



the States Parties to the present Convention, Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex. Noting that the States Parties to the International Covenant on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights, Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women. Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women. Concerned, however, that despite these various instruments extensive discrimination against women continues to exist. Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women to the service of their countries and of humanity, Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs. Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women. Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women, Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and

# Benchmarking National Legislation for Gender Equality

Findings from Five Asian Countries





# **Benchmarking National Legislation for Gender Equality**

## Findings from Five Asian Countries

**HASNA CHEEMA**

Human Development Report Unit  
UNDP Asia-Pacific Regional Centre

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# Preface

The legal system of a country can strategically influence gender gaps in a society. Laws and legal practices have synergistic links to both, institutions and attitudes. Laws determine rights and impose duties upon men and women in public and private spheres – physical security, learning, earning, property, inheritance, health, mobility and family relations.

This publication, *Benchmarking National Legislation for Gender Equality: Findings from Five Asian Countries* reviews the legal systems of Indonesia, Pakistan, the Philippines, Sri Lanka and Viet Nam and assesses the extent of their legislative compliance with articles of the Convention on the Elimination of Discrimination against Women (CEDAW). The Convention is an important international reference point for gender equality. The State Parties to CEDAW are legally bound to apply and enforce its articles in their legal systems. In this legislative assessment study only *de jure* compliance to CEDAW is assessed for the countries. But even for this, the findings reveal a varying level of legislative compliance. Overall, no country has achieved full compliance with CEDAW's articles. The extent of compliance ranges between 45 to 73 per cent, within *de jure* laws, with Viet Nam coming closest to the CEDAW benchmarks.

This work is motivated by the joint UNDP Pacific Centre and UNIFEM Pacific Regional Office publication *Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries*. It uses the publication's 113 indicators to assess country-by-country legislative compliance with CEDAW in the five Asian countries. Like the Convention, these indicators encompass diverse aspects of public and private spheres affecting women's legal rights – constitutional, criminal, civil, political, economic, social and family laws.

The country case studies uncover several gender biases that are integral to the legal processes of these countries. They focus on discriminatory laws and legal practices that reflect and exacerbate the subordinate status of women in the justice systems. Three barriers

hold women back from enjoying their full legal rights in law: the existence of discriminatory laws; gaps between *de jure* and *de facto* aspects of laws; conflicts between constitutional requirements of equality vis-à-vis customary laws and practices. A further, equally important legal barrier to equality is women's restricted access to justice – reaching courts is difficult and to get justice inside court rooms is even harder.

Thus, gender inequalities remain entrenched in the justice systems, even as the nature of discrimination and specificities may vary from country to country. Legal discrimination against women can be of many kinds: lack of expressed constitutional provisions on non-discrimination and equality; archaic and stereotyped procedural rules; unfair nationality laws; harmful customary practices; legal protectionism in employment; fault-based divorce system; and unequal inheritance and control over property. Another critical area of concern, affecting women's legal rights, is prevalence of violence against women. Where countries may have enacted laws to combat gender-based violence, enforcement mechanisms may be inadequate to fully protect female victims. In addition, harmful legal and customary practices – pressures for reconciliation or forgiveness – or near-impossible or unfair requirements of proof – corroboration, proof of resistance, past conduct – may also undermine efforts to eliminate violence against women.

Subregional legal disparities are also observed. In South Asian countries – Pakistan and Sri Lanka – the impediments to gender equality are obvious and may range from absence of laws or discriminatory legal practices to diverse personal laws followed by different communities. On the other hand, in East Asian countries – Indonesia, the Philippines and Viet Nam – the legal barriers can be of a more subtle nature. While laws may uphold women's equal inheritance and property rights in most cases, gender stereotypes and customary practices can prevent them from enjoying their due legal entitlements.

The publication also sheds light on several legal reforms that have been initiated by these countries. Through progressive legislative changes and judicial precedents, the countries have made advances in bringing down some of the legal gender barriers. However achieving substantive equality for women is yet to be fully realized in most cases. The case studies highlight some of the legal issues that require attention.

This work has benefited immensely from the technical feedback provided by the internal and external peer reviewers. A special thank-you is also extended to the

team at the Human Development Report Unit and authors of *Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries*.



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## External and Internal Reviewers

The country case studies were peer reviewed internally and externally. The author would like to take this opportunity to express profound gratitude to the following external peer reviewers. The legal experts who provided their substantial inputs and feedback on the individual case studies include:

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In addition, Nasira Iqbal (Retired High Court Judge of Pakistan) and Faisal Naqvi (lawyer, Supreme Court of Pakistan) have also provided their useful comments on the Pakistan case study.

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# Abbreviations

<b>ALG</b>	The Alternative Law Groups (The Philippines)
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>BPS</b>	Central Bureau of Statistics (Indonesia)
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CPV</b>	Communist Party of Viet Nam
<b>CRC</b>	Convention on the Rights of the Child
<b>CSOs</b>	Civil Society Organizations
<b>FTZs</b>	Free Trade Zones
<b>HIV</b>	Human Immunodeficiency Virus
<b>HRC</b>	Human Rights Commission (Sri Lanka)
<b>ICW</b>	International Council of Women (Indonesia)
<b>ILO</b>	International Labour Organization
<b>IMF</b>	International Monetary Fund
<b>KOPBUMI</b>	Migrant Workers Consortium (Indonesia)
<b>MoWD</b>	Ministry of Women Development (Pakistan)
<b>MPs</b>	Members of Parliament
<b>NCRFW</b>	National Commission on the Role of Filipino Women
<b>NCSW</b>	National Commission on the Status of Women (Pakistan)
<b>NGO</b>	non-governmental organization
<b>PCHR</b>	Philippines Commission on Human Rights
<b>UN</b>	United Nations
<b>UNDP</b>	United Nations Development Programme
<b>UNIFEM</b>	United Nations Development Fund for Women (part of UN Women)
<b>UNINSTRAW</b>	United Nations International Research and Training Institute for the Advancement of Women
<b>WHO</b>	World Health Organization
<b>WSC</b>	Women Study Centre (Indonesia)

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# 1

## Assessing National Legislation: Consolidated Summary of the Five Country Case Studies

# 1. Assessing National Legislation:

## Consolidated Summary of the Five Country Case Studies

### 1.1 Introduction and Background

Laws are vital to back women's rights and interests in political, social and economic spheres. They are critical for upholding fundamental rights and freedoms of all human beings. Laws regulate every aspect of human relations. They determine rights and impose duties on individuals and regulate their conduct within the public and private spheres. They also provide guarantees of physical security; equality and non discrimination; equal earning opportunities; inheritance and property rights; and fairplay in family relations. Thus laws influence how men and women seek opportunities and make choices to better their lives and fuel human development.<sup>1</sup> However laws can also be used to curtail fundamental rights and freedoms.

Gender equality in legal systems implies not only formal equal rights – *de jure* and *de facto* – for men, women and people of all gender identities but it also requires 'uncovering gender biases' that are integral to the legal process and affect the ways women come to experience the law.<sup>2</sup> It is not just about achieving mechanical but also substantive equality.

International conventions are useful benchmarks of gender equality. Global instruments such as the International Covenant on Civil and Political Rights 1966, the International Covenant on Economic, Social and Cultural Rights 1966 and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979 set international standards for gender equality.

In cognizance of the close linkages between gender-equitable laws and international standards on gender equality, the country case studies in this publication examine the national *de jure* laws of five Asian countries and assess their compliance with CEDAW's sixteen substantive articles. The countries covered are: Indonesia, Pakistan, the Philippines, Sri Lanka and Viet Nam. Pakistan and Indonesia are two Muslim states

and represent the subregions of South Asia and East Asia respectively. Their legal systems are influenced by religion. Sri Lanka, a South Asian country, is a multi-ethnic and multi-religious society. This diversity has added to the complexity of its legal system. The Philippines, a South-East Asia state, has a good record of upholding legal rights of women. Viet Nam, an East Asian country, may serve as a model in preserving equal rights of all its citizens.

The main finding from the five case studies is that despite legal reforms in these five countries – legislative changes and the use of progressive judicial precedents – women continue to face significant discrimination within their legal systems. As the studies reveal, the legal challenges are three-fold: absence of laws; the existence of discriminatory laws and gaps between *de jure* and *de facto* aspects of laws; and conflicts between constitutional guarantees on equality vis-à-vis customary laws and practices.

The results present a mixed picture and show varying levels of compliance in the five countries. Full compliance with the Convention has not been achieved by any of these countries. The case studies find that CEDAW full compliance rates, within *de jure* laws, range from 45 to 73 per cent with Viet Nam coming closest to the CEDAW benchmarks. In terms of non-compliance, 40 per cent of the national laws in Pakistan do not comply with the CEDAW benchmarks on gender equality. In Viet Nam, 23 per cent of the laws are non-compliant (Figure 1). In some cases, legal gaps – *de jure* and *de facto* – may curtail rights and freedoms. A country with a law on domestic violence may lack effective enforcement mechanisms, thus contributing to pervasive violence. The legal practices such as provisions for 'forgiveness' in sexual assault cases or reconciliation in divorce related proceedings may restrict women's access to justice and to obtain justice inside court rooms.

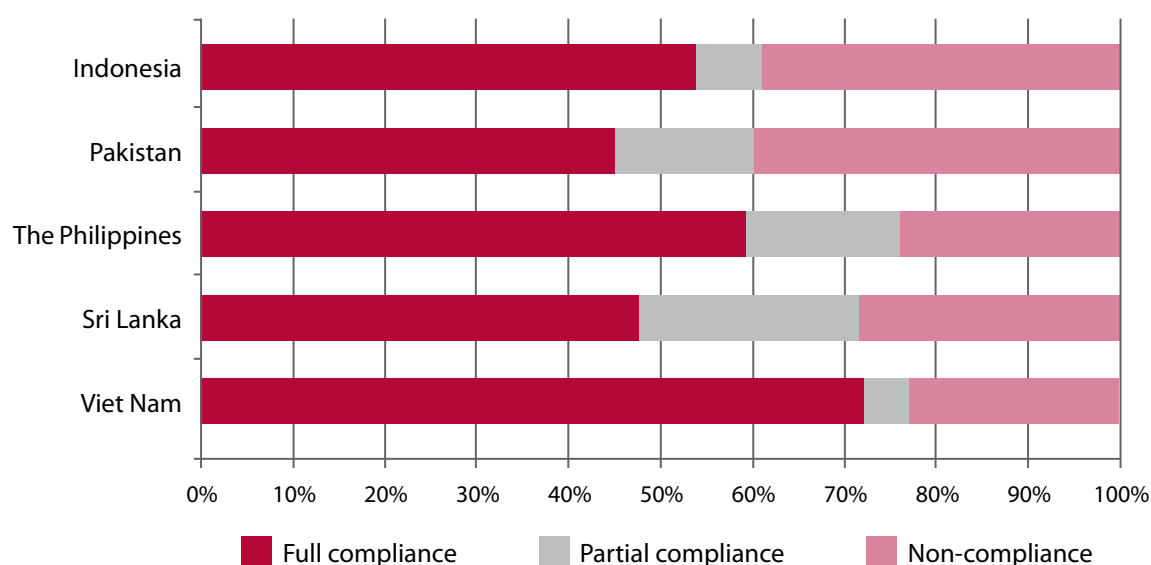
In order to fully comprehend the reasons for pervasive discrimination against women, one must also look at the

multiple influences that shape the legal systems of these five countries. Influences such as – varied interpretation of religion, harmful customs and traditions, and gender stereotypes – not only determine the foundation of laws in these countries but also their evolution and ongoing interpretation. Patent as well as latent barriers produce legal discrimination in the justice systems and may explain why no country is fully compliant with CEDAW articles on gender equality. The discriminatory legal provision on nationality rights is one example of a patent barrier. Indonesia and Pakistan, for example, are yet to change such provisions. A loosely defined law may act as a latent barrier. For example, the Philippines’ 1995 Anti-Sexual Harassment Act prohibits harassment in the workplace where only supervisors, employers and managers with ‘authority and influence’ are penalized for acts of harassment. The law is silent on sexual abuses committed by co-workers.

As partially compliant and non-compliant ratings reveal, the countries are prone to multiple and competing influences that shape laws. In Indonesia, factors such as interpretation of religion and harmful customs and traditions along with gender biases in its legal system may allow discrimination against women to prevail and persist. The application of

discriminatory provisions of its 1974 Marriage Law and unequal inheritance legislation can be attributed to these factors. In Pakistan, women’s legal rights and freedoms have been affected by varied interpretation of religion. The draconian 1979 Hudood Ordinances are one example of how women can be victimized through legal means. Its harsh Zina Ordinance required rape victims to produce four male witnesses as evidence for the crime or face adultery charges.<sup>3</sup> Some of its discriminatory provisions including that of evidence in rape cases have been overturned through the 2006 Women Protection Bill.<sup>4</sup> However the Ordinance still retains provisions that discriminate against women. Sri Lanka owes its non-compliance to some CEDAW benchmarks due to its diversity. It is a multi-ethnic society and grants allowances to various communities that may undercut women’s legal rights. Family, inheritance and property laws are prone to follow diverse legal paths in Sri Lanka. The Philippines and Viet Nam have passed special laws on gender equality – the Magna Carta of Women 2009<sup>5</sup> and the Law on Gender Equality 2006 respectively.<sup>6</sup> But as Figure 1 reveals, both countries have some laws that are non-compliant with CEDAW benchmarks. As revealed in later sections, subtle inequalities may restrict women’s legal rights in the Philippines and Viet Nam.

**Figure 1: Women Face Legal Discrimination in All Countries**



## Purpose

The overall purpose of the country case studies is to assess the national laws of five Asian countries and reveal *de jure* challenges and legal gaps that undermine women's fundamental freedoms and rights. The studies also aim to expose gender barriers – patent as well as latent – in selected countries of South Asia and East Asia and also to highlight subregional similarities and differences within their legal systems. It is thus intended as a resource and a tool for governments, development partners and non-government organisations to identify priority areas for working towards greater compliance in the future. Each country case study provides a summary analysis of compliance, progress made, as well as remaining challenges. For a more detailed analysis, each case study contains a table with compliance ratings and commentary which helps to identify areas of legal interventions that may be of interest to governments and partners for legal action as well as programming on gender equality.

The studies have already informed the legal chapter of 2010 Asia-Pacific Human Development Report *Power, voice and rights: A turning point for gender equality in Asia and the Pacific*.<sup>7</sup> Given the widespread gender related gaps in the justice systems and similar nature of legal challenges, the work may also be useful for other similarly placed countries in the region.

## Methodology

The country case studies have followed CEDAW's legislative compliance framework as used in the UNDP Pacific Centre and UNIFEM Pacific Regional Office publication, *Translating CEDAW into Law: CEDAW Legislative Compliance in Nine Pacific Island Countries*. The framework of CEDAW is constructed on three main principles: equality of all; non-discrimination – direct and indirect; and state obligations to uphold equality and eliminate gender discrimination.<sup>8</sup> On these three principles rests the 'prism' of women's human rights that provide the lens through which all sites of gender discrimination must be interrogated and corrected.<sup>9</sup>

A total of 113 indicators are used to assess national legislative compliance with CEDAW's articles. The indicators cover wide range of laws within the legal

system. They include: constitutional provisions on equality and non-discrimination; penal code sections; laws on affirmative action for women in political, social and economic spheres; legal provisions on elimination of gender stereotypes and harmful customary practices; laws on human trafficking and exploitation of sex workers; nationality and citizenship laws; labor legislation; and personal laws.

The indicators are qualitative in nature. Each indicator may take one of three values: full compliance (Yes); partial compliance (Partial); non-compliance (No). A compliance rating is then given for the total number of indicators for which a country scores Yes, Partial, and No. Table 1 tracks the procedure used to assess national laws of the five countries.

## Sources and Verification

The primary source of assessment and awarding scores for the 113 indicators are States Parties reports to the Committee on the Elimination of Discrimination against Women. Apart from the reports of the States Parties, the laws reviewed by the five case studies include constitutional provisions, penal code provisions, civil code procedures, statutes, acts, ordinances, property laws, citizenship acts, family laws etc. Secondary sources include country shadow reports, studies on CEDAW compliance conducted by UNIFEM and other online resources.<sup>10</sup>

The case studies have been peer-reviewed by external legal experts. Legal experts from Indonesia, Pakistan, the Philippines, Sri Lanka and Viet Nam provided their feedback and have validated the findings. Individual UNDP country offices have also peer-reviewed the relevant case studies and provided their useful comments.

## Limitations of the country case studies

The country case studies are limited in scope. They assess only the *de jure* aspects of laws in five countries in the rating. However, they do highlight some of the major *de facto* challenges that hinder gender equality within legal systems. These challenges are mentioned in the comment section of the case studies. Another constraint has been a lack of availability of on-line legal data. In the case of Indonesia, no English-language version of most laws was available online. In the cases of the Philippines,

**Table 1: Tracking Procedure for National Law Assessment**

### **Step 0**

States Parties, which have ratified/acceded or succeeded to CEDAW, are under the legal obligation to report on the status of compliance with CEDAW articles.

### **Step 1**

#### **Reading States Parties reports to the Committee**

Periodic reports are submitted by States Parties to the Committee on the Elimination of Discrimination against Women (nominally, every four years). This is a legal requirement under Article 18 of the Convention. The report profiles a country's status of compliance with regard to the Convention's provisions pertaining to the sixteen operative articles. Essentially it reflects the government's perspectives.

### **Step 2**

#### **Fact-check on national legislation (constitution, penal code, nationality law, labour code, family law, ordinances etc)**

On the basis of the status of compliance with CEDAW's articles, as specified in the States Parties reports, the information gathered is cross-checked with existing national legislation. This serves two objectives:

- a) Careful reading and legal interpretation of relevant articles, sections and provisions of laws.
- b) Taking into account any revision/repeal of laws subsequent to the submission of States Parties reports.

### **Step 3**

#### **Shadow reports**

The shadow reports provide perspectives of Non-Governmental Organisations (NGOs)/Civil Society Organisations (CSOs) on the status of compliance with articles of CEDAW. They also highlight major legal lacunae and enforcements problems on the ground.

### **Step 4**

#### **Assessment of de jure legislative compliance with the 113 indicators**

After careful reading of States Parties reports to the Committee and national laws, scores on 113 indicators are awarded for individual country case studies.

Viet Nam and Sri Lanka, laws promulgated recently were not available in the public domain. In order to address this issue, country offices and peer reviewers of individual case studies were requested to provide electronic copies of relevant laws. They responded positively. Their timely support ensured all indicators were assessed using specific and relevant legislation.

### **About the Convention on the Elimination of All Forms of Discrimination against Women**

The Convention, also known as CEDAW, was adopted by the United Nations General Assembly (through Resolution 34/180) on 18 December 1979. It entered into force on 3 September 1981. Globally, 186 States

Parties have ratified/acceded/succeeded to CEDAW. In the Asia Pacific region, 35 states out of 39 have ratified or acceded to the Convention.<sup>11</sup>

Among international human rights treaties, the Convention holds an important place in bringing the female half of humanity into the focus of human rights concerns. In so doing, the Convention not only establishes an international bill of rights for women, but also provides an agenda for action by countries to guarantee the enjoyment of those rights.<sup>12</sup> The Convention's provisions are legally binding upon the States Parties. The Convention has a preamble followed by 30 articles. In its preamble, the Convention explicitly acknowledges that 'extensive discrimination



against women continues to exist’ and emphasizes that such discrimination ‘violates the principles of equality of rights and respect for human dignity’. Article 1 of the Convention defines discrimination as ‘any distinction, exclusion or restriction made on the basis of sex ... in the political, economic, social, cultural, civil or any other field.’<sup>13</sup> Articles 2–4 cover the general obligations of States Parties. Articles

5–16 include substantive provisions, i.e. employment, education, health, political participation, nationality, rural women, trafficking etc. (Table 2). The later Articles 17–30 stipulate provisions concerning the constitution of the Committee on CEDAW, its functional powers, the review process and the Committee’s reporting/communication procedures with other UN bodies.

**Table 2: Sixteen Substantive Articles of CEDAW**

<b>Article 1</b>	Define ‘discrimination against women.’
<b>Article 2</b>	Condemn discrimination against women and commit to eliminate it through: <ul style="list-style-type: none"> <li>• Embody equality of men and women in national constitution and laws.</li> <li>• Adopt laws and impose sanctions that prohibit discrimination against women.</li> <li>• Establish competent tribunals and public institutions to provide legal protection to women against discriminatory acts.</li> <li>• Repeal discriminatory national penal code provisions.</li> <li>• Modify or abolish existing laws, regulations, customs and practices of discriminatory nature.</li> </ul>
<b>Article 3</b>	Take measures for full development and advancement of women in all fields – political, social, economic and cultural.
<b>Article 4</b>	Adopt temporary special measures to accelerate <i>de facto</i> equality between men and women.
<b>Article 5</b>	Take measures to: <ul style="list-style-type: none"> <li>• Modify social and cultural patterns and eliminate customary practices that promote gender stereotypes.</li> <li>• Ensure family education includes proper understanding of maternity as a social function and recognition of shared responsibilities at home.</li> </ul>
<b>Article 6</b>	Take measures to suppress trafficking in women and exploitation of women in prostitution.
<b>Article 7</b>	Take measures to eliminate discrimination against women in political and public life. Such measures include: <ul style="list-style-type: none"> <li>• Right to vote and hold public office.</li> <li>• Participate in government policy making and implementation.</li> <li>• Participate in NGOs and associations concerned with the political and public life.</li> </ul>
<b>Article 8</b>	Take measures to provide equal opportunities to women for: <ul style="list-style-type: none"> <li>• Representation in international organizations.</li> <li>• Participate in the work of international organizations.</li> </ul>
<b>Article 9</b>	Grant women equal rights to nationality and citizenship. The rights include: <ul style="list-style-type: none"> <li>• Equal right to acquire, change or retain nationality, regardless of marriage to a foreign national or change of nationality by husband.</li> <li>• Equal right to determine the nationality of children.</li> </ul>



<b>Article 10</b>	<p>Take measures to grant equal rights to women in the field of education. These rights include:</p> <ul style="list-style-type: none"> <li>• Equal opportunities in all levels of education – preschool, general, technical, professional and higher technical education; equal opportunity to benefit from scholarships and study grants.</li> <li>• Access to same curricula, examinations, teachers, facilities and school equipments.</li> <li>• Eliminate gender stereotypes through co-education, revision of text books and adaptation of teaching methods.</li> <li>• Reduce female students’ drop-out rates.</li> <li>• Equal opportunities to participate actively in sports and physical education.</li> <li>• Access to information and advice on family planning.</li> </ul>
<b>Article 11</b>	<p>Take measures to eliminate discrimination against women in the field of employment and uphold their economic rights. These rights include:</p> <ul style="list-style-type: none"> <li>• Right to work.</li> <li>• Right to same employment opportunities.</li> <li>• Right to free choice of profession and employment.</li> <li>• Right to equal remuneration and equal pay for work of equal value.</li> <li>• Equal treatment at the workplace and equal evaluation standards.</li> <li>• Equal rights to social security – retirement, unemployment, illness, old age, entitlement to paid leave.</li> <li>• Health and safety protection including safeguards from harmful work during pregnancy.</li> <li>• Prohibit dismissal of female workers on the grounds of pregnancy or marital status.</li> <li>• Entitlement to paid maternity leave without loss of seniority or benefits.</li> <li>• Provide social services that enable parents to combine family obligations and work responsibilities. This is achieved through the establishment and the development of networks of childcare facilities.</li> </ul>
<b>Article 12</b>	<p>Take measures to eliminate discrimination against women in the field of health care through:</p> <ul style="list-style-type: none"> <li>• Equal access to health care services that include family planning.</li> <li>• Provisions of adequate services during pregnancy and childbirth, and nutrition during pregnancy and breastfeeding.</li> </ul>
<b>Article 13</b>	<p>Take measures to eliminate discrimination against women in other areas of economic and social life. Provide women:</p> <ul style="list-style-type: none"> <li>• Equal right to family benefits.</li> <li>• Equal right to bank loans, mortgages and other forms of financial credit.</li> <li>• Equal right to participate in recreational activities and all aspects of cultural life.</li> </ul>
<b>Article 14</b>	<p>Take into account problems faced by women in rural areas and eliminate discrimination against them. Provide women in rural areas the right to:</p> <ul style="list-style-type: none"> <li>• Participate in development planning at all levels.</li> <li>• Access to adequate health care facilities.</li> <li>• Right to benefit directly from social security programmes.</li> <li>• Right to enjoy adequate living conditions – housing, sanitation, electricity and water supply, transport and communication.</li> <li>• Access to agricultural credit and loans, marketing facilities and technology.</li> <li>• Right to equal treatment in land, agrarian reform and land resettlement schemes.</li> </ul>

## 1.2 Women Face Legal Discrimination in All Countries

In none of the five countries do women enjoy fully equal political, economic, social and legal rights. The findings reveal that gender biases exist in the legal systems of Indonesia, Pakistan, the Philippines, Sri Lanka and Viet Nam. From lack of expressed constitutional provisions on gender equality, discriminatory penal code provisions, discriminatory nationality laws, to harmful customary practices, and restricted access to justice, and unjust family law provisions, the list of legal inequalities is long.

Using CEDAW's sixteen substantive articles as a framework of legislative assessment, some of the main findings of the country case studies are:

### To embody equality within national constitutions: provisions on fundamental rights and non-discrimination

The constitutions of the five countries have general provisions on fundamental rights and freedoms. The Constitution of the Republic of the Philippines of 1987 stipulates that the state values the dignity of every human person and grants full respect for human rights.<sup>14</sup> Similarly, the Constitution of the Socialist Republic of Viet Nam confers on all citizens 'equal rights in all fields – political, economic, cultural, social and family life'.<sup>15</sup> The Constitution of the Democratic Socialist Republic of Sri Lanka of 1978 has general provisions on non-discrimination. It also prohibits discrimination on grounds of 'race, religion, language, sex, political opinion, place of birth or any such grounds'.<sup>16</sup> But apart from Viet Nam, no country has expressed constitutional provisions specifically on gender equality and non-discrimination. The lack of specific provisions provides latitude for varied interpretations of the same law that may perpetuate discrimination against women.

### To repeal discriminatory national penal code provisions: gender-based violence

The case studies indicate that gender-based violence remains pervasive. Despite progressive changes to reform criminal systems and the making of specific

laws, women are victimized inside as well as outside the home. The challenges are two-fold: absence of adequate laws or existence of discriminatory laws and harmful legal practices.

Penal code provisions provide physical protection as well as legal remedies to women and girls against sexual offences such as rape, incest and other acts of violence. The Penal Code of Indonesia of 1999 criminalizes sexual offences such as rape, acts of harassment and physical violence.<sup>17</sup> The Pakistan Penal Code of 1860 criminalizes sexual offences such as rape, human trafficking, soliciting, honour killing, infanticide, sexual harassment at work places, incest, *Vani* etc. Pakistan's Protection of Women (Criminal Laws Amendment) Act of 2006 included a new legal provision on gang rape and imposed severe penalties for the crime.<sup>18</sup> It also imposes a minimum sentence of ten years for rape cases.

A positive trend of reforming discriminatory laws through legal reforms has taken roots in these countries. Sri Lanka's Penal Code of 1883 has undergone many amendments since 1995. The amendments take account of criminal offences which affect all citizens and women in particular. To curb violence against women, the Penal Code has included provisions on sexual harassment, grave sexual abuse, incest, sexual exploitation of children and trafficking, etc. In addition the revised Penal Code provisions impose severe sentences, mandatory imprisonment and fines on perpetrators. They also impose stiffer sentences on perpetrators and award mandatory compensation to victims of sexual assault. The Section 364 of its Penal Code, amended in 2006, raises imprisonment terms for rape offences. Before the amended law the perpetrator of a crime faced zero to 20 years of imprisonment. With the amendment the minimum sentence imposed has been raised to seven years.

Despite of legal reforms, men and women may experience laws and legal systems differently. And this differential treatment infringes the principle of substantive equality and is inconsistent with CEDAW. Under the 1930 revised Penal Code of the Philippines, a wife can be made criminally liable for the crime of adultery with a man who is not her husband. The husband can be held culpable for the crime of 'concubinage' only if he is caught with another woman

‘under scandalous circumstances’ or when he cohabits with another woman in the conjugal dwelling or in another place.

In some cases, patent barriers may restrict women’s equal access to laws and justice systems. One such barrier is the discriminatory legal practice of ‘forgiveness’. In the Philippines, marital rape is a criminal offence under its 1997 Anti-Rape Law.<sup>19</sup> However the legal provision of ‘forgiveness’ extinguishes the criminal dimension of the offence and its penalties. Article 266-C of the Act stipulates ‘in case it is the legal husband who is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty’. A similar legal practice is observed in Pakistan. Under Article 306 (c) of the 1860 Pakistani Penal Code, if a man murders his wife and they have children, her children cannot ask for *qisas* (essentially the death penalty) for her murder. In these circumstances, the maximum sentence that can be given when a man murders his wife is fourteen years. Many see a father financially compensating (*diyat*) his children for the loss of their mother as a ‘mockery’.

Discriminatory legal requirements of proof – prior history of sexual conduct, physical resistance, and independent corroboration – are still applied during court proceedings. The existence of such legal practices adversely affects the interests of female victims. It may discourage victims from reporting cases of violence to institutions of justice such as police stations and courts.

### To adopt temporary special measures to accelerate *de facto* equality

In order to redress historic and systematic legal disadvantages against women, all five countries have stipulated constitutional and legal provisions for the

adoption of special measures. The National Strategy for the Advancement of Women by 2010 of Viet Nam requires the reservation of women’s seats in the National Assembly of Deputies of 33 per cent, in the People’s Councils at Provincial level of 30 per cent, at District level of 25 per cent, and at Ward level of 20 per cent.<sup>20</sup> In Pakistan, 17 per cent of seats are reserved for women at the national government level while at the local government level their share is 33 per cent. Similarly Indonesia, the Philippines and Sri Lanka have constitutional requirements for special measures.

However, affirmative action may be rendered ineffective through regressive judicial rulings. Or at times, a country may hesitate to fulfil its constitutional obligations and adopt a specific law to enforce special measures. As a setback to women’s political representation in Indonesia, the Constitutional Court in its 2008 ruling, amended the voting pattern from the order number system to majority vote in the legislative election.<sup>21</sup> The decision dismantled the mechanism of a ‘zipper’ system in which for every three candidates fielded by political parties, at least one had to be a woman. In another case, Sri Lanka has yet to pass a law on special measures for women as enshrined in its 1978 Constitution.

### To eliminate customary practices that promote gender stereotypes

Gender stereotypes and harmful customary practices may harm women’s legal interests. The case studies reveal that only three out of five countries have express constitutional provisions granting primacy of formal laws over customary practices (Table 3). This kind of latitude, while intended to respect and accommodate prevailing norms, has been insufficient in eliminating practices that discriminate against women.

**Table 3: Constitutional Primacy of Formal Laws over Customs Is Not Fully Secured**

Country	Constitution	Relevant Constitutional Provision on Primacy of Formal Laws
Indonesia	Constitution of the Republic of Indonesia 2002	Article 18B (2) states ‘the state recognizes and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law’.

Country	Constitution	Relevant Constitutional Provision on Primacy of Formal Laws
Pakistan	Constitution of the Islamic Republic of Pakistan 1973	Article 8 (1) stipulates ‘any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void’.
The Philippines	Constitution of the Republic of the Philippines 1987	There is no constitutional provision that awards primacy to formal laws over customs and practices.
Sri Lanka	Constitution of the Democratic Socialist Republic of Sri Lanka 1978	There is no constitutional provision that awards primacy to formal laws over customs and practices.
Viet Nam	Constitution of the Socialist Republic of Viet Nam 1992 (as amended in 2001)	Article 30 (2) requires the state to ‘eliminate superstition and bad customs’.

*Sources:* Constitution of the Republic of Indonesia 2002; Constitution of the Islamic Republic of Pakistan 1973; Constitution of the Republic of the Philippines 1987; Constitution of the Democratic Socialist Republic of Sri Lanka 1978; Constitution of the Socialist Republic of Viet Nam 1992 (as amended in 2001).

### To eliminate discrimination against women in the political and public life

To advance gender equality, it is important that women have full access to political rights and freedoms. Women’s participation in the public sphere paves way for their empowerment in economic and social realms. With the exception of Sri Lanka – although it has constitutional requirements on special measures for women – the rest of the countries have adopted special laws to improve women’s position in the political sphere. The Party-List System Act 1995 in the Philippines grants 20 per cent of seats in the House of Representatives to marginalized sectors including women.<sup>22</sup> Similarly, its Indigenous Peoples Rights Act 1997 stipulates provision for adequate representation of indigenous women ‘in decision-making in all levels’ to award them ‘due respect and recognition’.<sup>23</sup>

However, in practice there are *de jure* and *de facto* barriers to women’s equal participation in political and public life. While political parties may have women’s wings, their role in management and decision making in party affairs remains weak in most of these countries. As well, their hesitation as voters and candidates to file complaints in the event of violation of their political rights further marginalizes them in politics. Women’s representation at the ministerial level is also an acute problem. Viet Nam has only four per cent female ministers as of January 2008.<sup>24</sup> Finally as discussed in a

later section, the masculine model of political life may also hamper women’s equal access to politics.

### To grant equal rights to nationality

Discriminatory nationality laws affect women’s equal right to acquire, retain or renounce nationality. Pakistan’s Citizenship Act of 1951 confers upon women equal rights to ‘acquire, retain or change their nationality’. Through the 2000 amendment to the Citizenship Act, women of Pakistani descent can determine nationality for their children born in marriage with a foreign spouse. Women cannot take equal citizenship for granted as they may lose their right to retain nationality in case of a marriage to a foreign national. A foreigner married to a Pakistani woman is denied the right to acquire Pakistani nationality. On the other hand, a foreign woman married to a Pakistani man is accorded this right.<sup>25</sup> An Indonesian woman automatically loses her nationality if she marries a foreign spouse and adopts her husband’s citizenship as a result of the marriage.<sup>26</sup> Conferring nationality rights on the basis of marital status undermine women’s autonomy and freedom.

### To eliminate discrimination against women at the workplace and uphold their economic rights

Equal and full access to economic rights is critical to women’s advancement in other spheres. The case studies show that female workers enjoy only limited

rights. In general the labour legislation upholds men's and women's rights to work, and to equal employment opportunities and remuneration. The 1994 Labor Code of the Socialist Republic of Viet Nam (as amended in 2002) safeguards female workers' equal rights to 'work, freely choose an employment and to improve skills without any discrimination'.<sup>27</sup> In order to bridge gender gaps and inequalities, the Labor Code specifies affirmative measures for the advancement of female workers. In the event that a female candidate 'meets the recruitment criteria' for a vacant post, she is to be given preference over male candidates.<sup>28</sup> In Sri Lanka female workers' rights to minimum wages, limited working hours, overtime rates, annual leave and public holidays are protected by law and is applicable to those engaged in formal employment.<sup>29</sup> In most cases, labour laws prohibit dismissal of female workers on the grounds of pregnancy or maternity leave.

In practice, female workers across the five countries suffer from unfair employment practices and regulations. Ostensible protective labour policies, such as restrictions on night work, limit their right to employment opportunities. Women remain underrepresented in the workplace, are more likely to work part time or to work long hours, and to be paid less than male workers for the same work. Legislation on sexual harassment at workplace is either non-existent or is narrowly defined. Viet Nam, for instance has not made or passed such a law. In the Philippines, the 1995 Anti-Sexual Harassment Act prohibits harassment in the workplace where only supervisors, employers and managers with 'authority and influence' are penalized for acts of harassment.<sup>30</sup> The law is silent on sexual abuses by co-workers. When a law omits certain perpetrators from its purview, such legal exclusion may restrict women's ability to seek legal remedies.

### **To accord women equality before the law**

The case studies reveal that the five countries have constitutional requirements of equal treatment of their citizens before the law. The Constitution of the Democratic Socialist Republic of Sri Lanka of 1978 enshrines principles of 'equality' and 'equal protection' before the law.<sup>31</sup> Viet Nam has set a precedent through a law that nullifies gender-discriminatory civil contracts and transactions. Under its 1995 Civil Code (amended

in 2005) the rights of plaintiffs and defendants are equal and any discrimination on the basis of 'gender' is prohibited in civil courts.<sup>32</sup> More importantly, it stipulates that any transaction which infringes women's equal civil rights is declared null and void.

In theory men and women have equal rights to sue and be sued. However, in practice there are certain inequalities in terms of women's legal capacity to conclude contracts or to administer property. Under Jaffna Matrimonial Rights and Inheritance Ordinance 1911, followed by some members of Tamil community in Sri Lanka, a wife requires the 'written consent' of her husband to transfer immovable property, even if such property is her own.<sup>33</sup>

### **To eliminate discrimination against women and accord equality to them within marriage and family relations**

The case studies show that diverse personal laws, discriminatory legal provisions and harmful customary practices have undermined women's marital choices and freedoms. In theory women have equal rights to enter into marriage and their consent is considered an important prerequisite for a valid marriage contract. However, narrow definitions of gender roles within marriage can undercut women's rights. Indonesia's Marriage Law No 1 of 1974, influenced by patriarchal norms, defines the role of a husband and a wife differently. The husband is perceived as the 'head' of the family while the wife is deemed a 'mother' of the household. Even in cases where the law treats men and women equally, local custom may perpetuate discrimination. In Viet Nam 'string' extension marriages are quite common in some ethnic groups.<sup>34</sup> Such marriages infringe basic prerequisites of a valid marriage – free consent and right of freedom of choice. In some countries child marriages, although illegal, are still practised by some communities.

In most cases, divorce laws are gender-neutral and discriminate on the basis of gender. Of the five countries, no country stipulates legal provisions against fault-based divorce system (Table 4). This requires proof of matrimonial offences such as adultery, desertion for a required number of years, willful refusal to consummate marriage, and habitual cruelty. Such requirements cause procedural indignities for women during court proceedings. In most cases, divorce is granted by a court



**Table 4: Divorce Allowed Only on Specified Grounds**

Country	Relevant Law	Grounds for Divorce
Indonesia	The Law on Marriage 1974.	Adultery; addiction to alcohol or narcotics; gambling or other vice that is hard to cure; abandonment for two continuous years; imprisonment for five years; physical disability that prevent from performing his conjugal duties; acts of cruelty and constant disputes with the spouse.
Pakistan	The Dissolution of Muslim Marriages Act 1939.	Whereabouts of the husband have not been known for a period of four years; husband has neglected or has failed to provide for her maintenance for a period of two years; husband has been sentenced to imprisonment for a period of seven years or upwards; husband has failed to perform, without reasonable cause, his marital obligations for a period of three years; husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease; and husband treats her with cruelty.
The Philippines	The Family Code of the Philippines 1987.	Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner; physical violence or moral pressure to compel the petitioner to change religious or political affiliation; attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement; final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned; drug addiction or habitual alcoholism of the respondent; homosexuality of the respondent; contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad; sexual infidelity or perversion; abandonment of petitioner by respondent without justifiable cause for more than one year.
Sri Lanka	The Marriage Registration Ordinance 1908.	Adultery; malicious desertion; incurable impotence at the time of marriage.
Viet Nam	The Marriage and Family Law 2000.	Couple can no longer live together; marriage purposes cannot be achieved; spouse of the person has been declared missing.

*Sources:* The Law on Marriage 1974; The Dissolution of Muslim Marriages Act 1939; The Family Code of the Philippines 1987; The Marriage Registration Ordinance 1908; The Marriage and Family Law 2000.

after all means of reconciliation between the estranged spouses have been exhausted. In cases of child custody, the court's order is often issued 'in the best interests of the child'. In the Philippines, in the case of differences between a husband and wife over the exercise of parental authority and legal guardianship over the person and property of a common child, the husband's decision prevails.<sup>35</sup>

Married women may exercise only limited control over property and other assets. They may possess restricted authority to manage or dispose of their own property.

Under the Matrimonial Rights and Inheritance Ordinance of 1911, followed by the some members of Tamil community in Sri Lanka, women require the 'written consent' of their husband to dispose of immovable property.<sup>36</sup> With respect to inheritance, some legal systems may openly discriminate against women. In Pakistan and Indonesia a daughter inherits one-third while a son's share of inheritance is two-thirds. At times, local norms may deny women of their due inheritance rights. It is a customary norm in some rural communities of Viet Nam that a married daughter cannot inherit property from her parents.<sup>37</sup>

### 1.3 Address Legal Inequalities

The case studies highlight that the five countries remain committed to implement CEDAW's articles for gender equality. As a testimony of their commitments, the countries have initiated legal reforms. Through legislative changes and judicial precedents, they have reformed their civil and criminal laws. However no country has achieved substantial equality and several legal inequalities prevail and persist in the justice systems of these countries. From lack of explicit constitutional provision on substantial equality to discriminatory formal, customary laws and legal practices, procedural trial indignities, protectionist labour laws, unfair personal laws, the list of legal barriers that require countries' attention is long and challenging.

There is no single strategy to redress legal inequalities against women. Laws that discriminate on the basis of gender need to be fixed and revised accordingly. This may include:

- Enshrine expressed constitutional provision on gender equality and non-discrimination.
- Change discriminatory laws – discriminatory penal code provisions, unequal nationality laws, unwarranted requirements of proof, and protectionist labour laws.
- Fill legal gaps.
- Promulgate tougher laws.
- Review harmful customary practices.
- Uphold equality within personal laws – narrowly defined gender roles within marriage, limited maintenance rights, unequal access to marital property and unjust inheritance practices need to be given priority.
- Strengthen enforcement mechanisms – obligatory gender training for all law enforcement agents and reservation of adequate human and financial resources.

Legal reforms are not limited to legislative changes only. Progressive judicial precedents too can be useful means to redress legal inequalities against women (Table 5).

**Table 5: Strategies to Address Legal Discrimination against Women**

Strategies		Actions proposed for countries	Testimonials from the countries
<b>I. Fix Laws</b>			
1.	Include express and well defined constitutional provisions on gender equality and non-discrimination.	Indonesia, Pakistan, the Philippines and Sri Lanka.	Viet Nam
2.	Repeal discriminatory rules of proof – independent corroboration, past history of sexual conduct and proof of physical resistance – from penal codes.	Indonesia, Pakistan, the Philippines, Sri Lanka and Viet Nam.	-
3.	Change discriminatory criminal laws – as highlighted in the individual case studies.	Indonesia, Pakistan, the Philippines, Sri Lanka and Viet Nam.	-
4.	Accord constitutional primacy to formal laws in case of conflict between custom and formal laws.	Sri Lanka and the Philippines.	Indonesia, Pakistan, Viet Nam.
5.	Change discriminatory nationality laws with regard to women's marriage to foreign nationals.	Indonesia and Pakistan.	The Philippines, Sri Lanka and Viet Nam.
6.	Amend discriminatory labour laws.	Indonesia, Pakistan, the Philippines, Sri Lanka and Viet Nam.	-

Strategies		Actions proposed for countries	Testimonials from the countries
7.	Establish a law against sexual harassment at the workplace.	Indonesia, Pakistan (law under consideration) and Viet Nam.	-
8.	Revise discriminatory inheritance laws.	Indonesia and Pakistan.	-
9.	Change relevant discriminatory provisions of family laws – forced marriages; bigamy; child marriages; court’s authority to promote reconciliation between estranged couple during divorce proceedings; unequal access to marital property; fault-based divorce system (as relevant for individual countries).	Indonesia, Pakistan, the Philippines, Sri Lanka and Viet Nam.	-
<b>II. Set Judicial Precedents</b>			
1.	Establish judicial precedents to change discriminatory laws against women and to advance their legal rights and interests.	All countries	The Supreme Court of Sri Lanka’s 1999 ruling set aside discriminatory nationality rules against foreign nationals married to Sri Lankan women.
<b>III. Improve Access To Justice</b>			
1.	Eliminate discriminatory legal and customary practices – forgiveness in sexual assault cases; court’s duty to seek reconciliation between estranged couples in divorce proceedings; paying compensation to the heirs of the victims.	All countries as applicable and relevant.	
2.	Sensitize judges and other judicial officers to gender-related legal concerns and challenges.	All countries as applicable and relevant.	
3.	Change attitudes and eliminate gender stereotypes – domestic violence is not to be considered as a private matter; rape is a crime against a ‘person’ and not against ‘chastity’; discard notion of wife’s role during marriage of being ‘home-manager’ only.	All countries as applicable and relevant.	



# 2

## Discriminatory Laws Hold Back Women in Indonesia

# 2. Discriminatory Laws Hold Back Women in Indonesia

## 2.1 Introduction and Overview of Legislative Compliance

The Constitution of the Republic of Indonesia 2002 protects fundamental freedoms and upholds equal rights of all its citizens. These constitutional provisions are in line with the articles of CEDAW. The Constitution of the Republic of Indonesia 2002 has a specific law that defines discrimination. As a predominantly Muslim society, its personal law – the Marriage Law No.1 of 1974 and the Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law – are influenced by Islamic law. Indonesia also has a codified law on inheritance.

This section assesses Indonesia's legislative compliance with CEDAW. Indonesia ratified CEDAW on 13 September 1984, thereby entering into the obligation to bring its Constitution and laws in accord with the articles of CEDAW.<sup>1</sup>

Overall, Indonesia has achieved full compliance with 61 of 113 indicators, partial compliance with eight indicators and is non-compliant with respect to the remaining 44 indicators. Some of the barriers that contribute to legislative non-compliance with CEDAW benchmarks include: interpretation of religion, gender stereotypes and harmful customs. This may explain why Indonesia has not legislated against: unequal inheritance rights; unequal roles of husband and wife as defined by its 1974 Marriage Law; discriminatory rules of proof; fault based divorce system; 16 years as minimum age of marriage for girls and court's duty to promote reconciliation in divorce cases.

The main findings of Indonesia's compliance with CEDAW benchmarks on gender equality include:

**To embody equality within national constitution and repeal discriminatory national penal code provisions**

In compliance with the Convention, the Constitution

of the Republic of Indonesia 2002 provides protection against discriminatory treatment on any grounds.<sup>2</sup> It also upholds the fundamental freedoms and rights of its citizens.<sup>3</sup> In addition, the public authorities are constitutionally bound to 'protect, advance and uphold' human rights.<sup>4</sup> Furthermore, Article 71 of Law No. 39 of 1999 on Human Rights places the state under an obligation to respect, protect, uphold and promote human rights, and also conform to international laws ratified by the Republic of Indonesia. A unique feature of the Indonesian legal system is its definition of what constitutes a discriminatory act. Discrimination is defined as 'all limitations, affronts or ostracism, both direct and indirect, on the grounds of differences in religion, race, group, faction, social status, economic status, sex... which result in the degradation, eradication of recognition, [of] basic freedoms in political, economic, legal, social, cultural or any other aspects of life.'<sup>5</sup> However, there are no expressed constitutional provisions that ensure equality of access and results.

CEDAW requires that discriminatory national penal code provisions be repealed in order to advance women's legal interests. The Penal Code of Indonesia 1999 criminalizes sexual offences such as rape, harassment and physical violence.<sup>6</sup> The law also prescribes minimum sentences for acts of sexual violence. Article 46 of the 2004 Law Regarding Elimination of Violence in Household stipulates that 'anyone committing sexual violence shall be punished'. Violence against women is prohibited and criminalized. Although the penal code does not have any specific provision for domestic violence, the 2004 Law Regarding Elimination of Violence in Household criminalizes domestic abuse. The Act defines domestic violence by family members as 'use of physical violence, psychological violence, sexual abuse and abandonment of family by the family members'. It is applicable to members of the household that may include husband, wife, children, blood relations, domestic helpers, etc. The law provides remedial measures to victims of violence which include medical treatment, court protection from perpetrators,

and social advice. Most importantly the court has the authority to issue restraining orders to protect the rights of the victim and to punish the offender.<sup>7</sup>

Contrary to these legal safeguards, the criminal and civil procedures still adhere to a 'gender-neutral paradigm' which restricts women's full access to justice.<sup>8</sup> The 2004 Law Regarding Elimination of Violence requires the victim or their family member to lodge a complaint. A suit must be instituted and reported to the investigator in order to prosecute perpetrators. Although the 2004 law is applied to all citizens, including the military and police, nevertheless, if the perpetrator is still active in the military or police, he/she will be tried by a military or police tribunal. If the perpetrator has retired, he/she will be tried in a state's court. The discriminatory application of this law in relation to civilians and military personnel is against the constitutional requirements of equality before the law.

Although the law prohibits violence against women, in reality such offences do persist. Cases of violence are often covered up or tacitly condoned. Certain discriminatory provisions of the Penal Code of Indonesia 1999 undermine women's equal access to its justice system. Under Article 287-1 of the Penal Code, a defendant in rape cases has an edge over a victim. The provision puts the onus on the rape victim to reveal his/her age, rather than on the perpetrator of the crime. The prosecution charge in rape cases is initiated 'only through a complaint.'<sup>9</sup> To compound matters, the Penal Code interprets rape as a crime which can occur only 'outside of marriage'.<sup>10</sup> These legal impediments curtail women's access to justice system and may also discourage them from filing charges and pursuing criminal prosecutions.

The Convention requires that competent tribunals and public institutions be established to provide legal protection to women. In compliance with the requirement, Indonesia established the National Commission on Human Rights in 1993.<sup>11</sup> The mandate of the Commission is to create conditions conducive for the implementation of human rights in conformity with the state's philosophy of *Pancasila*, the 2002 Constitution, the United Nations Charter and the Universal Declaration of Human Rights, and to enhance the promotion and protection of human rights to help achieve national development goals. To combat

violence against women, the National Commission on Violence against Women was established in 1998. The Commission has the mandate to 'prevent and address violence against women'.<sup>12</sup> The Ministry of Women Empowerment is also active in advancing women's rights.

