyers have never been instructed in gender. Training for judges in gender issues and human rights is necessary for gender biases to be eradicated from judicial decision-making.
- A gender balance in the composition of the bench, at all levels, and in all other court personnel is also required.
- Judges also have a law-making function. There is a large and growing body of international jurisprudence concerning women's human rights that is of value to judges and lawyers, and most common law systems allow judges scope to draw on it as an interpretative aid.
- The dissemination of judicial decisions from other jurisdictions and shared understanding by judges can be important tools. For example, judicial colloquia held in the Commonwealth that focused specifically on the promotion of the human rights of women and the girl-child through the judiciary produced recommendations that recognise the duty of an independent judiciary to interpret and apply national constitutions and laws in conformity with women's human rights.

(see Handout G.5c for examples of training of the judiciary)

2 Law enforcement agencies

- The police have a critical role to play in protecting and promoting the human rights of women. This is particularly true in the area of violence against women. Despite the prevalence of these crimes, research from many countries, including Australia, Bangladesh, Canada, India, New Zealand and the United Kingdom, has shown that they tend to be treated less seriously by the police than crimes against men or property.

(See Handout G.5d for strategies for police training)

3 Education and training

Legal programmes alone will not be effective unless they are accompanied by public education and advocacy, for example, through a public awareness campaign for gender sensitivity and respect for human rights.

- All stakeholders, especially legal policy and decision makers at all levels and civil society, need to receive training. The CEDAW Committee's General Recommendation 19 (1992) states that "Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention."
- Training on gender sensitivity, how laws may have gendered consequences and on human rights are required throughout all levels of the judicial hierarchy, from magistrates to the judges of the highest courts in the state.
- Training should be extended to court officials, as well as to state officials in positions of power over women (e.g. prison officers, immigration officials and social workers).
- Formal training programmes must integrate gender issues throughout, and not rely on a single session on women at the end of the programme that is likely to lead to early departures and be viewed as an 'add-on'.
- Public education is needed in all sectors, including health-care services, so that signs of gender violence and child abuse are recognised and dealt with appropriately.
- Teachers in infant, primary, secondary and tertiary establishments need training so as to understand ways of recognising and redressing cultural stereotyping, even in very young children. Human rights and gender equality should feature in primary and secondary school curricula and textbooks, materials and teacher training programmes
- Theatre (including children's and popular theatre), dance, song and exhibitions can also be effective educational tools on gender and human rights.



4 Access to justice

- Legislation must provide procedures and institutions (e.g. tribunals and courts) in which violations of gender equality can be challenged. These bodies should have the power to order effective remedies (e.g. monetary compensation, injunctive relief, reinstatement, protective orders and criminal sanctions).
- The requirement that states should ensure respect for the equal enjoyment of human rights imposes a positive obligation to provide effective and affordable legal support to women. A women's legal defence office should be established to provide information on women's human rights.
- The competency of ombudspersons should extend to allegations of sexual bias and harassment within bodies under their jurisdiction. Consideration should be given to appointing a women's ombudsperson with jurisdiction extending to the private sphere. Their recommendations on such matters should be given high profile in the appropriate reporting body and by the media
- Mediation and other forms of so-called informal justice are sometimes favoured as a cheaper and more flexible alternative to court processes, especially for family matters. However, these are as likely to show gender bias as any other institution. Quality control for mediation programmes is required to ensure, for example, that access is genuinely voluntary and that mediators are fully trained to recognise and deal with gender power relations.
- Efforts should be made to simplify legal language (plain language initiatives) and to disseminate information about legal processes in arenas frequented by women (women's centres, factories, health clinics, etc.).
- Court sittings should, whenever possible, be held at the scheduled time to avoid additional loss of earnings or the need to make child-care arrangements through adjournments or delays.
- Witness protection should be introduced to facilitate victims giving evidence (voice distorting techniques, use of pseudonyms, giving evidence from behind screens) where there is a real fear for the witness's security (e.g. in trafficking cases and sexually based crimes).