### **To adopt temporary special measures to accelerate *de facto* equality**

In compliance with CEDAW's benchmarks, several affirmative measures have been adopted to uphold the rights of Indonesian women. The 2002 Constitution of the Republic of Indonesia enshrines provision on affirmative action for the advancement of women in various spheres of life. The Constitution stipulates that every person is entitled to special treatment to 'achieve equality and fairness'.<sup>13</sup> For improving women's representation in politics and public life, the law requires that they should form at least 30 per cent of the candidates of political parties for the legislature.<sup>14</sup> Similarly, in the field of education temporary special measures include quotas, fellowships and subsidies at all levels, and guaranteed admission for girls to schools and institutions of higher education.<sup>15</sup>

### **To eliminate customary practices that promote gender stereotypes**

The Constitution of Indonesia recognizes and awards due respect to communities' traditional customary practices if they 'remain in existence and in accordance with the societal development'. Meeting CEDAW's requirement, it further states that all customary practices 'shall be regulated by law'.<sup>16</sup> But despite these constitutional requirements, women's sex roles and stereotypes remain major challenges to the implementation of the Convention. According to a 2010 Government report, certain customs and traditional norms such as 'early marriages, arranged marriages, arbitrary divorce and narrow religious interpretation' may restrict women's freedoms and rights in the society.<sup>17</sup> It is reported that conservative religious forces in certain provinces, in the name of regional autonomy, have imposed Islamic Shariat Law regulations that discriminate against women. These regulations restrict women's mobility and freedom of movement. Their movement is often mediated through male relatives.<sup>18</sup>

### To suppress human trafficking and exploitation of women in prostitution

Based on CEDAW principles, criminalizing sex work is not desirable; however, CEDAW calls for creating laws that prohibit procuring and trafficking of women for sex work. Under the Penal Code of Indonesia 1999 soliciting is a criminal offence.<sup>19</sup> Human Trafficking is illegal.<sup>20</sup> In practice, human trafficking remains a matter of concern for Indonesia. According to a 2005 Government report, the country serves as a source, transit and receiving country of trafficking in persons. Based on the Indonesian Migrant Workers Consortium's estimate, of the 1,000,000 Indonesian migrant workers, some 20 per cent are trafficked each year.<sup>21</sup>

### To eliminate discrimination against women in the political and public life

In conformity with CEDAW's standards, Indonesia's constitutional provision affirms that all citizens shall have equal status before the law and there will be no bar on women's right to vote or contest for elected office.<sup>22</sup> Article 23 (1) of Law No. 39 of 1999 concerning Human Rights stipulates that everyone has the freedom to 'choose' his/her political belief. In order to enhance women's participation in politics, the law requires 30 per cent female representation in political parties' electoral lists of candidates.<sup>23</sup> In the 2009 elections, women's representation in national legislative body increased from 11.6 – in the 2004 elections – to 18.2 per cent.<sup>24</sup>

In reality, some civil society groups assert that the masculine model of political life has hampered women's equal access to politics. As a setback to women's political representation, the Constitutional Court's verdict, in 2008, amended voting pattern from the order number system to majority vote in the legislative election. The decision dismantled the mechanism of a 'zipper' system in which for every three candidates fielded by political parties, at least one had to be a woman. The non-compulsory quota of 30 per cent women as candidates on the open ballot remains in place.<sup>25</sup> To worsen matters, cultural constraints may also hinder women's participation in politics. It is reported that politics is often perceived as 'dirty game' unsuitable for women.<sup>26</sup>

### To ensure equal opportunities of representation and participation to women in international organizations

Indonesia complies with CEDAW's benchmark of providing equal opportunities of representation and work in international organization. It has no legal barriers to women's representation at the international level. In Indonesia's political history, women's presence at international levels has been quite substantial. The country was led by Megawati Sukarnoputri during the period 2001-2004. Indonesian women have also served as members in major international institutions such as the World Health Organization (WHO), International Monetary Fund (IMF) and the International Council of Women. However, there is limited percentage of female ambassadors working abroad. The Department of Foreign Affairs' 2009 data shows that the percentage of its female employees is 30 as compared to 70 per cent of its male staff.<sup>27</sup> Furthermore, Indonesia has only 7.1 per cent female ambassadors.<sup>28</sup>

### To grant equal rights to nationality

The Citizenship Act of Indonesia is based on the principle of *jus sanguinis* – nationality based on descent. Indonesian women have the right to acquire, change or retain their nationality subject to fulfillment of 'certain requirements'.<sup>29</sup> In compliance with CEDAW's benchmarks, a discriminatory provision of the 1958 Citizenship Act was amended in 2006. It allows Indonesian women to pass on their nationality to their children irrespective of their marital status or spouse's nationality.<sup>30</sup>

However, there remain certain discriminatory provisions which deny equal nationality rights to women. A woman, married to a foreign national, will automatically lose her Indonesian nationality if 'by law of her husband's country; the citizenship of the wife will follow that of the husband' after marriage.<sup>31</sup> Based on this legal provision, a wife married to a foreign national will lose her nationality even if she remains in Indonesia. On the other hand, a foreign woman married to an Indonesian man faces fewer problems and can be naturalized within three years of her marriage, if she renounces her original nationality.<sup>32</sup> Certain legal gaps in the Law 12/2006 may also restrict women's nationality rights.

## To ensure equal rights to education

In conformity with CEDAW, every Indonesian citizen has the obligation to undertake basic education and the Government has the obligation to fund it.<sup>33</sup> The state provides free primary education for boys and girls.<sup>34</sup> It also has legal provisions for education scholarships, quotas, subsidies and guarantees of girls' access to schools and institutions of higher education. Furthermore, constitutional provision requires 20 per cent of the state budget to be reserved for education.<sup>35</sup>

Contrary to these legal requirements, women and girls access to education may be limited. For instance, in rural communities, boys may be given preference over girls' education. Factors such as poverty, expensive transportation and early marriages may also restrict their access to education opportunities. It is reported that many women face difficulties in obtaining birth certificates for their children that may restrict mother and child's right to obtain access to public services including schooling. The affected group may include: women who give birth out of wedlock; women in unregistered religious/traditional marriages; poor or marginalised women who may themselves not have a birth certificate or an identity card, or the money to pay for obtaining a birth certificate.<sup>36</sup>

## To eliminate discrimination against women at workplace and uphold their economic rights

In compliance with CEDAW's benchmarks on economic rights, the Constitution of Indonesia confers equal rights on men and women to work and make a living.<sup>37</sup> The labour laws prohibit discrimination in relation to wages and the right to a job, and forbid differential treatment at work.<sup>38</sup> Further, the Government Regulation No. 8 of 1981 on Wage Protection specifies that employers shall not discriminate between female and male workers in determining the rates of remuneration for work of equal value.

The law also provides protection to female workers. Employers are prohibited from dismissing female workers due to marriage, pregnancy or childbirth.<sup>39</sup> In addition, Article 83 of Law No. 13 of 2003 concerning Manpower states that employers are under an obligation to provide proper opportunities to breast-feeding

mothers, and such workers must be allocated time to breast-feed their babies if that must be performed during working hours. Keeping in consideration the biological needs of women, menstrual leave is also provided twice a month.<sup>40</sup> Furthermore, for night shifts, female workers are to be accorded roundtrip transport, nutritious food, and security at the workplace.<sup>41</sup> The state also prohibits gender-based differentials in the pensionable age.<sup>42</sup>

But in practice female workers' rights and interests may be affected due to discriminatory employment practices and regulations. According to the 2010 Government report, female workers are often underrepresented in the workplace, and are more likely to work part time or to work long hours. The sectors with the greatest female representation – agriculture and the informal sector – are less regulated and more poorly paid than other sectors.<sup>43</sup>

## To eliminate discrimination against women in health care

Contrary to CEDAW's requirement, abortion is a criminal offence under the Penal Code of Indonesia.<sup>44</sup> As a consequence, women are forced to resort to clandestine and unsafe abortion methods. According to one estimate, complicated abortion is believed to be responsible for 15 per cent of the maternal mortality rate.<sup>45</sup>

## To eliminate discrimination against women in economic and social life

In accordance with CEDAW's benchmarks, Indonesian women's social and economic rights are secured in the public sector. Civil servants, both men and women, are entitled to equal family benefits such as the right to health and medical insurance. Women public servants are entitled to expenses for up to two deliveries. They also have equal rights to open bank accounts, to seek loans and to make deals with their business partners without the consent of their husbands.<sup>46</sup> However, the Government has not been able to enforce such provisions for all private enterprises. The lack of enforcement in the private sector can cause economic hardships among informal workers.

## To eliminate discrimination against rural women

Indonesia has adopted numerous legal measures that



aim to protect due rights of rural women. Affirmative action includes provision for the creation of a conducive and fair climate for women and men engaged in small and medium enterprises.<sup>47</sup> In compliance with CEDAW, the 2003 state's Poverty Eradication Policy espoused principles of community empowerment through improved access to economic resources and the social security system for victims of social conflict. The Policy benefits rural women directly. However, certain laws discriminate and undermine their due rights. The Foreign Investment Act 2007 may pose a threat to women's access and control over natural resources. According to its provisions, foreign firms are granted usufruct rights to exploit water resources for a period of 95 years. This has serious implications for the economic, social and political rights of rural women. A civil society group maintains that the law may 'preserve the poverty' of rural women.<sup>48</sup> They, in comparison to rural men, are considered to have less economic power, restricted control over assets and limited political voice.

### **To accord women equality before the law**

In adherence to CEDAW's benchmarks, the Constitution of the Republic of Indonesia confers upon its citizen's equality before the law and obligates the state to respect the law, with no exceptions.<sup>49</sup> Additionally, the Indonesian Civil Code upholds equal legal capacity of both men and women. Article 5 (1) of Law No. 39 of 1999 concerning Human Rights states that everyone is recognized as an individual and has the right to demand and obtain equal treatment before the law as befits his or her human dignity. Women have equal rights to sue and claim relief from the civil courts.<sup>50</sup> Furthermore, poor suspects are provided free legal aid.<sup>51</sup>

However, women do face discrimination in accessing the civil justice system. Married women are barred from being acting executors of wills.<sup>52</sup> What is more, the domicile provision of the Civil Code is discriminatory in nature. Article 21 of the Indonesian Civil Code, 1847, stipulates that married women shall not have any residence other than that of the husband.<sup>53</sup>

### **To eliminate discrimination against women and accord equality to them within marriage and family relations**

In Indonesia, family matters are mainly determined by

Marriage Law No 1 of 1974. In conformity with the Convention, the Marriage Law grants equal rights to both men and women to enter into a marriage contract and their full consent is an essential prerequisite for a valid marriage. Article 6 (1) of the Marriage Law stipulates that men and women have equal rights to enter into marriage and the mutual consent of parties is required. Marriage registration is compulsory. Article 2 (2) of the Law stipulates that each marriage shall be entered in a register that conforms to the statutory regulations.

During marriage, spouses have the freedom to enter into all transactions. They have equal rights to acquire, manage and dispose of their marital property. Article 35 (1) of the law stipulates that property acquired during marriage shall become joint property. However, under Article 35 (2) property brought into a marriage by the husband and the wife and property acquired by either of them as a gift or by inheritance shall remain under their respective control. But in non-compliance with CEDAW, the law allows polygamy on the basis of certain grounds. Article 4 (2) of the Marriage Law provides reasons for practicing polygamy which may be based on spousal inability to carry out responsibilities as a wife, any physical disability, or inability to bear a child.

In the case of a divorce, the court authorizes the husband to pay alimony and living expenses to his ex-wife. However, there is no sanction if the husband does not fulfil his obligation. This causes economic hardships for the ex-wife, especially when she does not have any individual income.

Despite certain legal safeguards, the Marriage Law has provisions which infringe the marital rights of women. A man is perceived as the protector and 'head' of the family, while the wife is considered a 'mother' of household. The discriminatory division of roles between spouses restricts women's freedoms and marital rights. The divorce decree is granted by the court only after it has unsuccessfully endeavored to reconcile the parties. As noted above, the law also allows polygamy, which causes economic insecurities, social and psychological strain amongst the married women. The law also discriminates between the inheritance rights of a son and a daughter. As stipulated, a son's share in inheritance is two-thirds while the daughter's share is one-third.<sup>54</sup>

## 2.2 Assessment of National Legislation for Gender Equality

Article 1: Definition of Discrimination Against Women			
Article 2: Obligation to Eliminate Discrimination			
Indicator	Compliance	Relevant Legislation	Comments
1.1 Does the Constitution guarantee fundamental human rights and freedoms to men and women equally including the political, economic, social, cultural, civil or any other field?	Yes	<p>The Constitution of the Republic of Indonesia 2002 upholds fundamental freedoms and rights of its citizens.</p> <p>Article 28D states ‘Every person shall have the right of recognition, guarantees, protection and certainty before a just law, and of equal treatment before the law’.<sup>55</sup></p> <p>Article 27 (1) states ‘All citizens shall be equal before the law and the government and shall be required to respect the law and the government with no exceptions’.</p>	<p>The indicator requires that the constitution upholds women’s fundamental rights and freedoms in different spheres.</p> <p>Chapter XA on Human Rights, covering Articles 28A-28J, upholds fundamental freedoms and rights of all citizens. The fundamental rights conferred include right to citizenship (Article 28D (4); right to life (Article 28A); and right to work and humane livelihood (Article 27 (2)).</p> <p>In addition to this, Law No. 39 of 1999 on Human Rights, Article 1 (3) acknowledges equal rights between men and women in law and civic life.</p>
1.2 Is there constitutional guarantee of substantive equality between men and women?	Partial	The Constitution of the Republic of Indonesia, Article 27 (1) stipulates that all citizens are ‘equal before the law’.	<p>The indicator requires expressed constitutional provision on substantive equality.</p> <p>Although the Constitution of the Republic of Indonesia confers equality before the law, it does not have any provision on substantive equality – of access and results.</p>
1.3 Does the Constitution contain an anti-discrimination clause on the grounds of sex/gender?	Yes	The Constitution of the Republic of Indonesia, Article 28 (I) 2 states ‘every person shall have the right to be free from discriminatory treatment based upon any grounds whatsoever and shall have the right to protection from such discriminatory treatment’.	This indicator requires that the constitution has expressed anti-discrimination provisions.
1.4 Does the Constitution contain an anti-discrimination clause on the grounds of marital status?	Yes	The Constitution of the Republic of Indonesia, Article 28 (I) 2.	Compliance with this indicator requires that there be constitutional provisions on non-discrimination on the grounds of marital status – unmarried; married; single etc.
1.5 Does the Constitution contain an anti-discrimination clause on the grounds of sexual orientation?	Yes	The Constitution of the Republic of Indonesia Article 28 (I) 2.	

**Article 1: Definition of Discrimination Against Women****Article 2: Obligation to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.6 Does the Constitution contain an anti-discrimination clause on the ground of HIV status?	Yes	The Constitution of the Republic of Indonesia Article 28 (I) 2.	
1.7 Does the Constitution contain an anti-discrimination clause on the grounds of disability?	Yes	The Constitution of the Republic of Indonesia Article 28 (I) 2.	In addition to the constitutional provisions, Law No. 39 of 1999 on Human Rights Article 42, states 'In the event of old age, physical and/or mental disability, every citizen has the right to special care, education, training and assistance at the expense of the state, ensuring an existence worthy of human dignity, and building his/her self confidence and capacity to participate in the life of nation, state and society'.
1.8 Does the breadth of anti-discrimination clauses encompass direct and indirect discrimination?	Yes	Law of the Republic of Indonesia, No. 39, 1999 concerning Human Rights, Article 1 (3) defines discrimination as 'discrimination means all limitations, affronts or ostracism, both direct and indirect, on grounds of differences in religion, ethnicity, race, group, faction, social status, economic status, sex, language, or political belief, that results in the degradation, aberration, or eradication of recognition, execution, or application of human rights and basic freedoms in political, economic, legal, social, cultural, or any other aspects of life.' <sup>56</sup>	This indicator requires that the constitutional provision on non-discrimination prohibits both direct and indirect acts of infringement.
1.9 Does the anti-discrimination clause bind public authorities and institutions?	Yes	The Constitution of the Republic of Indonesia 2002, Article 28 I (4) states 'the protection, advancement, upholding and fulfilment of human rights are the responsibility of the state, especially the government'.	Compliance with this indicator requires that the constitution has a provision that binds public institutions to follow the principle of non-discrimination.  Law No. 39 on Human Rights 1999 Article 71 states 'The government shall respect, protect, uphold and promote human rights, as laid down in this Act, other legislation and international law concerning human rights ratified by the Republic of Indonesia'.



## Article 1: Definition of Discrimination Against Women

## Article 2: Obligation to Eliminate Discrimination

Indicator	Compliance	Relevant Legislation	Comments
1.10 Does the anti-discrimination clause bind all persons, organizations or enterprises?	Yes	Constitution of the Republic of Indonesia 2002 Article 28D (1) stipulates ‘every person shall have the right of recognition, guarantees, protection and certainty before a just law, and equal treatment before the law’.  Law No. 39 on Human Rights 1999, Article 17 stipulates ‘everyone without discrimination, has the right to justice by submitting applications, grievances, and charges of a criminal, civil, and administrative nature, and to a hearing by an independent and impartial tribunal’.	The indicator requires that there be a constitutional provision that binds both public and private sectors to follow non-discriminatory rules and regulations.
1.11 Are sanctions imposed for breach of anti-discrimination provisions?	No		Compliance with this indicator requires that there be legal provision that imposes sanctions – fines, apologies or loss of government contracts and remedies such as compensation and injunctive relief – in case of breach of anti-discrimination provisions.
1.12 Are there specific domestic violence offences in the criminal law legislation (Penal Code)?	Yes	Under the 2004 Law regarding Elimination of Violence in Household, it is a criminal offence to ‘use physical violence, psychological violence, sexual abuse’ against a family member. It recognizes marital rape and contains legal provisions for victims’ protection and rehabilitation programmes. <sup>57</sup>  Article 1 (1) of the Law states ‘violence in the household shall be any act against anyone, particularly women, bringing about physical, sexual, psychological misery or suffering, and/or negligence of household, including threat to commit an act, forcing, or seizure of freedom in a manner against the law, within the scope of the household’.	This indicator requires that there be specific laws or Penal Code provision on domestic violence.  Law No. 23 of 2004 on the Elimination of Domestic Violence in Household applies to all citizens of Indonesia, including persons from military circles and the police. However, if the perpetrator is still active personnel of the military and/or police circles, he/she is to be tried in a military and/or police tribunal. If the perpetrator is already retired from the military and/or police circles, he/she is to be tried in a Court of Justice.
1.13 Is stalking a criminal offence?	No	There is no specific definition of stalking provided in the Penal Code.	This indicator requires that any harassment act – including stalking – be criminalized.

**Article 1: Definition of Discrimination Against Women****Article 2: Obligation to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.14 Is a restraining order available in situations of sexual and domestic violence regardless of marital status?	Yes	Law No. 23 of 2004 regarding Elimination of Violence in Household, Article 16 (3) confers upon the court the power to issue restraining orders.  Article 16 (3) of the Law stipulates 'within a period of 1x24 (one times twenty-four) hours with effect from the time of provision referred to in paragraph (1) the police shall be obliged to request a protection instruction ruling from a court.'	Compliance with this indicator requires that the law provide civil remedies – restraining orders – to ensure effective protection of women against violence. Such remedies should be available to women irrespective of their marital status.
1.15 Is there mandatory prosecution for domestic violence offences?	Partial	Law No. 23 of 2004, regarding Elimination of Violence in Household warrants a complaint in cases of physical violence (Article 51); psychological violence (Article 52); and sexual violence (Article 53).	Domestic violence is not a private matter and must be treated as a criminal offence by law enforcement agencies. The indicator requires that the law stipulate provisions on mandatory prosecution of perpetrators.  Domestic violence is an offence which warrants a complaint under Indonesia's law. The law prohibits violent acts against women. But in reality it is reported that cases of violence are often covered up or tacitly condoned. <sup>58</sup>
1.16 Does the criminal legislation contain a broad range of sexual assault offences graded on the basis of seriousness to the victim?	Yes	The Penal Code of Indonesia, 1999 defines several offences: rape (Article 285); harassment (Article 284); physical violence (Article 89); abuse (Article 351-354). <sup>59</sup>	Women and girls can be sexually abused in several ways. Compliance with this indicator requires that any unwanted sexual contact be unlawful. It is essential to incorporate into criminal law a wide range of sexual assault offences.
1.17 Does the definition of rape and/or sexual assault offences include penetration of non-penile objects into anus, vagina and mouth?	No		This indicator requires that the legal definition of rape not be restricted to penile penetration only. It should take into account all forms of sexual abuse.
1.18 Is there an offence of incest for girls and women? If there is no offence of incest then there is full compliance with this indicator.	No	The Penal Code's provision, Article 294 (1) on incest does not make any distinction between a victim and the perpetrator. It stipulates that 'any person who commits any obscene act with his under age child, step child or foster child... shall be punished by a maximum imprisonment of seven years.'	Ideally the law on incest should make a clear distinction between a victim and the perpetrator. This indicator requires that under no circumstances victims of an incestuous sexual encounter (girls and women) be charged with an offence.

**Article 1: Definition of Discrimination Against Women****Article 2: Obligation to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.19 Have the terms indecency, carnal knowledge, defilement and insulting modesty been removed from the criminal legislation?	No	The terms such as carnal knowledge (Article 286) are still part of the Penal Code of Indonesia 1999.	The use of such language in place of appropriate legal terminology may depict female victims as damaged or tarnished by the sexual offences. Compliance with this indicator requires that such terms be removed and replaced, and that the focus be placed on invasion of women's personal integrity.
1.20 Is consent specifically defined in the criminal legislation outlining coercive circumstances?	Yes	Articles 285, 286 and 287 of the Penal Code 1999 outline coercive circumstances. They may involve: using force or threat of force; carnal knowledge of a woman who is unconscious or helpless; carnal knowledge of a woman presumed to be below 15 years of age etc.	Consent is used as a defence in cases of rape and other sexual offences. There can be doubt as to what circumstances constitute consent. The indicator requires a statutory definition of consent in the criminal law. The legal provision must include wide-ranging circumstances that may induce an unwilling consent.
1.21 Is there a legislative prohibition on the use of prior sexual conduct to establish consent?	No		The admission of the prior sexual history of the victim is a discriminatory procedural rule. It is based on the assumption that promiscuous women are more likely to have consented to sexual acts. The indicator requires that such provision be removed.
1.22 Is there a legislative prohibition of the requirement for corroboration?	No	Under Law No. 23 of 2004 regarding Elimination of Violence in Household, one witness is required to penalize the offender.  Article 55 provides 'as one of the legitimate instruments of proof, the testimony of a victim witness alone shall be adequate to prove that the accused is guilty if accompanied with another legitimate instrument of proof'.	The discriminatory legal requirement of independent evidence is used by some courts. It is based on the supposition that it is dangerous to convict the accused on the basis of uncorroborated evidence. Compliance with this indicator requires removing this legal provision from the Penal Code.
1.23 Is there a legislative prohibition of the requirement for proof of resistance?	No		The procedural rule of proof of resistance may be used by courts to determine consent. It implies victims of sexual assault must establish that they have physically resisted the perpetrator or otherwise consent may be inferred. The indicator requires removing this discriminatory rule from the Penal Code.

**Article 1: Definition of Discrimination Against Women****Article 2: Obligation to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.24 Is there a defence of honest and reasonable belief that the victim is of legal age? If there is no defence of honest and reasonable belief then there is full compliance with this indicator.	No	Penal Code 1999, Article 287-1 states 'the defence is available to a perpetrator in case the complainant is above fifteen years'.  Penal Code 1999 Article 287-2 'in addition a prosecution charge shall be initiated only by the complainant unless the victim has not reached the age of twelve years'.	The legal provision of honest and reasonable belief that the victim is of legal age is discriminatory. It can be used by a perpetrator to argue that he honestly believed the victim was of legal age. This provision puts the onus on the victim rather than on the alleged perpetrator to reveal the age. The indicator requires removing this discriminatory legal provision.
1.25 Is a defence of consent disallowed in relation to a victim under 18?	Partial	Based on the Act of the Republic of Indonesia No. 23, 2002 on National Child Protection, a person below 18 years is considered a child. <sup>60</sup>	Compliance with this indicator requires that consent of a victim, below 18 years, be disallowed as a defence.  A legal inconsistency stand in the way of effective implementation of the legal provisions. Under the Penal Code, defence of consent is allowed in relation to a victim above 15 years. However Act 2002 on National Child Protection sets 18 years as the age of consent. This contradiction between the two laws may lead to varied interpretation and weakens the case of the rape victims.
1.26 Is there an exemption from prosecution for marital rape? If yes, then there is no compliance with this indicator.	Partial	Law No. 23 of 2004 on regarding Elimination of Violence in Household, Article 8 (a) covers 'sexual violence include forcing sexual intercourse carried out against an individual living within the scope of the household'.	This indicator requires that marital rape be made unlawful and legal provisions be stipulated accordingly.  There is no direct provision on marital rape under the 2004 Law on the Elimination of Domestic Violence. Further, marital rape is not a criminal offence under Indonesia's Penal Code.
1.27 Is there mandatory prosecution for sexual offences?	No		This indicator requires that there be mandatory legal provisions to punish and redress the wrongs committed against female victims of sexual abuse.
1.28 Is bail unavailable for sexual offences if this presents a risk to the victim?	No		This indicator requires that bail not be granted to the accused if he poses a potential threat to the female victims.

**Article 1: Definition of Discrimination Against Women****Article 2: Obligation to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.29 Are there minimum sentences for sexual offences?	Yes	Law No. 23 of 2004 regarding Elimination of Violence in Household, Article 46 stipulates 'anyone committing sexual violence shall be punished by imprisonment of not longer than 12 years, or fine of not more than 36.000.000 million rupiah.'	Compliance with this indicator requires that the law impose minimum sentences for sexual offences.
1.30 Is there a provision in the criminal legislation which states that customary practices of forgiveness shall not affect criminal prosecution or sentencing?	No		The indicator requires that customary practices not be used as justification to reduce or withdraw sentences or not to prosecute the perpetrator of a crime.
1.31 Is there legislative provision for compensation for victims of sexual and domestic violence?	Partial	Law No. 21 of 2007 on the Eradication of the Criminal Act of Trafficking in Persons stipulates a provision on receiving restitution.  Article 8 (1) of the Law states 'every victim of a criminal act of trafficking in persons or his/her beneficiary is entitled to receive restitution. The victim can claim compensation for loss of assets or income; suffering; cost of medical and/or psychological treatment; and/or other losses suffered by the victim arising from the criminal act of trafficking in persons.'	Compliance with this indicator requires that law include compensatory measures for victims of sexual abuse.  Law No. 21 of 2007 is restricted to victims of human trafficking and does not provide compensatory relief in cases of domestic violence.
1.32 Does the criminal legislation allow for infanticide to replace a charge of murder or manslaughter?	No	The Indonesian Penal Code 1999, Article 341 criminalizes infanticide. The maximum punishment for this crime is seven years of imprisonment.	In the event that a mother causes the death of her child of 12 months or less, she should not be charged with manslaughter or murder. The indicator requires that such accused be charged with infanticide as this charge prescribes reduced sentences.
1.33 Does the definition of infanticide include environmental and social stresses?	No		The indicator requires that the defence of infanticide not be solely grounded on failure to recover from post-partum depression. It should also be linked to environmental and social stresses.

### Article 3: Guarantee of Basic Human Rights and Fundamental Freedoms

Indicator	Compliance	Relevant Legislation	Comments
3.1 Is there legislation establishing a national human rights machinery charged with promoting and protecting human rights including women's rights?	Yes	<p>The National Commission on Human Rights was established through the Presidential Decree No. 50 of 1993.<sup>61</sup></p> <p>Law No. 39 of 1999, Article 75 on Human Rights defines the functions of the National Commission on Human Rights: develop conditions conducive to the execution of human rights in accordance with Pancasila, the 1945 Constitution, the United Nations Charter, and the Universal Declaration of Human Rights; to improve the protection of human rights in the interest of the personal development of the Indonesian people as a whole and their ability to participate in various aspects of life.</p>	<p>This indicator requires that legally competent national tribunals and other public institutions be established to uphold women's rights.</p> <p>Other legal safeguards on women's human rights include the 2005 Presidential Decree on the National Commission on Violence against women. Article 2a and 2b stipulates the functions of the Commission: develop an environment conducive to the elimination of all forms of violence against women and the enforcement of women's human rights in Indonesia; strengthen efforts to prevent and address violence against women and to protect women's human rights.<sup>62</sup></p>
3.2 Is there legislation establishing a body to monitor the implementation of non-discriminatory law and policy for the advancement of women?	Yes	<p>The vision of the Ministry of Women and Child Protection of the Republic of Indonesia is to 'achieve gender equality and child protection'.<sup>63</sup></p> <p>The mission of the Ministry is to: encourage manifest gender responsive policies and child care for improving quality of life and protection of women, and the fulfillment of rights of the child's growth and protection from violence.</p>	<p>This indicator requires that a specific law be enacted to establish a national body for the advancement of women's interests and legal rights.</p> <p>The Women Parliamentarians Caucus was established in 1999 to promote a gender perspective and the human rights of female parliamentarians.<sup>64</sup></p>



#### Article 4: Acceleration of Equality between Men and Women

Indicator	Compliance	Relevant Legislation	Comments
4.1 Does the Constitution contain a temporary special measures provision?	Yes	<p>The Constitution of the Republic of Indonesia 2002, Article 28H (2) stipulates 'every person shall have the right to receive facilitation and special treatment to have the same opportunity and benefit in order to achieve equality and fairness.'</p> <p>Law No. 2 of 2008 on Political Parties, Article 2 (2) stipulates 'the formation and establishment of a Political Party ... must include 30 per cent women's representation.'</p> <p>Law No. 10 of 2008 on General Elections, Article 53 states 'the list of prospective candidates shall contain a minimum 30 per cent representation of women'. Article 55 (2) stipulates 'In the list of prospective candidates ... in every three prospective candidates there shall be at least one female prospective candidate.'</p>	<p>Compliance with this indicator requires that there be a constitutional provision on temporary special measures for advancing women's political, economic, social and legal rights.</p> <p>On 23 November 2008, the Constitutional Court ruled that Article 214 of Law No. 10 of 2008 is not in line with the Constitution of the Republic of Indonesia, and therefore was annulled. The Article 214 allowed parties to determine their representatives in legislative bodies based on numerical order system of seat distribution.</p> <p>The Court ruling now requires political parties to assign legislative seats to candidates who win the most votes. There is an opinion that allocating women specific seats is undemocratic. The court's ruling may damage women's chances of winning seats because of their limited political exposure and poor financial support.<sup>65</sup></p>
4.2 Are special measures exempt from discrimination on the grounds of sex, marital status, sexual orientation, disability and HIV status?	No		<p>This indicator requires that special measures be exempt from constitutional provisions on non-discrimination. A special measure adopted to redress legal inequities against women should not be challenged on the grounds that it discriminates against men.</p>

Article 5: Sex roles and Stereotypes			
Indicator	Compliance	Relevant Legislation	Comments
5.1 Is there a provision in the Constitution which gives precedence to a constitutional guarantee of equality if there is a conflict between custom and equality law?	Yes	The Constitution of the Republic of Indonesia, Article 18B (2) states 'the state recognizes and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law'.	Compliance with this indicator requires that constitutional provisions on equality prevail over discriminatory customary laws and practices.  Despite efforts, women's sex roles and stereotypes remain major challenges to the implementation of the Convention. In this regard, the Indonesian Government has taken many measures which include establishing additional Gender Study Centres (WSC) and strengthening existing centres. These centres provide inputs and recommendations for the formulation of policies and programmes at the local and national levels. <sup>66</sup>

Article 6: Exploitation of Women			
Indicator	Compliance	Relevant Legislation	Comments
6.1 Is the act of soliciting decriminalized?	No	According to the Indonesian Penal Code 1999, Article 296 soliciting is prohibited.	This indicator requires that sex work be decriminalized.
6.2 Is aiding and abetting consensual acts of soliciting decriminalized?	No		This indicator requires that brothels and third parties who facilitate sex work not be criminalized for their activities where the worker has reached age of majority.
6.3 Is it a criminal offence to procure any woman without consent or any girl under 18?	Yes	Penal Code 1999, Article 297 specifies 'trade in women and minors of the male sex shall be punished by maximum imprisonment of six years'.	This indicator requires that procuring a girl below 18 years be unlawful.
6.4 Does employment legislation including occupational health and safety legislation protect sex workers?	No		The indicator requires that sex workers be granted the same rights as other workers. They should be covered by relevant employment laws and be in a position to enjoy benefits and equal legal protection from exploitation.



Article 6: Exploitation of Women			
Indicator	Compliance	Relevant Legislation	Comments
6.5 Is the trafficking of women prohibited?	Yes	The Law of the Republic of Indonesia on the Eradication of Criminal Act of Trafficking in Persons, 2007 prohibits human trafficking. <sup>67</sup>	<p>This indicator requires that all forms of human trafficking be declared unlawful.</p> <p>It is reported that Indonesia serves as a source, transit and receiving country of trafficking in persons. Based on the Indonesian Migrant Workers Consortium estimate, there are 1,000,000 Indonesian migrant workers and about 20 per cent are trafficked each year.<sup>68</sup></p> <p>The lack of training for police and court officials on gender and the specifics of gender-based crimes, including human trafficking may prevent successful prosecution of perpetrators.<sup>69</sup></p>
6.6 Is sex tourism prohibited?	Yes	The Law of the Republic of Indonesia on the Eradication of Criminal Act of Trafficking in Persons 2007 prohibits human trafficking.	This indicator conveys the sense that sex tourism is a form of sexual exploitation that therefore should be made unlawful.

Article 7: Political and Public Life			
Indicator	Compliance	Relevant Legislation	Comments
7.1 Is there an equal right to vote?	Yes	Law No. 39 on Human Rights 1999, Article 43 (1) stipulates 'every citizen has the right to vote and be voted for in general elections.'	This indicator requires that women have an equal right to suffrage.
7.2 Is there equal eligibility for political representation?	Yes	Law No. 39 of 1999, Article 48 (1) on Human Rights, stipulates 'women have the right to select and be selected and appointed to an adequate job, position or profession, in line with prevailing law'.	<p>This indicator requires that women have equal eligibility rights to political representation.</p> <p>In the 2009 elections, women's representation in national legislative body has increased from 11.6 per cent in the 2004 elections to 18.2 per cent.</p>

## Article 7: Political and Public Life

Indicator	Compliance	Relevant Legislation	Comments
7.3 Is there legislative provision for minimum quotas of women in Parliament?	Partial	Law No. 2/2008 regarding Political Parties and Law No. 10/2008 on General Elections requires 30 per cent quota for female legislative candidates.	<p>This indicator requires that special measures, such as quotas, be adopted to promote women's participation in the political sphere.</p> <p>As a setback to women's political representation, the Constitutional Court's verdict, in 2008, amended voting pattern from the order number system to majority vote in the legislative election. The decision dismantled the mechanism of a 'zipper' system in which for every three candidates fielded by political parties, at least one had to be a woman. The non-compulsory quota of 30 per cent women as candidates on the open ballot remains in place.</p> <p>Certain discriminatory local regulations and bylaws might hinder women's political participation. It is reported that 154 such regulations do exist in Indonesia. Restriction on women's mobility and morality are some of the limitations imposed by these regulations.</p> <p>Such limitations restrict women's equal access to political opportunities at the local levels and may also hinder the decentralization process.<sup>70</sup></p>
7.4 Do women have an equal right to participate in NGOs?	Yes	Law No. 39 of 1999 on Human Rights, Article 24 (2) states 'every citizen or group has the right to found a political party, non-government organization, or other organization, in order to take part in the government or administration of the state and nation, for the purpose of protecting and promoting human rights, according to prevailing law'.	This indicator requires that women should have equal opportunities to participate in non-governmental organizations.
7.5 Is there legislation (other than Charitable Societies legislation) enabling NGOs to register and mobilize to promote the advancement of women without political interference?	Yes	There are no legal barriers.	This indicator requires that legal provisions be stipulated allowing non-government organizations to advocate for women's rights.

Article 8: International Representation and Participation			
Indicator	Compliance	Relevant Legislation	Comments
8.1 Do women have an equal opportunity to represent government at international level and participate in the work of international organizations?	Yes	The country was led by a female President during the term 2001–2004. Some women also held prominent positions at international levels as members of the UN CEDAW Committee (in 1987–1990, 1995–1998, and 2001–2004); as President of the International Council of Women (ICW), in the early 90's for one term; Member of the Board of Trustees UNINSTRAW, 1985–1991 etc.	The indicator requires that women should have an equal right to represent government at international levels and to participate in the work of international organizations. However, women's representation and participation at international level is limited. The 2009 Department of Foreign Affairs data shows the percentage of its women employees is 30 as compared to 70 per cent of its male staff. <sup>71</sup> Indonesia has only 7.1 per cent female ambassadors. <sup>72</sup>

Article 9: Nationality and Citizenship			
Indicator	Compliance	Relevant Legislation	Comments
9.1 Do women have an equal right to acquire, change or retain their nationality?	Yes	Law No. 39 of 1999 concerning Human Rights, Article 26 (1) states 'everyone has the right to obtain, change, and maintains his/her nationality'.	Nationality rights affect women's right to vote, stand for public office, choice of residence and access to public services. This indicator requires that women have equal rights to acquire, change or retain their nationality.
9.2 Does marriage to an alien or change of husband's nationality affect a wife's nationality? If there is no change to a wife's nationality after marriage, then there is full compliance with this indicator.	No	The Law of the Republic of Indonesia, Act No 12, on Citizenship 2006, Article 26 (1) concerning Citizenship stipulates: 'female citizens of the Republic of Indonesia who marry male citizens of foreign nationality will automatically lose their Indonesian citizenship if by law of her husband's country; the citizenship of the wife will follow that of the husband as a result of their union.' <sup>73</sup>	This indicator requires that in the event of a woman's marriage to a foreign national, her autonomy and independence should not be compromised. Women's right to equal nationality is restricted due to certain discriminatory provisions of the 2006 Law on Citizenship. As per Article 26, an Indonesian woman married to foreign national may lose her nationality in case she fails to declare the desire to retain her Indonesian nationality in due time. <sup>74</sup> In order to overcome this barrier, Indonesian embassies should enhance their access and outreach to Indonesian women who live abroad. This will enable them to inquiry their status in accordance with the Law. Apart from discriminatory provisions, there are also certain legal gaps in Law 12/2006. It does not yet address citizenship issues of women who are facing migration problems or are currently being trafficked. <sup>75</sup>

Article 9: Nationality and Citizenship			
Indicator	Compliance	Relevant Legislation	Comments
9.3 Do both spouses have equal rights to residency, citizenship and employment when married to a non-national?	Yes	The Law of the Republic of Indonesia, Act No 12, on Citizenship 2006, Article 8 allows a non national husband and wife to acquire Indonesian nationality.	Laws, in some cases, may deny non-national husbands automatic residency or citizenship rights. The indicator requires that such legal restrictions be removed.
9.4 Do both spouses have an equal right to determine the nationality of children?	Yes	The Law of the Republic of Indonesia Act No 12, on Citizenship 2006, Article 4, states Indonesian citizens are: (c) a child born from a legitimate marriage of an Indonesian citizen father and a foreign citizen mother; (d) a child born from a legitimate marriage of a foreign citizen father and an Indonesian citizen mother.	This indicator requires that men and women have equal rights to determine the nationality of their children. Any law under which children automatically acquire the nationality of their father but not their mother is discriminatory. Despite of equal rights to determine the nationality of children, women may face <i>de facto</i> challenges. It is reported that many women face difficulties in obtaining birth certificates for their children. The affected group may include: women who give birth out of wedlock; women in unregistered religious/traditional marriages; poor or marginalised women who may themselves not have a birth certificate or an identity card, or the money to pay for obtaining a birth certificate. This may restrict mother and child's right to obtain access to public services. <sup>76</sup>
9.5 Do women have an equal right to obtain a passport?	Yes	Women can obtain passports and other travel documents independently.	This indicator requires that women have equal rights to obtain a passport. There should be no legal restrictions – such as a requirement for the husband's consent – imposed on them.

Article 10: Education			
Indicator	Compliance	Relevant Legislation	Comments
10.1 Does the legislation guarantee women and girls equal access to education? Do women and girls have equal access to education?	Yes	The Act of the Republic of Indonesia No. 20, 2003 on the National Educational System, Article 5 (1) states 'every citizen has equal rights to receive a good quality education'. Article 6 (1) of the Act on National Educational System 2003 stipulates that every citizen of the age of seven to 15 years is obliged to undertake basic education. The Article 7 stipulates that every child is entitled to free primary education. <sup>77</sup>	This indicator requires that legal provisions allow women and girls equal access to all forms and levels of education.  Contrary to these legal requirements, women's and girls' access to education may be limited. For instance, in rural communities, boys may be given preference over girls' education. Factors such as poverty, expensive transportation and early marriages may restrict girls' access to education opportunities. <sup>78</sup>

Article 10: Education			
Indicator	Compliance	Relevant Legislation	Comments
10.2 Is there legislation that creates special measures for the advancement of women in education?	Yes	The constitution provision stipulates 'every person is entitled to special treatment to achieve equality and fairness.'	This indicator requires legal provisions on affirmative action for women in the field of education.  As per the constitutional requirement, a number of temporary special measures have been undertaken for girls. They include quotas, fellowships and subsidies at all levels including guaranteed admission for girls to schools and institutions of higher education. <sup>79</sup>
10.3 Is there compulsory primary education for girls and boys?	Yes	The Act of the Republic of Indonesia No. 20, 2003 on National Educational System, Article 6 (1) stipulates that every citizen of the age of seven to 15 years is obliged to undertake basic education.	This indicator requires that legal provisions be enacted on compulsory primary education for all.
10.4 Is there compulsory secondary education for girls and boys?	No		The indicator requires that there be legal provision on compulsory secondary education for boys and girls.
10.5 Is family life (reproductive and sexual health) education compulsory in schools?	No		The indicator requires that there be legal provisions for family life education. It should be a compulsory subject during secondary schools.
10.6 Is there a legislative prohibition of expulsion from school because of pregnancy?	No		This indicator requires that there not be any legal barrier to pregnant girls' right to pursue education in schools.

Article 11: Employment			
Indicator	Compliance	Relevant Legislation	Comments
11.1 Are there anti-discrimination provisions in employment legislation on the grounds of sex, marital status, disability, pregnancy, and sexual orientation and HIV status with sanctions?	Yes	The Constitution of the Republic of Indonesia 2002, Article 28 (2) clearly stipulated that every citizen has the right to work and make a living.  Act of the Republic of Indonesia No. 13, 2003 concerning Manpower, Article 5 stipulates 'any manpower (worker) shall have the same opportunity to get a job without discrimination.' <sup>80</sup>	The indicator requires that labour laws grant female workers the same employment rights, opportunities, choices and benefits as men. Appropriate sanctions should also be imposed in the event of violation of female workers' rights.

Article 11: Employment			
Indicator	Compliance	Relevant Legislation	Comments
11.2 Are there special measures provisions for the advancement of women in employment?	Yes	<p>Law No. 39 of 1999 concerning Human Rights, Article 49 (1) states ‘women have the right to select, be selected and appointed to an adequate job, position or a profession, in line with prevailing law’.</p> <p>Act of the Republic of Indonesia No. 13, 2003 concerning Manpower, Article 81 (1) provides for menstrual leave two days (the first and second day of menstruation) in a month.</p>	This indicator requires legal provisions allowing affirmative action – quota, preferential treatment during recruitment, legal protection to pregnant workers – for female workers. This aims to redress past discrimination against them and also to promote substantive equality in the sphere of employment.
11.3 Do women enjoy equal conditions of work including leave, superannuation and Workers Compensation?	Yes	<p>The Government Regulation No. 8 of 1981 on Wage Protection provides that employers shall not discriminate between female and male workers in determining the rates of remuneration for work of equal value.</p> <p>The circular letter of the Minister of Manpower No. 04 of 1988 prohibits discrimination between men and women in collective labour agreements, including gender-based differentials for pension-age and the provision of health care for workers and their families (unless the husband is working in the same enterprise and is already covered).</p>	<p>This indicator requires that female workers be provided with the same working conditions as other employees – leave entitlements; retirement benefits and compensation. Labour laws, at times, fail to protect the legal interest of domestic workers, casual workers or part-time workers.</p> <p>State pronouncements hold that women are under-represented in the workforce. They are more likely to be working part-time or long hours. They are also less likely to be self-employed and half as likely as men to be employers. The sectors where women have the greatest representation – agriculture and trade – are generally less regulated and are less well paid than other sectors.<sup>81</sup></p>
11.4 Does the legislation provide sexual harassment protection from employers and co-workers?	No	There is no specific law that deals with problems of sexual harassment at workplace.	The indicator requires specific legal provisions that prohibit sexual harassment at workplace.
11.5 Does the definition of sexual harassment include the breadth of unwanted behaviours?	No		This indicator requires that a law on sexual harassment at the workplace include and define a comprehensive range of unwanted behaviours.
11.6 Does the legislation contain an equal pay provision?	Yes	The Government Regulation No. 8 of 1981 on Wage Protection provides that employers shall not discriminate between female and male workers in determining the rates of remuneration for work of equal value.	The indicator requires that legal provisions uphold female workers’ right to pay equal to that of male workers.



Article 11: Employment			
Indicator	Compliance	Relevant Legislation	Comments
11.7 Does the legislation contain pay equity provisions?	No		This indicator requires that employment law uphold the principle of 'equal treatment in respect of work of equal value' (Article 11 (d) of CEDAW). <sup>82</sup>
11.8 Does the legislation provide for an equal retirement age?	Yes	The circular letter of the Minister of Manpower No. 04 of 1988 prohibits gender-based differentials for pension-age. <sup>83</sup>	This indicator requires that the law allows for equal retirement age for female and male workers.
11.9 Are there restrictions on women's choice of employment? If there are no restrictions on women's choice of employment, then there is full compliance with this indicator.	Yes	<p>The Act of the Republic of Indonesia No. 13, 2003 concerning Manpower, Article 76 (3 and 4) safeguards the rights of female workers engaged in night shifts. Entrepreneurs are expected to arrange for their roundtrip transport, provide nutritious food and maintain security at the workplace.</p> <p>Ministerial Decree No. 04 of 1989 on night shifts of female workers was repealed through the Ministerial Decree 224/2003. Currently the woman worker is not obliged to have her husband/family consent to her working at night.<sup>84</sup></p>	Protective laws that prohibit women from working in particular field of employment or particular hours – night shifts – are discriminatory. The indicator requires that such protective legal provisions be removed.
11.10 Does the legislation provide for health protection during pregnancy?	Yes	<p>Ministerial Regulation No. 3 of 1989 prohibits employers from laying-off women workers due to marriage, pregnancy or childbirth.</p> <p>Article 2 of this regulation points out that if, due to the characteristics of the work, a pregnant worker cannot perform her duties, the employer is required to substitute duties without compromising her rights in the company. If the employer fails to arrange for substitution of work, then longer maternity leave must be given.</p> <p>The Act of the Republic of Indonesia No. 13, 2003 concerning Manpower, Article 76 (2) prevents entrepreneurs from employing pregnant women in night shifts as this might be 'harming their own safety and safety of the baby'. A doctor's certificate is needed for enforcing this prohibition.</p>	The indicator requires that special legal protection measures be included in employment laws for pregnant workers. Such measures may include: breaks; light work; time to attend medical checks.

Article 11: Employment			
Indicator	Compliance	Relevant Legislation	Comments
11.11 Does the legislation provide paid maternity leave of not less than 14 weeks?	No	The Act of the Republic of Indonesia No. 13, 2003 concerning Manpower, Article 82 (1) grant three-month maternity leave.	This indicator requires that legal provision grant 14 weeks of maternity leave to female workers in both public and private sectors.  A female worker is entitled to a one-and-a-half month period of rest before the time at which she is estimated by an obstetrician or a midwife to give birth and another one-and-a-half month period of rest thereafter.
11.12 Does the legislation provide protection from dismissal because of pregnancy or maternity leave?	Yes	The Act of the Republic of Indonesia No. 13, 2003 concerning Manpower Article 153 (1-e) prohibits entrepreneurs from terminating female workers on the basis of the worker being pregnant, giving birth, having a miscarriage, or breast-feeding her baby.  Paragraph (2) of the Article states that any termination that takes place for that reason shall be declared null and void by law and the employer shall be obliged to re-employ the affected worker.	This indicator requires that employment law provide legal protection to female workers against dismissal due to pregnancy or maternity leave.
11.13 Does the legislation guarantee the provision of childcare by employer or state?	No		The indicator requires that legal provision obligate the employer or the state to adopt special childcare measures for female workers.
11.14 Does the legislation provide reasonable nursing time during work hours?	Yes	The Act of the Republic of Indonesia No. 13, 2003 concerning Manpower, Article 83, 2003 stipulates 'employers are under an obligation to provide proper opportunities to female worker/labour whose babies need breastfeeding; a worker has to be allocated time to breast-feed their babies if that must be performed during working hours'	The indicator requires that labour law uphold female workers' right to breastfeed their children during work hours.

Article 12: Health Care and Family Planning			
Indicator	Compliance	Relevant Legislation	Comments
12.1 Do women have access to safe and legal abortion facilities?	No	According to the Penal Code of Indonesia 1999, Article 341 abortion is a criminal offence.	<p>The indicator requires that the law makes abortion legal and stipulate provisions for safe abortion.</p> <p>By law, an abortion conducted outside recognized medical facilities is illegal. Factors such as inadequate family planning rape, desperate economic circumstances or pregnancy outside of marriage may force some women to resort to unsafe abortion methods. Complicated abortion is reported to be responsible for 15 per cent of the maternal mortality rate.<sup>85</sup></p>

Article 13: Economic and Social Benefits			
Indicator	Compliance	Relevant Legislation	Comments
13.1 Do women have an equal right to family benefits regardless of marital status?	Partial	<p>Male and female Government civil servants are entitled to family benefits in accordance with their ranks and positions within the bureaucracy.</p> <p>For spouses who are both working as Government civil servants, the family benefits are vested in the person who has a higher rank and position, and therefore a higher salary.</p> <p>Another benefit provided to civil servants is health/medical insurance without gender discrimination; this also includes expenses for a maximum of two deliveries.<sup>86</sup></p>	<p>The indicator requires that the law grant female workers equal rights to social security and benefits.</p> <p>However, the Government has not been able to enforce such provisions for all private enterprises. Not all enterprises participate in the Social Security Scheme.<sup>87</sup></p>
13.2 Do women have an equal right to obtain bank loans, mortgages and financial credit?	Yes		The indicator requires that the law upholds women's equal rights to obtain loans, mortgages and financial credit.
13.3 Do women have an equal right to participate in recreational activities, sports and cultural life?	Yes	There is no legal restriction on women participating in social life, including participation in entertainment, sports and recreational activities.	The indicator requires that the law does not impose restriction on women's equal rights to participate in recreational activities and cultural life.

Article 14: Rural Women			
Indicator	Compliance	Relevant Legislation	Comments
14.1 Is there legislation that provides for special measures to advance substantive equality for rural women?	Partial	The Poverty Eradication Policy 2003 is designed to benefit rural women. It provides them: Increased public services; good governance; community empowerment through improved access to economic resources; social security system focused on the poor, handicapped, and victims of social conflict.	The indicator requires that the law provide for affirmative action to uphold the rights of rural women.  However certain laws may affect rural women's interests. Law No 25, 2007 concerning Foreign Investment allows foreign investors to exploit Indonesian water resources for 95 years. This may pose a threat to women's access to and control of natural resources. <sup>88</sup>

Article 15: Equality before Law and Civil Matters			
Indicator	Compliance	Relevant Legislation	Comments
15.1 Does the Constitution guarantee equality before the law?	Yes	The Constitution of the Republic of Indonesia, Article 27 (1), stipulates: 'all citizens shall be equal before the law and the government shall be required to respect the law, with no exceptions.'  Law No. 39 of 1999 concerning Human Rights, Article 5 (1) states 'everyone is recognized as an individual who has the right to demand and obtain equal treatment before the law as befits his or her human dignity'.	The indicator requires a constitutional provision on equality before the law.  In Indonesia, based on the Criminal Procedural Code No. 8 of 1981, free legal counsel is available to poor suspects, especially suspects under threat of jail sentences of 15 years or above. <sup>89</sup>
15.2 Do women have an equal capacity in civil matters – can women sue?	Yes	The Indonesian Civil Code, 1847 confers equal legal capacity to both men and women. <sup>90</sup>	The indicator requires that there not be any legal restrictions on women's civil rights. Such rights include: capacity to initiate litigation; access legal advice; or seek redress from the courts.
15.3 Do women have an equal right to participate in courts and tribunals at all stages?	Yes	Women were granted equal rights with men to participate in every stage of the judicial process. Women can also act as prosecutors, lawyers, and judges and take part in the deliberations of the courts – first level courts, Appellate Court, and Supreme (cassation) Court.	The indicator requires that women have equal legal rights to participate in the courts and their proceedings.
15.4 Do women have an equal right (regardless of marital status) to conclude contracts and administer property?	Yes	The Marriage Law No. 1 of 1974, Article 36 (2) stipulates 'as for their respective property that they bring along into the marriage, husband or wife has the full right to conduct a legal act concerning their respective property'.	This indicator requires that women have the right to enter into a contract independently without the consent of a husband or male relatives.
15.5 Do women have an equal right to be executors or administrators of estates?	No	Under the Indonesian Civil Code 1847, Article 1006 married women are barred from being executors of wills.	This indicator requires that women have equal legal capacity in civil matters such as the administration of estates.

Article 15: Equality before Law and Civil Matters			
Indicator	Compliance	Relevant Legislation	Comments
15.6 Is there legislation that nullifies all contracts and instruments that limit women's legal capacity?	No		This indicator requires that any law that limits the capacity of women to conclude contracts be changed.
15.7 Do women have an equal right to choose residence and domicile?	No	The Civil Code 1847, Article 21 states 'married woman shall not have any other residence other than that of husband.'	This indicator requires that women have equal right to choose their residence and domicile.

Article 16: Personal and Family Law			
Indicator	Compliance	Relevant Legislation	Comments
16.1 Does the legislation guarantee entry into marriage with full and free consent?	Yes	The Law on Marriage 1974, Article 6 (1) stipulates that men and women have equal rights to enter into marriage and consent of both parties is required for a valid marriage.	The indicator requires that the law upholds women's right to freely choose a spouse and to enter into marriage with their free and full consent.  However, the Marriage Law No. 1 of 1974, Article 31 (3) distinguishes the role of a husband from that of a wife. He is considered the 'head' of the family and the wife is regarded 'mother' of the household. This marital division of roles may restrict the freedoms of married women.
16.2 Does the legislation allow marriages to be nullified if they are entered into under force, duress or undue influence?	No		The indicator requires that the law nullifies forced marriages.
16.3 Is there an equal minimum age of 18 for marriage?	No	The Law on Marriage 1974, Article 7 (1) sets 16 years and 19 years as the minimum age for a girl and a boy respectively.	This indicator requires that the law set 18 years as the minimum age of marriage for both boys and girls.  In Indonesia, it also has been proposed that the legal age for marriage be similar to the age recommended in the Law No 23 of 2002 on Child Protection which has been set at 18 years.
16.4 Is there a legislative prohibition of child marriage?	No		The indicator requires that the marriage law prohibits child marriage below the age of 18 years.
16.5 Does the legislation require registration of marriage in an official registry?	Yes	The Law on Marriage 1974, Article 2 (2) stipulates that each marriage shall be entered in a register conforming to the statutory regulations.	The indicator requires legal provision for registration of marriages. This is a good way of tracking child marriages, and cases of polygamy. It also facilitates women's claim for spousal benefits after divorce.

## Article 16: Personal and Family Law

Indicator	Compliance	Relevant Legislation	Comments
16.6 Does the legislation prohibit bigamy?	No	The Law on Marriage 1974, Article 4 (2) allows polygamy. The grounds for practicing polygamy include: spouse's inability to carry out her responsibility as wife; physical disability; and inability to bear children.	This indicator requires that family legislation prohibits bigamy or polygamy. Under the Law on Marriage 1974, the court will grant permission for second marriage to husband subject to 'consent' of existing wife. However bigamy or polygamy is against CEDAW's requirement of equality within marital relationships.
16.7 Do women have an equal right to choose a family name?	Yes	A married woman is legally entitled to keep her maiden name or to use the name of her husband.	This indicator requires that the family law upholds married women's right to choose a family name.
16.8 Is the consent of both parents equal in the marriage of minors?	Yes	The Law on Marriage 1974, Article 7 (1) stipulates that men and women should obtain consent from their parents and give their consent for the union if the bride or the groom is under 19 years old.	This indicator requires that the legal provisions grant equal rights to both parents on matters concerning their children. A legal provision that allows for the father's consent alone for a child marriage is discriminatory.
16.9 Are both spouses equal in the ownership, acquisition, management, administration, enjoyment and disposition of property?	Yes	The Law on Marriage 1974, Article 35 (1) stipulates 'property acquired during marriage shall become joint property'. Paragraph (2) of the Article states 'Property brought into marriage by the husband and the wife respectively and property acquired by either of them as a gift or inheritance shall remain under their respective control, unless otherwise decided between the parties'. Article 36 (1) of the Law on Marriage 1974 stipulates that the husband or wife may dispose of the joint property with mutual consent.	This indicator requires that legal provisions include spouses' equal rights to acquire, own, manage, administer or dispose of property.
16.10 Does the legislation provide for a maintenance and custody order during separation based on need?	Yes	The Law on Marriage, Article 41 stipulates 'both the father and the mother remain responsible for the sustenance and education of their children, exclusively to serve the children's interest. In case of dispute concerning custody of the children, the Court shall decide the matter; the father is responsible for all expenses of the children's sustenance and education; in case the father is unable to fulfil his obligations, the Court may decide that the mother shall bear such responsibility; the Court may also obligate the ex-husband to pay alimony and/or impose one or other obligation upon the ex-wife'.	This indicator requires that the family legislation stipulate provisions on maintenance and custody orders of children where woman decides to seek a divorce.



Article 16: Personal and Family Law			
Indicator	Compliance	Relevant Legislation	Comments
16.11 Is there legislation to enable women to occupy the marital home when settlement is not possible or in situations of domestic violence?	No		This indicator requires legal provision that allows a woman to remain in the marital home until property settlement is finalized.
16.12 Does the legislation provide an order for restitution of conjugal rights? If there is no such order in the legislation then there is full compliance with this indicator.	Yes	The Law on Marriage 1974 does not have any provision on restitution of conjugal rights.	At times, courts may order married persons (men or women), who have applied for divorce, to return to the marriage and fulfil their marital responsibilities. This may impact women's freedoms, and limits their choices. In some cases it may amount to legal sanctioning of marital rape.
16.13 Does the legislation provide for no-fault divorce?	No	The Law on Marriage 1974 specifies the grounds for a divorce: adultery or addiction to alcohol or narcotics; gambling or other vice that is hard to cure; abandonment for two continuous years; imprisonment for five years; physical disability or inflicted disease preventing him or her from performing his or her conjugal duties; acts of cruelty and constant disputes with the spouse.	This indicator requires that the law prohibits fault-based divorce. A requirement of evidence of matrimonial offences – cruelty, desertion, any physical disability – may compromise women's dignity in divorce cases.  Under Indonesian law, dissolution of a marriage must be decided by the courts on the basis of certain grounds.
16.14 Is there a duty of the court to promote reconciliation? If the legislation does not contain such a duty then there is full compliance with this indicator.	No	The Law on Marriage, Article 39 (1) stipulates that a divorce may be decreed only before the Court, after the Court has unsuccessfully endeavoured to reconcile the parties.	The indicator requires that there be no legal provision that obligates courts to promote reconciliation between parties.
16.15 Does the legislation provide for an equal division of property after divorce including recognition of unpaid contribution; are future needs and future earning capacity calculated?	Yes	The Law on Marriage 1974, Article 37 stipulates that in the case of a marriage that is dissolved by divorce, joint property is to be disposed of according to the relevant law.	The indicator requires that the law uphold women's equal right to marital property after divorce. It should also recognize their non-financial family contributions – raising children; caring for elderly relatives; and discharging household duties.
16.16 Does the legislation provide for the payment of child support upon divorce based on need?	Yes	The Law on Marriage 1974, Article 41 (b) stipulates that the father is responsible for all expenses of the children's sustenance and education; in case the father is unable to fulfil his obligation, the Court may decide that the mother shall bear such responsibility.	This indicator requires that there be a legal obligation on fathers to provide child maintenance support after divorce.

## Article 16: Personal and Family Law

Indicator	Compliance	Relevant Legislation	Comments
16.17 Does the legislation provide maintenance for the ex-spouse based on commitments, income, earning capacity and assets?	Yes	Article 41 (e) of the Law stipulates that the Court of Law may bestow the obligation upon the ex-husband to pay alimony and/or determine some other form of compensation to the ex-wife.	Compliance with the indicator requires that legal provision uphold women's maintenance rights after divorce.  In Indonesia, there is no legal sanction if the ex-husband does not fulfill his maintenance obligations.
16.18 Is custody and access to children based on the best interests of the child regardless of the relationship of the parents?	Yes	The parents continue to bear responsibilities of nurturing and educating their children in the best interests of the children.	Compliance with this indicator requires that courts be legally bound to uphold the best interests of the children in custody cases.
16.19 Does the legislation provide damages for adultery? If the legislation does not provide damages for adultery then there is full compliance with this indicator.	No	Under Penal Code provision, Article 284 adultery is a criminal offence.	This indicator requires that there be no legal recognition of damages for adultery.
16.20 Does the legislation recognize <i>de facto</i> rights (including same-sex couples) on the same basis as marriage?	No		The indicator requires that the law recognizes <i>de facto</i> relationships and grant rights to couples on the same basis as marriage.
16.21 Do women have equal rights to guardianship, wardship, trusteeship and adoption?	Yes	The Law on Marriage 1974, Article 41 (a) states that both mother and father 'remain responsible for the sustenance and education of their children'. In case of a dispute concerning custody of the children 'the court shall decide the matter'.	This indicator requires that the law uphold women's equal rights to guardianship, trusteeship and adoption.
16.22 Does the legislation provide for an order establishing parentage?	No		Both parents are considered jointly responsible for the raising and maintenance of their children. In cases where a child's parentage is not established, a mother may be prevented from claiming child support. A legal remedy is provided through a court order to establish parentage.
16.23 Does the legislation provide for a contribution to pregnancy and childbirth costs by the father to an unmarried mother?	No		This indicator requires that the law obligate both parents, irrespective of marital status, to contribute to childbirth and pregnancy costs.
16.24 Does the legislation provide for the payment of child support for children born outside marriage?	No		The indicator requires that the law obligate both parents to contribute to child support irrespective of marital status.

Article 16: Personal and Family Law			
Indicator	Compliance	Relevant Legislation	Comments
16.25 Does the legislation provide for equal rules of inheritance?	No	The Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law, Article 176 stipulates if there are one daughter and one son, the son will have two shares compared to one for the daughter. <sup>91</sup>	The indicator requires that there be no legal discrimination against women's equal rights to inheritance.  However, a testator has the freedom to determine and divide equally the share of inheritance to legatees. Article 183 of the Presidential Instruction states that the inheritors could agree among themselves concerning the part of inheritance each will have. This Article allows the inheritors to decide among themselves that the inheritance will be equally divided. <sup>92</sup>
16.26 Is there legislation requiring the application of CEDAW and CRC to domestic family law where relevant?	Yes	Law No. 39 of 1999 concerning Human Rights, Article 7 (2) stipulates that provisions set forth in international law concerning human rights ratified by the Republic of Indonesia are legally binding.	The indicator requires that legal provisions allow the courts to apply international conventions in interpreting family legislation.



# 3

## Legal Inequalities Curtail Women's Rights in Pakistan

# 3. Legal Inequalities Curtail Women's Rights in Pakistan

## 3.1 Introduction and Overview of Legislative Compliance

As this national legislative assessment study indicates, Pakistan's legal systems are influenced by factors such as religion, culture and traditional practices. The 1973 Constitution declares that Islam is the state religion. Islamic Law governs practices related to marriage, divorce, inheritance and rules of evidence. The Constitution of the Islamic Republic of Pakistan 1973 enshrines the principles of fundamental freedoms and equal rights of all citizens. It also has provisions on general non-discrimination. These constitutional provisions are in line with the articles of CEDAW. The 1860 Penal Code provides limited protection to women against acts of sexual violence. However it has yet to legislate against discriminatory requirements of proof – prior sexual conduct, necessity of corroboration or the evidence of physical resistance by the victim. The application of these rules by the courts makes it difficult to bring sexual assault offenders to justice and contradict CEDAW's principles of non-discrimination and equality. Women's economic rights are not fully realized. The constitutional provision requires 'women and children not to be employed in vocations unsuited to their age or sex'. Certain statutory labour laws prohibit women from night work thus limiting their employment opportunities. However, over the past few years many legal reforms – legislative and judicial – have been undertaken to address legal discrimination against women. These reforms testify to the country's commitment to bring national laws in sync with CEDAW benchmarks on gender equality.

This section assesses Pakistan's legislative compliance with CEDAW's articles. Pakistan ratified CEDAW on 12 April 1996 obliging it to bring its constitution and legislation into accord with the articles of CEDAW.<sup>1</sup> Overall, Pakistan has achieved full compliance with 51 of 113 indicators, partial compliance with 17 indicators and is non-compliant with respect to the

remaining 45 indicators. About 46 per cent of its laws are fully compliant with CEDAW benchmarks. The factors that contribute to Pakistan's national laws non-compliance with the Convention are many. The varied interpretation and misuse of religion has open doors of legal discrimination against women – such as the draconian 1979 Hudood Ordinance. Equally important is the role of harmful customs and gender stereotypes that have allowed gender discrimination to persist and prevail in Pakistan's justice systems – *vani* is still practiced in parts of Pakistan despite of being illegal. The list of legal challenges is long and worrisome – the discriminatory Hudood Ordinance and Qisas and Diyat Ordinance; unequal laws of evidence, inheritance and nationality; harmful custom of honor killings; ban on female workers' night work; allowances for bigamy and unfair child custody rights.

The main findings of Pakistan's compliance with sixteen substantive articles of the Convention include:

### To embody equality within national constitution and repeal discriminatory national penal code provisions

The Constitution of the Islamic Republic of Pakistan 1973 upholds the rights and freedoms of its citizens in most of the areas covered by CEDAW. Citizens enjoy 'full freedom of movement, association, speech, profession and assembly'.<sup>2</sup> It also requires full participation of women in national life.<sup>3</sup> In compliance with CEDAW's benchmarks, a constitutional provision stipulates that there will be no discrimination on the basis of sex alone.<sup>4</sup> Any discriminatory act of the state, its agents or those acting on behalf of the state can be challenged in the courts. The courts – the Supreme Court, Federal Shariat Court, the High Courts and the District Courts reporting to the High Courts – are authorized to provide relief to victims.<sup>5</sup>

However, there is a gap between the law and its enforcement. The constitutional provisions on 'principles and procedures' are not implemented



effectively. Although any citizen can approach the court in the case of a violation of his or her rights, this does not always guarantee fair and impartial dispensation of justice. The factors attributed to restricted access to the justice system may include a low level of literacy and a lack of awareness of one's rights. Although the Constitution prohibits discrimination and upholds the principles of equality before the law, it does not provide for 'substantive equality' between men and women.<sup>6</sup>

CEDAW requires that discriminatory national penal code provisions be repealed in order to advance women's legal interests. The Pakistan Penal Code 1860 provides limited protection to women and girls against sexual offences.<sup>7</sup> The Code contains specific sections relating to violence perpetrated against women. Section 354 deals with assault or the use of criminal force against a woman with the intent to outrage her modesty; Section 354-A lays down penalties for assault or the use of criminal force against a woman and deals especially with the stripping and exposure to public view of a woman. It criminalizes sexual offences such as rape, human trafficking, soliciting, honour killing, infanticide, sexual harassment at work places, incest, and *vani*. Protection of Women (Criminal Laws Amendment) Act 2006 has re-incorporated some provisions into the Pakistan Penal Code 1860 that were repealed through the 1979 Hudood Ordinance. It has made rape by two or more persons punishable by death or life imprisonment, provided that the act was committed in furtherance of the intention to rape by all parties.<sup>8</sup> A minimum sentence of ten years imprisonment has also been prescribed for rape, in the amended provision of the Ordinance. Furthermore the Act has added more provisions on the definition of consent which outlines coercive circumstances.<sup>9</sup> Under the Pakistan Code of Criminal Procedure 1898, courts have the power to compensate victims of sexual assault through fines collected from perpetrators.<sup>10</sup> To curb domestic violence against women, the National Assembly of Pakistan passed a law in 2009. The new law covers not only intentional acts of gender-based, physical and psychological abuse, but also includes 'economic abuse, harassment, stalking, sexual abuse, verbal abuse and any other repressive behaviour' committed against women, children or other vulnerable people, with whom those accused have been or still are in a domestic relationship.<sup>11</sup>

However, criminal laws do not fully secure the rights and interests of women in Pakistan. Penal Code provisions do not cover serious sexual offences such as marital rape. The Code lacks a provision for mandatory prosecution of sexual abuses. At present no specific section in the Penal Code deals with abuses in the family. Pakistan has yet to legislate against discriminatory rules of trial procedures – prior sexual conduct, necessity of corroboration or the requirement of proof of resistance by the victims. These three rules have historically made it difficult for victims to get legal redress.

There are certain Penal Code provisions which are discriminatory against women. The Hudood Ordinance on rape was promulgated in 1979.<sup>12</sup> It was incorporated in the Pakistan Penal Code. The Ordinance, as originally promulgated, was discriminatory against rape victims as it provided perpetrators of sexual violence against women with immunity from prosecution and punishment. It made prosecution and conviction more difficult. The Ordinance stated that the crime of rape could be established only if there were four adult male witnesses to the act or if the accused confessed to the crime himself. If a rape victim could not satisfy the evidentiary requirements, she became susceptible to prosecution for illicit consensual sex. The Protection of Women (Criminal Laws Amendment) Act, promulgated in December 2006, brought rape under the Pakistan Penal Code. The Act eliminates the previous requirement for four male witnesses to validate a woman's claim to being raped, and allows convictions to be made on the basis of forensic and circumstantial evidence.<sup>13</sup> However, despite the amendment of several discriminatory provisions, *zina* (adultery) remains punishable by death through public stoning and the amendment fails to recognize the offence of marital rape.

The principal statute on requirements of evidence is also discriminatory against women. Under the Qanun-e-Shahadat Order 1984 the value of a woman's testimony in court is considered equal to half of that of a man's in financial matters.<sup>14</sup>

Another discriminatory law is the Qisas and Diyat Ordinance.<sup>15</sup> Its provisions allow the next of kin to forgive the murderer in exchange for monetary compensation. Under this law, the victim or heir has the right to determine the amount of *qisas* (essentially the

death penalty), or *diyat* (compensation) or to pardon the accused. *Qisas* is not applied in murder cases when the *wali* (heir) of the victim is a direct descendant of the offender. Under Article 306 (c) of the Pakistani Penal Code, if a man murders his wife and they have children, her children cannot ask for *qisas* for her murder. In these circumstances, the maximum sentence that can be given when a man murders his wife is fourteen years. Furthermore, many see a father financially compensating (*diyat*) his children for the loss of their mother as a ‘mockery’ of the justice system.<sup>16</sup>

The Convention requires that competent tribunals and public institutions be established to provide legal protection to women. Contrary to CEDAW requirement, no law has been passed yet for the establishment of a National Human Rights Commission. A legislative bill for the establishment of such a Commission has been under consideration by the National Assembly since 2005 without any progress.<sup>17</sup> A leading agency for women’s rights, the National Commission on the Status of Women, was formed in 2000. It is a statutory body which has the mandate to ‘review laws, rules and regulations’ affecting the rights of women. It also has authority to monitor mechanisms and procedures to redress violations of women’s rights and individual grievances and, to provide facilities for social care.<sup>18</sup> However, its role as an independent commission is restricted due to its recommendatory powers. It has been suggested that the NCSW should be a quasi-judicial body for the oversight of the actions of the government. The Ministry of Women Development (MoWD) should be assigned to perform functions of execution, coordination, and policy formulation.<sup>19</sup>

### **To adopt temporary special measures to accelerate *de facto* equality**

In compliance with CEDAW’s benchmarks, the Constitution of Pakistan 1973, Article 25 (3) allows the state to adopt any special legal provision, as and when it requires, for the protection of women and children. Similarly Article 34 of the Constitution provides for the ‘full participation of women in all spheres of national life’. In the political sphere, 33 per cent and 17 per cent of seats are reserved for women at local government levels and at the national level – National Assembly, Senate and Provincial Assemblies – respectively<sup>20</sup>. In 2006 the

state increased the quota for women in all Government departments from five per cent to 10 per cent across the board. Apart from this legal measure, women can also compete in the remaining 90 per cent on open merit.<sup>21</sup>

### **To eliminate customary practices that promote gender stereotypes**

In full compliance with CEDAW’s standards, the Constitution of 1973, Article 8 (1), enjoins that any custom or usage which is inconsistent with fundamental rights shall be declared void. The despicable social practice of honour killing has been criminalized.<sup>22</sup> The crime carries the punishment of the death sentence or imprisonment of up to 25 years. An amendment incorporated in Section 310 of the Penal Code by the Criminal Law (Amendment) Act, 2004, has made *vani* a criminal offence, punishable by imprisonment of up to 14 years and a minimum sentence of not less than seven years. This abhorrent practice is followed to settle blood feuds and involves the giving away of women as compensation for the pardoning of the offender. However, female victims suffer severely due to discriminatory laws and legal practices. Harmful practices such as honor killings still prevail and persist. According to Pakistan’s Interior Ministry, there have been more than 4,100 honour killings since 2001.<sup>23</sup> Repressive customs such as “honour killings” and *vani* are still practiced. They impose restrictions on women’s right to life and personal security, as well as to mobility and to choose their spouse, in the name of protection, modesty, morality and honour.

### **To suppress human trafficking and exploitation of women in prostitution**

Based on CEDAW principles criminalizing sex work is not desirable; however, the Convention calls for creating laws which prohibit the procuring and trafficking of women for sex work. In non-compliance with CEDAW’s benchmark, the Constitution of Pakistan 1973 requires the state to prevent prostitution.<sup>24</sup> In addition, Article 11 (2) of the Constitution states ‘all forms of forced labour and human trafficking are prohibited’. The Penal Code provisions criminalize selling and buying a person for purposes of prostitution.<sup>25</sup> Under the Prevention and Control of Human Trafficking Ordinance 2002 all forms of trafficking are prohibited.<sup>26</sup> The penalties range from seven to 14 years of imprisonment plus fines.

## To eliminate discrimination against women in the political and public life

In conformity with CEDAW's standards, the Constitution of Pakistan 1973 grants women equal rights to vote.<sup>27</sup> They are also eligible for election to the office of President and Prime Minister.<sup>28</sup> There is no legal restriction on their right of participation in political parties. The state has set quotas to ensure their adequate representation in national, provincial and local assemblies.

Women's fullest participation in politics is affected by certain limitations. No disaggregated data is available to determine the level of women's participation in the activities of political parties. Although most political parties have women's wings, their role in the management and decision making processes remains weak. The list of factors inhibiting women's political participation include: lack of training; limited financial resources; and the disinclination of women – as voters and candidates – to file complaints in instances of violation of their political rights. Furthermore, women's representation in the judiciary is stated to be 'very low'. No woman has ever been appointed a judge in the Supreme Court of Pakistan and women judges at the High Courts are few.<sup>29</sup>

## To ensure equal opportunities of representation and participation to women in international organizations

The Constitution of Pakistan 1973 expressly prohibits discrimination on the basis of sex. Equal opportunities for women and men to represent Pakistan at the international level, is thus a constitutional requirement for the Government. In accordance with CEDAW's standards, women regularly represent Pakistan in international conferences and meetings. However, there is no deliberate policy to ensure that women are part of every delegation sent abroad.

## To grant equal rights to nationality

In accordance with the Convention, 1951 Pakistan Citizenship Act grants women the equal rights to acquire, retain or change their nationality. The Act follows both the principles of *jus soli* – nationality by

birth – and *jus sanguinis* – nationality by descent. It confers upon Pakistani women equal rights to acquire, retain or change their nationality. Through 2000 amendment of the Citizenship Act, women of Pakistani descent can claim nationality for their children born to foreign spouses. But certain discriminatory provisions continue to undermine their nationality rights. A foreign man married to a Pakistan woman is denied the right to acquire Pakistani nationality.<sup>30</sup> This rule is not applied in the case of a Pakistani man. Based on the Indian Succession Act 1925 the domicile of a married woman is determined on the basis of her husband's domicile.<sup>31</sup>

## To ensure equal rights to education

In conformity with CEDAW, there are constitutional provisions and specific laws which safeguard the educational interests of Pakistani women. Article 37 (b) of the Constitution requires the state to 'remove illiteracy and provide free and compulsory secondary education within the minimum possible period'. Education is a provincial subject under the Constitution. Each province has its own laws on education. Three of the four provinces i.e. Punjab, Khyber-Pakhtoonkhwa and Sindh, have enacted Compulsory Primary Education Acts for boys and girls.<sup>32</sup> The Acts make it mandatory for every child to attend primary school. The infringement of the rule carries penalties of imprisonment and fines. However, in practice girls face discrimination in terms of equal access to education opportunities. Some of the factors that affect their access to education opportunities include hostile attitudes towards female education, early marriages, domestic engagements, restricted mobility, long distances to school, shortage of trained teachers, insufficient transport facilities and lack of financial resources.

## To eliminate discrimination against women at workplace and uphold their economic rights

In compliance with CEDAW's benchmarks, labour laws in Pakistan do not discriminate on the basis of sex. In conformity with the Convention, the Constitution upholds the equal right to work for both men and women. Article 18 of the Constitution states that: 'subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to

enter upon any lawful profession or occupation, and to conduct any lawful trade or business'. Articles 25 and 27 of the Constitution provide for non-discriminatory and equal employment opportunities to all citizens. Article 34 of the Constitution requires provisions of affirmative action for women in employment.

Maternity benefits are granted and are an integral part of the labour laws. Pregnancy does not affect employment. Women employees in the public sector are entitled to 90 days maternity leave. This leave is sought and granted as a matter of right. Furthermore, adequate legal safeguards are provided against dismissal from a job due to pregnancy or maternity leave.<sup>33</sup> In the public sector the Government has also created a 10 per cent quota for positions for women. There is no discrimination against women in the public sector in terms of social security and the right to paid leave. Its 2010 Protection Against Harassment of Women at the Workplace Act aims at providing safe working environment to female workers. The Act imposes major penalties – demotion to a lower post, compulsory retirement, removal from service, dismissal from service, fines-part of which can be used as compensation for the complainant – and minor penalties – censure, withholding for specified periods of promotion or increment, and recovery of compensation payable to a complainant from pay or any other source of the accused.<sup>34</sup> In an attempt to create a conducive work- environment for working women, the Ministry of Women Development has initiated work on a Code of Conduct for Gender Justice at the Work Place.<sup>35</sup>

However, women's economic rights may be curtailed on the basis of gender. Gender-specific protective measures bar female workers from working in night shifts.<sup>36</sup> Maternity leave benefits are reserved for workers engaged in formal sectors only. Despite ratification in 2001 of the ILO 1951 Convention on Equal Remuneration, Pakistan does not have any specific laws on equal pay provisions. The agriculture sector falls outside the scope and protection of labour laws – legal exclusion that has seriously undermined the economic interests of rural women. In 2005–2006, the percentage of women in the workforce engaged in agriculture increased from 48 to 54 per cent.<sup>37</sup> This significant contribution from women is neither duly acknowledged nor are their rights in the performance of such services adequately protected.

## **To eliminate discrimination against women in health care**

Contrary to CEDAW's requirement, abortion is a criminal offence and illegal except to save the mother's life.<sup>38</sup>

## **To eliminate discrimination against women in economic and social life**

In accordance with CEDAW's benchmarks, Pakistani women have an equal right to receive bank loans, mortgages and financial credit. The First Women Bank was established in 1989 to encourage and to meet the credit needs of women entrepreneurs. The Bank provides finance to interested parties. The eligibility criteria for access to loan opportunities include: that women hold at least 50 per cent of the shares in the business; that the managing director is female; and that the percentage of women employees is 50 per cent or more.<sup>39</sup>

## **To eliminate discrimination against rural women**

Rural women are frequently disadvantaged in areas such as land ownership, health, education and housing. CEDAW allows for temporary affirmative measures to be incorporated into constitutions and legislation. In compliance with the Convention, Article 32 of the Constitution of Pakistan 1973 requires the state to strengthen local government institutions and also to ensure adequate representation of 'peasants, workers and women'. The reservation of 33 per cent seats for women in local government politics is in conformity with CEDAW principles on advancing the interests of rural women. In addition to the affirmative action, government safety net programmes including food subsidies, food support programmes, low-cost housing and *Baitul Mal* mostly target the poor rural population including women.<sup>40</sup> More recently the Government's Benazir Income Support Program is initiated. It is a large social safety net intervention that targets women households operating below poverty line with cash transfer and other graduated support.<sup>41</sup>

## **To accord women equality before the law**

In adherence to CEDAW's benchmarks, the Constitution's provisions grant Pakistani women equality before



the law<sup>42</sup>. There are no legal barriers to women's participation in judicial proceedings, nor are women denied the right to own and administer property.<sup>43</sup>

### To eliminate discrimination against women and accord equality to them within marriage and family relations

According to the Islamic Law on marriage, woman's consent is one of the essential prerequisites for a valid marriage. In compliance with CEDAW's benchmarks, the 2008 proposed Act on Prevention of Anti-Women Practices (Criminal Law Amendments) would outlaw forced marriages, and would make those responsible for any forced union liable to imprisonment of up to three years and to fines.<sup>44</sup> Marriage registration is mandatory under the Muslim Family Law Ordinance 1961.<sup>45</sup> In the case of non-compliance, the defaulter faces imprisonment of up to three months together with a fine. Islamic legal provision also provides full maintenance rights during marriage. After divorce women are entitled to limited maintenance rights. Through *Khula* women can seek divorce with the intervention of a court. The Dissolution of Muslim Marriages Act, 1939 provides grounds on the basis of which women can seek divorce.<sup>46</sup> Regarding its provisions on child custody, a mother has custodial rights up till seven years of age for boys and till

puberty for girls. Prevention of Anti-Women Practices (Criminal Law Amendments) 2008 is also under consideration which prescribes severe punishment for depriving women of their due inheritance rights.<sup>47</sup>

However, in reality certain discriminatory personal laws and practices hold women back. Many marriages are performed under various customs and traditions such as *Vani*, *Watta Satta* and *Haq Bakhshwana*. Polygamy is allowed even if it may not be socially acceptable.<sup>48</sup> Women's right to divorce require court's intervention. On the other hand a man can exercise the right to divorce without any legal oversight. Women are granted divorce only on certain specified grounds and with the leave of a court or without court intervention when the right to divorce is explicitly provided to the wife at the time of *Nikkah* – solemnization of marriage.<sup>49</sup> A wife is legally entitled to seek divorce provided she returns the dower amount.<sup>50</sup> Under the Dissolution of Muslim Marriages Act 1939, court is required to make one attempt of reconciliation. Child marriages are legal under the Child Marriage Restraint Act 1929.<sup>51</sup> The Act sets 16 years as the minimum age of marriage for a girl, which is contrary to CEDAW provision for 18 years age limit. With regard to women's rights to inheritance, a daughter inherits one-third as compared to the two-thirds share of a son.

## 3.2 Assessment of National Legislation for Gender Equality

Article 1: Definition of Discrimination Against Women			
Article 2: Obligation to Eliminate Discrimination			
Indicator	Compliance	Relevant Legislation	Comments
1.1 Does the Constitution guarantee fundamental human rights and freedoms to men and women equally including political, economic, social, cultural, and civil or any other field?	Yes	<p>The Constitution of the Islamic Republic of Pakistan, 1973, Preamble states: 'therein shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality.'</p> <p>Article 4 of the Constitution specifies 'to enjoy the protection of law and to be treated in accordance with law is</p>	<p>The indicator requires that the constitution uphold women's fundamental rights and freedoms in different spheres.</p> <p>However, under Article 233 (2) of the Constitution the President, through Proclamation of an emergency, can suspend fundamental rights as long as the emergency order remains in force.</p> <p>The constitutional provisions on principles and procedures are not</p>

(Continues)

**Article 1: Definition of Discrimination Against Women****Article 2: Obligation to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
		<p>the inalienable right of every citizen, wherever he may be’.</p> <p>Article 8 of the Constitution states ‘laws inconsistent with or in derogation of fundamental rights to be void’.</p> <p>Article 34 of the Constitution stipulates ‘full participation of women in national life’.</p>	<p>implemented effectively. Cases of gender discrimination prevail and are justified on the grounds of customary practices and interpretation of religious precepts.<sup>52</sup></p>
1.2 Is there a constitutional guarantee of substantive equality between men and women?	Partial	<p>Any citizen can approach a court, which has the relevant jurisdiction in the event that his/her fundamental rights are infringed.<sup>53</sup></p> <p>Article 184 (3) of the Constitution, authorizes the Supreme Court to issue a writ for the enforcement of the fundamental rights.</p> <p>Article 199 of the Constitution authorizes the High Courts to issue a writ for the enforcement of fundamental rights.</p>	<p>The indicator requires expressed constitutional provision on substantive equality – equality of access and results. Substantive equality refers to real or actual equality. It requires equality of access, opportunity and results.</p> <p>The Constitution prohibits discrimination and upholds the principles of ‘equality before the law’ but it does not provide for ‘substantive equality’ between men and women.</p>
1.3 Does the Constitution contain an anti-discrimination clause on the grounds of sex/gender?	Yes	The Constitution of the Islamic Republic of Pakistan 1973, Article 25 (2) states ‘there shall be no discrimination on the basis of sex alone.’ <sup>54</sup>	This indicator requires that the constitution have expressed anti-discrimination provisions.
1.4 Does the Constitution contain an anti-discrimination clause on the grounds of marital status?	No		Compliance with this indicator requires that there be constitutional provisions on non-discrimination on the grounds of marital status – unmarried; married; single etc.
1.5 Does the Constitution contain an anti-discrimination clause on the grounds of sexual orientation?	No		The Pakistan Penal Code 1860, Section 377 criminalizes ‘carnal intercourse against the order of nature’.
1.6 Does the Constitution contain an anti-discrimination clause on the grounds of HIV status?	No		
1.7 Does the Constitution contain an anti-discrimination clause on the grounds of disability?	No		
1.8 Does the breadth of anti-discrimination clauses encompass direct and indirect discrimination?	No		This indicator requires that the constitutional provision on non-discrimination prohibits both direct and indirect acts of infringements.



**Article 1: Definition of Discrimination Against Women****Article 2: Obligation to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.9 Does the anti-discrimination clause bind public authorities and institutions?	Yes	Articles 184 (3) and 199 allow the Supreme Court and High Courts to issue writs and injunctions in order to uphold citizens' fundamental rights.	<p>Compliance with this indicator requires that the constitution have provision that binds public institutions to follow principle of non-discrimination.</p> <p>Any discriminatory action by the state, agents or those acting on behalf of the state can be challenged in courts. However, it is often difficult to pursue cases in courts and there are no specified guidelines for the courts on the amount of damages they can award to the plaintiffs.<sup>55</sup></p>
1.10 Does the anti-discrimination clause bind all persons, organizations or enterprises?	Partial	Article 26 of the Constitution 1973 prohibits discrimination in respect of 'access to public places.'	<p>The indicator requires that there be constitutional provision that bind both public and private sectors to follow non-discriminatory rules and regulations.</p> <p>The public domain is relatively well covered. The same level of protection is not yet available in the private sector though recourse to the courts is theoretically possible.<sup>56</sup></p>
1.11 Are sanctions imposed for breach of anti-discrimination provisions?	Partial	<p>The Pakistan Penal Code 1860 contains various sections that hold Government officials liable for breach of impartial conduct.</p> <p>The grounds for culpability may include: the taking by a public servant of gratification other than legal remuneration in respect of an official act (Section 161); the disobeying by the public servant of a law with intent to cause injury to any person (Section 166); the framing of an incorrect document by the public servant with intent to cause injury (Section 167).</p>	<p>Compliance with this indicator requires that there be legal provision that impose sanctions – fines, apologies or loss of government contracts and remedies such as compensation and injunctive relief – in case of breach of anti-discrimination provisions.</p> <p>A wide body of rules and regulations governs the conduct of government officials. These prescribe a range of punishments for dereliction of duty or conduct unbecoming of a government official. While 'engaging in discrimination against women' is not cited as conduct unbecoming, a case could possibly be made against a public official under the Government of Pakistan Conduct and Efficiency Rules for showing prejudice or bias including on the basis of sex.</p>

**Article 1: Definition of Discrimination Against Women****Article 2: Obligation to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.12 Are there specific domestic violence offences in the criminal legislation?	Yes	Pakistan's National Assembly passed a bill on domestic violence in August 2009. The new law covers not only intentional acts of gender-based, physical and psychological abuse, but also includes 'economic abuse, harassment, stalking, sexual abuse, verbal abuse and any other repressive behaviour' committed against women, children or other vulnerable people, with whom those accused have been or still are in a domestic relationship. <sup>57</sup>	This indicator requires that there be specific laws or Penal Code provision on domestic violence.
1.13 Is stalking a criminal offence?	Partial	The Pakistan Penal Code, Section 509 prescribes punishment for a gesture, act, word or sound intended to be heard by a woman and to insult her modesty. <sup>58</sup>	This indicator requires that any harassment act – including stalking – be criminalized. The Code does not contain any specific definition of stalking.
1.14 Is a restraining order available in situations of sexual and domestic violence regardless of marital status?	Yes	Under the Law on Domestic Violence, passed by Pakistan's National Assembly in August 2009, the court has authority to pass a protection order in favour of an aggrieved party. In addition the court can also direct the accused to provide monetary relief. <sup>59</sup>	Compliance with this indicator requires that the law provide civil remedies – such as restraining orders – to ensure effective protection of women against violence. Such remedies should be available to women irrespective of their marital status.
1.15 Is there mandatory prosecution for domestic violence offences?	No		Domestic violence is not a private matter and must be treated as a criminal offence by law enforcement agencies. The indicator requires that the law stipulate provisions on mandatory prosecution of perpetrators.

**Article 1: Definition of Discrimination Against Women****Article 2: Obligation to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.16 Does the criminal legislation contain a broad range of sexual assault offences graded on the basis of seriousness to the victim?	Yes	The Pakistan Penal Code 1860 contains a range of sexual offences. They include rape (Section 375); gang rape (Section 376–2, as amended by Protection of Women Act 2006); assault or use of criminal force against a woman with intent to outrage her modesty (Section 354); procuration of a minor girl (below the age of 18) so as to induce her or cause her to be forced to have illicit intercourse.	<p>Women and girls can be sexually abused in several ways. Compliance with this indicator requires any unwanted sexual contact be unlawful. It is essential to incorporate into criminal law a wide range of sexual assault offences.</p> <p>Some Penal Code provisions are discriminatory towards women. The Ordinance on rape was promulgated in 1979<sup>60</sup> and incorporated in the Pakistan Penal Code. The Ordinance, as originally promulgated, was discriminatory towards rape victims. The Ordinance stated that the crime of rape could only be established if there were four adult male witnesses to the act or if the accused confessed to the crime himself. If a rape victim could not satisfy the evidentiary requirements, she became liable to prosecution for illicit consensual sex.</p> <p>The Protection of Women (Criminal Laws Amendment) Act, promulgated in December 2006, brought rape under the Pakistan Penal Code. The Act eliminates the previous requirement for four male witnesses to validate a woman's claim to being raped, and allows convictions to be made on the basis of forensic and circumstantial evidence.<sup>61</sup></p>
1.17 Does the definition of rape and/or sexual assault offences include penetration of non-penile objects into anus, vagina and mouth?	No		This indicator requires that legal definition of rape not to be restricted to penile penetration only. It should take into account all forms of sexual abuse.
1.18 Is there an offence of incest for girls and women? If there is no offence of incest then there is full compliance with this indicator.	Yes	There is no statutory provision on incest.	Ideally the law on incest should make a clear distinction between a victim and the perpetrator. This indicator implies that under no circumstances victims of incestuous sexual encounter (girls and women) be charged with an offence.

**Article 1: Definition of Discrimination Against Women****Article 2: Obligation to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.19 Have the terms indecency, carnal knowledge, defilement and insulting modesty been removed from the criminal legislation?	No	The Pakistan Penal Code 1860, Section 354 penalizes assault or use of criminal force against a woman with intent to outrage her 'modesty'.	The use of such language in place of appropriate legal terminology may depict female victims as damaged or tarnished by the sexual offences. Compliance with this indicator requires that such terms be removed, replaced and focus on invasion of personal integrity of women.
1.20 Is consent specifically defined in the criminal legislation outlining coercive circumstances?	Yes	The Protection of Women (Criminal Laws Amendment) Act, 2006, Section 375 concerning rape states 'a man is said to commit rape who has sexual intercourse with a woman under following circumstances: Against her will; without her consent; with her consent, when the consent has been obtained by putting her in fear of death or of hurt; with her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married; with or without her consent when she is under 16 years of age'. <sup>62</sup>	Consent is used as a defence in cases of rape and other sexual offences. There can be doubt as to what circumstances constitute consent. The indicator requires a statutory definition of consent in the criminal law. The legal provision must include wide-ranging circumstances that may induce an unwilling consent.
1.21 Is there a legislative prohibition on the use of prior sexual conduct to establish consent?	No	The Qanun-e-Shahadat Order 1984, Article 151 (4) allows 'immoral character' of the victim to be used as evidence.	The admission of the prior sexual history of the victim is a discriminatory procedural rule. It is based on the assumption that promiscuous women are more likely to have consented to sexual acts. The indicator requires that such provision be removed.
1.22 Is there a legislative prohibition of the requirement for corroboration?	No	Qanun-e-Shahadat Order 1984 (law of Evidence), Article 17 states that the value of a woman's testimony in court is considered half that of a man in financial matters.	The discriminatory legal requirement of independent evidence is used by some courts. It is based on the supposition that it is dangerous to convict the accused on the basis of uncorroborated evidence. Compliance with this indicator requires removing this legal provision from the Penal Code.

**Article 1: Definition of Discrimination Against Women****Article 2: Obligation to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.23 Is there a legislative prohibition of the requirement for proof of resistance?	No		The procedural rule of proof of resistance may be used by courts to determine consent. It implies victims of sexual assault must establish that they have physically resisted the perpetrator or otherwise consent may be inferred. The indicator requires removing this discriminatory rule from the Penal Code.
1.24 Is there a defence of honest and reasonable belief that the victim is of legal age? If there is no defence of honest and reasonable belief then there is full compliance with this indicator.	No	The Offence of Zina Ordinance, VII 1979, Section 2 states: 'adult means a person who has attained, being a male, the age of eighteen years or, being a female, the age of sixteen years, or has attained puberty'. <sup>63</sup>	The legal provision of honest and reasonable belief that the victim is of legal age is discriminatory. It can be used by the perpetrator to argue that he honestly believed the victim was of legal age. This provision puts the onus on the victim rather than on the alleged perpetrator to reveal the age. The indicator requires removing this discriminatory legal provision.
1.25 Is a defence of consent disallowed in relation to a victim under 18?	No	The Protection of Women Act, 2006, Section 5 (v) (Insertion of new sections, Act XLV of 1860) states 'a man is said to commit rape that has sexual intercourse with a woman ...with or without her consent when she is less than 16 years of age'. <sup>64</sup>	Compliance with this indicator requires that consent of the victim, below 18 years, be disallowed as a defence.
1.26 Is there an exemption from prosecution for marital rape? If yes, then there is no compliance with this indicator.	No		This indicator requires that marital rape be made unlawful and legal provisions be stipulated accordingly. Under Pakistan's criminal law there is no prosecution for marital rape.
1.27 Is there mandatory prosecution for sexual offences?	No		This indicator requires that there be mandatory legal provisions to punish and redress the wrongs committed against female victims of sexual abuse.
1.28 Is bail unavailable for sexual offences if this presents a risk to the victim?	Yes	According to the Protection of Women (Criminal Laws Amendment) Act 2006, Section 9, rape is a non-bailable offence.	This indicator requires that bail not be granted to the accused if he poses a potential threat to the female victims.
1.29 Are there minimum sentences for sexual offences?	Partial	Under the Protection of Women Act 2006 the heinous crime of gang rape carries a minimum sentence of ten years.	Compliance with this indicator requires that law impose minimum sentences for sexual offences. This rule is not applied across the board in Pakistan.

**Article 1: Definition of Discrimination Against Women****Article 2: Obligation to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.30 Is there a provision in the criminal law which states that customary practices of forgiveness shall not affect criminal prosecution or sentencing?	No		The indicator requires that customary practices not be used as justification to reduce or withdraw sentences or not to prosecute the perpetrator of a crime.  The legal recognition of customary practices may restrict women's access to justice. Under the Qisas and Diyat Ordinance the victim or heir has the right to determine the <i>qisas</i> (retribution), <i>diyat</i> (compensation) or to pardon the accused. <i>Qisas</i> is not applied in murder cases when the <i>wali</i> of the victim is a direct descendant of the offender.
1.31 Is there legislative provision for compensation for victims of sexual and domestic violence?	Yes	Under Section 545 of the Code of Criminal Procedure 1898, victims of abuse can claim compensation for the damages. <sup>65</sup>	Compliance with this indicator requires that law include compensatory measures for victims of sexual abuse.
1.32 Does the criminal legislation allow for infanticide to replace a charge of murder or manslaughter?	No	Under the Penal Code, Section 300 infanticide is treated as murder.	In the event that a mother causes the death of her child of 12 months or less, she should not be charged for manslaughter or murder. The indicator requires that such accused be charged for infanticide as this charge prescribes reduced sentences.
1.33 Does the definition of infanticide include environmental and social stresses?	No		The indicator requires that defence of infanticide not be solely grounded on failure to recover from post-partum depression. It should also be linked to environmental and social stresses.

**Article 3: Guarantee of Basic Human Rights and Fundamental Freedoms**

Indicator	Compliance	Relevant Legislation	Comments
3.1 Is there legislation establishing a national human rights machinery charged with promoting and protecting human rights including women's rights?	No	A draft of a National Commission for Human Rights Bill was presented to the National Assembly in February 2005. In May 2005 the Bill was referred to the National Assembly's Standing Committee on Law, Justice and Human Rights for further consideration and deliberations. There has been no further progress. <sup>66</sup>	This indicator requires that legally competent national tribunals and other public institutions be established to uphold women's rights.  The Human Rights Commission of Pakistan (HRCPP) has demonstrated its capacity to play a leading role in providing a highly informed and independent voice in the struggle for human rights and democratic development. It was established in 1987. HRCPP is an independent, non-political, non-profit making, and non-government organization. <sup>67</sup>



3.2 Is there legislation establishing a body to monitor the implementation of non-discriminatory law and policy for the advancement of women?	Yes	<p>In 2000 a permanent National Commission on the Status of Women (NCSW) was formed as a statutory body through an Ordinance promulgated by the President of Pakistan.<sup>68</sup></p> <p>The mandate of the Commission include: examine the policy, programmes and other governmental measures for women's development and gender equality; assess implementation and make suitable recommendations for effective impact; review laws, rules and regulations affecting the status and rights of women and suggest repeal; amendment or new laws essential to eliminate discrimination; monitor the mechanism and institutional procedures for redress of violations of women's rights.</p>	<p>This indicator requires that a specific law be enacted to establish a national body for the advancement of women's interests and legal rights.</p> <p>A National Commission on the Status of Women has only recommendatory powers. It has been suggested that the NCSW should be a quasi-judicial body for the oversight of actions of the government, with the Ministry of Women Development (MoWD) given the executing, coordination, and policy formulation functions.<sup>69</sup></p>
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Article 4: Acceleration of Equality between Men and Women			
Indicator	Compliance	Relevant Legislation	Comments
4.1 Does the Constitution contain a temporary special measures provision?	Yes	Constitution of Islamic Republic of Pakistan 1973, Article 25 (3) on the equality of citizens states 'nothing in this Article shall prevent the State from making any special provision for the protection of women and children.' <sup>70</sup>	<p>Compliance with this indicator requires that there be a constitutional provision on temporary special measures for advancing women's political, economic, social and legal rights.</p> <p>The special provisions include reservation of 33 per cent seats for women for most tiers of local bodies and 17 per cent seats in the National Assembly, the Senate and the provincial assemblies.<sup>71</sup></p> <p>In 2006 the state increased the quota for women from five per cent to 10 per cent across the board in all Government departments. Apart from this the women can also compete in the remaining 90 per cent on open merit.<sup>72</sup></p>
4.2 Are special measures exempt from discrimination on the grounds of sex, marital status, sexual orientation, disability and HIV status?	No		This indicator requires that special measures be exempt from constitutional provisions on non-discrimination. A special measure adopted to redress legal inequities against women should not be challenged on the grounds that it discriminates against men.

Article 5: Sex roles and Stereotypes			
Indicator	Compliance	Relevant Legislation	Comments
5.1 Is there a provision in the Constitution which gives precedence to a constitutional guarantee of equality if there is a conflict between custom and equality law?	Yes	<p>The Constitution of the Islamic Republic of Pakistan 1973, Article 8 (1) states ‘any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.’<sup>73</sup></p> <p>The Criminal Law (Amendment) Act 2004 declared honour killings, a murder. The law also enhanced punishment for this crime to the death penalty and imprisonment of up to 25 years.<sup>74</sup></p> <p>An amendment in Section 310 of the Pakistan Penal Code, through the Criminal Law (Amendment) Act, 2004 made giving away of women in compensation (<i>Vani</i>) a crime, punishable with imprisonment of a minimum of three and a maximum of ten years.<sup>75</sup></p>	<p>Compliance with this indicator requires that constitutional provisions on equality prevail over discriminatory customary laws and practices.</p> <p>Despite progressive legal initiatives, large sections of Pakistan society have at least some views about the roles of men and women in society. Generally the husband is assumed to be the breadwinner and the head of the family. The wife is expected to take care of the house, look after the children and the elderly.<sup>76</sup></p> <p>Unlawful customs such as ‘honor killings’ and <i>Vani</i> are still practiced. These repressive traditions restrict women’s rights to mobility and to choose a spouse in the name of protection, modesty, morality and honour.</p>

Article 6: Exploitation of Women			
Indicator	Compliance	Relevant Legislation	Comments
6.1 Is the act of soliciting decriminalized?	No	<p>The Constitution of the Islamic Republic of Pakistan 1973, Article 37 mandates the state to take steps for the promotion of social justice and eradication of social evils.</p> <p>Article 37 (g) of the Constitution states ‘the state shall prevent prostitution’.</p> <p>The Pakistan Penal Code 1860 (as amended by the Protection of Women Act 2006), Section 371 states that an accused selling a person for purposes of prostitution may face imprisonment of up to 25 years plus fine.</p>	<p>This indicator requires that sex work be decriminalized.</p> <p>In Pakistan, soliciting is a criminal offence. Under the law women caught in prostitution are bailed out only in the custody of a male member of the family.<sup>77</sup></p>
6.2 Is aiding and abetting consensual acts of soliciting decriminalized?	No		<p>This indicator requires that brothels and third parties who facilitate sex work not be criminalized for their activities where the worker has reached age of majority.</p>

Article 6: Exploitation of Women			
Indicator	Compliance	Relevant Legislation	Comments
6.3 Is it a criminal offence to procure any woman without consent or any girl under 18?	Yes	Buying and selling of a woman, irrespective of age, is a criminal offence under the Protection of Women Act 2006.	This indicator requires that procuring a girl below 18 years be unlawful. The law does not distinguish between prostitution and forced prostitution. This makes sex workers vulnerable to harassment and abuses of sexual workers at the hands of pimps, agents and law enforcement agencies.
6.4 Does employment legislation including occupational health and safety legislation protect sex workers?	No	The Constitution of the Islamic Republic of Pakistan 1973, Article 37 (g) requires the state to 'prevent prostitution'.	The indicator requires that sex workers be granted the same rights as other workers. They should be covered by relevant employment laws and be in a position to enjoy benefits and equal legal protection from exploitation.
6.5 Is the trafficking of women prohibited?	Yes	The Constitution of the Islamic Republic of Pakistan 1973, Article 11 (2) states that all forms of forced labour and traffic in human beings are prohibited. The Prevention and Control of Human Trafficking Ordinance 2002, Section 3 prohibits all forms of trafficking. The penalties for the crime range between seven and 14 years of imprisonment plus fines. <sup>78</sup>	This indicator requires that all forms of human trafficking be declared unlawful.
6.6 Is sex tourism prohibited?	Yes	The Prevention and Control of Human Trafficking Ordinance 2002 prohibits human trafficking for any reason whatsoever including labour, entertainment or prostitution.	This indicator conveys the sense that sex tourism is a form of sexual exploitation that therefore should be made unlawful.

Article 7: Political and Public Life			
Indicator	Compliance	Relevant Legislation	Comments
7.1 Is there an equal right to vote?	Yes	The Constitution of the Islamic Republic of Pakistan 1973, Article 51 (2) sets out the eligibility criteria for voting. 'A person shall be entitled to vote if he is a citizen of Pakistan; he is not less than 18 years of age; his name appears on the electoral roll; and he is not declared by a competent Court to be of unsound mind'. <sup>79</sup>	This indicator requires that women have an equal right to suffrage.

## Article 7: Political and Public Life

Indicator	Compliance	Relevant Legislation	Comments
7.2 Is there equal eligibility for political representation?	Yes	<p>Constitution of Pakistan 1973, Article 62 sets qualifications criteria for membership of Parliament on the basis of citizenship, age and mental soundness, and not on the basis of sex.</p> <p>Articles 41 and 91 of the Constitution respectively make women eligible for the Offices of President and Prime Minister.</p>	<p>This indicator requires that women have equal eligibility rights to political representation.</p> <p>There is no restriction on women becoming members of political parties and trade unions. Almost all- political parties have women's wings. However, women's membership in political parties remains a weak area. Credible data is hard to obtain. Most political parties do not maintain sex-disaggregated data on membership as a matter of routine.<sup>80</sup></p>
7.3 Is there legislative provision for minimum quotas of women in Parliament?	Yes	<p>Based on the Legal Framework Order 2002 women have 60 reserved seats out of total of 342 seats in the National Assembly. They also have 128 reserved seats, out of 758 seats, in Provincial Assemblies and one-third of seats in Local Councils.</p> <p>In the Parliament and provincial assemblies 17 per cent of seats are reserved for women.<sup>81</sup></p> <p>The Local Government Plan 2000, section 18 on District Election states 'in addition to the general seats, the Zila Council will have thirty three percent seats reserved for women.'<sup>82</sup></p>	<p>This indicator requires that special measures – such as quotas – be adopted to promote women's participation in the political sphere.</p> <p>Despite these comprehensive safeguards, women are likely to be deprived of their right to political participation either as voters or as candidates. The main difficulty remains in implementation of the laws. Weak implementation can be attributed to: lack of training and resources of the law enforcement authorities; the failure of persons including women whose electoral rights have been violated to come forward and file complaints; and lack of witnesses to substantiate complaints.<sup>83</sup></p> <p>Women's representation in judiciary reported to be 'very low'. No woman has ever been appointed a judge in the Supreme Court of Pakistan.<sup>84</sup></p>
7.4 Do women have an equal right to participate in NGOs?	Yes	There are no legal barriers to women's equal right to participate in NGOs.	This indicator requires that women have equal opportunities to participate in non-government organizations.
7.5 Is there legislation (other than Charitable Societies legislation) enabling NGOs to register and mobilize to promote the advancement of women without political interference?	Yes	There are no legal barriers.	This indicator requires that legal provisions be stipulated allowing NGOs to advocate for women's rights.

## Article 8: International Representation and Participation

Indicator	Compliance	Relevant Legislation	Comments
8.1 Do women have an equal opportunity to represent government at international levels and participate in the work of international organizations?	Yes	The 1973 Constitution expressly prohibits discrimination on the basis of sex.	<p>The indicator requires that women have an equal right to represent government at international level and to participate in the work of international organizations.</p> <p>It is a constitutional requirement to grant equal opportunities for women and men to represent Pakistan at the international level. Women, therefore, regularly represent the country in international conferences and meetings. However, there is no deliberate policy to ensure that women are part of every delegation sent abroad.<sup>85</sup></p>

## Article 9: Nationality and Citizenship

Indicator	Compliance	Relevant Legislation	Comments
9.1 Do women have an equal right to acquire, change or retain their nationality?	Yes	The Pakistan Citizenship Act 1951, Section 4 states 'there is no distinction between male and female, nor is this form of citizenship dependent on the person's father, mother or any ascendant being a citizen.' <sup>86</sup>	Nationality rights affect women's right to vote, stand for public office, choice of residence and her access to public services. This indicator requires that women have equal rights to acquire, change or retain their nationality.
9.2 Does marriage to an alien or change of a husband's nationality affect a wife's nationality?  If there is no change to a wife's nationality after marriage, then there is full compliance with this indicator.	Yes	The Citizenship Act 1951, Section 14 (4) states 'a Pakistani woman does not lose her citizenship if she marries a non-Pakistani, and by virtue of such marriage acquires citizenship of another country'.	This indicator requires that in the event of a woman's marriage to a foreign national, her autonomy and independence not be compromised.
9.3 Do both spouses have equal rights to residency, citizenship and employment when married to a non-national?	Partial	Under the Citizenship Act 1951, foreign spouse of a Pakistan wife is denied the right to claim Pakistani nationality. On the other hand, female foreign spouse, married to a Pakistani man, is entitled to acquire Pakistani citizenship.	<p>Laws, in some cases, may deny non-national husband of automatic residency or citizenship rights. The indicator requires that such legal restrictions be removed.</p> <p>Based on the Succession Act 1925 the domicile of a married woman is determined on the basis of her husband's domicile. The law needs to be amended to grant Pakistani nationality to foreign male spouse.</p>

Article 9: Nationality and Citizenship			
Indicator	Compliance	Relevant Legislation	Comments
9.4 Do both spouses have an equal right to determine the nationality of children?	Yes	Through a 2000 amendment to the Citizenship Act 1951, women of Pakistani descent can claim Pakistani nationality for their children born to a foreign spouse. <sup>87</sup>	This indicator requires that men and women have equal rights to determine the nationality of their children. Any law under which children automatically acquire the nationality of their father but not their mother is discriminatory.
9.5 Do women have an equal right to obtain a passport?	Yes	Women can acquire a passport in the same manner as men. A woman's minor children can be entered on her passport. The father's consent for entry of minor children's names on their mother's passport is not required.	This indicator requires that women have equal rights to obtain passports. There should be no legal restrictions – such as a requirement of husband's consent – imposed on them.

Article 10: Education			
Indicator	Compliance	Relevant Legislation	Comments
10.1 Does the legislation guarantee women and girls equal access to education? Do women and girls have equal access to education?	Yes	<p>The Constitution of the Islamic Republic of Pakistan 1973, Article 37 (b) states 'the state shall remove illiteracy and provide free and compulsory secondary education within minimum possible period'.</p> <p>Article 37 (c) of the Constitution states 'the state shall make technical and professional education generally available and higher education equally accessible to all on the basis of merit'.</p>	<p>This indicator requires that legal provisions allow women and girls equal access to all forms and levels of education.</p> <p>Women have the same opportunities for continuing education as men. However, they do face certain practical difficulties. The distance from home to the educational institution remains a consideration from the primary level to the higher educational levels. At higher levels of education it is possible that the female will have to leave her home and stay at a hostel if she wishes to continue her studies. Not all parents are willing to send their daughters away. Similarly not all women are willing to go to a new place unless there is an assurance of security.<sup>88</sup></p>
10.2 Is there legislation that creates special measures for the advancement of women in the field of education?	Yes	The Constitution of the Islamic Republic of Pakistan 1973, Article 34 stipulates that steps shall be taken to ensure full participation of women in all spheres of national life.	<p>This indicator requires legal provisions on affirmative action for women in the field of education.</p> <p>Pakistan's constitutional provision in Article 34 can be interpreted as favouring girls and women.</p>



Article 10: Education			
Indicator	Compliance	Relevant Legislation	Comments
10.3 Is there compulsory primary education for girls and boys?	Yes	Three of the four provinces of Pakistan i.e. Punjab, Khyber-Pakhtoonkhwa, and Sindh have enacted the Compulsory Primary Education Acts for boys and girls of five-nine age groups. Balochistan is expected to enforce similar regulations.  The Punjab Compulsory Primary Education Act 1994, Section 3 makes it mandatory for every child to attend primary school. The violation of the rule carries mandatory fines and imprisonment. <sup>89</sup>	This indicator requires that legal provisions be enacted on compulsory primary education for all.
10.4 Is there compulsory secondary education for girls and boys?	Partial	The Constitution of the Islamic Republic of Pakistan 1973, Article 37 (b) requires the state to remove illiteracy and provide free and compulsory secondary education within the minimum possible period.	The indicator requires that there be legal provision on compulsory secondary education for boys and girls. Despite constitutional requirements, there is no special legal provision on compulsory secondary education.
10.5 Is family life (re-productive and sexual health) education compulsory in schools?	No		The indicator requires that there be legal provisions for family life education. It should be compulsory subject during secondary schools.
10.6 Is there a legislative prohibition of expulsion from school because of pregnancy?	No		This indicator requires that there not be any legal barrier to pregnant girls' right to pursue education in schools.

Article 11: Employment			
Indicator	Compliance	Relevant Legislation	Comments
11.1 Are there anti-discrimination provisions in employment legislation on the grounds of sex, marital status, disability, pregnancy, and sexual orientation and HIV status with sanctions?	Partial	The Constitution of the Islamic Republic of Pakistan 1973, Article 18 states 'subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business'.  Article 27 (1) of the Constitution stipulates 'no citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth'.	The indicator requires that labour laws grant female workers the same employment rights, opportunities, choices and benefits as men. Appropriate sanctions should also be imposed in the event of violation of female workers' rights.  However, gender specific protective laws restrict women from working in night shifts. These laws include the Mines Act 1923; the Factories Act 1934; and the Hazardous Occupation Rules 1963.

Article 11: Employment			
Indicator	Compliance	Relevant Legislation	Comments
11.2 Are there special measures provisions for the advancement of women in employment?	Yes	The Constitution of the Islamic Republic of Pakistan 1973, Article 25 (3) states ‘nothing in this article shall prevent the State from making any special provision for the protection of women and children’.	This indicator requires legal provisions allowing affirmative action – quota, preferential treatment during recruitment, legal protection to pregnant workers. This aims to redress past discrimination against them and also to promote substantive equality in the sphere of employment.  The Government of Pakistan has also created a 10 per cent quota for women in the public sector.
11.3 Do women enjoy equal conditions of work including leave, superannuation and Workers Compensation?	Partial	The Constitution of the Islamic Republic of Pakistan 1973, Article 37 (e) stipulates ‘state shall make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment’.	This indicator requires that female workers be provided with same working conditions as other employees – leave entitlements; retirement benefits and compensation. Labour laws, at times, fail to protect the legal interest of domestic workers, casual workers or part-time workers.  Labour laws in Pakistan do not fully cover the legal interests of informal sectors workers. Such entities include small shops, work shops or the agricultural work force.  In 2005–2006, the percentage of women in the workforce, engaged in agriculture, increased from 48 to 54 per cent. <sup>90</sup> This significant contribution by women is neither duly acknowledged nor their rights in lieu of such services are amply protected. At present there is no mechanism for monitoring the situation of domestic workers. <sup>91</sup>
11.4 Does the legislation provide sexual harassment protection from employers and co-workers?	Yes	The Protection Against Harassment of Women at the Workplace Act, 2010 aims at providing safe working environment.  Section 2 (h) of the Act defines harassment as ‘any unwelcome sexual advance, request for sexual favours or other verbal and written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with the work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or if such a request is made condition for employment’.	The indicator requires specific legal provisions that prohibit sexual harassment at workplace.

Article 11: Employment			
Indicator	Compliance	Relevant Legislation	Comments
11.5 Does the definition of sexual harassment include the breadth of unwanted behaviour?	Yes	The Protection Against Harassment of Women at the Workplace Act, 2010, Section 2 (h) covers various types of unwanted behavior.	This indicator requires that law on sexual harassment at workplace include and define a comprehensive range of unwanted behaviours.
11.6 Does the legislation contain an equal pay provision?	Yes	There is no discrimination between men and women in remuneration and benefits in the public sector. In the private sector also, entities, which fall within the purview of labour laws, have to give the same remuneration, allowances and benefits to all employees doing the same work regardless of gender. <sup>92</sup>	The indicator requires that legal provisions uphold female workers' right to pay equal to that of male workers.
11.7 Does the legislation contain pay equity provisions?	No		This indicator requires that employment law uphold the principle of 'equal treatment in respect of work of equal value' (Article 11 (d) of CEDAW). <sup>93</sup>
11.8 Does the legislation provide for an equal retirement age?	Partial	The Punjab Civil Servants Act 1974 stipulates that retirement is granted 'on the completion of the sixtieth year of his age'. <sup>94</sup>	This indicator requires that the law for equal retirement age for female and male workers.  Under Pakistan's employment law, this provision is applicable to public sector only.
11.9 Are there restrictions on women's choice of employment? If there are no restrictions on women's choice of employment, then there is full compliance with this indicator.	Partial	There are certain restrictions imposed on women. Their employment in hazardous forms of work is prohibited.	Protective laws that prohibit women from working in particular field of employment or particular hours – night shifts – are discriminatory. The indicator requires that such protective legal provisions be removed.  However, in practice, it has been seen that women continue to be concentrated in only a few professions such as teaching and health. <sup>95</sup>

Article 11: Employment			
Indicator	Compliance	Relevant Legislation	Comments
11.10 Does the legislation provide for health protection during pregnancy?	Yes	The Constitution of the Islamic Republic of Pakistan 1973 Article 37(e) states 'the state shall make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment.'	The indicator requires that special legal protection measures be included in employment laws for pregnant workers. Such measures may include: breaks; light work; time to attend medical checks.
11.11 Does the legislation provide paid maternity leave of not less than 14 weeks?	No	<p>The relevant rules states 'a female civil servant shall be granted maternity leave on full pay for a maximum period of 90 days and the leave exceeding the period of 90 days shall be treated as leave admissible to and desired by the civil servant'.<sup>96</sup></p> <p>The Maternity Benefit Ordinance 1958 stipulates that upon completion of four months employment or a qualifying period, a worker may have up to six weeks prenatal and postnatal leave during which she is paid a salary drawn on the basis of her last pay. The Ordinance is applicable to all industrial and commercial establishments employing women</p>	This indicator requires that legal provision grant 14 weeks of maternity leave to female workers in both public and private sectors.
11.12 Does the legislation provide protection from dismissal because of pregnancy or maternity leave?	Yes	The West Pakistan Maternity Benefit Ordinance 1958, Section 7 stipulates 'no notice of dismissal to be given to woman in certain cases (dismissal within 6 months before delivery, notice during her absence from during maternity leave)'. <sup>97</sup>	<p>This indicator requires that employment law provide legal protection to female workers against dismissal due to pregnancy or maternity leave.</p> <p>Women employees in establishments which do not fall under the relevant labour laws can be discriminated against on grounds of pregnancy. Unfortunately most employees in such companies and industries are contract workers and piece-rate workers and can be dismissed from their positions quite easily.</p>

Article 11: Employment			
Indicator	Compliance	Relevant Legislation	Comments
11.13 Does the legislation guarantee the provision of childcare by employer or state?	No	There is no legal provision for childcare facilities for women employees in the public and private sectors.	<p>The indicator requires that legal provision obligate the employer or the state to adopt special childcare measures for female workers.</p> <p>Some Government entities do provide some form of childcare facilities. The Ministry of Women Development has a childcare facility, as does the Ministry of Foreign Affairs. However, the practice is not uniform and there are government entities that do not provide childcare facilities at all.<sup>98</sup></p>
11.14 Does the legislation provide reasonable nursing time during work hours?	No	There is no specific law.	The indicator requires that labour law upholds female workers' right to breastfeed their children during work hours.

Article 12: Health Care and Family Planning			
Indicator	Compliance	Relevant Legislation	Comments
12.1 Do women have access to safe and legal abortion facilities?	Partial	The Pakistan Penal Code, Section 338 (A-D) states 'abortion is illegal except to save the mother's life'. The punishment for illegal abortion is imprisonment of up to seven years and the perpetrator may also be liable to fines.	<p>The indicator requires that the law makes abortion legal and stipulate provisions for safe abortion.</p> <p>Abortion is illegal in Pakistan. However, it is not a crime if carried out in the early stages of pregnancy. The conditions for carrying out abortion include: the practitioner acted in good faith; the abortion is required for medical treatment. Abortion is not allowed except to save the life of the mother with the testimony of two qualified doctors that in their professional judgment further continuation of the pregnancy would be fatal for the mother.</p>

## Article 13: Economic and Social Benefits

Indicator	Compliance	Relevant Legislation	Comments
13.1 Do women have an equal right to family benefits regardless of marital status?	Yes	<p>The Constitution of the Islamic Republic of Pakistan 1973, Preamble specifies ‘it is the will of the people of Pakistan to establish an order wherein shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality’.</p> <p>Article 25 of the 1973 Constitution upholds the equality of all citizens before the law and entitles all citizens to equal protection of the law.</p>	<p>The indicator requires that the law grant female workers equal rights to social security and benefits.</p> <p>Constitutionally there is no discrimination between men and women in the economic and social spheres. Salaried women and men are entitled to certain family benefits that can be claimed either by the husband or the wife. These benefits include: housing allowance, transport allowance, medical allowance and social security benefits. These benefits are available to all salaried people, regardless of gender.<sup>99</sup></p>
13.2 Do women have an equal right to obtain bank loans, mortgages and financial credit?	Yes	<p>The First Women Bank was established in 1989 to encourage and to meet credit needs of women entrepreneurs. The bank provides finance to potential female entrepreneurs and businesswomen. The loan criteria require that 50 per cent of shareholders in the business be women; there be a female Managing Director; that the percentage of women employees be 50 per cent or more.<sup>100</sup></p>	<p>The indicator requires that the law upholds women’s equal rights to obtain loans, mortgages and financial credit.</p> <p>Credit is available to both men and women in Pakistan. Financial institutions such the First Women Bank Limited, other commercial banks and a number of public financial institutions extend credit to women.</p>
13.3 Do women have an equal right to participate in recreational activities, sports and cultural life?	Yes	<p>There are no legal barriers.</p>	<p>The indicator requires that the law not impose restrictions on women’s equal rights to participate in recreational activities and cultural life.</p>



Article 14: Rural Women			
Indicator	Compliance	Relevant Legislation	Comments
14.1 Is there legislation that provides for special measures to advance substantive equality for rural women?	Yes	<p>The Constitution of the Islamic Republic of Pakistan 1973, Article 32 states ‘the state shall encourage local Government institutions composed of elected representatives of the areas concerned and in such institutions special representation will be given to peasants, workers and women.’</p> <p>Under the Devolution plan, local communities have been given authority to run their own affairs through the Union, Tehsil and District councils. By law, 33 per cent of the members of these bodies should be female.</p>	<p>The indicator requires that the law provide for affirmative action to uphold the rights of rural women.</p> <p>However, there is as yet no institutional mechanism through which rural women can participate in the formulation and implementation of development planning at the macro level except through their elected representatives in the assemblies.<sup>101</sup></p> <p>In terms of the social security system, labour laws do not yet cover the agricultural and informal sectors. Rural women workers, unless they are working in large agro-industrial units, are not entitled to social security. There is no technical bar preventing women from seeking credit and loans etc. The problem is that due to their inferior economic status, women are generally unable to put up the collateral required to secure a loan.<sup>102</sup></p> <p>In order to alleviate poverty and empower women, the Government started Benazir Income Support Programme in 2008–2009. It is a large social safety net intervention that targets women households operating below poverty line with cash transfer and other graduated support.</p>

Article 15: Equality before Law and Civil Matters			
Indicator	Compliance	Relevant Legislation	Comments
15.1 Does the Constitution guarantee equality before the law?	Yes	The Constitution of the Islamic Republic of Pakistan 1973, Article 25 states ‘all citizens are equal before law and are entitled to equal protection of law’.	<p>The indicator requires that there be constitutional provision on equality before the law.</p> <p>The Constitution of Pakistan lays down a fairly comprehensive non discrimination regime.<sup>103</sup></p>
15.2 Do women have an equal capacity in civil matters – can women sue?	Yes	The Constitution of Pakistan 1973, Article 25 provides for the equality of its citizens before the law.	The indicator requires that there not be any legal restrictions on women’s civil rights. Such rights include: capacity to initiate litigation; access legal advice; or seek redress from courts.
15.3 Do women have an equal right to participate in courts and tribunals at all stages?	Yes		The indicator requires that women have equal legal rights to participate in the courts and their proceedings.

## Article 15: Equality before Law and Civil Matters

Indicator	Compliance	Relevant Legislation	Comments
15.4 Do women have an equal right (regardless of marital status) to conclude contracts and administer property?	Yes	<p>The Constitution of the Islamic Republic of Pakistan 1973, Article 23 stipulates ‘every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.’</p> <p>According to the Married Women’s Property Act 1874 a married woman has the right of separate property and of undertaking legal proceedings in her own name.</p>	<p>This indicator requires that women have the right to enter into a contract independently without the consent of a husband or male relative.</p> <p>Under the law a woman has the same right as a man to own, acquire, manage and dispose of property.</p>
15.5 Do women have an equal right to be executors or administrators of estates?	Partial	The Indian Succession Act 1925, Section 315 allows a married woman to act as an executor and administrator of a deceased person’s property, and gives her the same powers as a male executor or administrator. <sup>104</sup>	<p>This indicator requires that women have equal legal capacity in civil matters such as the administration of estates.</p> <p>Only married woman can be the executors and administrators of estates.</p>
15.6 Is there legislation that nullifies all contracts and instruments that limit women’s legal capacity?	No		<p>This indicator requires that any law that limits the capacity of women to conclude contracts be changed.</p> <p>In Pakistan, man or woman may allow each other the right to exercise certain legal rights on his/ her behalf. Such an act is not declared null and void. Thus a wife allowing her husband to manage her property on her behalf is not deemed to diminish her legal capacity.<sup>105</sup></p>
15.7 Do women have an equal right to choose residence and domicile?	No	<p>Under the Succession Act 1925, Section 16 the wife’s domicile follows that of husband during marriage.</p> <p>Section 15 of the Act states ‘by marriage, woman acquires the domicile of husband if she had not the same domicile before.’</p>	<p>This indicator requires that women have equal rights to choose their residence and domicile.</p> <p>As reported in CEDAW 2005, the official policy is ‘all citizens of Pakistan, regardless of gender, have the right to choose their residence and domicile’.<sup>106</sup> However women’s right to domicile are restricted.</p>

## Article 16: Personal and Family Law

Indicator	Compliance	Relevant Legislation	Comments
16.1 Does the legislation guarantee entry into marriage with full and free consent?	Yes	<p>Under Islamic rules on marriage an adult woman has the freedom to choose her partner. This is considered one of the main prerequisites for a valid Islamic marriage.</p> <p>A draft Bill – Prevention of Anti-Women Practices (Criminal Law Amendments) Bill 2008 – is under study by the Select Committee of the National Assembly.</p> <p>The proposed section 498B would outlaw forced marriages, and would make those responsible for the forced union, liable to imprisonment of up to three years and fine.<sup>107</sup></p>	<p>The indicator requires that the law uphold women's right to freely choose a spouse and to enter into marriage with their free and full consent.</p> <p>Sometimes the parents do not grant their children the right to choose their spouse. This occurs more commonly with daughters.</p> <p>In more disadvantaged areas of the country, if the girl persists in her desire to go against the wishes of her family, she may be ostracized, forced to seek a divorce or rarely, killed in the name of honour.<sup>108</sup> Many marriages are performed under various customs and traditions such as <i>Vani</i>, <i>Watta Satta</i>, <i>Haq Bakhshtwana</i>.</p>
16.2 Does the legislation allow marriages to be nullified if they are entered into under force, duress or undue influence?	No		<p>The indicator requires that law nullifies forced marriages.</p> <p>A draft bill – the Prevention of Anti-Women Practices (Criminal Law Amendments) Bill 2008 is under study by the Select Committee of National Assembly.</p> <p>Proposed Section 498B would outlaw forced marriages, and would make those responsible for a forced union, liable to imprisonment of up to three years and fines.<sup>109</sup></p>
16.3 Is there an equal minimum age of 18 for marriage?	No	<p>According to the Child Marriage Restraint Act 1929 the minimum age of marriage for girls is 16.<sup>110</sup></p>	<p>This indicator requires that the law set 18 as the minimum age of marriage for both boys and girls.</p> <p>The Child Marriage Restraint (Amendment) Act 2009 is under consideration by National Assembly of Pakistan. It defines a person below 18 years as child and hence disallows child marriage.<sup>111</sup></p>

Article 16: Personal and Family Law			
Indicator	Compliance	Relevant Legislation	Comments
16.4 Is there a legislative prohibition of child marriage?	Partial	The Child Marriage Restraint Act 1929 established minimum marriageable age at 18 years for boys and 16 years or puberty for girls.	The indicator requires that marriage law prohibits child marriage below the age of 18. The Child Marriage Restraint (Amendment) Act 2009 is under consideration by the National Assembly of Pakistan. According to the Act whoever performs conducts or directs any child marriage shall be punishable with two years of imprisonment. A child is anybody 'under eighteen years of age'. <sup>112</sup>
16.5 Does the legislation require registration of marriage in an official registry?	Yes	The Muslim Family Law Ordinance 1961, Section 5 (1) states 'every marriage solemnized under the Muslim Law shall be registered in accordance with the provisions of this ordinance'. <sup>113</sup>	The indicator requires legal provision for registration of marriage. This is a good way of tracking child marriages, and cases of polygamy. It also facilitates women's claim for spousal benefits after divorce. Pakistan has a good system of official marriage registration. However, they are some challenges that affect the compulsory registration of marriage requirement. The registration requirement often goes unheeded in rural areas, where marriages are generally contracted orally. <sup>114</sup>
16.6 Does the legislation prohibit bigamy?	No	The Muslim Family Laws Ordinance 1961, Section 6 specifies that men can contract another marriage with the permission of an existing wife/wives; and notification of the union council.	This indicator requires that family legislation prohibits bigamy or polygamy. Polygamy is allowed in Pakistan though it may not be socially acceptable.
16.7 Do women have an equal right to choose a family name?	Yes	There are no legal barriers to a married woman from adopting a family name of her choice, or a profession or occupation.	This indicator requires the family law uphold married women's right to choose a family name.
16.8 Is the consent of both parents equal in the marriage of minors?	Yes	There are no legal barriers.	This indicator requires that the legal provisions grant equal rights to both parents on matters concerning their children. A legal provision that allows for the father's consent alone for a child marriage is discriminatory.

## Article 16: Personal and Family Law

Indicator	Compliance	Relevant Legislation	Comments
16.9 Are both spouses equal in the ownership, acquisition, management, administration, enjoyment and disposition of property?	Yes	The Constitution of the Islamic Republic of Pakistan 1973, Article 23 stipulates ‘every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.’	This indicator requires that legal provisions include spouses’ equal rights to acquire, own, manage, administer or dispose of property.  A woman has the same legal right as a man to own, acquire, manage and dispose of property. Similarly, the earnings of a husband and of a wife are two independent resources and are thus classified as independent properties of the two spouses. The law is based upon the Quranic verse that says that both men and women have the independent right of management and disposal of their properties. No one can interfere with this right. Nevertheless, in general, women let their husbands manage their property. <sup>115</sup>
16.10 Does the legislation provide for a maintenance and custody order during separation based on need?	Yes	The Guardians and Wards Act 1890, Section 7 empowers the courts to make orders as to guardianship. If the Court is satisfied that it is for the welfare of a minor that an order should be made, it can appoint a guardian of the minor’s his person or property, or both. <sup>116</sup>	This indicator requires that the family legislation stipulate provisions on maintenance and custody orders of children where a woman decides to seek a divorce.
16.11 Is there legislation to enable women to occupy the marital home when settlement is not possible or in situations of domestic violence?	No		This indicator requires legal provision that allows a woman to remain in the marital home until property settlement is finalized.
16.12 Does the legislation provide an order for restitution of conjugal rights?  If there is no such order in the legislation then there is full compliance with this indicator.	No	The West Pakistan Family Court Act 1964, Section 5 empowers Family Courts with exclusive jurisdiction to entertain, hear and adjudicate upon various matters –including restitution of conjugal rights. <sup>117</sup>	At times, a court may order married persons (men or women), who have applied for divorce, to return to the marriage and fulfil their marital responsibilities. This may impact women’s freedoms and limits their choices. In some cases, it may amount to legal sanctioning of marital rape.

## Article 16: Personal and Family Law

Indicator	Compliance	Relevant Legislation	Comments
16.13 Does the legislation provide for no-fault divorce?	No	The Dissolution of Muslim Marriages Act 1939, Section 2 stipulates ‘a married woman is entitled to obtain a decree of dissolution of marriage on certain grounds only’. <sup>118</sup>	<p>This indicator requires that the law prohibits fault based divorce. Evidence of matrimonial offences – cruelty, desertion, any physical disability – may compromise women’s dignity in divorce cases.</p> <p>Women require court’s intervention in order to get a divorce in Pakistan. They are allowed divorce on certain specified grounds and only with the leave of court or without court intervention when the right to divorce is explicitly sought by the wife at the time of <i>nikkah</i>. In case of application for judicial divorce, she must forgo the rights to dower.</p>
16.14 Is there a duty of the court to promote reconciliation? If the legislation does not contain such a duty then there is full compliance with this indicator.	No	The West Pakistan Family Courts Act 1964, Section 12 (1) states that court shall make an effort to ‘effect a compromise or reconciliation between the parties’.	<p>The indicator requires that there be no legal provision that obligates courts to promote reconciliation between parties.</p> <p>Under the 1964 Law, the court is required to make one attempt at reconciliation. But if the women rejects then the divorce is granted. This provision of reconciliation does not lengthen the process of seeking or being granted the divorce. However <i>de jure</i> compliance with the indicator requires that court should have no authority to promote reconciliation.</p>
16.15 Does the legislation provide for an equal division of property after divorce including recognition of unpaid contributions; are future needs and future earning capacity calculated?	No	The law does not recognize marital property rights.	<p>The indicator requires that the law uphold women’s equal right to marital property after divorce. It should also recognize their non-financial family contributions – raising children; caring for elderly relatives; and discharging household duties.</p> <p>On dissolution of marriage the wife is entitled to all the property that she has earned herself and also benefits from the property of the husband – dower, maintenance for the <i>iddat</i> period i.e. 130 days, or in the case of a pregnant wife, up to the delivery of the child, and maintenance of the children in the custody of the wife.<sup>119</sup></p>



Article 16: Personal and Family Law			
Indicator	Compliance	Relevant Legislation	Comments
16.16 Does the legislation provide for the payment of child support upon divorce based on need?	Yes	The West Pakistan Family Courts Act 1964, Section 5 grants Family Courts exclusive jurisdiction to entertain, hear and adjudicate upon the following matters: dissolution of marriage; <i>khula</i> ; dower; maintenance- child support.	This indicator requires that there be a legal obligation on fathers to provide child maintenance support after divorce.
16.17 Does the legislation provide maintenance for the ex-spouse based on commitments, income, earning capacity and assets?	Partial	Under the Islamic law on maintenance after marriage, the ex-husband is to provide support: during the <i>Iddat</i> period for 130 days after notice of divorce; till the time she remarries; or if the wife is pregnant at the time of the divorce, till the delivery.	Compliance with the indicator requires that legal provision uphold women's maintenance rights after divorce.
16.18 Is custody and access to children based on the best interests of the child regardless of the relationship of the parents?	Yes	The Guardians and Wards Act, 1890, Section 7 (1) stipulates 'where the court is satisfied that it is for the welfare of a minor that an order should be made.'	Compliance with this indicator requires that courts be legally bound to uphold the best interests of the children in custody cases.  The right to custody of the children after the dissolution of marriage depends upon the religion and sect to which the spouses belong. This right is affected by the remarriage of the mother as well as that of the father. However, in all cases the deciding factor is the welfare of the child.
16.19 Does the legislation provide damages for adultery? If the legislation does not provide damages for adultery then there is full compliance with this indicator	No	Adultery is a criminal offence under the Offence of Zina Ordinance 1979.	This indicator requires that there be no legal recognition of damages for adultery.  The punishment for adultery, under hadd crimes, is stoning to death. However, Protection of Women Act 2006 made it a crime liable to <i>tazir</i> crimes. <sup>120</sup>
16.20 Does the legislation recognize <i>de facto</i> rights (including same-sex couples) on the same basis as marriage?	No	Pakistan Penal Code 1860, Section 377 stipulates 'unnatural offences' carries punishment of imprisonment for life, or with imprisonment of either description for a term which shall not be less than two years nor more than ten years, and shall also be liable to fine'.	The indicator requires that the law recognizes <i>de facto</i> relationships and grant rights to couples on the same basis as marriage.  Pakistani law does not recognize any matrimonial relationship between parties except that which is provided by the religion i.e. marriage between a man and a woman. Other forms of cohabitation (other than marriage) in which sexual relations between the parties occur is a crime for which punishment is prescribed by law.

Article 16: Personal and Family Law			
Indicator	Compliance	Relevant Legislation	Comments
16.21 Do women have equal rights to guardianship, wardship, trusteeship and adoption?	No	Under the Guardians and Wards Act 1890 mothers are not recognized as legal guardian of minor children (below 18 years of age). They also lose custody of a child in the event of re-marriage. The Indian Trust Act 1882, Section 60 does not consider married women proper trustees. <sup>121</sup>	This indicator requires that the law uphold women's equal rights to guardianship, trusteeship and adoption.
16.22 Does the legislation provide for an order establishing parentage?	No		Both parents are considered jointly responsible for the raising and maintenance of their children. In cases where a child's parentage is not established, a mother may be prevented from claiming child support. A legal remedy is provided through a court order to establish parentage.
16.23 Does the legislation provide for a contribution to pregnancy and childbirth costs by the father to an unmarried mother?	No		This indicator requires that law obligate both parents, irrespective of marital status, to contribute childbirth and pregnancy costs.
16.24 Does the legislation provide for the payment of child support for children born outside marriage?	No		The indicator requires that the law obligate both parents to contribute to child support irrespective of marital status.
16.25 Does the legislation provide for equal rules of inheritance?	No	Under the Islamic Law of Inheritance women are entitled to the following percentages of property: one –third for a daughter; two-third for a son. <sup>122</sup>	The indicator requires that there be no legal discrimination against women's equal rights to inheritance. A draft Act 'Prevention of Anti-Women Practices (Criminal Law Amendments) 2008' is under study/review by the Select Committee of the National Assembly. The Act imposes severe penalties – imprisonment and fines – in any case where a woman is denied her due inheritance rights.
16.26 Is there legislation requiring the application of CEDAW and CRC to domestic family law where relevant?	No		The indicator requires that legal provisions allow courts to apply international conventions in interpreting family legislation. The courts generally refer to these international legal instruments during proceedings.

# 4

## Patent Barriers Produce Discrimination Against Women in the Philippines

# 4. Patent Barriers Produce Discrimination Against Women in the Philippines

## 4.1 Introduction and Overview of Legislative Compliance

The Philippines' legal system is unique as it is influenced by diverse cultures – civil law (Roman); common law (Anglo-American); Muslim (Islamic) law; and indigenous law.<sup>1</sup> The Constitution of the Republic of the Philippines 1987 upholds the fundamental freedoms and rights of all citizens. The civil and criminal laws are, in most cases, in sync with CEDAW's articles. In August 2009 the Congress of the Philippines passed a comprehensive law on women's rights – the Magna Carta of Women. This law seeks to eliminate discrimination against women and outlines the duties of the state in recognizing, protecting, fulfilling and promoting the rights of women, especially those of marginalized women.<sup>2</sup> However, *de facto* gaps have impeded women's full enjoyment of their social, economic and political rights. The formal laws may treat men and women equally but unfair legal practices and contradiction between formal and customary laws may restrict women's full access to the justice systems.

This section assesses the Philippines' legislative compliance with CEDAW. The Philippines ratified CEDAW on 5 August 1981, obliging it to bring its constitution and legislation into accord with the articles of CEDAW. It has achieved full compliance with 66 of 113 indicators, partial compliance with 19 indicators and is non-compliant with respect to the remaining 27 indicators.

Only 60 per cent of its laws are fully compliant with CEDAW benchmarks on gender equality. Apart from patent barriers, there are certain latent impediments that deny Filipino women their due legal rights and freedoms. This explains why 40 per cent of its laws

are either partially compliant or non-compliant with the Conventions provisions of substantive equality. What are these latent inequalities that affect women's legal rights in the Philippines? It lacks expressed constitutional provisions on gender equality and non-discrimination. This grants courts wide latitude of interpretation that may perpetuate discrimination. Influenced by gender stereotypes, its criminal system has retained discriminatory rules of proof – past conduct and physical resistance – and have kept demeaning legal terms such as 'carnal knowledge' while referring to sexual offences. It defines infidelity of a man and a woman differently. Although the Penal Code criminalizes marital rape, it has made this provision ineffective by allowing for a forgiveness practice. The wife's forgiveness act extinguishes 'criminal action and penalty' against the convict husband. At times, a law omits certain perpetrators from its purview allowing discrimination to persist. In marriage and family relations, subtle inequalities are also revealed. In case of differences over disposable of marital property or child custody, a husband's decision prevails over that of his wife.

The main findings of the Philippine's compliance with sixteen substantive articles of the Convention include:

### To embody equality within national constitution and repeal discriminatory national penal code provisions

In full compliance with CEDAW, the Constitution of the Republic of the Philippines 1987 stipulates 'the state values the dignity of every human person and guarantees full respect for human rights'.<sup>3</sup> The Constitution fully recognizes the role of women in nation-building and upholds the fundamental equality before the law of all citizens.<sup>4</sup> The specific constitutional

measures concerning women include their rights to safe and healthy working conditions, equal citizenship rights and their sectoral representation in national and local legislative bodies.<sup>5</sup> In August 2009 a special law was passed – the Magna Carta of Women – that prohibits direct as well as indirect discrimination.

The 2004 government report mentions that there is a need for raising wider awareness on what constitutes discrimination against women, what is implied by *de facto* equality and what forms part of the obligations of the state as well as private individuals and organizations to respect, protect and fulfil the human rights of women. The target audience should include both duty-bearers and rights-holders.<sup>6</sup>

The Convention requires that discriminatory national penal code provisions be repealed in order to advance women's legal interests. The revised Penal Code of the Philippines 1930 provides protection to women and girls against sexual offences.<sup>7</sup> The Code criminalizes offences such as rape, acts of lasciviousness, seduction and corruption of minors. The Anti-Rape Law of 1997 redefines and expands rape from its characterization as a crime against chastity to that of a crime against the person.<sup>8</sup> In addition, marital rape is considered a criminal offence.<sup>9</sup> Consent, outlining coercive circumstances, is also defined under the criminal law.<sup>10</sup> Rape victims are not liable to provide proof of resistance but physical actions manifesting resistance 'may be accepted' as evidence in the prosecution.<sup>11</sup> To compensate victims of assault, the court may grant actual, compensatory, moral and exemplary damages.<sup>12</sup> Even more importantly, the 2004 Anti-Violence against Women and Their Children Act is a special Penal law which covers domestic violence. It supersedes Penal Code provisions for crimes where an intimate relationship is alleged. The Act takes into account 'physical, sexual, psychological and economic' abuses.

Despite these legal provisions, certain discriminatory Penal Code provisions marginalize women in the criminal justice system. Articles 333 and 334 of the Revised Penal Code define sexual infidelity for men and women differently. A wife can be made criminally liable for adultery with a man who is not her husband. On the other hand, a husband's adulterous act with a woman

not his wife is not a crime. The husband can be held criminally liable for concubinage only if he is caught with another woman 'under scandalous circumstances or when he cohabits with another woman in the conjugal dwelling or in any other place'.

The Convention requires that competent tribunals and public institutions be established to provide legal protection to women. In conformity with CEDAW's requirement, the Philippines Commission on Human Rights (PCHR) was established in 1987.<sup>13</sup> The Commission is a constitutional body which monitors the implementation of conventions and national policies on human rights. It also investigates complaints of human rights violations and provides legal assistance to complainants. The National Commission on the Role of Filipino Women (NCRFW) was established in 1975. NCRFW is a policy group and oversight agency for women's empowerment and gender equality. However the 2004 government report states that its structure and mandate need to be strengthened and its budgetary allocation be increased to enable it to meet its obligations.<sup>14</sup>

### **To adopt temporary special measures to accelerate *de facto* equality**

In compliance with CEDAW's benchmarks, several affirmative measures have been adopted to uphold the rights of Filipino women. The constitutional provision requires reservation of 20 per cent of all seats in the House of Representatives (out of 250 seats) for party list representatives from marginalized sectors that include women. Similarly, Section 26 of the 1997 Indigenous People's Rights Act mandates the representation of indigenous women in decision making at all levels.

Despite constitutional requirements of equality for all and provisions for special measures, subtle gender inequalities persist. In ostensibly gender-equal society such as the Philippines, affirmative action is viewed by some as unwarranted or contentious. The 2004 government report asserts that attitudes such as women already possess 'higher average educational attainment and are visible in public life – government, professional and technical occupations' may impede efforts to eliminate historic discrimination against them.<sup>15</sup>

### **To eliminate customary practices that promote gender stereotypes**

Contrary to CEDAW's benchmarks, the country does not have any constitutional provision which gives precedence to formal law over customary rules. Sex-role stereotyping remains a stumbling block to women's full development. It is reported that the institutions of socialization – home, school, media, church, even government – explicitly and implicitly – adhere to beliefs and practices that restrict women's access to opportunities for personal development and for participation in the development of their community and society.<sup>16</sup> Several discriminatory traditional practices against Filipino women still persist. It is reported that the practice of mail-order brides<sup>17</sup> prevails despite the promulgation of the 1990 Anti Mail-Order Bride law which bans the practice.<sup>18</sup>

### **To suppress human trafficking and exploitation of women in prostitution**

Based on CEDAW principles, criminalizing sex work is not desirable; however, the Convention calls for creating laws which prohibit the procuring and trafficking of women for sex work. The Anti-Trafficking in Persons Act 2003 criminalizes procuring any woman without consent or any girl less than 18 years of age.<sup>19</sup> The Act stipulates necessary institutional mechanisms, and sanctions and penalties in order to eliminate trafficking in persons especially women and children. In addition, it protects and supports trafficked persons. According to the revised Penal Code of the Philippines 1930, prostitution is a criminal offence.

### **To eliminate discrimination against women in the political and public life**

In conformity with CEDAW's standards, the Constitution of the Republic of the Philippines 1987 upholds equal rights of women and men in political and public life. Several legal initiatives have been taken to advance women's political rights. The 1995 Party-List System Act grants 20 per cent of seats in the House of Representatives to marginalized sectors such as peasant communities, urban poor, farmers, fishers and women.<sup>20</sup> Similarly, the 1997 Indigenous Peoples Rights Act stipulates provisions for adequate representation of

indigenous women in decision making at all levels and to award them due respect and recognition.<sup>21</sup>

These measures notwithstanding, women remain a minority in electoral politics, in the highest levels of public office on an appointive capacity, and in the executive and judicial branches of government.<sup>22</sup> The Party List System Act fails to allocate a minimum quota for women. Civil society groups assert that theoretically and in practice the 20 per cent seats reserved for party list representatives may be occupied by men. In addition, female members of Parliament usually come from elite clans and owe their presence in the legislative assembly to male-dominated patronage politics. Women members of the Lower House are 'either the wives or daughters of former politicians whose terms have ended'.<sup>23</sup>

### **To ensure equal opportunities of representation and participation to women in international organizations**

In compliance with the Convention, there are no legal barriers in the Philippines to equal representation of women at the international levels. However, government report states that affirmative action in the form of mandatory inclusion of women representatives in international delegations is required.<sup>24</sup>

### **To grant equal rights to nationality**

In accordance with the Convention, the constitutional provisions on nationality provide equal rights to Filipino women and men to acquire, change or retain their citizenship or that of their children.<sup>25</sup> Under the 2003 Citizenship Retention and Re-Acquisition Act, dual nationality is allowed in some cases. Natural-born citizens of the Philippines who become citizens of another country are not deemed to have lost their Philippine citizenship.<sup>26</sup> However, certain discriminatory legal provisions may restrict women's legal rights. The 1996 Passport Act requires that women applicants submit documentary proof of their marriage, divorce or annulment when applying for a passport. No such conditions are imposed on male applicants.<sup>27</sup>

### **To ensure equal rights to education**

In conformity with CEDAW, there are constitutional



provisions and laws that uphold and protect the educational interests of Filipino women. The Constitutional provision requires the state to 'protect and promote the right of all citizens to quality education at all levels and to take appropriate steps to make education accessible to all'.<sup>28</sup> Primary and secondary education is free and compulsory for boys and girls. Women and girls are also provided scholarships to pursue careers in science and technology.<sup>29</sup>

### **To eliminate discrimination against women at workplace and uphold their economic rights**

In compliance with CEDAW's benchmarks on economic rights, the Constitution of the Republic of the Philippines 1987 stipulates that the state shall promote full employment and provide for equality of employment opportunities.<sup>30</sup> The Labor Code of the Philippines 1974 requires the state to 'afford protection to labor, promote full employment and ensure equal work opportunities regardless of sex, race or creed'.<sup>31</sup> Employment-related special measures are also outlined. These measures include provisions for separate toilet rooms for women and nurseries at work places, and determine the minimum age for special occupations.<sup>32</sup> There is also a legal provision which requires financial institutions to set aside five per cent of their loan portfolio for women's projects.<sup>33</sup> In order to provide legal protection, discrimination against single parents at workplace is disallowed.<sup>34</sup> It is prohibited to dismiss a female worker 'on account of her pregnancy, on leave or in confinement due to her pregnancy'.<sup>35</sup> Women's security at the work place is protected by the Anti-Sexual Harassment Act 1995.<sup>36</sup> The law imposes penalties on sexual harassment offenders. However, the law has limited scope as it imposes penalties only if the perpetrator is a superior employer and manager with 'authority and influence'. There is no legal liability if the act is committed by a peer or subordinate or by co-workers.

Despite these legal safeguards, Filipino women face discrimination at workplace. Female workers experience particular hardships in export processing zones, domestic service and the informal sector. These limitations restrict their employment choices. The law does not address the real issue of security for women working at night time. Studies have indicated that female workers working in

special export processing zones are required to produce a doctor's certification that they are not pregnant. Certain companies deny their female workers maternity benefits but the infringement of this entitlement often remains uninvestigated. The law on sexual harassment at workplace assumes that demands and requests for sexual favour arise only from employers and not from the peers or subordinates. Furthermore the 2004 government report asserts that there is an ambiguity in the law as to which agency should take cognizance of the security concerns of women working in the private sector.<sup>37</sup>

### **To eliminate discrimination against women in health care**

Contrary to CEDAW's requirement, abortion remains illegal under Articles 255–259 of the 1930 Penal Code. Since abortion is a criminal offence, hapless women are left with no choice but to opt for unsafe and clandestine abortion facilities. It is reported that nearly half a million induced abortions are estimated to occur each year with thousands of women dying from complications.<sup>38</sup>

### **To eliminate discrimination against women in economic and social life**

In accordance with CEDAW's benchmarks, the Philippines have adopted various affirmative initiatives to promote social justice in the society. The 2000 Solo Parents' Welfare Act, Social Security Act 1997 and Extended Senior Citizens Act 2003 aim to provide social protection and economic benefits to women (and men). However, contrary to the constitutional and legal requirements of equality and social justice, poor economic conditions and certain cultural norms have created inequalities between men and women, rich and poor, and urban and rural women. The government report states that women bear most of the burden of poverty owing to their roles as caretakers of the family's health and welfare.<sup>39</sup>

### **To eliminate discrimination against rural women**

CEDAW allows for temporary affirmative measures to be incorporated into constitutions and legislation. In compliance with CEDAW's standards, several laws in the Philippines focus on protecting the rights of rural women. The 1998 Fisheries Law provides

women the right of representation in local councils formed to implement the government's coastal resource management programmes. However, a civil society group claims that the rural women's work in production and social reproduction is largely undervalued.<sup>40</sup>

### To accord women equality before the law

In adherence to CEDAW's benchmarks, the Constitution of the Republic of the Philippines confers full equality before the law.<sup>41</sup> The 1992 Women in Development and National Building Act stipulates that women of legal age, regardless of civil status, shall have the capacity to act and enter into contracts which shall in every respect be equal to that of men under similar circumstances. Government agencies are slowly recognizing women's capacity to act, especially in concluding contracts, land ownership and property relations. The 2004 government report claims that Agrarian Reform Department protects and promotes the rights of female tillers/farmers through the issuance of emancipation patents/certificate of land ownership awards in the name of both wife and husband.<sup>42</sup>

### To eliminate discrimination against women and accord equality to them within marriage and family relations

In compliance with CEDAW's benchmarks, the Family Code of the Philippines 1987 grants equal marriage rights to men and women. A marriage can be nullified if solemnized under duress.<sup>43</sup> The Code declares child marriage 'void even if performed with the consent of the parents or guardians' and prohibits polygamy.<sup>44</sup> It also accords equal inheritance rights to men and women. The court is not authorized to issue orders of restitution of conjugal rights in divorce cases. However, there are certain legal barriers that may restrict women's right to equality within family relations. Women can easily be accused of infidelity while husbands are culpable if found co-habiting and supporting another woman.<sup>45</sup> In case of difference between husband and wife over community and conjugal partnership property or the exercise of parental authority and legal guardianship over the person and property of a common child, the husband's decision 'prevails' over that of the wife.<sup>46</sup> Divorce is granted on the basis of certain grounds only.

## 4.2 Assessment of National Legislation for Gender Equality

Article 1: Definition of Discrimination Against Women			
Article 2: Obligation to Eliminate Discrimination			
Indicator	Compliance	Relevant Legislation	Comments
1.1 Does the Constitution guarantee fundamental human rights and freedoms to men and women equally including political, economic, social, cultural, and civil or any other field?	Yes	<p>The Constitution of the Republic of the Philippines 1987, Article 2 Section 11 states 'the state values the dignity of every human person and guarantees full respect for human rights'.<sup>47</sup></p> <p>The Constitution of the Republic of the Philippines, 1987, Article 3 Section 1 specifies, 'no person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws'.</p>	The indicator requires that the constitution uphold women's fundamental rights and freedoms in different spheres.

## Article 1: Definition of Discrimination Against Women

## Article 2: Obligation to Eliminate Discrimination

Indicator	Compliance	Relevant Legislation	Comments
1.2 Is there constitutional guarantee of substantive equality between men and women?	Partial	The Constitution of Republic of the Philippines, 1987, Article 2 Section 14 states 'the state shall ensure the fundamental equality before the law of women and men'.	The indicator requires expressed constitutional provision on substantive equality – equality of access and results. The Philippines constitutional provision does not include requirements of substantive equality. Advocates have pointed to the need to create wider awareness of what constitutes discrimination against women, and what is implied by <i>de facto</i> equality between men and women. <sup>48</sup>
1.3 Does the Constitution contain an anti-discrimination clause on the grounds of sex/gender?	Yes	A legal definition of discrimination is defined in Section 4 (B) of the 2009 Magna Carta of Women, The Section stipulates 'discrimination against women refers to any gender-based distinction, exclusion or restriction 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'. <sup>49</sup>	This indicator requires that the constitution have expressed anti-discrimination provisions.
1.4 Does the Constitution contain an anti-discrimination clause on the grounds of marital status?	Partial	Section 4 (B) of the 2009 Magna Carta of Women prohibits 'any' gender-based distinction, exclusion or restriction imposed on women.	Compliance with this indicator requires that there be constitutional provisions on non-discrimination on the grounds of marital status – unmarried; married; single etc.
1.5 Does the Constitution contain an anti-discrimination clause on the grounds of sexual orientation?	Partial	Section 4 (B) of the 2009 Magna Carta of Women prohibits 'any' gender-based distinction, exclusion or restriction imposed on women.	
1.6 Does the Constitution contain an anti-discrimination clause on the grounds of HIV status?	Partial	Section 4 (B) of the 2009 Magna Carta of Women prohibits 'any' gender-based distinction, exclusion or restriction imposed on women.	

## Article 1: Definition of Discrimination Against Women

## Article 2: Obligation to Eliminate Discrimination

Indicator	Compliance	Relevant Legislation	Comments
1.7 Does the Constitution contain an anti-discrimination clause on the grounds of disability?	Partial	Section 32 of the 1992 Magna Carta for Disabled Persons stipulates ‘no entity, whether public or private, shall discriminate against a qualified disabled person by reason of disability in regard to job application procedures, the hiring, promotion, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.’ <sup>50</sup>	
1.8 Does the breadth of the anti-discrimination clause encompass direct and indirect discrimination?	Partial	The 2009 Magna Carta of Women, Section 4 (b) prohibits acts that directly or indirectly discriminate against upon women.	This indicator requires that the constitutional provision on non-discrimination prohibits both direct and indirect discrimination.  In the Philippines, there is no constitutional provision that prohibits indirect discrimination.
1.9 Does the anti-discrimination clause bind public authorities and institutions?	Yes	Article 8 Section 1 of the Constitution specifies the judicial powers of the courts. The judicial powers include the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.	Compliance with this indicator requires that the constitution have provision that binds public institutions to follow principle of non-discrimination.
1.10 Does the anti-discrimination clause bind any person, organization or enterprise?	Partial	The Constitutional provision holds only the state and its agencies accountable for acts of discrimination. The Civil Code of the Philippines 1949, Article 19 stipulates ‘every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.’  The Civil Code of the Philippines 1949, Article 32 states ‘any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs the constitutionally guaranteed rights and liberties of another person shall be liable to the latter for damages.’ <sup>51</sup>	The indicator requires that there be constitutional provision that binds both public and private sectors to follow non-discriminatory rules and regulations.  Under the Human Relations Chapter of the Civil Code 1949 (Chapter 2) private persons and entities can be held liable for violation of the rights of another person.

**Article 1: Definition of Discrimination Against Women****Article 2: Obligation to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.11 Are sanctions imposed for breach of anti-discrimination provisions?	Yes	The Civil Code of the Philippines stipulates provisions for compensation/claims against discriminatory acts.	Compliance with this indicator requires that there be legal provision that impose sanctions – fines, apologies or loss of government contracts and remedies such as compensation and injunctive relief – in case of breach of anti-discrimination provisions.
1.12 Are there specific domestic violence offences in the criminal legislation (Penal Code)?	Yes	<p>The Anti-Violence Against Women and Their Children Act, Section 3 (a) states ‘victims of violence include wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate.’</p> <p>Section 3 (A-D) of the 2004 Act defines different violent acts which include physical violence, sexual violence, psychological violence and economic abuse.</p> <p>Under Section 36 of the 2004 Act a victim of violence shall be entitled to ‘actual, compensatory, moral and exemplary damages.’<sup>52</sup></p>	<p>This indicator requires that there be specific laws or Penal Code provision on domestic violence.</p> <p>The Anti-Violence against Women and Their Children Act is considered special Penal legislation which covers domestic violence and supersedes penal code provisions for crimes where an intimate relationship is alleged.</p> <p>The criminal law is a combination of the revised Penal Code and special Penal laws.</p>
1.13 Is stalking a criminal offence?	Yes	<p>The Anti Violence against Women and their Children Act 2004, Section 3 (d) defines stalking as an ‘intentional act committed by a person who, knowingly and without lawful justification follows the woman or her child or places the woman or her child under surveillance directly or indirectly or a combination thereof’.</p> <p>Sec. 5 (H) of the Act mentions certain stalking acts ‘following a woman or her child in public or private places; peering in the window or lingering outside the residence of the woman or her child; entering or remaining in the dwelling or on the property of the woman or her child against her/his will; destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and engaging in any form of harassment or violence’.</p>	This indicator requires that any harassment act – including stalking – be criminalized.

**Article 1: Definition of Discrimination Against Women****Article 2: Obligation to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.14 Is a restraining order available in situations of sexual and domestic violence regardless of marital status?	Yes	The Anti Violence against Women and their Children Act 2004, Section 8 provides for court protection orders to provide relief to victims of violence.	Compliance with this indicator requires that law provide civil remedies – such as restraining orders – that ensures effective protection of women against violence. Such remedies should be available to women irrespective of their marital status.
1.15 Is there mandatory prosecution of domestic violence offences?	No	The Anti Violence Against Women and their Children Act 2004, Section 25 classifies domestic violence as a public crime which may be prosecuted upon the filing of a complaint by any citizen having personal knowledge of the circumstances involving the commission of the crime.	Domestic violence is not a private matter and be treated as a criminal offence by law enforcement agencies. The indicator requires that law stipulate provisions on mandatory prosecution of perpetrators.
1.16 Does the criminal legislation contain a broad range of sexual assault offences graded on the basis of seriousness to the victim?	Yes	The Penal Code 1930 has stipulated a range of sexual offences: Article 335 on Rape; Article 333 on adultery; Article 334 on concubineage; Article 336 on acts of lasciviousness; Article 337 on qualified seduction; Article 338 on simple seduction; Article 340 on corruption of minors.	<p>Women and girls can be sexually abused in several ways. Compliance with this indicator requires any unwanted sexual contact be unlawful. It is essential to incorporate into criminal law a wide range of sexual assault offences.</p> <p>Certain discriminatory Penal Code provisions curtail women's legal rights. Articles 333 and 334 of the Revised Penal Code define sexual infidelity for men and women differently. A wife can be made criminally liable for mere adultery, while a husband must have committed concubinage.</p> <p>Similarly under Section 266-C of the Anti-Rape Act 1997 forgiveness can 'extinguish' the criminal dimension of marital rape and its penalties and may thereby perpetuate the cycle of violence.<sup>53</sup></p>
1.17 Does the definition of rape and/or sexual assault offences include penetration of non-penile objects into anus, vagina and mouth?	Yes	Anti-Rape Act 1997, Section 266-A (2). <sup>54</sup>	<p>This indicator requires that the legal definition of rape not be restricted to penile penetration only. It should take into account all forms of sexual abuse.</p> <p>The Philippines law redefines and expands rape from being a crime against 'chastity' to being a crime against a person.</p>



## Article 1: Definition of Discrimination Against Women

## Article 2: Obligation to Eliminate Discrimination

Indicator	Compliance	Relevant Legislation	Comments
1.18 Is there an offence of incest for girls and women? If there is no offence of incest then there is full compliance with this indicator	Partial	The Anti-Rape Act 1997, Section 266-B (1), has a provision on incestuous rape. The offenders may include a parent, ascendant, step parent, guardian, and relative by consanguinity or affinity within the third civil degree.	Ideally the law on incest should make a clear distinction between a victim and the perpetrator. This indicator implies that under no circumstances victims of incestuous sexual encounter – girls and women – be charged with an offence.
1.19 Have the terms indecency, carnal knowledge, defilement and insulting modesty been removed from the criminal legislation?	No	Penal Code, 1930, Article 333 uses the word ‘carnal knowledge’.	The use of such language in place of appropriate legal terminology may depict female victims as damaged or tarnished by the sexual offences. Compliance with this indicator requires that such terms be removed, replaced and focus on invasion of personal integrity of women.
1.20 Is consent specifically defined in the criminal legislation outlining coercive circumstances?	Yes	The Anti-Rape Act 1997, Article 266-A (1a–to–1d) to Article 335 (1 to 3).	Consent is used as a defence in cases of rape and other sexual offences. There can be doubt as to what circumstances constitute consent. The indicator requires a statutory definition of consent in the criminal law. The legal provision must include wide-ranging circumstances that may induce an unwilling consent.
1.21 Is there a legislative prohibition on the use of prior sexual conduct to establish consent?	No	Rape Victim Assistance and Protection Act 1998, Section 6 requires the court to take into account evidence of complainant’s past sexual conduct ‘only to the extent that such evidence is material and relevant to the case.’ <sup>55</sup>	The admission of the prior sexual history of the victim is a discriminatory procedural rule. It is based on the assumption that promiscuous women are more likely to have consented to sexual acts. The indicator requires that such provision be removed.  Section 3 of the 1998 Act provides for the establishment of a rape crisis centre in ‘every province and municipality.’ The centres provide rape victims with psychological counselling, legal assistance, safety and medical services.
1.22 Is there a legislative prohibition of the requirement for corroboration?	Yes	In the Philippines the testimony of the victim alone, if credible, is sufficient to convict the accused of the crime. Many court decisions have resulted in conviction on the basis of the uncorroborated but credible testimony of the victim.	The discriminatory legal requirement of independent evidence is used by some courts. It is based on the supposition that it is dangerous to convict the accused on the basis of uncorroborated evidence. Compliance with this indicator requires removing this legal provision from the Penal Code.

**Article 1: Definition of Discrimination Against Women****Article 2: Obligation to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.23 Is there a legislative prohibition of the requirement for proof of resistance?	No	The Anti-Rape Act, 1997, Article 266-D requires proof of resistance.	The procedural rule of proof of resistance may be used by courts to determine consent. It implies victims of sexual assault must establish that they have physically resisted the perpetrator or otherwise consent may be inferred. The indicator requires removing this discriminatory rule from the Penal Code.
1.24 Is there a defence of honest and reasonable belief that the victim is of legal age? If there is no defence of honest and reasonable belief then there is full compliance with this indicator.	Yes	According to the Anti-Rape Act 1997, Section 266-B (1) the defence is not available if the offender rapes a victim below the age of 18 years.	The legal provision of honest and reasonable belief that the victim is of legal age is discriminatory. It can be used by perpetrator to argue that he honestly believed the victim was of legal age. This provision put the onus on the victim rather than on the alleged perpetrator to reveal the age. The indicator requires removing this discriminatory legal provision.
1.25 Is a defence of consent disallowed in relation to a victim under 18?	Yes	The Anti-Rape Law 1997, Section 266-B (1). The offender faces criminal charges for raping a victim less than 18 years of age.	Compliance with this indicator requires that consent of the victim, below 18 years, be disallowed as a defence.
1.26 Is there an exemption from prosecution for marital rape? If yes, then there is no compliance with this indicator.	Partial	According to the Anti-Rape Law 1997 marital rape is a criminal offence.	This indicator requires that marital rape be made unlawful and legal provisions should be stipulated accordingly.  In the case of a husband who is the offender, subsequent forgiveness by the wife extinguishes the criminal action. <sup>56</sup>
1.27 Is there mandatory prosecution for sexual offences?	Partial	There is no expressed provision on mandatory prosecution.	This indicator requires that there be mandatory legal provisions to punish and redress the wrongs committed against female victims of sexual abuse.  As public crimes however, criminal action against sexual offences may be initiated by any person having personal knowledge of the offense.  Also for offenses covered by the Anti-Violence Against Women and Their Children Act, 2004 compromise or mediation is prohibited. Section 33 of the Act stipulates that a 'court hearing an application for a protection order shall not order, direct, force or in any way unduly influence the applicant for a protection order to compromise or abandon any of the reliefs sought'. <sup>57</sup>

## Article 1: Definition of Discrimination Against Women

## Article 2: Obligation to Eliminate Discrimination

Indicator	Compliance	Relevant Legislation	Comments
1.28 Is bail unavailable for sexual offences if risk to victim?	Partial	The Constitution of the Republic of the Philippines 1987, Article 3, Section 13 stipulates ‘all persons, except those charged with offenses punishable by <i>reclusion perpetua</i> when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of <i>habeas corpus</i> is suspended. Excessive bail shall not be required’.	This indicator requires that bail not be granted to the accused if he poses a potential threat to the female victims Based on Article 266 B of the Anti Rape Law of 1997, rape carries the penalty of ‘reclusion perpetua to death’.
1.29 Are there minimum sentences for sexual offences?	No		Compliance with this indicator requires that law impose minimum sentences for sexual offences.
1.30 Is there a provision in the criminal legislation which states that customary practices of forgiveness shall not affect criminal prosecution or sentencing?	No	The provision of the Revised Penal Code as amended by the Anti-Rape Law 1997, Article 266-C states ‘in case it is the legal husband who is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty.’ <sup>58</sup>	The indicator requires that customary practices not be used as justification to reduce, withdraw sentences or not to prosecute the perpetrator of a crime. According to the Anti-Rape Law the forgiveness clause extinguishes the criminal dimension of marital rape.
1.31 Is there legislative provision for compensation for victims of sexual and domestic violence?	Yes	Violence against women and their Children Act 2004 Section 36 stipulates ‘any victim under this Act shall be entitled to actual, compensatory, moral and exemplary damages’.	Compliance with this indicator requires that the law include compensatory measures for victims of sexual abuse. The 1992 Act Creating a Board of Claims under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes, Section 3 (d) stipulates ‘Any person who is a victim of violent crimes’ may file a claim for compensation. For this purpose, violent crimes shall include rape and shall likewise refer to offences committed with malice which resulted in death or serious physical and/or psychological injuries, permanent incapacity or disability, insanity, abortion, serious trauma, or committed with torture, cruelty or barbarity.’ <sup>59</sup>

**Article 1: Definition of Discrimination Against Women****Article 2: Obligation to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.32 Does the criminal legislation allow for infanticide to replace a charge of murder or manslaughter?	No	Penal Code 1930, Article 255 criminalizes infanticide.	In the event that a mother causes the death of her child of 12 months or less, she should not be charged for manslaughter or murder. The indicator requires that such accused be charged for infanticide as this charge prescribes reduced sentences.
1.33 Does the definition of infanticide include environmental and social stresses?	No		The indicator requires that defence of infanticide not be solely grounded on failure to recover from post-partum depression. It should also be linked to environmental and social stresses.

**Article 3: Guarantee of Basic Human Rights and Fundamental Freedoms**

Indicator	Compliance	Relevant Legislation	Comments
3.1 Is there legislation establishing national human rights machinery charged with promoting and protecting human rights including women's rights?	Yes	The Constitution of the Republic of the Philippines 1987, Article 13, Section 17 mandates the establishment of an independent Philippines Commission on Human Rights (PCHR). <sup>60</sup>	<p>This indicator requires that legally competent national tribunals and other public institutions be established to uphold women's rights.</p> <p>PCHR is a constitutional body that monitors the implementation of conventions and national policies on human rights. The mandate of the Commission includes: prevention of human rights violation through advocacy, partnership, monitoring, research etc; empowerment of victims of human rights violations and their families; advocacy for rights-based legislative, administrative and judicial policies, programmes and measures; investigation, reporting of human rights violations and abuses.<sup>61</sup></p> <p>The 2009 Magna Carta of Women seeks to establish a gender ombudsperson in the Commission on Human Rights.</p>

Article 3: Guarantee of Basic Human Rights and Fundamental Freedoms			
Indicator	Compliance	Relevant Legislation	Comments
3.2 Is there legislation establishing a body to monitor the implementation of non-discriminatory law and policy for the advancement of women?	Yes	Under Presidential Decree No 633. 1975 a 'National Commission on the Role of Filipino Women' was established. <sup>62</sup>	<p>This indicator requires that a specific law be enacted to establish a national body for the advancement of women's interests and legal rights.</p> <p>The National Commission on the Role of Filipino Women was reorganized and strengthened in 1997.</p> <p>Its mandate includes: review, evaluate, and recommend measures, including priorities to ensure the full integration of women for economic, social and cultural development at national, regional and international levels; and to ensure further equality between women and men.<sup>63</sup> The 2009 law on the Magna Carta of Women also aims to strengthen the NCRFW.</p> <p>However there is a need to strengthen and broaden the structure and mandate of the NCRFW.<sup>64</sup></p>

Article 4: Acceleration of Equality between Men and Women			
Indicator	Compliance	Relevant Legislation	Comments
4.1 Does the Constitution contain a temporary special measures provision?	Partial	Special measures are included in the 2009 Law on the Magna Carta of Women. The Law states 'temporary special measures include a variety of legislative, executive, administrative, and regulatory instruments, policies, and practices aimed at accelerating <i>de facto</i> equality. These measures shall not be considered discriminatory but shall in no way entail as a consequence the maintenance of unequal or separate standards. They shall be discontinued when their objectives have been achieved'.	<p>Compliance with this indicator requires that there be a constitutional provision on temporary special measures for advancing women's political, economic, social and legal rights.</p> <p>There is no expressed provision in the Constitution of the Philippines for special measures.</p>

Article 4: Acceleration of Equality between Men and Women			
Indicator	Compliance	Relevant Legislation	Comments
4.2 Are special measures exempt from discrimination on the grounds of sex, marital status, sexual orientation, disability and HIV status?	No		<p>This indicator requires that special measures be exempt from constitutional provisions on non-discrimination. A special measure adopted to redress legal inequities against women should not be challenged on the grounds that it discriminates against men.</p> <p>However, it is reported that gender inequality persists in Philippine society in political, economic and socio-cultural spheres. The subtle nature of inequalities may make it more difficult to establish temporary special measures than in societies where nature of discrimination is obvious.<sup>65</sup></p>

Article 5: Sex roles and Stereotypes			
Indicator	Compliance	Relevant Legislation	Comments
5.1 Is there a provision in the Constitution which gives precedence to a constitutional guarantee of equality if there is a conflict between custom and equality law?	No		<p>Compliance with this indicator requires that constitutional provisions on equality prevail over discriminatory customary laws and practices.</p> <p>Sex-role stereotyping remains a stumbling block to women's full development. The institutions of socialization – home, school, media, church, as well as government – adhere to beliefs and practices that restrict women's access to opportunities in political, social and economic spheres.<sup>66</sup> Several discriminatory traditional practices continue to cause endless suffering to Filipino women. Mail order bride practices continue despite the Anti-Mail-Order Bride Law 1990, banning it.</p>

Article 6: Exploitation of Women			
Indicator	Compliance	Relevant Legislation	Comments
6.1 Is the act of soliciting decriminalized?	No	<p>The revised Penal Code, Article 202 penalizes prostituted women and girls.</p> <p>A proposed Anti-Prostitution Act 2007 seeks to decriminalize women in prostitution and shift criminal liability to perpetrators and buyers of persons in prostitution.<sup>67</sup></p>	<p>This indicator requires that sex work be decriminalized.</p> <p>Poverty and the absence of alternative sources of income continue to push women into prostitution, where brothel operators and pimps exploit them.<sup>68</sup></p>



Article 6: Exploitation of Women			
Indicator	Compliance	Relevant Legislation	Comments
6.2 Is aiding and abetting consensual acts of soliciting decriminalized?	No	According to Anti-Trafficking in Persons Act 2003, trafficking is a crime regardless of the victim's consent. Section 11 of the Act stipulates 'any person who buys or engages the services of trafficked persons for prostitution shall be penalized'. <sup>69</sup>	This indicator requires that brothels and third parties who facilitate sex work not be criminalized for their activities where the worker has reached age of majority.
6.3 Is it a criminal offence to procure any woman without consent or any girl under 18?	Yes	Anti-Trafficking in Persons Act 2003, Section 11 prohibits the use of trafficked persons for prostitution regardless of the latter's consent.	This indicator requires that procuring a girl below 18 years be unlawful.
6.4 Does employment legislation including occupational health and safety legislation protect sex workers?	Partial	Under Article 138 of the Labor Code of the Philippines, any woman who is permitted or suffered to work, with or without compensation, in any night club, cocktail lounge, massage clinic, bar or similar establishments under the effective control or supervision of the employer for a substantial period of time, shall be considered an employee of such establishment for purposes of labour and social laws.	The indicator requires that sex workers be granted the same rights as other workers. They should be covered by relevant employment laws and be in a position to enjoy benefits and equal legal protection from exploitation.
6.5 Is the trafficking of women prohibited?	Yes	Under the Anti-Trafficking in Persons Act 2003, Section 10 (a) the offender faces a sentence of up to 20 years and fines.	This indicator requires that all forms of human trafficking be declared unlawful. The 2003 Anti-Trafficking Act commits the State to provide mandatory services to trafficked persons, such as emergency shelter, counselling, free legal services, medical or psychological services, livelihood and skills training and educational assistance. <sup>70</sup>
6.6 Is sex tourism prohibited?	Yes	Anti-Trafficking in Persons Act 2003, Section 3 (e).	This indicator conveys the sense that sex tourism is a form of sexual exploitation that therefore should be made unlawful.

Article 7: Political and Public Life			
Indicator	Compliance	Relevant Legislation	Comments
7.1 Is there an equal right to vote?	Yes	The Constitution of the Republic of the Philippines 1987, Article 5, Section 1 stipulates 'suffrage may be exercised by all citizens of the Philippines'.	This indicator requires that women have an equal right to suffrage. The Philippine's Constitution upholds the equal rights of women and men to participate in political and public life. However, women continue to be a minority in electoral politics, in the highest levels of public office, and in the executive and judicial branches of government. <sup>71</sup>

Article 7: Political and Public Life			
Indicator	Compliance	Relevant Legislation	Comments
7.2 Is there equal eligibility for political representation?	Yes	The Constitution of the Republic of the Philippines 1987 confers upon its citizens equal rights of political representation.	This indicator requires that women have equal eligibility rights to political representation.
7.3 Is there legislative provision for minimum quotas of women in Parliament?	Partial	<p>Party-List System Act 1995, Section 11 allocates 50 seats or 20 per cent of the 250 seats in the House of Representatives for party list representatives from marginalized sectors such as peasant communities, urban poor, farmers, fishers and 'women'.<sup>72</sup></p> <p>A proposed Gender Balance Act 2006 calls for reserving 30 per cent of seats in national parliament and local political institution. The Act recommends increasing the percentage to one-half by 2013.<sup>73</sup></p> <p>The Local Government Code of the Philippines 1991 stipulates provisions for one women representative in local government legislative bodies – provincial, city and municipal levels.<sup>74</sup></p>	<p>This indicator requires that special measures – such as quotas – be adopted to promote women's participation in the political sphere.</p> <p>The Party List mechanism provides an opportunity to protect women's interest through female representatives. However, the low level of awareness concerning the party list system, along with the inexperience and lack of funds of the parties, has so far limited its impact. Furthermore, the Party List System Act fails to allocate a minimum quota for women. Theoretically, the 20 per cent seats reserved for party list representatives can be occupied by men.</p> <p>It is reported that Congress is yet to pass an enabling law to enforce and implement Local Government Code provisions.<sup>75</sup> This restricts women's opportunities in political life at the local levels.</p> <p>Other laws ensuring women's representation in the decision-making processes include: The Indigenous Peoples Rights Act 1997; the Social Reform and Poverty Alleviation Act 1997 allocate one seat for women in the National Anti-Poverty Commission.<sup>76</sup></p>
7.4 Do women have an equal right to participate in NGOs?	Yes	There are no legal barriers.	This indicator requires that women have equal opportunities to participate in non-governmental organizations.
7.5 Is there legislation (other than Charitable Societies legislation) enabling NGOs to register and mobilize to promote the advancement of women without political interference?	Yes	The Constitution of the Republic of the Philippines, 1987, Article 2, Section 23.	This indicator requires that legal provisions be stipulated allowing NGOs to advocate for women's rights.

Article 8: International Representation and Participation			
Indicator	Compliance	Relevant Legislation	Comments
8.1 Do women have an equal opportunity to represent government at international levels and participate in the work of international organizations?	Yes	The 2009 Magna Carta of Women states ‘women’s groups shall also be represented in all international, national and local special and decision-making bodies; the state shall take all appropriate measures to ensure that women, on equal terms with men and without any discrimination get the opportunity to represent their Government at the international level and to participate in the work of international organizations.’	<p>The indicator requires that women have an equal right to represent government at international levels and also participate in the work of international organizations.</p> <p>There are no legislative barriers to women’s equal representation at international levels. In September 2002 there were 80 Philippine embassies and consulates around the world. Women headed 28 per cent of these, with twelve holding the rank of Ambassador and ten that of Consul-General.<sup>77</sup></p>

Article 9: Nationality and Citizenship			
Indicator	Compliance	Relevant Legislation	Comments
9.1 Do women have an equal right to acquire, change or retain their nationality?	Yes	The Constitution of the Republic of the Philippines, 1987, Article IV Section 1 grants equal right of nationality to the following individuals ‘citizens of the Philippines at the time of adoption of constitution; whose fathers or mothers are citizens; born to Filipino mothers; naturalized in accordance with law’.	<p>Nationality rights affect women’s right to vote, stand for public office, choice of residence and her access to public services. This indicator requires that women have equal rights to acquire, change or retain their nationality.</p> <p>The laws on nationality provide equal rights to Filipino women and men to acquire, change or retain their citizenship or that of their children. To ascertain the efficient implementation of laws and guidelines on non-discrimination in acquisition and retention of nationality, monitoring mechanisms need to be installed to track violations and cases.<sup>78</sup></p>
9.2 Does marriage to an alien or change of a husband’s nationality affect a wife’s nationality? If there is no change to a wife’s nationality after marriage, then there is full compliance with this indicator.	Yes	The Constitution of the Republic of the Philippines, 1987, Article 4 Section stipulates ‘citizens of the Philippines who marry aliens shall retain their citizenship, unless by their act or omission they are deemed, under the law, to have renounced it’.	<p>This indicator requires that in the event of a woman’s marriage to a foreign national, her autonomy and independence not be compromised.</p> <p>The Constitutional provisions do not allow for dual nationality. However, there can be exceptions to the rule in some cases. Section 3 of the Citizenship Retention and Re-acquisition Act 2003 declares that natural born citizens of the Philippines who become citizens of another country will not lose their Philippine citizenship.<sup>79</sup></p>

Article 9: Nationality and Citizenship			
Indicator	Compliance	Relevant Legislation	Comments
9.3 Do both spouses have equal rights to residency, citizenship and employment when married to a non-national?	Yes	There are no legislative barriers.	Laws, in some cases, may deny non-national husband of automatic residency or citizenship rights. The indicator requires that such legal restrictions be removed.
9.4 Do both spouses have an equal right to determine the nationality of children?	Yes	Based on the constitutional provisions on nationality, a mother has an equal right to determine the nationality of the children.	This indicator requires that men and women have equal rights to determine the nationality of their children. Any law under which children automatically acquire the nationality of their father but not their mother is discriminatory.
9.5 Do women have an equal right to obtain a passport?	Partial	The Passport Act 1996 does not require that women seek the consent of their husbands to obtain a passport. However, Section 5 (d) of the Act has a discriminatory requirement applicable to women only. They need to submit documentary proof of their marriage, divorce or annulment at the time of the application for a passport. No such conditions are imposed on male applicants. <sup>80</sup>	This indicator requires that women have equal rights to obtain passports. There should be no legal restrictions – such as a requirement of husband's consent – imposed on them.

Article 10: Education			
Indicator	Compliance	Relevant Legislation	Comments
10.1 Does the legislation guarantee women and girls equal access to education? Do women and girls have equal access to education?	Yes	The Constitution of the Republic of the Philippines, 1987, Article 14 Section 1 stipulates 'the state shall protect and promote the right of all citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all'.  The 2009 Magna Carta of Women contains provision on equal access and elimination of discrimination in education, scholarships and training.	This indicator requires that legal provisions allow women and girls equal access to all forms and levels of education.  Education is a basic right of every Filipino. CEDAW 2004 suggests that lower literacy in rural areas may predispose rural women (and men) to lower level jobs, such as domestic service and unpaid family work, or worse, make them easy prey to prostitution. <sup>81</sup>
10.2 Is there legislation that creates special measures for the advancement of women in education?	Yes	To boost enrolment in science and technology courses, the Philippines Congress passed the Science and Technology Scholarship Act 1997. The Act aimed to expand and upgrade educational opportunities for women to pursue careers in science and technology.	This indicator requires legal provisions on affirmative action for women in the field of education.

Article 10: Education			
Indicator	Compliance	Relevant Legislation	Comments
10.3 Is there compulsory primary education for girls and boys?	Yes	The Constitution of the Republic of the Philippines 1987, Article XIV Section 2 (2) stipulates 'elementary education is compulsory for all children of school age'.	This indicator requires that legal provisions be enacted on compulsory primary education for all.
10.4 Is there compulsory secondary education for girls and boys?	Yes	The Constitution of the Republic of the Philippines, 1987, Article XIV Section 2 (2) states 'establish and maintain a system of free public education in the elementary and high school levels'.	The indicator requires that there be legal provision on compulsory secondary education for boys and girls.
10.5 Is family life (reproductive and sexual health) education compulsory in schools?	No		The indicator requires that there be legal provisions for family life education. It should be a compulsory subject during secondary schools.  However, a proposed law, the Reproductive Health Bill makes family life education compulsory in primary and secondary schools. <sup>82</sup>
10.6 Is there a legislative prohibition on expulsion from school because of pregnancy?	Yes	The 2009 Magna Carta of Women, Section 13 (c) stipulates 'no school shall turn out or refuse admission to a female student solely on the account of her having contracted pregnancy outside of marriage during her term in school'.	This indicator requires that there not be any legal barrier to pregnant girls' right to pursue education in schools.

Article 11: Employment			
Indicator	Compliance	Relevant Legislation	Comments
11.1 Are there anti-discrimination provisions in employment legislation on the grounds of sex, marital status, disability, pregnancy, sexual orientation and HIV status with sanctions?	Yes	The Constitution of the Republic of the Philippines 1987, Article 13 Section 3 stipulates 'the state shall promote full employment and equality of employment opportunities'.  The Labor Code of the Philippines 1974, Article 3 states 'the state shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and employers'. <sup>83</sup>	The indicator requires that labour laws grant female workers the same employment rights, opportunities, choices and benefits as men. Appropriate sanctions should also be imposed in the event of violation of female workers' rights.  In the last decade, Filipino women increasingly have become as active as men in providing for the economic needs of their families. However, as reported by CEDAW 2004, female workers faces employment related hazards. The vulnerable groups include women workers involved in special economic zones; domestic service; the informal sector, migrant workers and working girl children. <sup>84</sup>

Article 11: Employment			
Indicator	Compliance	Relevant Legislation	Comments
11.2 Are there special measures provisions for the advancement of women in employment?	Yes	<p>The Labor Code of the Philippines 1974, Article 132 b-d stipulates ‘the special measures include separate toilet rooms for women, establish nursery at work place and determine minimum age for special occupations such as flight attendants.’</p> <p>The Solo Parents’ Welfare Act 2000, Section 7 prohibits employers from discriminating against any sole parent. Additionally it mandates certain agencies to develop and implement programmes of social development and welfare services for single parents and their children.<sup>85</sup></p> <p>Social Security Act, 1997 expands social security to self-employed persons, housewives and household staff.<sup>86</sup></p> <p>In 1995, Congress passed Republic Act 7882 mandating the government to assist Filipino women in their pursuit of owning, operating and managing small business enterprises. Under this law, any woman who is certified to have received appropriate training by any government or government- accredited training institution is eligible to avail herself of loans from government financing institutions that have been tasked to set aside five per cent of their loan portfolio for women’s projects. Section 7 of the Act requires financial institutions to set aside five per cent of their loan portfolio for women’s projects.<sup>87</sup></p> <p>Migrant Workers and Overseas Filipinos Act 1995 has provisions to safeguard the rights and interests of overseas Filipino workers (OFW).<sup>88</sup></p>	<p>This indicator requires legal provisions allowing affirmative action – quota, preferential treatment during recruitment, legal protection to pregnant workers. This aims to redress past discrimination against them and also to promote substantive equality in the sphere of employment.</p> <p>Despite the existence of special measures, women face many employment related challenges. Female migrant workers are exposed to violence and abuses. Based on government data, collected between 1993 and 2000, there were 1,013 cases of human trafficking. Woman made up 64 per cent; 19 per cent of this figure refers to persons who had been prostituted.<sup>89</sup></p>



Article 11: Employment			
Indicator	Compliance	Relevant Legislation	Comments
11.3 Do women enjoy equal conditions of work including leave, superannuation and Workers Compensation?	Partial	<p>The Labor Code 1974, Article 130 prohibits night work for women except in specified circumstances.</p> <p>Additionally the Labor Code gives legal recognition to domestic or household service. The Articles 141 to 152 define household service, and stipulate minimum wages and provisions on domestic workers welfare that include lodging, education, medical attendance and indemnity against unjustified dismissal.</p>	<p>This indicator requires that female workers be provided with same working conditions as other employees – leave entitlements; retirement benefits and compensation. Labour laws, at times, fails to protect the legal interest of domestic workers, casual workers or part-time workers.</p> <p>The prohibition of night work may aim to protect women workers. However, in practice it discriminates against women, as it does not address the real issue of security for women working at night and also excludes them from certain employment opportunities.<sup>90</sup></p>
11.4 Does the legislation provide sexual harassment protection from employers and co-workers?	Partial	<p>Anti-Sexual Harassment Act 1995, Section 3 prohibits sexual harassment at the work place. An offender faces imprisonment of one to six months or both fines and imprisonment.<sup>91</sup></p>	<p>The indicator requires specific legal provisions that prohibit sexual harassment at workplace.</p> <p>The Anti-Sexual Harassment Act penalizes the offense if committed by a superior but not if committed by a peer or a subordinate.</p> <p>The law should be revised, particularly its scope and enforcement in the private sector. At present it is not clear as to which agency should monitor private sector's observance of the legal provisions. Data on implementation of the Act, in the private sector is also not available.<sup>92</sup></p>
11.5 Does the definition of sexual harassment include the breadth of unwanted behaviours?	No		<p>This indicator requires that law on sexual harassment at workplace include and define comprehensive range of unwanted behaviours.</p> <p>The Anti-Sexual Harassment Act 1995 has limited application.</p>
11.6 Does the legislation contain an equal pay provision?	Yes	<p>The Labor Code 1974 Section 135 (a) prohibits 'any discrimination against payment of a lesser compensation, including wage, salary or other form of remuneration and fringe benefits to a female employee as against a male employee for work of equal value.'</p>	<p>The indicator requires that legal provisions uphold female workers' right to pay equal to that of male workers.</p>
11.7 Does the legislation contain pay equity provisions?	No		<p>This indicator requires that employment law uphold the principle of 'equal treatment in respect of work of equal value' (Article 11 (d) of CEDAW).<sup>93</sup></p>

Article 11: Employment			
Indicator	Compliance	Relevant Legislation	Comments
11.8 Does the legislation provide for an equal retirement age?	Yes	Based on Article 287 of the Code, the compulsory retirement age is 65 for men and women.	This indicator requires that the law allow for equal retirement age for female and male workers.
11.9 Are there restrictions on women's choice of employment? If there are no restrictions on women's choice of employment, then there is full compliance with this indicator.	No		Protective laws that prohibit women from working in particular fields of employment or particular hours – night shifts – are discriminatory. The indicator requires that such protective legal provisions be removed.  Restrictions such as the prohibition of night shifts limit women's employment rights. However, Congress is considering a proposed law that seeks to abolish the night work prohibition provision from the Labor Code.
11.10 Does the legislation provide for health protection during pregnancy?	Yes	The Philippine Labor Code in Articles 132, 133 and 134, acknowledges maternity as a social function and accords women workers the right to a nursery in the workplace, maternity leave, separate toilet facilities for women and family planning services for women.	The indicator requires that special legal protection measures be included in employment laws for pregnant workers. Such measures may include: breaks; light work; time to attend medical checks.
11.11 Does the legislation provide paid maternity leave of not less than 14 weeks?	No	Social Security Act 1997, Section 14-A provides for a 60-day maternity leave for normal delivery and 78-day maternity leave for caesarean delivery. <sup>94</sup>	This indicator requires that legal provision grant 14 weeks of maternity leave to female workers in both public and private sectors.  Senate Bill No. 2383 proposes to expand the number of days of maternity leave from 60 to 120 days. <sup>95</sup>
11.12 Does the legislation provide protection from dismissal because of pregnancy or maternity leave?	Yes	The Labor Code 1974, Article 137 (2) prohibits dismissals on the basis of pregnancy and maternity leave.	This indicator requires that employment law provide legal protection to female workers against dismissal due to pregnancy or maternity leave.  Studies have found that before women are hired in the special economic (export processing) zones they are required to submit a doctor's certificate that they are not pregnant. Once hired they have difficulty in availing themselves of maternity leave. Certain companies have been reportedly violating the law on maternity benefits but these have remained uninvestigated as women are reluctant to submit formal complaints for fear of losing their jobs. <sup>96</sup>

Article 11: Employment			
Indicator	Compliance	Relevant Legislation	Comments
11.13 Does the legislation guarantee the provision of childcare by employer or state?	Yes	The Labor Code 1974, Section 132 (c) provides that nurseries shall be established at workplaces for the benefit of women employees.	The indicator requires that legal provision obligate the employer or the state to adopt special childcare measures for female workers.
11.14 Does the legislation provide reasonable nursing time during work hours?	No		<p>The indicator requires that labour law upholds female workers' right to breastfeed their children during work hours.</p> <p>The House of Representatives is considering a Bill No. 1010 which provides for the establishment and maintenance of lactation stations in public places.<sup>97</sup></p>

Article 12: Health Care and Family Planning			
Indicator	Compliance	Relevant Legislation	Comments
12.1 Do women have access to safe and legal abortion facilities?	No	Abortion is criminalized under Articles 255–259 of the Penal Code 1930.	The indicator requires that the law makes abortion legal and should stipulate provisions for safe abortion.

Article 13: Economic and Social Benefits			
Indicator	Compliance	Relevant Legislation	Comments
13.1 Do women have an equal right to family benefits regardless of marital status?	Yes	<p>The Solo Parents' Welfare Act, 2000 provides for a comprehensive plan of social development and welfare services for single parents and their children.</p> <p>The Social Security Act 1997 expands coverage to self-employed persons, housewives and household staff whose employer is required to remit and shoulder part of the contribution.<sup>98</sup></p> <p>Expanded Senior Citizens Act 2003 grants many benefits and privileges to senior citizens. The benefits include 20 per cent discounts from establishments, income tax exemptions, medical and dental privileges in government and private facilities etc.<sup>99</sup></p>	<p>The indicator requires that the law grant female workers equal rights to social security and benefits.</p> <p>The Constitution enshrines the promotion of a just and dynamic social order and social justice in all phases of national development. It requires the state to free the people from poverty through adequate social services, promote full employment, raise standards of living and improve the quality of life for all. It also enunciates equal rights for all.</p> <p>Contrary to these constitutional provisions, poor economic conditions and certain cultural norms have created inequalities between men and women, rich and poor, and urban and rural women. Women bear most of the burden of poverty owing to their role as caretaker of the family's health and welfare.<sup>100</sup></p>

Article 13: Economic and Social Benefits			
Indicator	Compliance	Relevant Legislation	Comments
13.2 Do women have an equal right to obtain bank loans, mortgages and financial credit?	Yes	<p>The 2009 Magna Carta of Women contains provisions on equal rights to employment, livelihood, credit, capital and technology.</p> <p>Republic Act 7882 provides assistance to women engaged in micro and cottage business enterprises. Section 2 of the Act confers upon women above 18 years of age the right to enjoy benefits provided under the Act. It does not take their civil status into account.</p>	<p>The indicator requires that the law upholds women's equal right to obtain loans, mortgages and financial credit.</p> <p>There are various interventions undertaken to provide women greater access to social and economic benefits but high interest rates and the stringent credit policies of lending and financial institutions hamper the growth of women's enterprises.<sup>101</sup></p> <p>The People's Credit and Finance Corporation reported that between 2001 and 2003, it served 864,965 beneficiaries. Out of these beneficiaries, approximately 98 per cent were women.</p>
13.3 Do women have an equal right to participate in recreational activities, sports and cultural life?	Yes	<p>There are no legal restrictions imposed on women's right to participate in recreational activities, sports and cultural life.</p>	<p>The indicator requires that the law not impose restrictions on women's equal rights to participate in recreational activities and cultural life.</p> <p>However, women's participation in sports activities is limited. At best, only popular female sports personalities are given attention. There is a need for a comprehensive and aggressive sports programme to seek out and develop women and young athletes among the populace in the rural areas.<sup>102</sup></p>

Article 14: Rural Women			
Indicator	Compliance	Relevant Legislation	Comments
14.1 Is there legislation that provides for special measures to advance substantive equality for rural women?	Yes	<p>The Fisheries Law 1998 provides women the right to representation in local councils. The councils aim to implement the government's coastal resource management programme.</p> <p>The Local Government Code of the Philippines 1991 stipulates provisions for one women representative in local government legislative bodies – provincial, city and municipal levels.</p>	<p>The indicator requires that the law provide for affirmative action to for uphold the rights of rural women.</p> <p>It is reported that the Philippines guarantees women equal access to credit and capital, an equal share of farm produce and obligates the State to make available wider credit schemes and opportunities to women.<sup>103</sup></p> <p>However, Congress is yet to pass an enabling law to enforce and implement 1991 Local Government Code provisions.<sup>104</sup> This restricts women's opportunities in political life at local levels.</p>

Article 15: Equality before Law and Civil Matters			
Indicator	Compliance	Relevant Legislation	Comments
15.1 Does the Constitution guarantee equality before the law?	Yes	The Constitution of the Republic of the Philippines, 1987, Article 2 Section 14 enshrines the principle of equality of all before the law.	The indicator requires that constitutional provision on equality before the law.
15.2 Do women have an equal capacity in civil matters – can women sue?	Yes	The Women in Development and Nation Building Act, 1992, Section 5 confers equal right to enter and conclude contracts.	The indicator requires that there not be any legal restrictions on women's civil rights. Such rights include: capacity to initiate litigation; access legal advice; or seek redress from courts.
15.3 Do women have an equal right to participate in courts and tribunals at all stages?	Yes	Based on the 1992 Women in Development and Nation Building Act women of legal age, regardless of civil status, have the capacity to act and enter into contracts equal to those of men under similar circumstances. In all contractual situations where married men have the capacity to act, married women shall have equal rights. Women are also granted equal right to participate in court proceedings.	The indicator requires that women have equal legal right to participate in the courts and their proceedings.
15.4 Do women have an equal right (regardless of marital status) to conclude contracts and administer property?	Yes	Women in Development and Nation Building Act 1992, Section 5 states 'women of legal age, regardless of civil status, shall have the capacity to act and enter into contracts which shall in every respect be equal to that of men under similar circumstances. In all contractual situations where married men have the capacity to act, married women shall have equal rights'. <sup>105</sup>	This indicator requires that women have the right to enter into a contract independently without the consent of a husband or male relative.  Government agencies are slowly recognizing women's capacity to act, especially in concluding contracts, land ownership and property relations. More than ever married women may now purchase or lease public lands without written permission from their husbands. The Agrarian Reform Department protects and promotes the rights of women tillers/farmers by issuing emancipation patents/certificate of land ownership awards in the name of both wife and husband. In 2002 it repealed a long-standing policy that prohibited married women from applying for homestead patents, except for certain cases, and required the written consent of a woman's husband before she could apply for the purchase or lease of public lands. <sup>106</sup>
15.5 Do women have an equal right to be executors or administrators of estates?	Yes	The Family Code has given joint authority to the husband and wife over their children and to administer the conjugal property and choose the family residence.	This indicator requires that women have equal legal capacity in civil matters such as the administration of estates.

Article 15: Equality before Law and Civil Matters			
Indicator	Compliance	Relevant Legislation	Comments
15.6 Is there legislation that nullifies all contracts and instruments that limit women's legal capacity?	No	There is no legal provision that nullifies such contracts and instruments.	This indicator requires that any law that limits the capacity of women to conclude contracts be changed.
15.7 Do women have an equal right to choose residence and domicile?	Yes	The Civil Code of the Philippines 1949, Article 50 states 'for the exercise of civil rights and the fulfilment of civil obligations, the domicile of natural persons is the place of their habitual residence'.	This indicator requires that women have equal rights to choose their residence and domicile.

Article 16: Personal and Family Law			
Indicator	Compliance	Relevant Legislation	Comments
16.1 Does the legislation guarantee entry into marriage with full and free consent?	Yes	The Family Code of the Philippines 1987, Article 2 (2) states that no marriage shall be valid unless 'consent is freely given in the presence of the solemnizing officer'. <sup>107</sup>	The indicator requires that the law uphold women's right to freely choose a spouse and to enter into marriage with their free and full consent.
16.2 Does the legislation allow marriages to be nullified if they are entered into under force, duress or undue influence?	Yes	The Family Code of the Philippines 1987, Article 4 states 'the absence of any of the essential or formal requisites shall render the marriage <i>void ab initio</i> '.	The indicator requires that the law nullifies forced marriages.
16.3 Is there an equal minimum age of 18 for marriage?	Yes	The Family Code of the Philippines 1987, Article 5 sets 18 years as the minimum age of marriage for both men and women.	This indicator requires that the law set 18 as the minimum age of marriage for both boys and girls.
16.4 Is there a legislative prohibition of child marriage?	Yes	The Family Code of the Philippines 1987, Article 35 (1) declares child marriage as void, even if performed with the consent of parents or guardians.	The indicator requires that marriage law prohibits child marriage below the age of 18.
16.5 Does the legislation require registration of marriage in an official registry?	Yes	The Family Code of the Philippines 1987, Article 7 (2) requires registration of marriage with the civil registrar general.  Article 23 of the Code stipulates 'it shall be the duty of the person solemnizing the marriage to furnish either of the contracting parties the original of the marriage certificate... and to send the duplicate and triplicate copies not later than 15 days after the marriage to the local civil registrar of the place where the marriage was solemnized'.	The indicator requires that legal provision should provide for registration of marriage. This is a good way of tracking child marriages, and cases of polygamy. It also facilitates women's claim for spousal benefits after divorce.



Article 16: Personal and Family Law			
Indicator	Compliance	Relevant Legislation	Comments
16.6 Does the legislation prohibit bigamy?	Yes	Article 35 (4) of the Family Code declares that bigamous and polygamous marriages are 'void from the beginning'. Article 349 of the Revised Penal Code prohibits bigamous marriages.	This indicator requires that family legislation prohibits bigamy or polygamy.
16.7 Do women have an equal right to choose a family name?	Yes	Article 370 of the New Civil Code provides the following options for married women but not for married men: use of her maiden first name and surname and addition of her husband's surname; her maiden first name and her husband's surname; or her husband's full name, prefixing a word indicating that she is his wife, such as Mrs.	This indicator requires the family law uphold married women's right to choose a family name.  Under the law, the woman's use of her husband's surname is optional, not obligatory.
16.8 Is the consent of both parents equal in the marriage of minors?	Yes	Child marriage is illegal.	This indicator requires that the legal provisions grant equal rights to both parents on matters concerning their children. A legal provision that allows for father's consent alone for a child marriage is discriminatory.
16.9 Are both spouses equal in the ownership, acquisition, management, administration, enjoyment and disposition of property?	Partial	Article 96 of the Family Code stipulates that in the event of disagreement between spouses over community and conjugal partnership property, the husband's decision shall prevail over that of the wife.	This indicator requires that legal provisions include spouses' equal rights to acquire, own, manage, administer or dispose of property.
16.10 Does the legislation provide for a maintenance and custody order during separation based on need?	Yes	Article 49 of the Family Code empowers the courts to issue orders 'for the support of the spouse, custody and support of their common children'.	This indicator requires that the family legislation stipulate provisions on maintenance and custody orders of children where a woman decides to seek a divorce.
16.11 Is there legislation to enable women to occupy the marital home when settlement is not possible or in situations of domestic violence?	Yes	The Anti Violence against Women and their Children Act 2004, Section 8 (c) provides for the following legal remedies: Removal and exclusion of the respondent from the residence of the petitioner, regardless of ownership of the residence, either temporarily for the purpose of protecting the petitioner, or permanently where no property rights are violated, and if a respondent must remove personal effects from the residence, the court shall direct a law enforcement agent to accompany the respondent to see that he has gathered his things and escort the respondent from the residence.	This indicator requires legal provision that allows a woman to remain in the marital home until property settlement is finalized.

Article 16: Personal and Family Law			
Indicator	Compliance	Relevant Legislation	Comments
16.12 Does the legislation provide an order for restitution of conjugal rights? If there is no such order in the legislation then there is full compliance with this indicator.	Yes	The court does not authorize the restitution of conjugal rights.	At times, a court may order a married persons (men or women), who have applied for divorce, to return to the marriage and fulfil their marital responsibilities. This may impact women's freedoms and limits their choices. In some case it may amount to legal sanctioning of marital rape.
16.13 Does the legislation provide for no-fault divorce?	No	Based on Article 55- Section 1 to 10 of the Family Code legal separation is possible subject to the existence of certain conditions.	This indicator requires that the law prohibits fault based divorce. Evidence of matrimonial offences – cruelty, desertion, any physical disability – may compromise women's dignity in divorce cases.
16.14 Is there a duty of the court to promote reconciliation? If the legislation does not contain such a duty then there is full compliance with this indicator.	No	Article 59 of the Family Code authorizes the court to promote reconciliation. 'No legal separation may be decreed unless the Court has taken steps toward the reconciliation of the spouses and is fully satisfied, despite such efforts, that reconciliation is highly improbable.'	The indicator requires that there be no legal provision that obligates courts to promote reconciliation between parties.
16.15 Does the legislation provide for an equal division of property after divorce including recognition of unpaid contributions; are future needs and future earning capacity calculated?	Yes	The Family Code 1987, Article 63 (2) stipulates 'the absolute community or the conjugal partnership shall be dissolved and liquidated'.	The indicator requires that the law uphold women's equal right to marital property after divorce. It should also recognize their non-financial family contributions – raising children; caring for elderly relatives; and discharging household duties.
16.16 Does the legislation provide for the payment of child support upon divorce based on need?	Yes	Article 49 of the Family Code states 'The Court shall provide for the support of the spouses and the custody and support of their common children.'	This indicator requires that there be a legal obligation on fathers to provide child maintenance support after divorce.
16.17 Does the legislation provide maintenance for the ex-spouse based on commitments, income, earning capacity and assets?	No		Compliance with the indicator requires that legal provision uphold women's maintenance rights after divorce.
16.18 Is custody and access to children based on the best interests of the child regard less of the relationship of the parents?	Yes	Article 49 of the Family Code 1987 states 'the Court shall give paramount consideration to the moral and material welfare of said children and their choice of the parent with whom they wish to remain.'	Compliance with this indicator requires that courts be legally bound to uphold the best interests of children in custody cases.

Article 16: Personal and Family Law			
Indicator	Compliance	Relevant Legislation	Comments
16.19 Does the legislation provide damages for adultery? If the legislation does not provide damages for adultery then there is full compliance with this indicator	No		This indicator requires that there be no legal recognition of damages for adultery.
16.20 Does the legislation recognize <i>de facto</i> rights (including same-sex couples) on the same basis as marriage?	No	Article 1 of the Family Code 1987 defines marriage as ‘a special contract of permanent union between a man and a woman.’	The indicator requires that the law recognize <i>de facto</i> relationships and grant rights to couples on the same basis as marriage.
16.21 Do women have equal rights to guardianship, wardship, trusteeship and adoption?	Partial	Article 211 of the Family Code 1987 states in case of differences of opinion between spouses ‘husband’s decision shall prevail in cases of legal guardianship over person and property of the common child’.	This indicator requires that the law uphold women’s equal rights to guardianship, trusteeship and adoption.
16.22 Does the legislation provide for an order establishing parentage?	Yes	Article 172 of the Family Code 1987 provides for proof of filiation.	Both parents are considered jointly responsible for the raising and maintenance of their children. In cases where a child’s parentage is not established, a mother may be prevented from claiming child support. A legal remedy is provided through a court order to establish parentage.
16.23 Does the legislation provide for a contribution to pregnancy and childbirth costs by the father to an unmarried mother?	No	Article 195 of the Family Code 1987 grants such support between ascendants and descendants, and spouses.	This indicator requires that the law obligate both parents, irrespective of marital status, to contribute to childbirth and pregnancy costs.
16.24 Does the legislation provide for the payment of child support for children born outside marriage?	Yes	Article 176 of the Family Code 1987 states ‘illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support’.  Solo Parents’ Welfare Act 2000 provides a comprehensive programme of social development and welfare services for single parents and their children.  Republic Act. 9255. 2004 amends Article 176 of the Family Code by allowing illegitimate children to use the father’s surname. <sup>108</sup>	The indicator requires that the law obligate both parents to contribute to child support irrespective of marital status.

Article 16: Personal and Family Law			
Indicator	Compliance	Relevant Legislation	Comments
16.25 Does the legislation provide for equal rules of inheritance?	Yes	The Civil Code of the Philippines 1949, Article 900 states 'if the only survivor is the widow or widower, she or he shall be entitled to one-half of the hereditary estate of the deceased spouse and the testator may freely dispose of the other half'.	The indicator requires that there be no legal discrimination against women's equal rights to inheritance.
16.26 Is there legislation requiring the application of CEDAW and CRC to domestic family law where relevant?	No	No specific provisions exist for the application of CEDAW and CRC to domestic family law.	The indicator requires that legal provisions allow courts to apply international conventions in interpreting family legislation.

# 5

## Diversity within Family Laws May Undermine Women's Rights in Sri Lanka

# 5. Diversity within Family Laws May Undermine Women's Rights in Sri Lanka

## 5.1 Introduction and Overview of Legislative Compliance

Sri Lanka (prior to 1972 known as Ceylon) is a multi-ethnic and multiple-religions country. This diversity and its colonial history have a direct bearing on its legal systems.<sup>1</sup> The Constitution of Sri Lanka, enacted in 1978, incorporates a chapter on Fundamental Rights which contains many articles which are in line with CEDAW. The state has made concerted efforts to redress legal discrimination against women through several legal initiatives – reforming 1883 Penal Code provisions is one good example. However, against this backdrop the diverse personal laws of a multi-religious and multi-ethnic society – the Kandyan, Muslim and Thesawomalamai laws that exist alongside the general law – has added to the complexity of its legal system. The full compliance with the Committee on the Elimination of Discrimination against Women would require bringing all these diverse systems in sync with CEDAW's principles of equality, non-discrimination and fulfillment of State's obligations.

This section assesses Sri Lanka's compliance with CEDAW. Sri Lanka ratified CEDAW on 5 October 1981, obliging it to bring its constitution and legislation into accord with the articles of CEDAW.<sup>2</sup> Overall, Sri Lanka has achieved full compliance with 55 of 113 indicators, partial compliance with 26 indicators and is non-compliant with respect to the 32 remaining indicators.

Nearly 52 per cent of Sri Lanka's formal laws are either partially compliant or non-compliant to CEDAW benchmarks on gender equality. The discriminatory laws along with legal gaps are obvious barriers to full compliance with the Convention. Its allowance for diversity in marriage and family relations has restricted

women's legal rights. The general laws allow equal right to marriage, ban bigamy, prohibit child marriage and grant equal maintenance and property rights to women. However the personal laws, followed by three main communities in Sri Lanka, may discriminate against women. They may be used to deny a wife equal right to dispose of property without the 'written consent' of a husband or make bigamy lawful.

The main findings of Sri Lanka's legislative compliance with sixteen substantive articles of CEDAW include:

### **To embody equality within national constitution and repeal discriminatory national penal code provisions**

In full compliance with CEDAW, the Constitution of the Democratic Socialist Republic of Sri Lanka 1978 prohibits 'discrimination on the grounds of race, religion, language, sex, political opinion, place of birth or any such grounds'.<sup>3</sup> Public institutions are constitutionally bound to respect, secure and advance the fundamental right of citizens. The Constitution stipulates that citizen's rights will not be 'abridged, restricted or denied except in the manner provided'.<sup>4</sup> There are constitutional requirements that affirm citizens' rights to equality before the law and equality of protection.<sup>5</sup>

Nevertheless, despite constitutional provisions on non-discrimination, equality before the law and the accountability of public institutions, infringement of fundamental rights does occur. Constitutional restrictions are imposed on citizens' enjoyment and exercise of their fundamental rights. The exercise and enforcement of fundamental rights is conditional and restricted by limitations such as 'national security, racial harmony, national economy, public order, protection of public health and morality'.<sup>6</sup> Any law enforced at



the time of the enactment of the Constitution is valid and operative even if it flouts fundamental rights.<sup>7</sup> This discriminatory constitutional provision results in the retention of statutes which discriminate against women. The Buddhist Temporalities Ordinance is one glaring example. Section 40 of the Ordinance prevents women from holding religious office or taking part in the election of office bearers.<sup>8</sup> The Constitution has no provision on the right to information. Further, only public authorities are held liable for unfair administrative or executive actions. This constitutional omission has restricted women's full enjoyment of fundamental rights as many cases of infringement of basic rights occur in the private sector.

Judicial activism has produced mixed results in upholding women's legal interests. Judicial precedents have been used as effective instruments to correct wrongs. But at times, they may deepen gender inequalities. Through a judicial precedent the Supreme Court has set aside the discriminatory guidelines in respect of non-national spouses of Sri Lankan women and formulated recommendations in line with the Fundamental Rights as espoused in the Constitution. Some verdicts have, however, had a negative impact on advancing women's rights. The Supreme Court in a 2008 ruling concluded that minimum mandatory sentences for rape and other sexual offences were tantamount to interference with judicial discretion by the legislature.<sup>9</sup> The Court observed that a minimum sentencing guideline conflicts with the Constitution. It maintained its right to impose a sentence that it deems appropriate. Section 364 (1) of the Penal Code (as amended by Penal Code (Amendment Act No. 13, 22 of 1995 and 10, 16 of 2006) prescribes a minimum mandatory sentence of seven years for the offence of rape. The Court observed that the minimum mandatory sentence is in conflict with Articles 4 (c), 11 and 12 (1) of the Constitution – independence of judiciary; freedom from torture; and equality before the law. It ruled that the High Court is not inhibited from imposing a sentence that it deems appropriate in the exercise of its 'judicial discretion', irrespective of the minimum mandatory sentence.<sup>10</sup>

CEDAW requires that discriminatory gender penal code provisions be repealed. The Sri Lanka's Penal Code 1883 has several provisions on sexual abuse.<sup>11</sup> The Code has undergone many amendments since

1995 to take account of criminal offences that affect citizens and women in particular. To curb violence against women, the Penal Code includes provisions on sexual harassment, grave sexual abuse, incest, sexual exploitation of children, trafficking etc. In addition the revised Penal Code provisions impose 'severe sentences, mandatory imprisonment and fine' on perpetrators of sexual crimes. They also impose stiffer sentences on perpetrators and awards mandatory compensation to victims of sexual assault. Section 364 of the Penal Code (as amended by Act No 13, 22 of 1995 and 10, 16 of 2006) increased imprisonment for rape offences. Before the amendment the perpetrator of a crime faced zero to 20 years of imprisonment. Under the new provisions, the minimum sentence imposed is seven years and the maximum is 20 years.

The 1883 Penal Code was also amended to protect rape victims. The consent provision of the Code was further expanded. It aims to prevent a perpetrator from vitiating the heinous nature of the crime.<sup>12</sup> The discriminatory requirement of proof of resistance in rape cases was discontinued. Under the Code, rape victims are not required to provide evidence of physical injuries to the body in order to prosecute perpetrators of a grave crime.<sup>13</sup>

Despite these legal protections, there is no penal code provision on domestic abuse. To compensate for this omission, the 2005 Prevention of Domestic Violence Act provides protection against acts of domestic violence.<sup>14</sup> It authorizes the courts to issue police protection orders, upholds victims' right to common property, and prevents a perpetrator from entering a victims' residence etc.

The Convention requires that competent tribunals and public institutions be established to provide legal protection to women. In conformity with CEDAW's requirement, the Sri Lanka Human Rights Commission (HRC), established in 1997, is an independent body that aims to promote and protect human rights in the country.<sup>15</sup> The Commission has the mandate to resolve 'complaints of infringement' of constitutionally recognized rights and play a recommendatory role in making laws.<sup>16</sup> The HRC also provides an informal and easily accessible forum for addressing gender issues. An important feature of the HRC is the right to 'sue or be

sued.<sup>17</sup> Any person can petition to HRC on behalf of the aggrieved party. The Commission can also take *suo moto* action and investigate acts of human rights violations.

The National Committee on Women (NCW) was established in 1993. It aims to implement laws and policies that advance women's legal rights. It is a non-statutory body performing consultative functions only. It advises the Government on gender policy issues including the examination of gender-specific laws. Through its Gender Complaints Centres, it seeks to redress women's grievances through administrative and legal means.<sup>18</sup> A law is under consideration to award statutory status to NCW. It aims to give legal sanction to its establishment, composition, powers and functions.<sup>19</sup>

### **To adopt temporary special measures to accelerate *de facto* equality**

In compliance with CEDAW's benchmarks, the Constitution of the Democratic Socialist Republic of Sri Lanka 1978 has a provision on the advancement of women, children or disabled persons.<sup>20</sup> However, despite of constitutional requirements, it has yet to pass a specific law on affirmative measures. Unlike other countries, Sri Lanka has not legislated for reservation of women's seats in assemblies, government jobs, or quotas etc.

### **To eliminate customary practices that promote gender stereotypes**

Contrary to CEDAW's benchmark, Sri Lanka's Constitution does not take into account the damaging effects of discriminatory customary practices. Many in Sri Lanka's society draw strength from customs, traditions and beliefs. Such norms may reinforce gender stereotypes. However, a 2009 government report asserts that old-age prejudices against women are fast eroding.<sup>21</sup>

### **To suppress human trafficking and exploitation of women in prostitution**

Based on CEDAW principles, criminalizing sex work is not desirable; however, the Convention calls for creating laws which prohibit procuring and trafficking of women for sex work. The Penal Code of Sri Lanka 1883 does not specifically criminalize prostitution.

But soliciting is prohibited under a specific law.<sup>22</sup> The Vagrant Ordinance 1842 prohibits soliciting on public roads while the Brothels Ordinance makes 'living off' the earnings of a prostitute an offence. In addition, human trafficking and child prostitution are declared criminal offences.<sup>23</sup>

The law on soliciting is aimed at punishing the agents of sex work. However, as claimed by a civil society group, in practice sex workers end up on the wrong side of justice. They may face harassment and are frequently subjected to abuses by law-enforcement agencies.<sup>24</sup>

### **To eliminate discrimination against women in the political and public life**

In conformity with CEDAW's standards, the 1978 Constitution of the Democratic Socialist Republic of Sri Lanka accords men and women equal rights to vote and stand for elections.<sup>25</sup> There are no constitutional or statutory impediments to women's participation in political and public life. In practice, however, there are several barriers to women's equal participation. As noted above, despite the constitutional clause on special provisions, there is no separate quota system for women in the assemblies. In fact, women's representation in parliament is only 5.8 per cent.<sup>26</sup> The factors that account for low women's political participation are many. According to the government report, the reasons include social attitudes that politics is a male domain; that women's family responsibilities take precedence over political ambitions; the prevalence of male-dominated party structures; a reluctance to be exposed to the perceived violence of electoral politics; and the high cost of electioneering.<sup>27</sup>

### **To ensure equal opportunities of representation and participation to women in international organizations**

In compliance with the Convention, Sri Lanka adheres to the Constitutional principle of non-discrimination in the selection of government representatives for international meetings. Furthermore, representatives are selected on the basis of their expertise in the relevant field. However it is reported that there is no conscious effort to ensure equal representation of women on international delegations.<sup>28</sup>

### To grant equal rights to nationality

The nationality law of Sri Lanka conforms to the principle of *jus sanguinis* – nationality by descent – in awarding citizenship. The Constitution prohibits discriminatory treatment of its citizens. In accordance with the Convention, certain discriminatory nationality law provisions against women have been repealed through legislative changes and progressive judicial rulings. Previously, married women were not allowed to pass on their citizenship to their children. But through an amendment to the 1948 Citizenship Act, in 2003 mothers were accorded the right to determine the nationality of their children. The Supreme Court's 1999 ruling set aside discriminatory guidelines on the acquisition of nationality for foreign spouses married to Sri Lankan women. The residency guidelines for awarding visas to foreign spouses of citizens had differed for men and women. Residence visas to foreign spouses of Sri Lankan men were granted as a matter of course, whereas applications for grant of residence visas to foreign husbands of Sri Lankan women were considered individually on the merits of each case. A Sri Lankan woman and her foreign husband filed an application in the Supreme Court in 1999 that challenged the non-issuance of a residence visa to the husband. The Court gave its verdict in favour of the couple and observed that there was no 'rational basis' for the discriminatory treatment. It issued a directive to the Controller of Immigration and Emigration to make and publish guidelines and procedures conforming to Article 12 of the Constitution, which recognizes the right to equality.<sup>29</sup>

### To ensure equal rights to education

In conformity with CEDAW, the Constitution of 1978 allows equal access to education and equal opportunities in education field is considered the basic right of all citizens. The state's policy is to completely eradicate illiteracy and ensure citizens' universal and equal access to education at all levels.<sup>30</sup> In sync with Constitutional requirements, the state provides scholarships, midday meals, free textbooks and school uniforms. These provisions help create an enabling environment for higher girls' enrolment and advancement in educational facilities. However, a civil society group states that several factors may affect girls' equal rights to education.

They include: the impact of gender-role stereotypes; lack of will to eliminate gender discrimination; and the socio-economic constraints of poverty.<sup>31</sup>

### To eliminate discrimination against women at workplace and uphold their economic rights

In compliance with CEDAW's benchmarks, the Constitution of 1978 stipulates that women and men have equal rights of 'work, wages and benefits'.<sup>32</sup> Several laws in Sri Lanka protect the economic interests of female workers. The formal worker's right to minimum wages, working hours, overtime rates, annual leave and public holidays is protected by law.<sup>33</sup> Maternity-related benefits such as maternity leave, protection against dismissal, child care services and nursing breaks are also granted.<sup>34</sup> Sexual harassment at the workplace is a criminal offence and the law imposes severe penalties on the perpetrator of the crime.<sup>35</sup>

Nevertheless, contrary to the requirement of equality, female workers face several employment related hardships. The Constitutional provisions on non-discrimination do not cover workers in private sectors. This legal gap affects equal rights to employment opportunities and the enjoyment of benefits. According to the Global Gender Gap Report 2009, Sri Lanka's wage equality for similar work index is 0.72. Similarly, in some cases the marital status of a female worker may determine her access to and security in a certain job. A civil society group claims that in the Free Trade Zones (FTZs) unmarried and young women are given preference over married women. The marital status may affect job security of female workers.

### To eliminate discrimination against women in health care

Contrary to CEDAW's requirement, abortion is illegal in Sri Lanka. And can be performed only to 'save the mother's life or for health reasons'.<sup>36</sup>

### To eliminate discrimination against women in economic and social life

As enshrined in the Constitution of the Socialist Republic of Sri Lanka 1978, it is state policy to provide social security to all its citizens.<sup>37</sup> In line with CEDAW's

benchmarks and the constitutional requirements, the law provides social benefits such as pensions to widowers and orphans of officers. Women also have an equal right to receive bank loans, mortgages and financial credit. Although no sex-disaggregated data is available, it is observed that approximately half of recipients within poverty groups may have been women.<sup>38</sup> However, it is often argued that in terms of land and financial assistance, male heads of households tend to benefit more from resource allocation and asset distribution.<sup>39</sup>

### **To eliminate discrimination against rural women**

In theory, constitutional provisions, labour laws and state policies apply equally to women in the urban and rural sectors. Rural women, in general, are considered to be at disadvantage in areas such as land ownership, health, education and housing. However, the 2009 government report states that under *Mahinda Chintana* – current government policy – a significant number of its poverty programmes target rural women.<sup>40</sup>

### **To accord women equality before the law**

In adherence to CEDAW's benchmarks, the state is constitutionally bound to uphold the principle of equality before the law.<sup>41</sup> However, in practice there are certain legal discrepancies in terms of women's legal capacity to conclude contracts and administer property. Under Jaffna Matrimonial Rights and Inheritance Ordinance 1911, the wife requires the consent of her husband to enter into ownership of or to transfer immovable property, even her own.<sup>42</sup>

### **To eliminate discrimination against women and accord equality to them within marriage and family relations**

Being a multi-religion society, communities in Sri Lanka follow different personal laws. Family, property and inheritance are the areas prone to following diverse legal paths. The general laws on family issues may treat men and women equally. But personal laws may perpetuate discrimination against women.

The allowances for diversity in family matters tend to undercut women's rights. Tamils follow *Thesawalamai* law in most marriage-related matters. Kandyan Sinhalese and Muslim communities are governed by their own personal laws. However a member of any community may choose to follow general law of the state in family matters – marriage, inheritance, property or divorce.

On marriage-related matters, the general law establishes 18 years as the minimum marriage age for both men and women.<sup>43</sup> Bigamy is declared a criminal offence.<sup>44</sup> Under the Marriages (General) Act 1908 (as amended in 1995), child marriages are prohibited. With respect to the property rights of women, the three communities follow their own personal laws. Under the Married Women's Property Ordinance 1923, a woman has the freedom to 'acquire, hold and dispose property' and will be considered as *feme sole* – a single woman, whether spinster, widow, or divorcee.<sup>45</sup> Under the Jaffna Matrimonial Rights and Inheritance Ordinance 1911, women require the written consent of their husband in order to dispose of immovable property.<sup>46</sup> The Kandyan Law Declaration and Amendment Ordinance do not confer equal intestate rights to women. Section 11 (1) of the Ordinance stipulates that when a man dies intestate leaving a spouse, the surviving spouse shall be entitled to an estate in the acquired property of the deceased; if there is no acquired property or property is insufficient for her maintenance, then maintenance will be paid out of the *paraveni*.<sup>47</sup> Under the Muslim Intestate Succession Ordinance 1931, women's share of inheritance is half that of men.<sup>48</sup>

The lack of uniform family code may curtail women's family and marital rights. Although bigamy is a criminal offence under the general law, Muslim men are permitted to practice polygamy. The general law as well as personal laws of communities allows child marriages with the consent of the parents.<sup>49</sup> None of the personal laws of communities allow no-fault divorce. Regarding children's rights after divorce, the court is the final authority and may issue a ruling that it considers 'proper with respect to the custody of minor children'.<sup>50</sup>

## 5.2 Assessment of National Legislation for Gender Equality

Article 1: Definition of Discrimination Against Women			
Article 2: Obligations to Eliminate Discrimination			
Indicator	Compliance	Relevant Legislation	Comments
1.1 Does the Constitution guarantee fundamental human rights and freedoms to men and women equally including political, economic, social, cultural, civil or any other field?	Partial	<p>The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 12 (1) states ‘all persons are equal before the law and are entitled to the equal protection of the law’.</p> <p>Article 14 (1) of the Constitution stipulates ‘every citizen is entitled to freedom of speech, movement, peaceful assembly, association, to forms a trade union etc.’<sup>51</sup></p>	<p>The indicator requires that the constitution uphold women’s fundamental rights and freedoms in different spheres.</p> <p>Any existing enactments containing provisions that are discriminatory of any of the rights recognized in the chapter on fundamental rights cannot be challenged in the courts.<sup>52</sup></p> <p>Article 15 states that the exercise and operation of fundamental rights shall be subject to restrictions such as national security, racial and religious harmony, national economy, public order, protection of public health and morality.</p>
1.2 Is there a constitutional guarantee of substantive equality between men and women?	Partial	<p>The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 12 (1) specifies ‘all persons are equal before law and are entitled to equal protection of the law’.</p> <p>Article 16 (1) of the Constitution stipulates ‘all existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter’.</p>	<p>The indicator requires expressed constitutional provision on substantive equality (equality of benefits).</p> <p>Substantive equality refers to real or actual equality. It requires equality of access, opportunity and results. In theory men and women are equal before the law. But in practice, they experience the same laws differently. Contrary to the constitutional provision on equality women’s access to justice remains limited.<sup>53</sup></p>
1.3 Does the Constitution contain an anti-discrimination clause on the grounds of sex/gender?	Yes	<p>The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 12 (2) states ‘no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds.’<sup>54</sup></p>	<p>This indicator requires that the constitution have expressed anti-discrimination provisions.</p>



**Article 1: Definition of Discrimination Against Women****Article 2: Obligations to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.4 Does the Constitution contain an anti-discrimination clause on the grounds of marital status?	No		<p>Compliance with this indicator requires that there be constitutional provisions on non-discrimination on the grounds of marital status – unmarried; married; single etc.</p> <p>The Constitution of the Democratic Socialist Republic of Sri Lanka 1978 does not take account of discrimination on the basis of gender, marital status, and sexual orientation or HIV status.</p>
1.5 Does the Constitution contain an anti-discrimination clause on the grounds of sexual orientation?	No	The Penal Code 1883 (as amended by Act No. 17, 22 of 1995 and 11, 16 of 2006), Section 365 criminalizes same-sex relationships.	<p>Same sex relations are criminalized in Sri Lanka.</p> <p>The Constitution of the Democratic Socialist Republic of Sri Lanka 1978 does not take account of discrimination on the basis of gender, marital status, and sexual orientation or HIV status.</p>
1.6 Does the Constitution contain an anti-discrimination clause on the grounds of HIV status?	No		The Constitution of the Democratic Socialist Republic of Sri Lanka 1978 does not take account of discrimination on the basis of gender, marital status, and sexual orientation or HIV status.
1.7 Does the Constitution contain an anti-discrimination clause on the grounds of disability?	Yes	The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 12 (4) states ‘nothing in this Article shall prevent special provision being made, by law, subordinate legislation or executive action, for the advancement of women, children or disabled persons.’ <sup>55</sup>	The Constitution does not explicitly prohibit discrimination on the grounds of disability.
1.8 Does the breadth of anti-discrimination clause encompass direct and indirect discrimination?	No		This indicator requires that the constitutional provision on non-discrimination prohibits both direct and indirect acts of infringements.
1.9 Does the anti-discrimination clause bind public authorities and institutions?	Yes	The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 4 (d) states ‘the fundamental rights, declared and recognized by the Constitution, shall be respected, secured and advanced by all the organs of Government, and shall not be abridged, restricted or denied, save in the manner and to the extent hereinafter provided.’ <sup>56</sup>	<p>Compliance with this indicator requires that the constitution have provision that binds public institutions to follow the principle of non-discrimination.</p> <p>The Constitutional requirements on non-discrimination do not apply to private sectors. The provisions are applicable only in respect of ‘administrative and executive actions’ in public sectors.<sup>57</sup></p>



**Article 1: Definition of Discrimination Against Women****Article 2: Obligations to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.10 Does the anti-discrimination clause bind all persons, organizations or enterprises?	Partial	The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 12 (3) states 'no person shall, on the grounds of race, religion, language, caste, sex or any one such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion.' <sup>58</sup>	The indicator requires that there be constitutional provision that binds both public and private sectors to follow non-discriminatory rules and regulations.
1.11 Are sanctions imposed for breach of anti-discrimination provisions?	Yes	The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 126 states 'the Supreme Court shall have sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by executive or administrative action of any fundamental right.' <sup>59</sup>  Article 126 (4) of the Constitution stipulates 'the Supreme Court shall have power to grant such relief or make such directions as it may deem just and equitable in the circumstance in respect of any petition or reference referred to in paragraphs (2) and (3) of this Article or refer the matter back to the Court of Appeal if in its opinion there is no infringement of a fundamental right or language right'.	Compliance with this indicator requires that there be legal provision that imposes sanctions – fines, apologies or loss of government contracts and remedies such as compensation and injunctive relief – in case of breach of anti-discrimination provisions.
1.12 Are there specific domestic violence offences in the criminal legislation (Penal Code)?	Yes	The Prevention of Domestic Violence Act 2005 prohibits domestic violence.	This indicator requires that there be specific laws or Penal Code provision on domestic violence.  There is no specific provision in the 1883 Penal Code on domestic violence. However its provisions can be used in cases of domestic violence.  Such violence is known to take place in all socio-economic classes but is seldom reported. <sup>60</sup>
1.13 Is stalking a criminal offence?	No		This indicator requires that any harassment act – including stalking – be criminalized.

**Article 1: Definition of Discrimination Against Women****Article 2: Obligations to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.14 Is a restraining order available in situations of sexual and domestic violence regardless of marital status?	Partial	The Prevention of Domestic Violence Act 2005, Section 6 (3) empowers the courts to issue protection orders for victims of domestic violence. <sup>61</sup>	<p>Compliance with this indicator requires that law provide civil remedies – restraining orders – to ensure effective protection of women against violence. Such remedies should be available to women irrespective of their marital status.</p> <p>Restraining orders are granted in certain cases only. In cases of domestic violence the court has the authority to issue protection orders to safeguard the rights of the abused victims.</p> <p>With the changes in the Penal Code since 1995, the law imposes severe sentences on the perpetrators of sexual crimes. It also stipulates provision for award of compensation to the victim.<sup>62</sup></p>
1.15 Is there mandatory prosecution for domestic violence offences?	No		Domestic violence is not a private matter and must be treated as a criminal offence by law enforcement agencies. The indicator requires that the law stipulate provisions on mandatory prosecution of perpetrators.
1.16 Does the criminal legislation contain a broad range of sexual assault offences graded on the basis of seriousness to the victim?	Yes	The Penal Code 1883 details a range of sexual offences with varying penalties including: Section 363 (as amended by Act No.12, 22 of 1995) on rape; Section 364 (as amended by Act No. 13, 22 of 1995 and 10, 16 of 2006) on custodial rape; Section 364 A (as amended by Act No 15,22 of 1995) on incest; Section 365 B (as amended by act of 19,22, 1995) on grave sexual abuse; Section 343 on assault; and Section 360 B (as amended by Act No 8, 22 of 1995) on sexual exploitation of children. <sup>63</sup>	Women and girls can be sexually abused in several ways. Compliance with this indicator requires any unwanted sexual contact be unlawful. It is essential to incorporate into criminal law a wide range of sexual assault offences.
1.17 Does the definition of rape and/or sexual assault offences include penetration of non-penile objects into anus, vagina and mouth?	No		This indicator requires that the legal definition of rape not be restricted to penile penetration only. It should take into account all forms of sexual abuse.

**Article 1: Definition of Discrimination Against Women****Article 2: Obligations to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.18 Is there an offence of incest for girls and women? If there is no offence of incest then there is full compliance with this indicator.	No	The Penal Code 1883 (as amended by Act No 15,22 of 1995), Section 364 A (3) states 'whoever commits incest will be punished by rigorous imprisonment of not less than seven years and not exceeding 20 years, also liable to fine'. <sup>64</sup>	Ideally the law on incest should make a clear distinction between a victim and the perpetrator. This indicator implies that under no circumstances should victims of incestuous sexual encounter (girls and women) be charged with an offence.
1.19 Have the terms indecency, carnal knowledge, defilement and insulting modesty been removed from the criminal legislation?	No	The Penal Code 1883 (as amended by Act No 15, 22 1995), Section 364 A concerns 'defilement' of girls and Section 365A refers to acts of 'gross indecency' between male persons.	The use of such language in place of appropriate legal terminology may depict female victims as damaged or tarnished by the sexual offences. Compliance with this indicator requires that such terms be removed and replaced, and that the focus be placed on invasion of women's personal integrity.
1.20 Is consent specifically defined in the criminal legislation outlining coercive circumstances?	Yes	The Penal Code 1883, Section 363 (as amended by Act No.12, 22 of 1995) outlines coercive circumstances: 'consent if obtained by force; illegal detention; in unsound state; false representation; impersonating as husband of a married woman and women judicially separated from a man'. <sup>65</sup>	Consent is used as defence in cases of rape and other sexual offences. There can be doubt as to what circumstances constitute consent. The indicator requires a statutory definition of consent in the criminal law. The legal provision includes wide-ranging circumstances that may induce an unwilling consent.
1.21 Is there a legislative prohibition on the use of prior sexual conduct to establish consent?	No	There is no such provision in the 1883 Penal Code that prohibits use of prior sexual conduct to establish consent.	The admission of the prior sexual history of the victim is a discriminatory procedural rule. It is based on the assumption that promiscuous women are more likely to have consented to sexual acts. The indicator requires that such provision be removed.
1.22 Is there a legislative prohibition of the requirement for corroboration?	Yes	Evidence Ordinance 1895.	The discriminatory legal requirement of independent evidence is used by some courts. It is based on the supposition that it is dangerous to convict the accused on the basis of uncorroborated evidence. Compliance with this indicator requires removing this legal provision from the Penal Code.

**Article 1: Definition of Discrimination Against Women****Article 2: Obligations to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.23 Is there a legislative prohibition of the requirement for proof of resistance?	Yes	The Penal Code 1883 (as amended by Act No 12, 22 1995) Section 363 (ii) states 'evidence of resistance such as physical injuries to the body is not essential to prove that sexual intercourse took place without consent'. <sup>66</sup>	The procedural rule of proof of resistance may be used by courts to determine consent. It implies victims of sexual assault must establish that they have physically resisted the perpetrator or otherwise consent may be inferred. The indicator requires removing this discriminatory rule from the Penal Code.  Through an amendment in the Code, the legal provision of 'against her will' was deleted. The intention being to prevent courts from requiring proof of actual physical resistance.
1.24 Is there a defence of honest and reasonable belief that the victim is of legal age? If there is no defence of honest and reasonable belief then there is full compliance with this indicator.	Partial	The Penal Code 1883 (as amended by Act No.12, 22 of 1995) Section 363 e states 'with or without her consent when she is under sixteen years of age, unless the woman is his wife who is over twelve years of age and is not judicially separated from the man.'	The legal provision of honest and reasonable belief that the victim is of legal age is discriminatory. It can be used by perpetrator to argue that he honestly believed the victim was of legal age. This provision put the onus on the victim rather than on the alleged perpetrator to reveal the age. The indicator requires removing this discriminatory legal provision.
1.25 Is a defence of consent disallowed in relation to a victim under 18?	No	The Penal Code 1883 (as amended by Act No 13, 22 of 1995) Section 364 e stipulates that defence of mutual consent is not available if the girl is under 16 years of age. <sup>67</sup>	Compliance with this indicator requires that consent of the victim, below 18 years, be disallowed as a defence.
1.26 Is there an exemption from prosecution for marital rape? If yes, then there is no compliance with this indicator.	Partial	The Penal Code 1883 (as amended by Act No 12, 22 of 1995) Section 363 (a) recognizes marital rape only in the case of judicial separation. <sup>68</sup>	This indicator requires that marital rape be made unlawful and that legal provisions should be stipulated accordingly.  Penal Code 1883 grants partial protection to women against marital rape. However, under the Prevention of Domestic Violence Act 2005, restraining orders can be obtained from the court.
1.27 Is there mandatory prosecution for sexual offences?	Yes	The amendments in the Penal Code 1883 (Act No 13, 22 of 1995 and 10, 16 of 2006) impose stiffer sentences. Section 364 (1) on rape increases the minimum sentence from zero to seven years.	This indicator requires that there be mandatory legal provisions to punish and redress the wrongs committed against female victims of sexual abuse.

**Article 1: Definition of Discrimination Against Women****Article 2: Obligations to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.28 Is bail unavailable for sexual offences if he presents a risk to the victim?	Yes	Under the Penal Code 1883 (as amended by Act No 13, 22 of 1995 and 10, 16 of 2006), Section 364 rape is made a non-bailable offence. <sup>69</sup>	This indicator requires that bail not be granted to the accused if he poses a potential threat to the female victims.
1.29 Are there minimum sentences for sexual offences?	Partial	The amendments in the Penal Code 1883 (Act No 13, 22 of 1995 and 10, 16 of 2006) Section 364 (1) on rape increased the minimum sentence from zero to seven years.	Compliance with this indicator requires that the law impose minimum sentences for sexual offences.  In a major setback to the women's legal rights, the Supreme Court passed a 2008 ruling against requirement of minimum mandatory sentences for rape and sexual offences. The Court observed that the rule amounted to interference with the 'judicial discretion' of the legislature.
1.30 Is there a provision in the criminal legislation which states that customary practices of forgiveness shall not affect criminal prosecution or sentencing?	No		The indicator requires that customary practices not be used as justification to reduce or withdraw sentences or not to prosecute the perpetrator of a crime.
1.31 Is there legislative provision for compensation for victims of sexual and domestic violence?	Yes	Penal Code 1883 (as amended by Act No 13, 22 of 1995 and 10, 16 of 2006) Section 364 empowers the court to determine the amount of compensation to be paid to the victim. <sup>70</sup>	The compliance with this indicator requires that the law include compensatory measures for victims of sexual abuse.
1.32 Does the criminal legislation allow for infanticide to replace a charge of murder or manslaughter?	Yes	The Penal Code 1883, section 294 on murder (exception 5) states 'culpable homicide is not murder if the offender, being the mother of a child under the age of twelve months, causes its death whilst the balance of her mind is disturbed'. <sup>71</sup>	In case a mother causes the death of her child of 12 months or less, she shouldn't be charged for manslaughter or murder. The indicator requires that such accused should be charged for infanticide as it prescribes reduced sentences.
1.33 Does the definition of infanticide include environmental and social stresses?	Yes	Section 294 (exception 5) of the Penal Code.	The indicator requires that the defence of infanticide not be solely grounded on failure to recover from post-partum depression. It should also be linked to environmental and social stresses.

Article 3: Guarantee of Basic Human Rights and Fundamental Freedoms			
Indicator	Compliance	Relevant Legislation	Comments
3.1 Is there legislation establishing a national human rights machinery charged with promoting and protecting human rights including women's rights?	Yes	The Human Rights Commission of Sri Lanka Act No.21 of 1996, Section 2 (1) stipulates 'there shall be established a Commission which shall be called and known as the Human Rights Commission of Sri Lanka (hereinafter in this Act referred to as 'the Commission'. <sup>72</sup>	This indicator requires that legally competent national tribunals and other public institutions be established to uphold women's rights.  The Commission was established in 1997. It is vested with powers relating to the resolution of complaints of violation of constitutional rights. The HRC also performs an advisory and recommendatory role in making laws, administrative directives and procedures in furtherance of the promotion and protection of fundamental rights. It also makes recommendations to Government regarding measures to ensure that national laws and administrative practices are in accordance with international human rights norms and standards. <sup>73</sup>
3.2 Is there legislation establishing a body to monitor the implementation of non-discriminatory law and policy for the advancement of women?	Partial	The National Committee on Women was first established in 1993 under the framework of the Women's charter 1993.	This indicator requires that a specific law be enacted to establish a national body for the advancement of women's interests and legal rights.  The NCW performs a consultative function with regard to determining policy issues relating to women, including examination of laws affecting women. The NCW has also established a Gender Complaints Centre which commenced functioning in 1999. The Centre receives and considers complaints regarding gender-based discrimination and violence. Action is taken to redress grievances via administrative and legal means. <sup>74</sup>

Article 4: Acceleration of Equality between Men and Women			
Indicator	Compliance	Relevant Legislation	Comments
4.1 Does the Constitution contain a temporary special measures provision?	Partial	The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 12 (4) states 'nothing in this article shall prevent special provision being made, by law, subordinate legislation or executive action, for the advancement of women children or disabled persons'. <sup>75</sup>	Compliance with this indicator requires that there be a constitutional provision on temporary special measures for advancing women's political, economic, social and legal rights.



Article 4: Acceleration of Equality between Men and Women			
Indicator	Compliance	Relevant Legislation	Comments
4.2 Are special measures exempt from discrimination on the grounds of sex, marital status, sexual orientation, disability and HIV status?	Partial	The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 12 (4).	<p>This indicator requires that special measures be exempt from constitutional provisions on non-discrimination. A special measure adopted to redress legal inequities against women should not be challenged on the grounds that it discriminates against men.</p> <p>The Constitution of the Democratic Socialist Republic of Sri Lanka 1978 does not take account of discrimination on the basis of gender, marital status, sexual orientation or HIV status.</p>

Article 5: Sex roles and Stereotypes			
Indicator	Compliance	Relevant Legislation	Comments
5.1 Is there a provision in the Constitution which gives precedence to a constitutional guarantee of equality if there is a conflict between custom and equality law?	No	The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 16 (1) stipulates 'all existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter (fundamental rights)'.	<p>Compliance with this indicator requires that constitutional provisions on equality prevail over discriminatory customary laws and practices.</p> <p>Many in Sri Lankan society draw strength from customs, traditions and beliefs. Such norms may reinforce gender stereotyping. However, it is reported that old-age prejudices against women are fast eroding. Women are acquiring higher levels of education and becoming partners in the development process.<sup>76</sup></p>

Article 6: Exploitation of Women			
Indicator	Compliance	Relevant Legislation	Comments
6.1 Is the act of soliciting decriminalized?	Partial	<p>The Vagrants Ordinance 1842 (Section 7) and Brothels Ordinance (Section 2) make provision to arrest those soliciting on public roads and living off the earnings of prostitution respectively.<sup>77</sup></p> <p>Penal Code 1883, Section 360 C (as amended by Act No.8, 22 of 1995 and 8, 16 of 2006) and 360 E (as amended by Act No. 9, 16 of 2006) criminalize human trafficking and child prostitution respectively.<sup>78</sup></p>	<p>This indicator requires that sex work be decriminalized.</p> <p>There is no specific provision on prostitution in the Penal Code 1883. However specific laws prohibit soliciting.</p>

Article 6: Exploitation of Women			
Indicator	Compliance	Relevant Legislation	Comments
6.2 Is aiding and abetting consensual acts of soliciting decriminalized?	No	Brothels Ordinance, Section 2	This indicator requires that brothels and third parties who facilitate sex work not be criminalized for their activities where the worker has reached age of majority.
6.3 Is it a criminal offence to procure any woman without consent or any girl under 18?	Yes	Under the Penal Code 1883 (as amended by Act No. 9,16 of 2006), Section 360E soliciting a child under 18 years of age carries a punishment not exceeding ten years, fines or both fines and punishment.	This indicator requires that procuring a girl below 18 years be unlawful.
6.4 Does employment legislation including occupational health and safety legislation protect sex workers?	No		The indicator requires that sex workers be granted the same rights as other workers. They should be covered by relevant employment laws and be in a position to enjoy benefits and equal legal protection from exploitation.
6.5 Is the trafficking of women prohibited?	Yes	Under the Penal Code 1883 (as amended by Act. No 8,22 of 1995 and 8,16 of 2006) Section 360 C (2) trafficking carries a punishment of not less than two years and not more than twenty years and as well as liability to fines.	This indicator requires that all forms of human trafficking be declared unlawful.
6.6 Is sex tourism prohibited?	No		This indicator conveys the sense that sex tourism is a form of sexual exploitation that therefore should be made unlawful.

Article 7: Political and Public Life			
Indicator	Compliance	Relevant Legislation	Comments
7.1 Is there an equal right to vote?	Yes	The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 4 (e) states 'every citizen who has attained the age of 18 years is qualified to vote.' <sup>79</sup>	This indicator requires that women have an equal right to suffrage. Although women are becoming politically conscious, the proportion of women who participate in active politics is low. Women are poorly represented in Parliament and therefore there is concern that their issues are inadequately voiced. <sup>80</sup> At present only 5.8 per cent of seats in parliament are held by women. <sup>81</sup>
7.2 Is there equal eligibility for political representation?	Yes	The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 90 stipulates 'every person who is qualified to be an elector shall be qualified to be elected as a member of Parliament.' <sup>82</sup>	This indicator requires that women have equal eligibility rights to political representation.

Article 7: Political and Public Life			
Indicator	Compliance	Relevant Legislation	Comments
7.3 Is there legislative provision for minimum quotas of women in parliament?	No		<p>This indicator requires that special measures – such as quotas – be adopted to promote women’s participation in the political sphere.</p> <p>The factor accounting for low participation of women in politics are: social attitudes and values which identify politics as a male domain; family responsibilities which take precedence over the pursuit of a political career; party structures and processes that directly or indirectly obstruct family; criminalization and character assassination in electoral politics; and high cost of electioneering.</p>
7.4 Do women have an equal right to participate in NGOs?	Yes	The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 14 (1).	This indicator requires that women have equal opportunities to participate in non-government organizations.
7.5 Is there legislation (other than Charitable Societies legislation) enabling NGOs to register and mobilize to promote the advancement of women without political interference?	Yes	The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 14 (1) protects any organization that works for the promotion of women’s interests.	This indicator requires that legal provisions be stipulated allowing NGOs to advocate for women’s rights.

Article 8: International Representation and Participation			
Indicator	Compliance	Relevant Legislation	Comments
8.1 Do women have an equal opportunity to represent government at international level and participate in the work of international organizations?	Yes	There are no legal barriers.	<p>The indicator requires that women have an equal right to present government at international levels and also participate in the work of international organizations.</p> <p>There is no discrimination against women in the selection of Government representatives for international meetings. Representatives are selected on the basis of expertise in the relevant field.<sup>83</sup></p>

Article 9: Nationality and Citizenship			
Indicator	Compliance	Relevant Legislation	Comments
9.1 Do women have an equal right to acquire, change or retain their nationality?	Yes	The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 26 (3) stipulates ‘no distinction shall be drawn between citizens of Sri Lanka, whether by descent or by virtue of registration.’	Nationality rights affect women’s right to vote, stand for public office, choice of residence and access to public services. This indicator requires that women have equal rights to acquire, change or retain their nationality.

Article 9: Nationality and Citizenship			
Indicator	Compliance	Relevant Legislation	Comments
9.2 Does marriage to an alien or change of husband's nationality affect a wife's nationality? If there is no change to a wife's nationality after marriage, then there is full compliance with this indicator.	Yes	The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 26 (4) stipulates 'no citizen of Sri Lanka shall be deprived of his status of a citizen of Sri Lanka, except under and by virtue of the provisions of sections 19, 20, 21 and 22 of the Citizenship Act'.	This indicator requires that in the event of a woman's marriage to a foreign national, her autonomy and independence not be compromised.  Section 19 of the Constitution deals with renunciation of citizenship. Section 20 prescribes provisions on restrictions against dual citizenship. Sections 21 and 22 impose restrictions against dual citizenship of persons who are citizens by registration and cases of invalid renunciation of foreign citizenship respectively.
9.3 Do both spouses have equal rights to residency, citizenship and employment when married to a non-national?	Yes	The pertinent article of the Citizenship Act 1948 confers equal rights in residency and citizenship to both spouses. <sup>84</sup>	Laws, in some cases, may deny a non-national husband automatic residency or citizenship rights. The indicator requires that such legal restrictions be removed.  There was a time when residence visas for foreign female spouses of Sri Lankan men were granted as a matter of course, whereas applications for grant of residence visas to foreign husbands of Sri Lankan women were considered individually on the merits of each case. The Supreme Court intervened and issued a directive in 1999 setting aside the discriminatory guidelines. <sup>85</sup>
9.4 Do both spouses have an equal right to determine the nationality of children?	Yes	Citizenship (Amendment Act No 16) 2003, Section 5A (1) a 'any person who is born within or outside Sri Lanka, or whose mother at the time of his birth is a citizen of Sri Lanka...shall be eligible to obtain the status of a citizen of Sri Lanka.' <sup>86</sup>	This indicator requires that men and women have equal rights to determine the nationality of their children. Any law under which children automatically acquire the nationality of their father but not their mother is discriminatory.
9.5 Do women have an equal right to obtain a passport?	Yes	There are no legal barriers to women's equal right to obtain passports.	This indicator requires that women have equal rights to obtain a passport. There should be no legal restrictions – such as a requirement for the husband's consent – imposed on them.

Article 10: Education			
Indicator	Compliance	Relevant Legislation	Comments
10.1 Does the legislation guarantee women and girls equal access to education? Do women and girls have equal access to education?	Yes	The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Section 27 (2) h calls for complete eradication of illiteracy and the right to universal and equal access to education at all levels. <sup>87</sup>	This indicator requires that legal provisions allow women and girls equal access to all forms and levels of education.  Equal education opportunities have been promoted in Sri Lanka as a basic right. Since 1945 the upward socio-economic mobility of the people is encouraged through substantial incentives such as free primary, secondary and tertiary education. Other provisions include scholarships, midday meals where feasible, free text books and free school uniforms. In addition to this, regulations were enforced in January 1998 that made primary education compulsory for children of the age group five to 14 years. The minimum age of marriage was raised from 12 years to 18 years in 1996. The change is intended to encourage extended years of schooling for girls. <sup>88</sup>
10.2 Is there legislation that creates special measures for the advancement of women in education?	Partial	The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 12 (4).	This indicator requires legal provisions on affirmative action for women in the field of education.  This constitutional provision (Article 12–4) is not backed by any law that creates special measures for the advancement of women in education.
10.3 Is there compulsory primary education for girls and boys?	Yes	Education Ordinance 1939. <sup>89</sup>	This indicator requires that legal provisions be enacted on compulsory primary education for all.
10.4 Is there compulsory secondary education for girls and boys?	Yes	Education Ordinance 1939.	The indicator requires that there be legal provision on compulsory secondary education for boys and girls.
10.5 Is family life (reproductive and sexual health) education compulsory in schools?	No		The indicator requires that there be legal provisions for family life education. It should be compulsory subject during secondary schools.
10.6 Is there a legislative prohibition of expulsion from school because of pregnancy?	No		This indicator requires that there not be any legal barrier to pregnant girls' right to pursue education in schools.

Article 11: Employment			
Indicator	Compliance	Relevant Legislation	Comments
11.1 Are there anti-discrimination provisions in employment legislation on the grounds of sex, marital status, disability, pregnancy, sexual orientation and HIV status with sanctions?	Yes	The Women's Charter of Sri Lanka 1993 states that women should have equal opportunities employment, wages and the right to work. <sup>90</sup> The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 12 seeks to ensure gender equality and recognizes that citizens have equal rights.	The indicator requires that labour laws grant female workers the same employment rights, opportunities, choices and benefits as men. Appropriate sanctions should also be imposed in the event of violation of female workers' rights.
11.2 Are there special measures provisions for the advancement of women in employment?	Partial	The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 12 (4) facilitates the enactment of special measures provisions.	This indicator requires legal provisions allowing affirmative action – quota, preferential treatment during recruitment, legal protection to pregnant workers. This aims to redress past discrimination against them and also to promote substantive equality in the sphere of employment.
11.3 Do women enjoy equal conditions of work including leave, superannuation and Workers Compensation?	Partial	The Shop and Office Employees Act 1954 provides 90 days of maternity leave to women employees working in shops, restaurants etc <sup>91</sup>	This indicator requires that female workers be provided with the same working conditions as other employees – leave entitlements; retirement benefits and compensation. Labour laws, at times, fail to protect the legal interests of domestic workers, casual or part-time workers  Labour laws are not applicable to the private sector in which large numbers of women are employed as piece rate workers, agricultural workers and unpaid family labourers. Workers in the public sectors, however, do enjoy benefits such as employment provident fund, sick leave, maternity leave etc.
11.4 Does the legislation provide sexual harassment protection from employers and co-workers?	Yes	The Penal Code 1883 (as amended by Act No.5, 22 of 1995 and 5, 16 of 2006) Section 345 criminalizes sexual harassment at work place. It states 'whoever, by assault or use of criminal force, sexually harasses another person, or by the use of words or actions, causes sexual annoyance or harassment to such other person commits the offence of sexual harassment.  Section 345 (1) defines harassment by person in authority as 'unwelcome sexual advances by words or action used by a person in authority, to a working place or any other place, shall constitute the offence of sexual harassment'.	The indicator requires specific legal provisions that prohibit sexual harassment at workplace.  The punishment for sexual harassment is imprisonment of up to five years and compensation for the victim as determined by the court. <sup>92</sup>



Article 11: Employment			
Indicator	Compliance	Relevant Legislation	Comments
11.5 Does the definition of sexual harassment include the breadth of unwanted behaviours?	No		<p>This indicator requires that the law on sexual harassment at the workplace include and define a comprehensive range of unwanted behaviours.</p> <p>The Penal Code provision on sexual harassment at workplace can be interpreted by courts and they may take account of different types of unwanted behaviors. However, compliance with the indicator requires that law should not be narrowly defined.</p>
11.6 Does the legislation contain an equal pay provision?	Partial	The Wages Board Ordinance 1941. No 41 provides for minimum wages, working hours, overtime rate, annual leave and public holidays. <sup>93</sup>	<p>The indicator requires that legal provisions uphold female workers' right to pay equal to that of male workers.</p> <p>Contrary to constitutional requirements of non-discrimination and equality, female workers face significant hardships with regard to the right to equal wages. According to the Global Gender Gap Report 2009, the wage equality for similar work index is 0.72 in Sri Lanka.<sup>94</sup></p>
11.7 Does the legislation contain pay equity provisions?	No		This indicator requires that employment law uphold the principle of 'equal treatment in respect of work of equal value' (Article 11 (d) of CEDAW). <sup>95</sup>
11.8 Does the legislation provide for an equal retirement age?	Yes	The mandatory retirement age for men and women is 55 years in the public sector.	<p>This indicator requires that the law allows for equal retirement age for female and male workers.</p> <p>In the private sector workers work up to 65 years of age.<sup>96</sup></p>
11.9 Are there restrictions on women's choice of employment? If there are no restrictions on women's choice of employment, then there is full compliance with this indicator.	Yes	There are no constitutional or legal barriers that restrict women's choice of employment.	<p>Protective laws that prohibit women from working in particular fields of employment or particular hours – night shifts – are discriminatory. The indicator requires that such protective legal provisions be removed.</p> <p>The law on night work states that women can work at night subject to certain conditions being met by the employer.</p>

Article 11: Employment			
Indicator	Compliance	Relevant Legislation	Comments
11.10 Does the legislation provide for health protection during pregnancy?	Yes	The Shops and Office Employees Act 1954, Section 18 (D) 1 states ‘where a female employee gives notice to her employer that she expects to be confined within such period (not exceeding three months) from the date specified in the notice, as may be so specified, she shall not be employed, or be caused or permitted to be employed, during the period commencing on that date and ending on the date immediately preceding the date of her confinement, on any such work as may be injurious to her or her child’.	The indicator requires that special legal protection measures be included in employment laws for pregnant workers. Such measures may include: breaks; light work; time to attend medical checks.
11.11 Does the legislation provide paid maternity leave of not less than 14 weeks?	Yes	Under Section 18 D (1) of the Shops and Office Employees Act 1954, grants three months of maternity leave, that excludes the holidays.	This indicator requires that legal provision grant 14 weeks of maternity leave to female workers in both public and private sectors.
11.12 Does the legislation provide protection from dismissal because of pregnancy or maternity leave?	Yes	The Shops and Office Employees Act 1954 Section 18 (E) stipulates that employment of female employee shall not be terminated because of her pregnancy. <sup>97</sup>	This indicator requires that employment law provide legal protection to female workers against dismissal due to pregnancy or maternity leave.
11.13 Does the legislation guarantee the provision of childcare by employer or state?	Yes	Maternity Benefits Ordinance 1939, Section 12A (1) (as amended in 1978) stipulates ‘the employer of more than a prescribed number of women workers in any trade shall establish and maintain, in accordance with regulations made in that behalf, a creche for children under five years of age, and shall allow any such worker who has in her care a child or children under five years of age, to leave such child or children in such creche during the hours when she is required to work for her employer’.	The indicator requires that legal provision obligate the employer or the state to adopt special childcare measures for female workers.
11.14 Does the legislation provide reasonable nursing time during work hours?	Yes	The 2005 new regulations on maternity leave entitlements allow feeding mothers to leave an hour early to breastfeed the infant. This entitlement is valid for six- months period. <sup>98</sup>	The indicator requires that the labour law upholds female workers’ right to breastfeed their children during work hours.

Article 12: Health Care and Family Planning			
Indicator	Compliance	Relevant Legislation	Comments
12.1 Do women have access to safe and legal abortion facilities?	No	According to Penal Code Section 303, abortion is a criminal offence, carrying a sentence of up to three years, fine or both. It carries punishment of up to seven years of imprisonment, fine or both if performed with the woman's consent. <sup>99</sup>	The indicator requires that the law make abortion legal and stipulate provisions for safe abortion.  Abortion is not legalized in Sri Lanka and can only be performed to save the mother's life or for health reasons.

Article 13: Economic and Social Benefits			
Indicator	Compliance	Relevant Legislation	Comments
13.1 Do women have an equal right to family benefits regardless of marital status?	Yes	The Widows and Orphans Pension Fund Act 1983, Section 9 states 'widowers and orphans of officers are entitled to pension'.	The indicator requires that the law grant female workers equal rights to social security and benefits.
13.2 Do women have an equal right to obtain bank loans, mortgages and financial credit?	Yes	Women and men have equal rights to obtain bank loans, and mortgages. They are also eligible for credit from state, private financial institutions, local credit delivery programmes and from donor-assisted programmes.	The indicator requires that the law upholds women's equal right to obtain loans, mortgages and financial credit.  Although sex-disaggregated data is not available, it is reliably understood that approximately half the recipients from poverty groups have been women while relatively few women are reported to seek large loans from development or commercial banks. <sup>100</sup>
13.3 Do women have an equal right to participate in recreational activities, sports and cultural life?	Yes	There are no legal barriers to women's participation in recreational activities, sports and cultural life.	The indicator requires that the law not impose restrictions on women's equal right to participate in recreational activities and cultural life.  The participation of women in cultural and recreational activities is determined by the availability of leisure time after the completion of their economic and domestic tasks. Influenced by customs and traditions men's needs for leisure and recreation may be given preference to those of women. <sup>101</sup>

Article 14: Rural Women			
Indicator	Compliance	Relevant Legislation	Comments
14.1 Is there legislation that provides for special measures to advance substantive equality for rural women?	No		<p>The indicator requires that the law provide for affirmative action to uphold the rights of rural women.</p> <p>The State policy recognizes that there is a need for interventions to bridge the gaps between urban and rural communities. Under <i>Mahinda Chintana</i>, current Government policy, a significant number of poverty programmes target rural women.<sup>102</sup></p>

Article 15: Equality before Law and Civil Matters			
Indicator	Compliance	Relevant Legislation	Comments
15.1 Does the Constitution guarantee equality before the law?	Yes	The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 12 (1) states 'all persons are equal before law and are entitled to equal protection of the law'.	The indicator requires that constitutional provision on equality before the law.
15.2 Do women have an equal capacity in civil matters – can women sue?	Yes	The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 12 (1).	The indicator requires that there not be any legal restrictions on women's civil rights. Such rights include: capacity to initiate litigation; access legal advice; or seek redress from the courts.
15.3 Do women have an equal right to participate in courts and tribunals at all stages?	Yes	The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 12 (1).	The indicator requires that women have equal legal right to participate in the courts and their proceedings.
15.4 Do women have an equal right (regardless of marital status) to conclude contracts and administer property?	Partial	<p>The General law – Married Women Property Ordinance 1923 – awards equal rights to men and women to conclude and administer property.</p> <p>Under Thesawalamai property law, as followed by Tamils in the North, women require the consent of their husbands to enter into contracts and to transfer immovable property, even their own.</p>	<p>This indicator requires that women have the right to enter into a contract independently without the consent of a husband or male relative.</p> <p>The three main communities in Sri Lanka are governed by their own personal laws.</p>
15.5 Do women have an equal right to be executors or administrators of estates?	Yes	Civil Procedure Code 1889, Section 394 (2).	This indicator requires that women have equal legal capacity in civil matters such as the administration of estates.
15.6 Is there legislation that nullifies all contracts and instruments that limit women's legal capacity?	No		This indicator requires that any law that limits the capacity of women to conclude contracts be changed.

Article 15: Equality before Law and Civil Matters			
Indicator	Compliance	Relevant Legislation	Comments
15.7 Do women have an equal right to choose residence and domicile?	Yes		This indicator requires that women have equal rights to choose their residence and domicile.

Article 16: Personal and Family Law			
Indicator	Compliance	Relevant Legislation	Comments
16.1 Does the legislation guarantee entry into marriage with full and free consent?	Partial	The Marriage Registration Ordinance 1988 confers equal rights to men and women to enter into marriage. <sup>103</sup>	<p>The indicator requires that the law uphold women's right to freely choose a spouse and to enter into marriage with their free and full consent.</p> <p>Multiple sources feed into the Sri Lanka's family legislation. Out of three main communities, Tamils are governed by the general law in most marriage-related matters; Kandyan Sinhalese can choose to be governed by the general law or their customary laws. Muslims follow Islamic law.<sup>104</sup> This diversity may adversely affect women's legitimate rights to free marriage, property and inheritance.</p>
16.2 Does the legislation allow marriages to be nullified if they are entered into under force, duress or undue influence?	No	Section 20 (2) of the Marriage Registration Ordinance 1908 stipulates that no promise, contract or seduction shall vitiate any marriage duly solemnized and registered.	The indicator requires that the law nullifies forced marriages.
16.3 Is there an equal minimum age of 18 for marriage?	Partial	The Marriage Registration Ordinance 1908, Section 15 (amended in 1995) stipulates that both parties are required to be 18 years of age at the time of marriage.	<p>This indicator requires that the law set 18 as the minimum age of marriage for both boys and girls.</p> <p>However, the Muslim community is not bound to follow this legal provision.</p>
16.4 Is there a legislative prohibition of child marriage?	Partial	The Marriage Registration Ordinance 1908, Section 15 (amended in 1995) stipulates that no marriage shall be valid unless both parties have reached 18 years of age.	<p>The indicator requires that the marriage law prohibits child marriage below the age of 18.</p> <p>The Muslim Marriage and Divorce Act 1951 do not specify a minimum age for valid marriage. The Act requires the consent of judicial officer to register the marriage of a girl below 12 years of age.</p>

Article 16: Personal and Family Law			
Indicator	Compliance	Relevant Legislation	Comments
16.5 Does the legislation require registration of marriage in an official registry?	No	Under the Marriage Registration Ordinance 1908 registration of marriage is not mandatory.	The indicator requires that legal provision provide for registration of marriage. This is a good way of tracking child marriages, and cases of polygamy. It also facilitates women's claim for spousal benefits after divorce.  Under the General Law, non-registration does not invalidate the marriage.
16.6 Does the legislation prohibit bigamy?	Partial	Under the Penal Code 1883, section 362 B (as amended by Act. No 9, 22 of 1995), bigamy is a criminal offence and is punishable by imprisonment up to seven years and a fine.	This indicator requires that family legislation prohibit bigamy or polygamy.  However, polygamy is permitted under the Muslim Marriage and Divorce Act 1951.
16.7 Do women have an equal right to choose a family name?	Yes	There are no legal barriers.	This indicator requires that the family law upholds married women's right to choose a family name.
16.8 Is the consent of both parents equal in the marriage of minors?	No	Section 22 (1) of the Marriage Registration Ordinance 1908 gives a father the right to decide on a child's marriage.	This indicator requires that the legal provisions grant equal rights to both parents on matters concerning their children. A legal provision that allows for the father's consent alone for a child marriage is discriminatory.
16.9 Are both spouses equal in the ownership, acquisition, management, administration, enjoyment and disposition of property?	Partial	Section 5 (I) of the Married Women's Property Ordinance 1923 stipulates 'a married woman shall be capable of acquiring, holding, and disposing by will, movable and immovable property, if she were a <i>feme-sole</i> , without the intervention of any trustee'. <sup>105</sup>  Jaffna Matrimonial Rights and Inheritance Ordinance 1911 govern the property rights of Tamils – those governed by Thesawalamai – Article 6 of the Ordinance stipulates that a wife can dispose of movable property without her husband's consent. However, written consent of the husband is required by her to dispose of immovable property. <sup>106</sup>	This indicator requires that legal provisions include spouses' equal rights to acquire, own, manage, administer or dispose of property.  The General Law confers upon spouses equal rights to own, acquire, manage and administer property. However the personal laws, followed by different communities, may restrict women's full access to and rights over property.



## Article 16: Personal and Family Law

Indicator	Compliance	Relevant Legislation	Comments
16.10 Does the legislation provide for a maintenance and custody order during separation based on need?	Partial	<p>The Maintenance Act 1999 provides for maintenance of spouse, child, adults and disabled offspring.<sup>107</sup></p> <p>The Muslim Marriage and Divorce Act 1951 recognizes limited maintenance rights after divorce. However, under Section 47 (1) d of the Act a divorced wife is entitled to maintenance for a limited duration: until registration of the divorce; during the <i>Iddat</i> period (90 days); or in the case of pregnancy until she delivers the child.</p> <p>Kandyan Marriage and Divorce Act 1952, Section 33 (7) ii-iii states that a district registrar, in granting dissolution of a marriage, may order the husband to pay a certain amount of money or provide other support for the maintenance of his wife, children or both.<sup>108</sup></p>	This indicator requires that the family legislation stipulate provisions on maintenance and custody orders of children in case a woman decides seek a divorce.
16.11 Is there legislation to enable women to occupy the marital home when settlement is not possible or in situations of domestic violence?	Yes	<p>According to the Domestic Violence Act 2005, a court through a protection order, may prohibit the respondent from committing any act of domestic violence. It may also prohibit the respondent from entering a residence or any specified part shared by the aggrieved person and him.<sup>109</sup></p>	This indicator requires legal provision that allows women to remain in the marital home until property settlement is finalized.
16.12 Does the legislation provide an order for restitution of conjugal rights? If there is no such order in the legislation then there is full compliance with this indicator.	Partial	<p>The Muslim Marriage and Divorce Act 1951, Section 47 (h) authorizes the court to issue an order for restitution of conjugal rights.</p>	<p>At times, a court may order a married persons (men or women), who have applied for divorce, to return to the marriage and fulfil their marital responsibilities. This may impact women's freedoms and limits their choices. In some cases it may amount to legal sanctioning of marital rape.</p> <p>Under the General Law of Sri Lanka restitution of conjugal rights is not allowed.</p>

Article 16: Personal and Family Law			
Indicator	Compliance	Relevant Legislation	Comments
16.13 Does the legislation provide for no-fault divorce?	No	<p>The Marriage Registration Ordinance 1908, Section 19 (2) specifies grounds on the basis of which divorce is granted. The grounds include: adultery; malicious desertion; incurable impotence at the time of marriage.</p> <p>Under the Kandyan Marriage and Divorce Act 1952, Section 32, the court is to grant divorce on the basis of: adultery by wife; adultery by husband coupled with incest; desertion for two years; mutual consent.</p> <p>The Muslim Marriage and Divorce Act 1951, Section 28 (1) grounds for divorce include: inability of husband to provide support; cruelty; dissension and quarrels; husband's leprosy; husband's insanity; and husbands' impotence.</p>	<p>This indicator requires that the law prohibit fault-based divorce. A requirement of evidence of matrimonial offences – cruelty, desertion, any physical disability – may compromise women's dignity in divorce cases.</p> <p>The law is currently under scrutiny which explicitly introduces irretrievable breakdown of marriage as a new ground of divorce.<sup>110</sup></p>
16.14 Is there a duty of the court to promote reconciliation? If the legislation does not contain such a duty then there is full compliance with this indicator.	Yes	Under the general law there is no legal provision that promotes reconciliation.	The indicator requires that there be no legal provision that obligates courts to promote reconciliation between parties.
16.15 Does the legislation provide for an equal division of property after divorce including recognition of unpaid contributions; are future needs and future earning capacity calculated?	Partial	Under the Civil Procedure Code 1889, Section 615 the court may issue any order it thinks fit with regard to conveyances of property or monetary payments of maintenance for the benefit of either spouse.	<p>The indicator requires that the law uphold women's equal right to marital property after divorce. It should also recognize their non-financial family contributions – raising children; caring for elderly relatives; and discharging household duties.</p> <p>This legal provision of the court's order that it deemed 'fit' may allow latitude for wide interpretation to judges and lawyers.</p>

Article 16: Personal and Family Law			
Indicator	Compliance	Relevant Legislation	Comments
16.16 Does the legislation provide for the payment of child support upon divorce based on need?	Yes	<p>Under the Civil Procedure Code 1889, Section 621, the court can issue an order for the custody, maintenance and education of minor children after dissolution of a marriage.<sup>111</sup></p> <p>The Kandyan Marriage and Divorce Act 1952, Section 33 (7) ii-iii stipulates that a district registrar, in granting dissolution of a marriage, may order the husband to pay a certain amount of money or provide other support for maintenance of his wife, children or both.</p> <p>Under the Muslim Marriage and Divorce Act 1951, Section 48 any claim for maintenance by or on behalf of the wife, or legitimate child falls within the exclusive jurisdiction of <i>Qazi</i>.</p>	This indicator requires that there be a legal obligation on fathers to provide child maintenance support after divorce.
16.17 Does the legislation provide maintenance for the ex-spouse based on commitments, income, earning capacity and assets?	Partial	<p>According to the Civil Procedure Code 1889, Section 615, the courts may issue any order it thinks fit with regard to conveyances of property or monetary payments of maintenance for the benefit of either spouse.</p> <p>Under the Kandyan Marriage and Divorce Act 1952, Section 33 (7) ii-iii (amendment of 1975), the district registrar shall issue an order for the husband to pay a sum of money, periodically, for the maintenance of his wife and children respectively.</p> <p>Under the Muslim Marriage and Divorce Act 1951 limited maintenance rights are granted. Section 47 (1) d stipulates that an ex-wife's maintenance rights are restricted to: until registration of the divorce; during <i>iddat</i>; if the woman is pregnant at the time of registration of the divorce, until she delivers the child.<sup>112</sup></p>	<p>Compliance with the indicator requires that legal provision upholds women's maintenance rights after divorce.</p> <p>The general law does grant equal maintenance rights to ex-spouses. However, the personal laws, practiced by the three communities, may deny women their due post-marital maintenance rights.</p>

Article 16: Personal and Family Law			
Indicator	Compliance	Relevant Legislation	Comments
16.18 Is custody and access to children based on the best interests of the child regard less of the relationship of the parents?	Yes	<p>The Civil Procedure Code 1889, Section 621 states ‘in any action for obtaining a dissolution of marriage or a decree of nullity of marriage, the court may, from time to time, make such provision in the decree as the court deems proper with respect to the custody, maintenance and education of minor children.’</p> <p>The Kandyan Marriage and Divorce Act 1952, Section 33 (7) ii-iii stipulates ‘a district registrar, in granting dissolution of marriage, may order the husband to pay a certain amount of money or provide other support for the maintenance of his wife, children or both.’</p>	Compliance with this indicator requires that courts be legally bound to uphold the best interests of children in custody cases.
16.19 Does the legislation provide damages for adultery? If the legislation does not provide damages for adultery then there is full compliance with this indicator	No	According to the Marriage Registration Ordinance 1988, Section 19 (2) adultery constitutes one of the grounds for seeking divorce. Under Section 20 (3) of the Ordinance, the court grants the right to the aggrieved party to recover or sue for damages for the breach of promise of marriage, for seduction or any other cause. <sup>113</sup>	This indicator requires that there be no legal recognition of damages for adultery.
16.20 Does the legislation recognize <i>de facto</i> rights (including same-sex couples) on the same basis as marriage?	No	Penal Code 1883 Section 365 criminalizes same-sex relationships.	The indicator requires that the law recognizes <i>de facto</i> relationships and grant rights to couples on the same basis as marriage.
16.21 Do women have equal rights to guardianship, wardship, trusteeship and adoption?	Yes	Under the general law, the court is authorized to issue any order it deems ‘proper’ for the guardianship of a child	This indicator requires that the law upholds women’s equal rights to guardianship, trusteeship and adoption.
16.22 Does the legislation provide for an order establishing parentage?	Yes	Sri Lankan courts interpret the Evidence Ordinance to accept DNA testing to establish paternity.	Both parents are considered jointly responsible for the raising and maintenance of their children. In cases where a child’s parentage is not established, a mother may be prevented from claiming child support. A legal remedy is provided through a court order to establish parentage.
16.23 Does the legislation provide for a contribution to pregnancy and child-birth costs by the father to an unmarried mother?	No		This indicator requires that the law obligates both parents, irrespective of marital status, to contribute to childbirth and pregnancy costs.

Article 16: Personal and Family Law			
Indicator	Compliance	Relevant Legislation	Comments
16.24 Does the legislation provide for the payment of child support for children born outside marriage?	Yes	The Maintenance Act of 1999 makes provision for children born outside marriage to claim maintenance.	The indicator requires that the law obligate both parents to contribute to child support irrespective of marital status.
16.25 Does the legislation provide for equal rules of inheritance?	Partial	<p>The Matrimonial Rights and Inheritance Ordinance 1876, Section 22 stipulates equal rights to inheritance for male and female spouses. The surviving spouse is entitled to inherit half of the deceased's property.</p> <p>Based on the Muslim Intestate Succession Ordinance 1931 women's inheritance rights are limited to: female heirs inherit a lesser share than the male heir of the property of the deceased; a widow inherits half the portion that a widower would inherit; daughters are not excluded from inheritance but their rights are diminished as compared to sons (their rights come under a residuaries category, not that of main sharers).</p> <p>The Kandyan Law Declaration and Amendment Ordinance 1939 discriminates between inheritance rights of men and women. Section 11 (1) of the Ordinance stipulates 'When a man dies intestate leaving a spouse, then the surviving spouse shall be entitled to an estate in the acquired property of the deceased, if there is no acquired property or insufficient for her maintenance, maintenance out of the <i>Paraveni</i>'.<sup>114</sup></p> <p>However under <i>Thediatheddam</i> both spouses are equally entitled to the property from the time of acquisition. Section 20 of the Matrimonial Rights and Inheritance Ordinance 1911 stipulates that on the death of either spouse one half of <i>Thediatheddam</i> shall devolve on the surviving spouse.</p>	The indicator requires that there be no legal discrimination against women's equal rights to inheritance.
16.26 Is there legislation requiring the application of CEDAW and CRC to domestic family law where relevant?	No		The indicator requires that legal provisions allow the courts to apply international conventions in interpreting family legislation.





# 6

## Gender Equality Law Not Sufficient To Secure Women's Rights in Viet Nam

# 6. Gender Equality Law Not Sufficient to Secure Women's Rights in Viet Nam

## 6.1 Introduction and Overview of Legislative Compliance

Viet Nam's legal system preserves the principles of gender equality to a great extent. Its constitutional provisions on equality and non-discrimination are in compliance with CEDAW articles. The 2006 Law on Gender Equality defines gender and assigns penalties for discriminatory acts. The 1999 Penal Code follows 'pro-women procedures' as it has many provisions that protect the life and health of female suspects.<sup>1</sup> Despite a 2006 Law on Gender Equality, *de facto* gaps and discriminatory legal practices may curtail women's rights. Patriarchal Confucian values also contribute in perpetuating discrimination against women.

This section assesses Viet Nam's legislative compliance with CEDAW. Viet Nam ratified CEDAW on 17 February 1982, obliging it to bring its constitution and legislation into accord with the articles of the Convention.<sup>2</sup> Overall, Viet Nam has achieved full compliance with 83 of 113 indicators, partial compliance with five indicators, and is non-compliant with respect to the remaining 25 indicators.

Despite the 2006 Law on Gender Equality, 27 per cent of Viet Nam's laws are either partially compliant or non-compliant with CEDAW benchmarks on gender equality. Gender stereotypes and harmful traditions and customs may hold back Vietnamese women from enjoying their due legal rights. The list of legal inequities is long. Its Penal Code considers women ability to defend herself in rape cases – and not the issue of whether or not she has given consent. Similarly the Labour Code does not allow an employer to assign a female employee to heavy or dangerous work, or work requiring contact with toxic substances that has adverse effects on her ability to 'bear and raise a child'. The law grants equal inheritance rights. However influenced by certain customs and Confucian values, married women

are denied their inheritance shares in certain rural communities of Viet Nam.

The main findings of Viet Nam's legislative compliance with sixteen substantive articles of CEDAW include:

### To embody equality within national constitution and repeal discriminatory national penal code provisions

In full compliance with CEDAW, the 1992 Constitution of the Socialist Republic of Viet Nam (amended in 2001) confers equal rights upon citizens in all spheres – political, economic, cultural, social and family life.<sup>3</sup> The Constitution prohibits all acts of 'discrimination' against women and acts that 'violate women's dignity'.<sup>4</sup> The state and society are constitutionally bound to create favorable conditions for women to improve their knowledge and competence in all respects.<sup>5</sup> The 2006 Law on Gender Equality and the 2000 Law on Marriage and Family uphold the rights of Vietnamese women in the political, social, economic and family spheres of life.<sup>6</sup> The Law on Gender Equality 2006 requires Government, its agencies at all levels (ministries, People's Committees) as well as mass organizations – the Viet Nam Women's Union (VWU), People's Committees, and the Viet Nam Fatherland Front etc. to promote gender equity.

Contrary to these requirements of equal treatment, there is no constitutional provision on substantive equality of access and benefits. A specific provision on substantive equality in a state's constitution provides greater protection to women's rights than does a specific law, as it cannot be easily amended.

The Convention requires that discriminatory national penal code provisions be repealed in order to advance women's legal interests. A government report asserts that the Penal Code 1999 strictly follows the principle of 'pro-women procedure'.<sup>7</sup> The Code stipulates severe

punishment for various sexual offences which include rape, incest and sexual assault of children. The Code prohibits any infringement of women's rights to equality. Anybody who 'uses violence or commits serious acts to prevent women from participating in political, economic, scientific, cultural and social activities' shall be subjected to warnings or face prison sentences.<sup>8</sup> Complainants of violence are also entitled to receive damage compensation in accordance with the law.<sup>9</sup> To protect women from violence, the Code criminalizes domestic violence. In 2007, a special Law on Domestic Violence Prevention and Control was also passed.

In spite of these legal provisions, many women are subjected to violence. A groundbreaking 2006 global study on violence against women by the United Nations Secretary-General compared national surveys on one form of violence – the prevalence of physical assaults on women by their male partners. Prevalence rate in Viet Nam was 25 per cent despite of laws that make various forms of violence against women unlawful.<sup>10</sup> It is reported that violent behaviour inside the home is often considered a normal practice, following interpretations of the Confucian concept that men are responsible for the 'education' of their wives and children.<sup>11</sup> The Penal Code 1999 follows the discriminatory legal requirement for proof of resistance for victims of sexual offences. The rape victim must produce before the court strong material evidence of resisting the perpetrator for successful prosecution. This legal practice strengthens the position of a defendant involved in a heinous crime of sexual assault.

The Convention requires that competent tribunals and public institutions be established to provide legal protection to women. In conformity with CEDAW's requirement, the National Committee for the Advancement of Women in Viet Nam implements programmes and policies in support of women. It performs several functions: advise to the Prime Minister to develop and monitor the implementation of the National Strategy and Plan of Action for the Advancement of Vietnamese Women; collaborate with concerned agencies to make proposals to the Prime Minister on formulating laws and policies related to gender equality and women's advancement; and coordinate with relevant agencies to promote and monitor the implementation of laws.<sup>12</sup> The Viet

Nam Women's Union is the main representative of women's rights.

### **To adopt temporary special measures to accelerate *de facto* equality**

In compliance with CEDAW's benchmarks, several affirmative measures have been adopted to uphold the rights of Vietnamese women. The 1992 Constitutional provision (as amended in 2002) requires the creation of 'favorable conditions for women to improve their knowledge and competence in all respects'.<sup>13</sup> The Penal Code 1999 allows commuting a death sentence to life imprisonment for female offenders. Other special measures for women include natal allowance, and access to pregnancy supporting facilities for female workers.

### **To eliminate customary practices that promote gender stereotypes**

In sync with CEDAW's benchmarks, Viet Nam commits itself to eliminate practices which are discriminatory in nature. Its supreme law – the 1992 Constitution (amended in 2001) – requires 'reactionary and depraved ideologies and culture are to be banned; superstition is to be driven out'.<sup>14</sup> However, certain laws and policies perpetuate stereotypes regarding the role of women. A civil society group states that Viet Nam Women's Union programmes are exclusively 'women only' and exclude men and boys. Patriarchal Confucian values and practices remain entrenched in the society and women suffer from gender biases in the home as well as the workplace.<sup>15</sup> These attitudes also determine the ways in which laws are made and enforced. The husband may be considered as the head of the family while the wife is depicted as a home-maker.

### **To suppress human trafficking and exploitation of women in prostitution**

Based on CEDAW principles, criminalizing sex work is not desirable; however, the Convention calls for creating laws which prohibit procuring and trafficking of women for sex work. Soliciting, procuring services of a girl below 18 years of age and trafficking of women are declared criminal offences under Viet Nam's 1999 Penal Code Provisions.<sup>16</sup> To prevent the exploitation of sex workers, the 2003 Ordinance on the Prevention

and Suppression of Prostitution stipulates punitive measures against customers, procurers and organizers. However, a Government report asserts that sex workers are routinely harassed by the police.<sup>17</sup> And a civil society group claims that cases of female human trafficking have increased considerably over the past five years.<sup>18</sup>

### **To eliminate discrimination against women in the political and public life**

In conformity with CEDAW's standards, Viet Nam's legal system recognizes women's 'right to vote and stand for election'. A person who resorts to 'deception, buying off, and coercion' and obstructs citizens' right to vote and stand for election will be charged under the criminal law.<sup>19</sup> The decision made by the Prime Minister of the Government on approval of the National Strategy for the Advancement of Women in Viet Nam by 2010 requires the reservation of 33 per cent of seats for women in the National Assembly of Deputies, 30 per cent in People's Councils at provincial level, 25 per cent at the District level and 20 per cent at Ward level.<sup>20</sup> Viet Nam's representation of female parliamentarians is 25.8 per cent.<sup>21</sup>

However, despite legal measures to narrow the gender gaps in politics and public life, the ratio between male and female representation is still unbalanced. Women's representation at the ministerial level is an acute problem. Viet Nam has only 4 per cent female ministers as of January 2008.<sup>22</sup>

### **To ensure equal opportunities of representation and participation to women in international organizations**

In compliance with the Convention, Vietnamese women have significant representation at the international levels. According to a Government report, the total percentage of women in the diplomatic service accounts to 28 per cent.<sup>23</sup>

### **To grant equal rights to nationality**

In conformity with CEDAW, the Vietnamese Law on Nationality 2008 confers upon its citizenship equal nationality rights. Women have the right to 'attain, renounce or retain' nationality without any discrimination. Importantly, marital status does not

affect the nationality of a person. Spouses married to foreign nationals are legally allowed to retain their nationality. The 2008 Law on Vietnamese Nationality of stipulates that such couples continue to hold citizenship irrespective of their marriage with foreigners.<sup>24</sup> Further, the children born to a Vietnamese mother are granted citizenship regardless of their 'birth within or outside Viet Nam'.<sup>25</sup>

### **To ensure rights to education**

In conformity with CEDAW, the 1992 Constitution of the Socialist Republic of Viet Nam (as amended in 2001) stipulates that acquiring knowledge is both a 'right and obligation' of its citizens'.<sup>26</sup> Further, the Constitution has stipulated provisions for 'free primary education' and 'universalization of secondary education' for all citizens.<sup>27</sup> The Education Law 2005 disallows discrimination in learning opportunities on the basis of 'ethnic origin, religion, belief, gender, family background, social status or economic conditions'.<sup>28</sup>

Despite of legal requirements, gender biases are still reflected in the education curriculum. Women's role in society is portrayed as subservient to that of men. It is reported that some textbooks depict the traditional role of women as 'doing housework, manual work and farming' while men are presented as 'scholars, explorers and engineers'.<sup>29</sup>

### **To eliminate discrimination against women at workplace and uphold their economic rights**

In compliance with CEDAW's benchmarks on economic rights, the Labour Code of the Socialist Republic of Viet Nam 1994 (as amended in 2002) grants its female workers equal rights to 'work', 'freely choose an employment', and to 'improve skills' without any discrimination.<sup>30</sup> Further, the 1992 Constitution (amended in 2001) preserves men and women workers' right to 'receive equal pay for equal work'.<sup>31</sup> In order to bridge the gender gap and narrow gender inequalities, the Labour Code 1994 provides for affirmative action for the advancement of female workers. Where a female candidate meets the recruitment criteria for a vacant post, she is to be given preference over male candidates.<sup>32</sup> To further secure the rights of female workers, Article 111 (1) of the Labour Code requires 'an employer

must implement the principle of equality of males and females in respect of recruitment, utilization, wage increases, and wages'. Female workers also enjoy full maternity rights including prenatal and post-natal leave for four to six months and a 60-minute break every day for one year to breast-feed the baby. The Labour Code 1994 (as amended in 2002) also prohibits dismissal on the basis of marriage and pregnancy.<sup>33</sup> There have been deliberate attempts to modernize laws including those related to land. The names of both husband and wife must be mentioned on the land-use-right certificates as stipulated in the revised Land Law 2003.

In spite of legislative provisions, female workers do experience legal discrimination on a regular basis. Their rights to equal employment opportunities, equal pay and physical safety are often violated. Female workers are prohibited from certain employment opportunities such as underground work in mines and any dangerous or heavy work that is considered harmful for their 'child-bearing and rearing functions'.<sup>34</sup> Although the law follows the principle of equal pay for the same job, it has been reported that women receive only 72 per cent of male salaries for the same type of work.<sup>35</sup> In addition to these *de facto* gaps, the state has yet to legislate against sexual harassment at the workplace.

### **To eliminate discrimination against women in health care**

In synch with CEDAW's requirement, abortion is allowed in Viet Nam. Article 44 of the Law on Health stipulates that women have the right to an abortion on demand.<sup>36</sup>

### **To eliminate discrimination against women in economic and social life**

Decree No. 67/2007/ND-CP on Support Policies for Social Protection Beneficiaries provide social security to disadvantaged groups including women. In compliance with CEDAW's benchmarks, women also have equal rights to obtain bank loans, mortgages and financial credit. Article 12 of the 2006 Law on Gender Equality states 'Men and women are equal in setting up a business, carrying out business and production activities, managing business and are equal in accessing information, capital markets and labour sources'.

### **To eliminate discrimination against rural women**

In sync with CEDAW's requirements, numerous legal measures have been adopted by Viet Nam to uphold the rights of rural women. The Gender Strategy in Agriculture and Rural Development 2010 aims at 'realizing gender equality' at all levels of local governance. To improve their participation in decision making, a 2003 Government Decree confers upon rural women 'more chances to discuss, make decisions, implement plans' at community levels.<sup>37</sup> Women's equal control over land ownership is secured through the 2003 Law on Land.<sup>38</sup> This Law grants equal land user rights to both wife and husband. It imposes a legal requirement that land certificates must bear the full names of both husband and wife.

However, gender prejudices against rural women are quite common. Women have fewer options in land allocation mainly due to their lack of understanding of their rights and responsibilities over land. The 2003 Law on Land allows equal opportunities to men and women for managing land property. But effective implementation of its legal provisions remains a matter of concern. It is reported that for agricultural land, only 15 per cent of those households with land user certificates held them jointly, while 66 per cent were held by men and 19 per cent by women.<sup>39</sup>

### **To accord women equality before the law**

In adherence to CEDAW's benchmarks, Viet Nam has several constitutional and legal measures that uphold women's rights to equality before the law and equal treatment in civil suits. They enjoy the freedom to enter into civil transactions and contract relations. The rights of plaintiffs and defendants are 'equal' in civil courts and any discrimination on the basis of gender is prohibited and declared null and void.<sup>40</sup> An aggrieved party can seek the court's intervention and request 'termination' of any act that may infringe his/her fundamental rights.<sup>41</sup>

### **To eliminate discrimination against women and accord equality to them within marriage and family relations**

According to the 2000 Marriage and Family Law, marriage is considered 'voluntary, progressive, monogamous'.<sup>42</sup> Forced and child marriages are declared



illegal and are considered criminal offences.<sup>43</sup> The law also requires the registration of marriage with ‘competent state bodies – marriage registration offices.’<sup>44</sup> In addition, bigamy is prohibited and criminalized under Penal Code provisions.<sup>45</sup> The Law also upholds ex-spouses rights to property. They are legally entitled to ‘division of common property’ into equal shares between the ex-spouses.<sup>46</sup> With regard to maintenance rights after divorce, the law recognizes housework as ‘income-generating labour.’<sup>47</sup> This legal provision authorizes courts to compensate ex-wives adequately for their unpaid contributions to the family.

In spite of these requirements and provisions on equality,

women’s family and marital rights may be curtailed. They may face difficulties in seeking divorce. Divorce can be sought only on certain grounds. The law requires the civil court to seek reconciliation before adjudicating on such cases.<sup>48</sup> To aggravate matters, traditional, gender-biased customs such as string extension marriages are practiced by some ethnic groups.<sup>49</sup> Such marriages infringe on the basic prerequisites of a valid marriage – the right of freedom of choice and consent. The law confers upon men and women the equal right to inherit, but local norms, sometimes, inhibit women’s full freedom to exercise this right. It is observed that in some ethnic groups in rural areas, parents may deny due inheritance rights to their married daughters.<sup>50</sup>

## 6.2 Assessment of National Legislation for Gender Equality

Article 1: Definition of Discrimination Against Women			
Article 2: Obligations to Eliminate Discrimination			
Indicator	Compliance	Relevant Legislation	Comments
1.1 Does the Constitution guarantee fundamental human rights and freedoms to men and women equally including in the political, economic, social, cultural, and civil or any other field?	Yes	The Constitution of the Socialist Republic of Viet Nam 1992 (as amended in 2001), Article 63 states ‘all citizens regardless of their sex have equal rights in all respects, political, economic, cultural, social and in family life.’ <sup>51</sup>	The indicator requires that the constitution uphold women’s fundamental rights and freedoms in different spheres.
1.2 Is there a constitutional guarantee of substantive equality between men and women?	Partial	Article 52 of the 1992 Constitution (as amended in 2001) does uphold citizens’ right to equality before the law. However there is no constitutional provision on substantive equality. The 2006 Law on Gender Equality, Article 4 stipulates ‘the gender equality goals are to eliminate gender discrimination, to create equal opportunities for man and woman in socio-economic development and human resources development in order to reach substantial equality between man and woman.’	The indicator requires expressed constitutional provision on substantive equality. There is no constitutional provision that confers equality of access and benefits. However the 2006 Law on Gender equality has provisions on substantive equality. Ideally the principle of substantive equality should be entrenched in national constitutions as it provides greater protection and cannot be easily amended.
1.3 Does the Constitution contain an anti-discrimination clause on the grounds of sex/gender?	Yes	The Constitution of the Socialist Republic of Viet Nam 1992 (as amended in 2001), Article 63 states ‘any discrimination against women and violation of women’s dignity are strictly prohibited.’ <sup>52</sup>	This indicator requires that the constitution have expressed anti-discrimination provisions.



**Article 1: Definition of Discrimination Against Women****Article 2: Obligations to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.4 Does the Constitution contain an anti-discrimination clause on the grounds of marital status?	Yes	The Constitution of the Socialist Republic of Viet Nam 1992 (as amended in 2001), Article 63.	The compliance with this indicator requires that there be constitutional provisions on non-discrimination on the grounds of marital status – unmarried; married; single etc.
1.5 Does the Constitution contain an anti-discrimination clause on the grounds of sexual orientation?	Yes	The Constitution of the Socialist Republic of Viet Nam 1992 (as amended in 2001), Article 63.	
1.6 Does the Constitution contain an anti-discrimination clause on the grounds of HIV status?	Yes	The Constitution of the Socialist Republic of Viet Nam 1992 (as amended in 2001), Article 63.	
1.7 Does the Constitution contain an anti-discrimination clause on the grounds of disability?	Yes	The Constitution of the Socialist Republic of Viet Nam 1992 (as amended in 2001), Article 67 states 'old people, disabled persons and orphans with no family support are entitled to assistance from the state and society'. <sup>53</sup>	
1.8 Does the breadth of anti-discrimination clause encompass direct and indirect discrimination?	No	The constitutional provisions do not cover indirect forms of discrimination.	This indicator requires that the constitutional provision on non-discrimination prohibits both direct and indirect acts of infringements.
1.9 Does the anti-discrimination clause bind public authorities and institutions?	Yes	The Constitution of the Socialist Republic of Viet Nam 1992 (as amended in 2001), Article 63 states 'the state and society create favourable conditions for women to improve their knowledge and competence in all respects'.  The 2006 Law on Gender Equality requires government, ministries, the Viet Nam's Women Union, People's Committees, and the Viet Nam Fatherland Front to promote gender equity. <sup>54</sup>	The compliance with this indicator requires that the constitution have provision that binds public institutions to follow the principle of non-discrimination.

**Article 1: Definition of Discrimination Against Women****Article 2: Obligations to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.10 Does the anti-discrimination clause bind all persons, organizations or enterprises?	Yes	The Law on Gender Equality 2006, Article 2 (1) stipulates that the target group includes 'state institutions, political organizations, socio-political organizations, professional organizations, social organizations, economic organizations, non-productive units, units of the people's armed forces, families and Vietnamese citizens (hereinafter referred to as agencies, organizations, families and individuals)'.	The indicator requires that there be constitutional provision that binds both public and private sectors to follow non-discriminatory rules and regulations.
1.11 Are sanctions imposed for breach of anti-discrimination provisions?	Yes	The Law on Gender Equality 2006, Article 39 defines principles for handling cases involving infringements of fundamental rights. The Article states 'every violation of the law on gender equality must be timely detected and prevented. The handling of violations of the law on gender equality must be carried out in a prompt, just and thorough manner in accordance with the law'.	The compliance with this indicator requires that there be legal provision that imposes sanctions – fines, apologies or loss of government contracts and remedies such as compensation and injunctive relief – in case of breach of anti-discrimination provisions.
1.12 Are there specific domestic violence offences in the criminal legislation (Penal Code)?	Yes	The Law on Domestic Violence Prevention and Control 2007, Article 2 defines acts of domestic violence.  The Penal Code 1999, Article 151 stipulates that any person who 'ill treats or persecutes their grand parent, parent, husband, wife, children, nephew, niece shall be subject to warning, non-custodial reform for up to two years or prison term of between three months and two years'.	This indicator requires that there should be specific laws or Penal Code provision on domestic violence.  A groundbreaking 2006 global study on violence against women by the United Nations Secretary-General compared national surveys on one form of violence – the prevalence of physical assaults on women by their male partners. Prevalence rate in Viet Nam was 25 per cent.  Violent behaviour inside the home is often considered a normal practice, following the Confucian concept that men are responsible for the 'education' of their wives and children.
1.13 Is stalking a criminal offence?	Partial	Penal Code 1999, Article 338 states, 'those who commit acts of harassing people shall be sentenced to non-custodial reform for up to three years or between three months and three years of imprisonment'. <sup>55</sup>	This indicator requires that any harassment act – including stalking – be criminalized.  There is no specific Penal Code provision on stalking. The Code refers only broadly to acts of harassment.

## Article 1: Definition of Discrimination Against Women

## Article 2: Obligations to Eliminate Discrimination

Indicator	Compliance	Relevant Legislation	Comments
1.14 Is a restraining order available in situations of sexual and domestic violence regardless of marital status?	Yes	The Law on Domestic Violence Prevention and Control 2007, Article 21 (1) empowers the courts to issue restraining orders. The Article states ‘in collecting evidence or processing civil cases between the victim of domestic violence and the person conducting violent acts, the courts shall have the authority to forbid the person committing violent acts to contact the victim of domestic violence.’ <sup>56</sup>	Compliance with this indicator requires that the law provide civil remedies – restraining orders – to ensure effective protection of women against violence. Such remedies should be available to women irrespective of their marital status.
1.15 Is there mandatory prosecution for domestic Violence offences?	No		Domestic violence is not a private matter and must be treated as a criminal offence by law enforcement agencies. The indicator requires that the law must stipulate provisions on mandatory prosecution of perpetrators.
1.16 Does the criminal legislation contain a broad range of sexual assault offences graded on the basis of seriousness to the victim?	Yes	The Penal Code 1999 stipulates several sexual offences that carry varied penalties: Article 111 on rape carries a penalty of imprisonment between two and seven years; Article 112 on the rape of children aged between 13 and 16 years imposes a sentence between seven and fifteen years; Article 150 on incest carries penalties of imprisonment between six months and five years.	Women and girls can be sexually abused in several ways. Compliance with this indicator requires any unwanted sexual contact should be unlawful. It is essential to incorporate into criminal law a wide range of sexual assault offences.
1.17 Does the definition of rape and/or sexual assault offences include penetration of non-penile objects into anus, vagina and mouth?	No		This indicator requires that the legal definition of rape not be restricted to penile penetration only. It should take account of all forms of sexual abuse.
1.18 Is there an offence of incest for girls and women? If there is no offence of incest then there is full compliance with this indicator	No	The Penal Code 1999, Article 50 states, ‘those who have sexual intercourse with other persons of direct blood lines, with sisters or brothers born of common parents, with half-brothers or half-sisters, shall be sentenced to between six months and five years of imprisonment.’	Ideally the law on incest should make a clear distinction between a victim and the perpetrator. This indicator implies that under no circumstances should victims of an incestuous sexual encounter – girls and women – be charged with an offence.
1.19 Have the terms indecency, carnal knowledge, defilement and insulting modesty been removed from the criminal legislation?	Yes	There is no direct use of these terms in the Penal Code 1999.	The use of such language in place of appropriate legal terminology may depict female victims as damaged or tarnished by the sexual offences. Compliance with this indicator requires that such terms be removed and replaced, and that the focus be placed on invasion of women’s personal integrity. .

**Article 1: Definition of Discrimination Against Women****Article 2: Obligations to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.20 Is consent specifically defined in the criminal legislation outlining coercive circumstances?	Yes	Penal Code, 1999, Article 111 (1) outlines coercive circumstances ‘violence, threat to use violence or take advantage of the victims’ state of being unable to (act in his/her) self-defence or resort to other tricks’.	Consent is used as defence in cases of rape and other sexual offences. There can be doubt as to what circumstances constitute consent. The indicator requires a statutory definition of consent in the criminal law. The legal provision includes wide-ranging circumstances that may induce an unwilling consent.
1.21 Is there a legislative prohibition on the use of prior sexual conduct to establish consent?	No		The admission of the prior sexual history of the victim is a discriminatory procedural rule. It is based on the assumption that promiscuous women are more likely to have consented to sexual acts. The indicator requires that such provision be removed.  The legal provision of prior sexual history is based on the unfounded supposition that promiscuous women or sex workers are more likely to consent
1.22 Is there a legislative prohibition of the requirement for corroboration?	No		The discriminatory legal requirement of independent evidence is used by some courts. It is based on the supposition that it is dangerous to convict the accused on the basis of uncorroborated evidence. Compliance with this indicator requires removing this legal provision from the Penal Code.
1.23 Is there a legislative prohibition of the requirement for proof of resistance?	No	There is no Penal Code provision that prohibits the requirement for proof of resistance.	The procedural rule of proof of resistance may be used by courts to determine consent. It implies victims of sexual assault must establish that they have physically resisted the perpetrator or otherwise consent may be inferred. The indicator requires removing this discriminatory rule from the Penal Code.
1.24 Is there a defence of honest and reasonable belief that the victim is of legal age? If there is no defence of honest and reasonable belief then there is full compliance with this indicator.	Yes	Penal Code 1999, Article 111 (4) stipulates ‘committing rape against a juvenile aged between full 16 and under 18 years old, the offenders shall be sentenced to between five and ten years of imprisonment’.	The legal provision of honest and reasonable belief that the victim is of legal age is discriminatory. It can be used by perpetrator to argue that he honestly believed the victim was of legal age. This provision put the onus on the victim rather than on the alleged perpetrator to reveal the age. The indicator requires removing this discriminatory legal provision.

**Article 1: Definition of Discrimination Against Women****Article 2: Obligations to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.25 Is a defence of consent disallowed in relation to a victim under 18?	Yes	Penal Code 1999, Article 111 (4).	Compliance with this indicator requires that consent of the victim, below 18 years, be disallowed as a defence.
1.26 Is there an exemption from prosecution for marital rape? If yes then there is no compliance with this indicator.	Yes	There is no specific Penal Code provision on marital rape.	This indicator requires that marital rape must be made unlawful and that legal provisions should be stipulated accordingly.
1.27 Is there mandatory prosecution for sexual offences?	No		This indicator requires that there be mandatory legal provisions to punish and redress the wrongs committed against female victims of sexual abuse.
1.28 Is bail unavailable for sexual offences if he presents a risk to the victim?	Partial	The Law on Domestic Violence Prevention and Control 2007, Article 21 (1) empowers the courts to issue restraining orders against perpetrators.	This indicator requires that bail not be granted to the accused if he poses a potential threat to the female victims.
1.29 Are there minimum sentences for sexual offence?	No		Compliance with this indicator requires that law impose minimum sentences for sexual offences.
1.30 Is there a provision in the criminal legislation which states that customary practices of forgiveness shall not affect criminal prosecution or sentencing?	No		The indicator requires that customary practices not be used as justification to reduce or withdraw sentences or not to prosecute the perpetrator of a crime.
1.31 Is there legislative provision for compensation for victims of sexual and domestic violence?	Yes	<p>The Criminal Procedure Code, Article 326 (1e) states ‘the complainants shall have the right to have their infringed legitimate rights restored and to receive damage compensation in accordance with the law’.</p> <p>The Law on Domestic Violence Prevention and Control 2007, Article 5 (1a) states that victims of domestic violence may ‘request the authorized institutions, organizations and individuals to protect their lives, dignity and other rights and legitimate benefits’.</p>	The compliance with this indicator requires that the law include compensatory measures for victims of sexual abuse.

**Article 1: Definition of Discrimination Against Women****Article 2: Obligations to Eliminate Discrimination**

Indicator	Compliance	Relevant Legislation	Comments
1.32 Does the criminal legislation allow for infanticide to replace a charge of murder or manslaughter?	No	Penal Code 1999, Article 94 stipulates 'any mother who, due to strong influence of backward ideology or special objective circumstances, kills her new-born or abandons such baby to death, shall be sentenced to non-custodial reform for up to two years or to between three months and two years of imprisonment'.	In case a mother causes the death of her child of 12 months or less, she shouldn't be charged for manslaughter or murder. The indicator requires that such accused should be charged for infanticide as it prescribes reduced sentences.
1.33 Does the definition of infanticide include environmental and social stresses?	Yes	Penal Code 1999, Article 94 stipulates 'any mother who, due to strong influence of backward ideology or special objective circumstances, kills her new-born or abandons such baby to death, shall be sentenced to non-custodial reform for up to two years or to between three months and two years of imprisonment'.	The indicator requires that the defence of infanticide not be solely grounded on failure to recover from post-partum depression. It should also be linked to environmental and social stresses.

**Article 3: Guarantee of Basic Human Rights and Fundamental Freedoms**

Indicator	Compliance	Relevant Legislation	Comments
3.1 Is there legislation establishing a national human rights machinery charged with promoting and protecting human rights including women's rights?	No		This indicator requires that legally competent national tribunals and other public institutions should be established to uphold women's rights.
3.2 Is there legislation establishing a body to monitor the implementation of non-discriminatory law and policy for the advancement of women?	Yes	<p>The National Committee on the Advancement of Women is the lead agency responsible for implementation of policies and programmes for the advancement of women.</p> <p>It performs several functions: coordinate with relevant agencies to promote and monitor the implementation of laws and other issues related to women at ministries, branches, provinces; coordinate with concerned agencies to disseminate and advocate implementation of laws and policies related to women and the CEDAW; take a leading role in preparing a national report on the implementation of CEDAW in Viet Nam.<sup>57</sup></p>	<p>This indicator requires that a specific law be enacted to establish a national body for the advancement of women's interests and legal rights.</p> <p>However, the Committee does not exist as a separate institution directly assisting the Prime Minister. But it has been integrated into the structure of the Ministry of Labour, War Invalids and Social Affairs.<sup>58</sup></p>



#### Article 4: Acceleration of Equality between Men and Women

Indicator	Compliance	Relevant Legislation	Comments
4.1 Does the Constitution contain a temporary special measures provision?	Yes	The Constitution of the Socialist Republic of Viet Nam, 1992 (as amended in 2001), Article 63 states 'the state and society create favourable conditions for women to improve their knowledge and competence in all respects and create favourable conditions for women's production, work, study, medical treatment, rest and discharge of the duties of motherhood'.	Compliance with this indicator requires that there be a constitutional provision on temporary special measures for advancing women's political, economic, social and legal rights.  Some of the temporary measures are: female workers on maternity leave are entitled to natal allowance, irrespective of the number of pregnancies; before executing a death sentence brought down on female offender, conditions for non-application of the death penalty must be checked; commuting of the death sentence to life imprisonment for female offender.
4.2 Are special measures exempt from discrimination on the grounds of sex, marital status, sexual orientation, disability and HIV status?	Yes	The Law on Gender Equality 2006.	This indicator requires special measures be exempt from constitutional provisions on non-discrimination. A special measure adopted to redress legal inequities against women should not be challenged on the grounds that it discriminates against men.

#### Article 5: Sex roles and Stereotypes

Indicator	Compliance	Relevant Legislation	Comments
5.1 Is there a provision in the Constitution which gives precedence to a constitutional guarantee of equality if there is a conflict between custom and equality law?	Yes	The Constitution of the Socialist Republic of Viet Nam 1992 (as amended in 2001), Article 30 (2) requires that 'the state assumes the unified administration of cultural development. Reactionary and depraved ideologies and culture are to be banned; superstition is to be driven out'.	Compliance with this indicator requires that constitutional provisions on equality prevail over discriminatory customary laws and practices.

Article 6: Exploitation of Women			
Indicator	Compliance	Relevant Legislation	Comments
6.1 Is the act of soliciting decriminalized?	No	The Ordinance on Prevention and Suppression of Prostitution 2003 prohibits prostitution. <sup>59</sup>	This indicator requires that sex work be decriminalized.  Prostitution is considered a 'social evil' that must be stamped out. In principle the law condemns third-party involvement in prostitution: the pimps, procurers, sex ring and brothel owners, rather than the prostitutes and sex workers themselves.  In practice, however, prostitutes and sex workers are routinely victimized and harassed. <sup>60</sup>
6.2 Is aiding and abetting consensual acts of soliciting decriminalized?	No	Penal Code 1999, Article 254 stipulates, 'those who harbour prostitutes shall be sentenced to between one and seven years of imprisonment.'  Article 255 of the Penal Code stipulates 'those who entice or procure prostitutes shall be sentenced to between six months and five years of imprisonment.'	This indicator requires that brothels and third parties who facilitate sex work not be criminalized for their activities where the worker has reached age of majority.
6.3 Is it a criminal offence to procure any woman without consent or any girl under 18?	Yes	The Article 111 (4) of the Penal Code 1999 stipulates 'committing rape against a juvenile aged between full 16 and under 18 years old, the offender will be sentenced to between five and ten years of imprisonment or will face life imprisonment.' <sup>61</sup>	This indicator requires that procuring a girl below 18 years be unlawful.
6.4 Does employment legislation including occupational health and safety legislation protect sex workers?	No		The indicator requires that sex workers be granted the same rights as other workers. They should be covered by relevant employment laws and be in a position to enjoy benefits and equal legal protection from exploitation.
6.5 Is the trafficking of women prohibited?	Yes	Penal Code 1999, Article 119- 2 (a) stipulates 'those who traffic in women shall be sentenced to between two and seven years of imprisonment'	This indicator requires that all forms of human trafficking be declared unlawful. Observers state that trafficking of women and girls for sexual exploitation is a serious problem in Viet Nam. The victims include brides sold in Taiwan or in remote villages of China. Chinese men who are too poor to afford a wife, may pool money to 'share' her. <sup>62</sup>
6.6 Is sex tourism prohibited?	Yes	According to Vietnamese laws all prostitution-related activities are strictly forbidden and violation of the laws is punished accordingly.	This indicator conveys the sense that sex tourism is a form of sexual exploitation that therefore should be made unlawful.

Article 7: Political and Public Life			
Indicator	Compliance	Relevant Legislation	Comments
7.1 Is there an equal right to vote?	Yes	<p>The Constitution of the Socialist Republic of Viet Nam 1992 (as amended in 2001), Article 54 stipulates, ‘all citizens regardless of their ethnic origin, sex, social status, belief, religion, educational level, occupation and term of residence have the right to vote upon reaching the age of eighteen...’</p> <p>The Penal Code 1999, Article 126 imposes punitive measures against acts that deny citizens their rights to vote and stand for election. Paragraph 1 of this Article stipulates ‘those who resort to deception, buying off, coercion or other tricks to obstruct the exercise of citizens’ rights to vote and/or the right to stand for election shall be subject to warning, non-custodial reform for up to one year or a prison term of between three months and one year.’<sup>63</sup></p>	<p>This indicator requires that women have an equal right to suffrage.</p> <p>Women have the constitutional right to vote and stand for elections. However there are some constraints: limited social awareness of the importance of women’s participation in the political life and community activities; absence of mechanisms and favourable conditions for women to fully exercise their rights to vote and stand for elections; lack of self-confidence and family support in standing for elections.<sup>64</sup></p>
7.2 Is there equal eligibility for political representation?	Yes	<p>The Constitution of the Socialist Republic of Viet Nam 1992 (as amended in 2001), Article 54 stipulates ‘all citizens regardless of their ethnic origin, sex, social status, belief, religion, educational level, occupation and term of residence have the right to stand for election to the National Assembly and the People’s Councils upon attaining the age of twenty one as provided by law’.</p>	<p>This indicator requires that women have equal eligibility rights to political representation.</p>
7.3 Is there legislative provision for minimum quotas of women in Parliament?	Yes	<p>The National Strategy for the advancement of Vietnamese Women by 2010 sets the following targets for women’s political participation: 33 per cent of National Assembly Deputies; 30 per cent of members of People’s Councils at provincial level; 25 per cent at district level; 20 per cent at ward level.</p>	<p>This indicator requires that special measures – such as quotas – be adopted to promote women’s participation in the political sphere.</p> <p>Women’s representation at the ministerial level is an acute problem. Viet Nam has only 4 per cent women ministers. However, it has better record of female representation in the Parliament. The percentage of female parliamentarians in the National Assembly is 25.8.<sup>65</sup></p>
7.4 Do women have an equal right to participate in NGOs?	Yes	<p>There are no legal barriers to women’s equal right to participate in NGOs.</p>	<p>This indicator requires that women have equal opportunities to participate in non-government organizations.</p>

Article 7: Political and Public Life			
Indicator	Compliance	Relevant Legislation	Comments
7.5 Is there legislation (other than Charitable Societies legislation) enabling NGOs to register and mobilize to promote the advancement of women without political interference?	Yes	There are no legal barriers.	This indicator requires that legal provisions be stipulated allowing NGOs to advocate for women's rights.

Article 8: International Representation and Participation			
Indicator	Compliance	Relevant Legislation	Comments
8.1 Do women have an equal opportunity to represent government at international levels and participate in the work of international organizations?	Yes	There are no legal barriers to women's equal right to represent government at international levels.	<p>The indicator requires that women have an equal right to present government at international levels and also participate in the work of international organizations.</p> <p>Vietnamese laws and the state's policies grant equal rights to men and women for participation in international activities. At present, the percentage of women in the diplomatic service is 28 per cent.<sup>66</sup></p>

Article 9: Nationality and Citizenship			
Indicator	Compliance	Relevant Legislation	Comments
9.1 Do women have an equal right to acquire, change or retain their nationality?	Yes	The Law on Vietnamese Nationality, 2008, Article 2 stipulates, 'in the Socialist Republic of Viet Nam, every individual is entitled to a nationality. Vietnamese citizens will not be deprived of their Vietnamese nationality.' <sup>67</sup>	Nationality rights affect women's right to vote, stand for public office, choice of residence and access to public services. This indicator requires that women have equal rights to acquire, change or retain their nationality.
9.2 Does marriage to an alien or change of husband's nationality affect a wife's nationality? If there is no change to a wife's nationality after marriage, then there is full compliance with this indicator.	Yes	The Law on Vietnamese Nationality 2008, Article 10 states 'that a husband or wife acquires, restores or loses his/her Vietnamese nationality does not alter the nationality of his/her spouse.' <sup>68</sup>	<p>This indicator requires that in the event of a woman's marriage to a foreign national, her autonomy and independence are not to be compromised.</p> <p>As the legal provisions stipulate, Vietnamese citizens, men and women alike, have the right to retain their Vietnamese nationality after marriage, divorce or annulment of illegal marriage with foreigners.</p>
9.3 Do both spouses have equal rights to residency, citizenship and employment when married to a non-national?	Yes	Under the Viet Nam Nationality Law, men and women have equal rights to residency and citizenship.	Laws, in some cases, may deny non-national husband automatic residency or citizenship rights. The indicator requires that such legal restrictions be removed.

Article 9: Nationality and Citizenship			
Indicator	Compliance	Relevant Legislation	Comments
9.4 Do both spouses have an equal right to determine the nationality of children?	Yes	The Law on Vietnamese Nationality 2008, Article 16 (1) stipulates ‘a child born inside or outside the Vietnamese territory either of whose parents is a Vietnamese citizen and the other is a stateless person at the time of his/her birth or whose mother, at the time of his/her birth, is a Vietnamese citizen and whose father is unknown, has Vietnamese nationality’. <sup>69</sup>	This indicator requires that men and women have equal rights to determine the nationality of their children. Any law under which children automatically acquire the nationality of their father but not their mother is discriminatory. Children with one Vietnamese parent are granted Vietnamese citizenship with agreement in writing of both parents at the time of birth registration. Children with Vietnamese mothers and foreign national or unidentified fathers are granted Vietnamese citizenship regardless of their place of birth within or outside Viet Nam.
9.5 Do women have an equal right to obtain a passport?	Yes	There is no legal barrier.	This indicator requires that women should have equal rights to obtain a passport. There should be no legal restrictions – such as a requirement for the husband’s consent – imposed on them.

Article 10: Education			
Indicator	Compliance	Relevant Legislation	Comments
10.1 Does the legislation guarantee women and girls equal access to education? Do women and girls have equal access to education?	Yes	<p>The Constitution of the Socialist Republic of Viet Nam 1992 (as amended in 2001), Article 59 stipulates ‘education is both a right and obligation of citizens’.</p> <p>Apart from the constitutional provisions, Article 10 of the Education Law 2005 states ‘every citizen, regardless of ethnic origins, religions, beliefs, gender, family background, social status or economic conditions, has equal rights of access to learning opportunities’.</p>	<p>This indicator requires that legal provisions allow women and girls equal access to all forms and levels of education.</p> <p>Some traces of gender-biased attitudes still remain in school textbooks. Images and concepts presented in textbooks depict women and girls in traditional roles – doing housework, manual work and farming. Further, they are described as shy, dependent on the help of others, and inferior to men. Boys and men, on the other hand, are depicted as scholars, explorers and engineers or skilled workers.<sup>70</sup></p>

Article 10: Education			
Indicator	Compliance	Relevant Legislation	Comments
10.2 Is there legislation that creates special measures for the advancement of women in education?	Yes	<p>The National Plan of Action on Education for All 2003–2015 aims at ‘achieving gender equality in education by 2015 with guarantee of female students’ full and equal access to education and of their completion of education with good quality’.<sup>71</sup></p> <p>The Law on Gender Equality 2006, Article 14 (3) stipulates ‘man and woman are equal in accessing and benefiting from the policies on education, training, fostering of professional knowledge and skills’.<sup>72</sup></p>	<p>This indicator requires legal provisions on affirmative action for women in the field of education.</p> <p>There is no discrimination between male and female students at different levels. They have equal access to educational facilities such as classrooms, curricula, scholarships and financial support.</p>
10.3 Is there compulsory primary education for girls and boys?	Yes	The Constitution of the Socialist Republic of Viet Nam 1992 (as amended in 2001), Article 59 stipulates ‘primary education is to be compulsory and free of charge’.	This indicator requires that legal provisions be enacted on compulsory primary education for all.
10.4 Is there compulsory secondary education for girls and boys?	Yes	The Constitution of the Socialist Republic of Viet Nam, 1992, Article 36 states ‘the state [...] enforces universalization of secondary education’.	The indicator requires that there be legal provision on compulsory secondary education for boys and girls.
10.5 Is family life (reproductive and sexual health) education compulsory in schools?	Yes	In Viet Nam, sex education is part of the secondary school curriculum. <sup>73</sup>	The indicator requires that there be legal provisions for family life education. It should be compulsory subject during secondary schools.
10.6 Is there a legislative prohibition of expulsion from school because of pregnancy?	No		This indicator requires that there not be any legal barrier to pregnant girls’ right to pursue education in schools.

Article 11: Employment			
Indicator	Compliance	Relevant Legislation	Comments
11.1 Are there anti-discrimination provisions in employment legislation on the grounds of sex, marital status, disability, pregnancy, sexual orientation and HIV status with sanctions?	Yes	The Labour Code of the Socialist Republic of Viet Nam 1994 (as amended 2002), Article 5 (1) stipulates ‘every person shall have the right to work, to choose freely an employment and occupation, to learn a trade, and to improve his professional skills without any discrimination in respect of sex, race, social class, beliefs or religion’. <sup>74</sup>	The indicator requires that labour laws grant female workers the same employment rights, opportunities, choices and benefits as men. Appropriate sanctions should also be imposed in the event of violation of female workers’ rights.



Article 11: Employment			
Indicator	Compliance	Relevant Legislation	Comments
11.2 Are there special measures provisions for the advancement of women in employment?	Yes	<p>The Labour Code of the Socialist Republic of Viet Nam 1994 (as amended 2002), Article 109 (1) states ‘the state shall ensure the women’s right to work on a basis of equality in any respect with men’</p> <p>Article 111 (1) of the Labour Code states, ‘all acts by an employer to discriminate against female workers or offend their dignity and honour are strictly prohibited’</p> <p>Article 111 (2) of the Labour Code stipulates ‘the employer shall give preference to a woman when she meets the recruitment criteria for a vacant position suitable to both men and women that needs to be filled in the enterprise’.</p>	<p>This indicator requires legal provisions allowing affirmative action – quota, preferential treatment during recruitment, legal protection to pregnant workers. This aims to redress past discrimination against them and also to promote substantive equality in the sphere of employment.</p> <p>There are various provisions under the Labour Code, amended in 2002, related to special measures for female workers. The Government Decree 33/2003/ND-CP of 2003 stipulates that disciplinary measures are not applicable to: pregnant female workers; female workers on maternity leave; female workers raising child under 12 months of age and male workers raising child under 12 months of age.</p>
11.3 Do women enjoy equal conditions of work including leave, superannuation and Workers Compensation?	Yes	The Labour Code of the Socialist Republic of Viet Nam 1994 (as amended 2002), Article 111 (1) states ‘the employer must implement the principle of equality between men and women in respect of recruitment, employment, and advancement in wage grades and remuneration.	This indicator requires that female workers be provided with the same working conditions as other employees – leave entitlements; retirement benefits and compensation. Labour laws, at times, fail to protect the legal interests of domestic workers, casual workers or part-time workers.
11.4 Does the legislation provide sexual harassment protection from employers and co-workers?	No		The indicator requires specific legal provisions that prohibit sexual harassment at workplace.
11.5 Does the definition of sexual harassment include the breadth of unwanted behaviours?	No		This indicator requires that the law on sexual harassment at the workplace include and define a comprehensive range of unwanted behaviours.
11.6 Does the legislation contain an equal pay provision?	Yes	The Labour Code of the Socialist Republic of Viet Nam 1994, (as amended 2002), Article 111 (1) stipulates ‘an employer must implement the principle of equality of males and females in respect of recruitment, utilization, wage increases, and wages’.	<p>The indicator requires that legal provisions uphold female workers’ right to pay equal to that of male workers.</p> <p>Although Vietnamese laws require equal pay for men and women, reports and testimony show that for the same work women receive less pay. Information received shows that wage-earning women receive only 72 per cent of male salaries for the same type of work.<sup>75</sup></p>

Article 11: Employment			
Indicator	Compliance	Relevant Legislation	Comments
11.7 Does the legislation contain pay equity provisions?	No		<p>This indicator requires that employment law uphold the principle of 'equal treatment in respect of work of equal value' (Article 11 (d) of CEDAW).<sup>76</sup></p> <p>There is no direct legal provision concerning pay equity; however, the Labour Code 1994 stipulates the minimum wage provision for workers in all economic sectors.</p>
11.8 Does the legislation provide for an equal retirement age?	No	The Labour Code of the Socialist Republic of Viet Nam 1994 (as amended 2002), Article 145 (a) stipulates that the retirement age for men and women is 60 and 55 years respectively.	This indicator requires that the laws allow for equal retirement age for female and male workers.
11.9 Are there restrictions on women's choice of employment? If there are no restrictions on women's choice of employment, then there is full compliance with this indicator.	No	<p>The Labour Code of the Socialist Republic of Viet Nam 1994 (as amended 2002), Article 113 (1) states, 'an employer must not assign female employees to heavy, dangerous work, or work exposed to toxic substances that are harmful to their child bearing and rearing functions'.</p> <p>The Labour Code of the Socialist Republic of Viet Nam 1994 (as amended 2002), Article 113 (2) stipulates, 'an employer must not employ a female employee of any age in regular underground work in mines or work immersed in water'.</p>	Protective laws that prohibit women from working in particular fields of employment or particular hours – night shifts – are discriminatory. The indicator requires that such protective legal provisions should be removed.
11.10 Does the legislation provide for health protection during pregnancy?	Yes	The Labour Code of the Socialist Republic of Viet Nam 1994 (as amended 2002), Article 115 (2) states, 'a female employee performing heavy work, on reaching her seventh month of pregnancy, shall be transferred to lighter work, or have her daily working time reduced by one hour but shall still receive her full wage'.	The indicator requires that special legal protection measures be included in employment laws for female workers. Such measures may include: breaks; light work; time to attend medical checks.
11.11 Does the legislation provide paid maternity leave of not less than 14 weeks?	Yes	The Labour Code of the Socialist Republic of Viet Nam 1994 (as amended 2002), Article 114 (1) states, 'a female employee shall be entitled to maternity leave prior to and after the birth of her child for a total period of four to six months as determined by the Government on the basis of the working conditions and nature of the work'.	This indicator requires that legal provision grant 14 weeks of maternity leave to female workers in both public and private sectors.

Article 11: Employment			
Indicator	Compliance	Relevant Legislation	Comments
11.12 Does the legislation provide protection from dismissal because of pregnancy or maternity leave?	Yes	The Labour Code of the Socialist Republic of Viet Nam 1994 (as amended 2002), Article 111 (3) states, 'the employer shall be prohibited from dismissing a female worker or unilaterally terminating the labour contract of a female employee for the reason of her marriage, pregnancy, or maternity leave.'	This indicator requires that employment law provide legal protection to female workers against dismissal due to pregnancy or maternity leave.
11.13 Does the legislation guarantee the provision of childcare by employer or state?	Yes	The Labour Code of the Socialist Republic of Viet Nam 1994 (as amended 2002), Article 116 (2) states, 'where a high number of female employees are employed, the employer shall have the responsibility to assist in making arrangements for crèches and kindergartens or in covering part of the expenses incurred by female employees having children in crèches or kindergartens.'	The indicator requires that legal provision should obligate the employer or the state to adopt special childcare measures for female workers.
11.14 Does the legislation provide reasonable nursing time during work hours?	Yes	The Labour Code of the Socialist Republic of Viet Nam 1994 (as amended 2002), Article 115 (3) states, 'a female employee nursing a child under 12 months of age shall be entitled to 60 minutes off in every working day with full pay.'	The indicator requires that the labour law upholds female workers' right to breastfeed their children during work hours.  According to the Labour Code's regulations female workers can take 60 minutes off every day for 12 months to breast-feed the baby, with no reduction in pay.

Article 12: Health Care and Family Planning			
Indicator	Compliance	Relevant Legislation	Comments
12.1 Do women have access to safe and legal abortion facilities?	Yes	Article 44 of the Law on Health provides that women have the right to an abortion on demand. <sup>77</sup>	The indicator requires that the law should make abortion legal and should stipulate provisions for safe abortion.

### Article 13: Economic and Social Benefits

Indicator	Compliance	Relevant Legislation	Comments
13.1 Do women have an equal right to family benefits regardless of marital status?	Yes	Decree No. 67/2007/ND-CP on support Policies for Social Protection Beneficiaries, Article 1 states ‘this Decree provides for support policies and regimes for disadvantaged persons.’ The disadvantaged persons include orphans, lonely elderly people in poor households, people aged 85 or above, households having two or more seriously disabled persons who have no self-serving capacity etc. <sup>78</sup>	The indicator requires that law grant female workers equal rights to social security and benefits.
13.2 Do women have an equal right to obtain bank loans, mortgages and financial credit?	Yes	Article 12 of the 2006 Law on Gender Equality states ‘men and women are equal in setting up a business, carrying out business and production activities, managing business and are equal in accessing information, capital markets and labour sources.’	The indicator requires that the law upholds women’s equal right to obtain loans, mortgages and financial credit.  However, it is reported that male-headed households are more likely than female-headed households to have access to credit – 46 per cent vs. 38 per cent. This gender difference is observed in both urban and rural areas. In both areas, female-headed households are less likely to have access to credit than male-headed households. <sup>79</sup>
13.3 Do women have an equal right to participate in recreational activities, sports and cultural life?	Yes	The Ordinance on Sport and Physical Activities requires the state to encourage the entire population to take part in sport and physical activities of various kinds. <sup>80</sup>	The indicator requires that the law should not impose restrictions on women’s equal right to participate in recreational activities and cultural life.  Nevertheless, many women particularly those living in rural and mountainous areas have few opportunities to participate in recreational activities, sports and cultural life. This may be attributed to the housework responsibilities and negative impact of Confucian ideas. <sup>81</sup>

Article 14: Rural Women			
Indicator	Compliance	Relevant Legislation	Comments
14.1 Is there legislation that provides for special measures to advance substantive equality for rural women?	Yes	<p>The Law on Land 2003, Article 48 (3) grants land user rights to both wife and husband. The certificates must mention the full names of both husband and wife.<sup>82</sup></p> <p>To improve gender equality and the position of women in rural areas, the Ministry of Agriculture and Rural Development adopted a 'Gender Strategy in Agriculture and Rural Development to 2010'. The Strategy aims at coordinating and promoting efforts of agencies at all levels, mass organizations and individuals to realize gender equality in agriculture and rural areas where most poor and needy people live and make up the majority of the workforce.</p>	<p>The indicator requires law provide for affirmative action to uphold the rights of rural women.</p> <p>The 2003 Law on Land allows equal opportunities to men and women to manage land property. But effective implementation of the legal provisions remains a challenge. It is reported that for agricultural land, 15 per cent of those households with land user certificates held them jointly, while 66 per cent were held by men alone and 19 per cent by women alone.</p> <p>To protect the rights of female labourers in rural areas, Viet Nam authorises the use of temporary special measures to provide credit support, and agricultural, forestry or fishery extension.<sup>83</sup></p>

Article 15: Equality before Law and Civil Matters			
Indicator	Compliance	Relevant Legislation	Comments
15.1 Does the Constitution guarantee equality before the law?	Yes	The Constitution of the Socialist Republic of Viet Nam 1992 (as amended in 2001), Article 52 stipulates, 'all citizens are equal before the law'.	<p>The indicator requires that constitutional provision on equality before the law.</p> <p>Women enjoy equality before the law. Such rights include: independent participation in civil transactions and contract relations; management of assets; and freedom to choose their place of residence and participation in legal proceedings to protect their own interests before law enforcement agencies.<sup>84</sup></p>

## Article 15: Equality before Law and Civil Matters

Indicator	Compliance	Relevant Legislation	Comments
15.2 Do women have an equal capacity in civil matters – can women sue?	Yes	<p>The Civil Code of the Socialist Republic of Viet Nam 1995 (amended in 2005), Article 5 requires that in civil relations the parties shall be equal, and may not use differences regarding ethnicity, gender, social class, economic situation, belief, religion, or educational levels as reasons to treat each other unequally.<sup>85</sup></p> <p>The Civil Code of the Socialist Republic of Viet Nam 1995 (amended in 2005), Article 9 (2a) stipulates, ‘when the civil rights of a subject are infringed upon, he/she/it shall have the right to protect such rights by him/her/itself in accordance with the provisions of this Code or request competent agencies or organizations to recognize his/her/its civil rights.’</p>	The indicator requires that there not be any legal restrictions on women’s civil rights. Such rights include: capacity to initiate litigation; access legal advice; or seek redress from the courts.
15.3 Do women have an equal right to participate in courts and tribunals at all stages?	Yes	The Civil Code of the Socialist Republic of Viet Nam 1995 (amended in 2005), Article 4 stipulates, ‘the right to freely undertake or agree on the establishment of civil rights and obligations shall be guaranteed by law, if such undertaking or agreement is not banned by law and/or not contrary to social ethics.’	The indicator requires that women have equal legal right to participate in the courts and their proceedings.
15.4 Do women have an equal right (regardless of marital status) to conclude contracts and administer property?	Yes	The Civil Code of the Socialist Republic of Viet Nam 1995 (amended in 2005), Articles 4 and 15 (2).	This indicator requires that women have the right to enter into a contract independently without the consent of a husband or male relative.
15.5 Do women have an equal right to be executors or administrators of estates?	Yes	The Civil Code of the Socialist Republic of Viet Nam 1995 (amended in 2005), Article 15 (2) of the Civil Code stipulates, ‘an individual shall have the following civil rights and obligations: ownership rights, inheritance rights and other rights with respect to property.’	This indicator requires that women have equal legal capacity in civil matters such as the administration of estates.
15.6 Is there legislation that nullifies all contracts and instruments that limit women’s legal capacity?	Yes	The Civil Code of the Socialist Republic of Viet Nam 1995 (amended in 2005), Article 9 (2b) states, ‘when the civil rights of a subject are infringed upon, he/she/it shall have the right to protect such rights by him/her/itself in accordance with the provisions of this Code or request competent agencies or organizations to: order the termination of the act of violation.’	This indicator requires that any law that limits the capacity of women to conclude contracts be changed.



Article 15: Equality before Law and Civil Matters			
Indicator	Compliance	Relevant Legislation	Comments
15.7 Do women have an equal right to choose residence and domicile?	Yes	<p>The Marriage and Family Law 2000, Article 20 states, ‘the domicile of husband and wife is selected by themselves without being bound by customs, practices and/or administrative boundaries.’<sup>86</sup></p> <p>The Penal Code 1999, Article 124 states, ‘those who infringe upon citizens’ inviolable rights relating to places of residence shall be subject to warning, non-custodial reform for up to one year or a prison term of between three months and one year.</p>	This indicator requires that women have equal right to choose their residence and domicile.

Article 16: Personal and Family Law			
Indicator	Compliance	Relevant Legislation	Comments
16.1 Does the legislation guarantee entry into marriage with full and free consent?	Yes	The Marriage and Family Law 2000, Article 2 states, that the basic principles of marriage are ‘voluntary, progressive and monogamous marriage in which husband and wife are equal’.	<p>The indicator requires that the law uphold women’s right to freely choose a spouse and to enter into marriage with their free and full consent.</p> <p>A large number of backward customs may curtail women’s marital rights. Such challenges include: early marriage and the string-extension custom of some ethnic groups. A younger brother who is single or whose wife is dead is entitled to marry his sister-in-law if his older brother dies. This practice is observed by the Brau ethnic group. A brother-in-law is also entitled to marry his wife’s younger sister if his wife dies. This practice is followed by the Ro Mam ethnic group.<sup>87</sup></p>
16.2 Does the legislation allow marriages to be nullified if they are entered into under force, duress or undue influence?	Yes	Penal Code 1999, Article 146 states, ‘those who force other persons into marriage against their will shall be subject to warning, non-custodial reform for up to three years or a prison term of between three months and three years.’	The indicator requires that the law nullifies forced marriages.
16.3 Is there an equal minimum age of 18 for marriage?	Yes	The Marriage and Family Law 2000, Article 9 (1) stipulates 18 as the minimum age of marriage for women. For men the minimum age is 20 or more years.	This indicator requires that the law set 18 as the minimum age of marriage for both boys and girls.

Article 16: Personal and Family Law			
Indicator	Compliance	Relevant Legislation	Comments
16.4 Is there a legislative prohibition of child marriage?	Yes	Under the Penal Code 1999, Article 148 organizing an under-age marriage is a criminal offence. The accused shall be subject to a warning, non-custodial reform for up to two years or a prison term of between three months and two years.	The indicator requires that the marriage law prohibit child marriage below the age of 18.
16.5 Does the legislation require registration of marriage in an official registry?	Yes	The Marriage and Family Law, 2000, Article 11 (1) requires registration of marriage with 'competent state bodies'.	The indicator requires that legal provision provide for registration of marriage. This is a good way of tracking child marriages, and cases of polygamy. It also facilitates women's claim for spousal benefits after divorce.
16.6 Does the legislation prohibit bigamy?	Yes	Penal Code 1999, Article 147 makes bigamy a criminal offence. The crime carries a prison term of between three months and one year.	This indicator requires that family legislation prohibit bigamy or polygamy.
16.7 Do women have an equal right to choose a family name?	Yes	There are no legal barriers to women's right to choose a family name.	This indicator requires the family law should uphold married women's right to choose a family name.
16.8 Is the consent of both parents equal in the marriage of minors?	Yes	Under Penal Code 1999 marriages of minors are prohibited.	This indicator requires that the legal provisions grant equal rights to both parents on matters concerning their children. A legal provision that allow for the father's consent alone for a child marriage is discriminatory.
16.9 Are both spouses equal in the ownership, acquisition, management, administration, enjoyment and disposition of property?	Yes	Under the Law on Land 2003 both husband and wife have equal property rights. Articles 28 to 32 of the Law on Marriage and Family, 2000 stipulates, that husband and wife have equal rights to both common and private property.	This indicator requires that legal provisions include spouses' equal rights to acquire, own, manage, administer or dispose property.
16.10 Does the legislation provide for a maintenance and custody order during separation based on need?	Yes	The Marriage and Family Law, 2000, Article 56 stipulates 'When divorced, the fathers or mothers who do not directly raise their 'minor children or adult children who are disabled, have lost their civil action capacity or have no working capacity and no property to support themselves, have the obligation to support the children'.	This indicator requires that the family legislation stipulate provisions on maintenance and custody orders of children in case a woman decides to seek a divorce.
16.11 Is there legislation to enable women to occupy the marital home when settlement is not possible or in situations of domestic violence?	Yes	The Marriage and Family Law, 2000, Article 95 (2a) grants the right of division of common property into two equal shares between husband and wife.	This indicator requires legal provision that allows women to remain in the marital home until property settlement is finalized.

Article 16: Personal and Family Law			
Indicator	Compliance	Relevant Legislation	Comments
16.12 Does the legislation provide an order for restitution of conjugal rights? If there is no such order in the legislation then there is full compliance with this indicator	Yes	There is no legal provision on restitution of conjugal rights.	At times, a court may order a married persons (men or women), who have applied for divorce, to return to the marriage and fulfil their marital responsibilities. This may impact women's freedoms and limits their choices. In some cases it may amount to legal sanctioning of marital rape.
16.13 Does the legislation provide for no-fault divorce?	No	The Marriage and Family Law, 2000, Article 89 (1) stipulates grounds for divorce. It states 'the court considers the divorce application, if deeming that the situation is serious, the couple can no longer live together and the marriage purposes cannot be achieved, the Court shall decide to permit the divorce'. Or Article 89 (2) states 'Where the spouse of the person who has been declared missing by the Court applies for a divorce, the Court shall permit such divorce'.	This indicator requires that the law prohibit fault-based divorce. A requirement of evidence of matrimonial offences – cruelty, desertion, any physical disability – may compromise women's dignity in divorce cases.
16.14 Is there a duty of the court to promote reconciliation? If the legislation does not contain such a duty then there is full compliance with this indicator.	No	The Marriage and Family Law 2000, Article 88 requires courts to investigate and seek reconciliation before adjudication. The Article states 'after processing and handling a divorce application, the Court shall proceed with the reconciliation according to the provisions of the civil procedure legislation'.	The indicator requires that there be no legal provision that obligates courts to promote reconciliation between parties.
16.15 Does the legislation provide for an equal division of property after divorce including recognition of unpaid contributions; are future needs and future earning capacity calculated?	Yes	The Marriage and Family Law, 2000, Article 95 (2a) states, 'the housework done in the family by the husband and/or wife is regarded as income-generating labour'.	The indicator requires that the law upholds women's equal right to marital property after divorce. It should also recognize their non-financial family contributions – raising children; caring for elderly relatives; and discharging household duties.
16.16 Does the legislation provide for the payment of child support upon divorce based on need?	Yes	The Law on Marriage and Family 2000, Article 92 (1) stipulates, 'after their divorce, the husband and wife are still obliged to look after, care for, educate and rear their minor children or adult children who are disabled, have lost their civil action capacity; or have no working capacity and no property to support themselves....the person who does not directly rear children is obliged to provide support for the children'.	This indicator requires that there be a legal obligation on fathers to provide child maintenance support after divorce.

Article 16: Personal and Family Law			
Indicator	Compliance	Relevant Legislation	Comments
16.17 Does the legislation provide maintenance for the ex-spouse based on commitments, income, earning capacity and assets?	Yes	The Marriage and Family Law, 2000, Article 56.	Compliance with the indicator requires that legal provision upholds women's maintenance rights after divorce.
16.18 Is custody and access to children based on best the interests of the child regardless of the relationship of the parents?	Partial	Article 92 (2) of the Marriage and Family Law, 2000 stipulates 'husband and wife agree upon who shall directly rear their children, the rights and obligations of each party toward their children after divorce-, if they fail to reach an agreement thereon, the Court shall decide to assign one party to directly rear the children ' on the basis of the children's interests in every aspect, if the children are aged full nine years or older, their aspirations must be taken into consideration. In principle, all children under three years of age shall be assigned to their mothers for direct rearing unless otherwise agreed upon by the two parties'.	Compliance with this indicator requires that courts be legally bound to uphold the best interests of children in custody cases.
16.19 Does the legislation provide damages for adultery? If the legislation does not provide damages for adultery then there is full compliance with this indicator.	Yes	There is no legal provision for damages of adultery.	This indicator requires that there be no legal recognition of damages for adultery.
16.20 Does the legislation recognize <i>de facto</i> rights (including same-sex couples) on the same basis as marriage?	No	Same-sex marriage is banned under the Marriage and Family Law 2000. <sup>88</sup>	The indicator requires that the law recognize <i>de facto</i> relationships and grant rights to couples on the same basis as marriage.
16.21 Do women have equal rights to guardianship, wardship, trusteeship and adoption?	Yes	There are no legal barriers to women's equal rights to guardianship, adoption and trusteeship.	This indicator requires that the law upholds women's equal rights to guardianship, trusteeship and adoption.
16.22 Does the legislation provide for an order establishing parentage?	Yes	The Marriage and Family Law (2000), Article 63 (2) stipulates 'in cases where the fathers and mothers decline to recognize children, they must produce evidence which must be determined by the Court'.	Both parents are considered jointly responsible for raising and maintenance of their children. In cases where a child's parentage is not established, a mother may be prevented from claiming child support. A legal remedy is provided through a court order to establish parentage.

## Article 16: Personal and Family Law

Indicator	Compliance	Relevant Legislation	Comments
16.23 Does the legislation provide for a contribution to pregnancy and child-birth costs by the father to an unmarried mother?	Yes	The Law on Protection and Care of Children, 2004, Article 4 stipulates the 'equality of all children' in enjoying the rights and benefits provided by the state.	This indicator requires that the law obligates both parents, irrespective of marital status, to contribute to childbirth and pregnancy costs.
16.24 Does the legislation provide for the payment of child support for children born outside marriage?	Yes	The Law on Protection and Care of Children 2004, Article 4.	The indicator requires that the law obligate both parents to contribute to child support irrespective of marital status.
16.25 Does the legislation provide for equal rules of inheritance?	Yes	The Marriage and Family Law (2000), Article 31 (1) stipulates 'husband and wife have the right to inherit each other's property according to the provisions of the inheritance legislation.'	The indicator requires that there be no legal discrimination against women's equal rights to inheritance.  Despite of equal rights, customary practices may stand in the way. It is reported that married daughters in certain rural communities may be denied the right to inherit from their parents. <sup>89</sup>
16.26 Is there legislation requiring the application of CEDAW and CRC to domestic family law where relevant?	Partial	The Law on the Conclusion and Implementation of International Treaties 2005, Article 3 (6) stipulates that the state of Viet Nam undertake to implement international treaties that it has ratified or acceded to. Article 6 (1) of this Law stipulates that in the event of conflicts between international treaties and national law, the international treaties will apply.	The indicator requires that legal provisions allow courts to apply international conventions in interpreting family legislation.





# Definitions of Technical Terms

<b>Baitul Mal</b>	This is an autonomous body in Pakistan set up through the Act of 1991. It contributes toward poverty alleviation through its various 'poorest of the poor' focused services.
<b>Binna Marriage</b>	It is a term used in Sri Lanka's family legislation. It implies a marriage arrangement where the husband goes to live in the wife's house.
<b>Common law</b>	A system of jurisprudence based on judicial precedents rather than statutory laws. It is also referred to as the traditional unwritten law of England, based on custom and usage.
<b>Confucian Values</b>	Values that are based on teachings of Confucius emphasizing love for humanity; a high value is given to learning and to devotion to the family; peace and justice.
<b>Corroboration</b>	It implies to confirm and sometimes add substantive (reinforcing) testimony to the evidence of another witness or a party in a trial.
<b>Customary Law</b>	Customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are so vital and intrinsic part of the social and economic system that they are treated as if they are laws. Customary law is also referred to as informal law.
<b>De facto</b>	A Latin word for 'in point of fact'; actual; existing in fact.
<b>De jure</b>	A Latin word for 'as a matter of law'; existing by right or according to law.
<b>Diga Marriage</b>	It is a term used in Sri Lanka's family legislation. It implies a marriage arrangement where woman goes to live in her husband's house and give up her claims to the parental estate.
<b>Diyat</b>	A term that implies compensation and is part of Pakistan's Penal Code 1860.
<b>Doi Moi</b>	A reform process initiated by the Communist Party of Viet Nam in 1986.
<b>Domicile</b>	The place where a person has his/her permanent principal home to which he/she returns or intends to return.
<b>Habeas Corpus</b>	A writ through which an aggrieved person can seek relief from his unlawful detention or that of another person.
<b>Hadd crimes</b>	These are crimes that are punishable by a pre-established punishment found in the Quran. There is no reduced punishment for a Hadd crime. It has no maximum or minimum punishments attached to them.
<b>Haq Bakhshwana</b>	It refers to a customary practice, followed in Pakistan, in which a woman is deemed to be 'married' to the Quran to prevent the transfer of her inheritance share through marriage.
<b>Hudood</b>	It is plural for had, and implies 'limit'. Hudood laws constitute five criminal statutes of Pakistan: the Property Ordinance deals with theft and robbery; the Zina Ordinance stipulates legal provisions on rape, adultery, fornication and abduction; the Prohibition Order deals with alcohol and narcotics- related offences; the Qazf Ordinance deals with offence of false accusation of zina; and the Execution of the Punishment of Whipping Ordinance specifies the mode of whipping for those convicted under the Hudood Ordinances.

<b>Iddat</b>	It is a term used in Pakistan's Islamic laws on marital relationship. It implies a specified period of time that must elapse before a Muslim widow or divorcee may legitimately remarry.
<b>Khula</b>	It is a term used in Pakistan's Islamic laws on marital relationship. It implies the right of a woman in Islam to divorce or separate from her husband.
<b>Mahinda Chintana</b>	The ten years development framework (2006–2016) devised by the President of Sri Lanka. It was introduced by President Mahinda Rajapaksha in 2005.
<b>Nationality and Citizenship</b>	Nationality of an individual is his quality of being a subject of a certain state. Citizenship is a concept where a person, by place of birth, nationality of one or both parents, or through the naturalization process, has avowed loyalty to a nation.
<b>Nikkah</b>	It is the matrimonial contract between a bride and bridegroom within Islamic marriage.
<b>Pancasila</b>	The term is used in Indonesia. It is based on the five principles of oneness of God, unity of Indonesia, civilized humanity, social justice and democracy.
<b>Paraveni</b>	A term that implies ancestral or inherited property in Sri Lanka.
<b>Penal Code</b>	The laws specifying crimes and punishment.
<b>Qanun-e-Shahadat</b>	The law of evidence in Pakistan.
<b>Qazi</b>	Qazi is a judge ruling in accordance with the Islamic religious law.
<b>Qisas</b>	Article 299 (k) of Pakistan's Penal Code 1860 defines <i>qisas</i> as 'punishment by causing similar hurt at the same part of the body of the convict as he has caused to the victim or by causing his death if he has committed qatl-i-amd (murder) in exercise of the right of the victim or a wali'.
<b>Reclusion Perpetua</b>	A legal term used in the Penal Code of the Philippines. It is synonymous with life imprisonment that may not exceed more than 40 years.
<b>Suo moto</b>	This legal term is applied to cases where court, government agency acts on its own cognizance.
<b>Tazir crimes</b>	A category of crimes based on statutory laws and is used in Pakistan's legal system.
<b>Tehsil</b>	The word implies an administrative division in Pakistan.
<b>Thediatheddham</b>	A term used in Sri Lanka's family legislation. It implies property acquired by either spouse during marriage using the couple's shared funds or estate.
<b>Thesawalamai</b>	The literal meaning of the term, in Tamil, is custom of the land. It refers to land and property law, applicable to the inhabitants of the Northern Province in Sri Lanka.
<b>Usufruct rights</b>	A legal right to use and enjoy the advantages or profits derived from another person's property.
<b>Vani</b>	It refers to a customary practice followed in parts of Pakistan. The custom involves marrying young girls forcibly to opposing tribe in order to resolve disputes. The disputes are generally blood-feuds. The practice is illegal but is still practice in certain parts of the country.
<b>Visum et repertum</b>	A written statement by a doctor, used as evidence in cases of rape, assault and murder.
<b>Void ab initio</b>	It implies that an action, document or transaction has no legal effect.

<b>Wage equality for similar work (female-over-male ratio).</b>	This ratio refers to the female wage compared with the male wage for similar work. It is based on data in the World Economic Forum's Executive opinion survey 2009.
<b>Wali</b>	The term refers to an heir. It is used in Pakistan's Penal Code 1860.
<b>Watta Satta</b>	The term refers to a customary practice of exchange marriages followed in some parts of Pakistan.
<b>Zina</b>	The term implies adultery and is included in Pakistan's Penal Code 1860.



# Endnotes

## Chapter 1

1. UNDP 2010.
2. Kapur 2007.
3. The Offence of Zina (Enforcement of Hudood) Ordinance 1979.
4. Human Rights Council 2008.
5. The Magna Carta of Women 2009.
6. CEDAW 2005a.
7. UNDP 2010.
8. OHCHR 2007.
9. UNIFEM South Asia Regional Office and Partners for Law in Development 2004.
10. Chiongson 2009; and Forster and Vedna 2009
11. UN n.d.
12. OHCHR 2007.
13. There are several other international instruments which address different aspects of discrimination against women. For instance Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966) bar discrimination on the basis of sex.
14. Constitution of Republic of the Philippines 1987: Article 2 (11).
15. Constitution of the Socialist Republic of Viet Nam 1992 (as amended in 2001): Article 63 (1).
16. Constitution of the Democratic Socialist Republic of Sri Lanka 1978: Article 12 (2).
17. Penal Code of Indonesia 1999.
18. Protection of Women (Criminal Laws Amendment) Act 2006: Section 5.
19. The Anti-Rape Law 1997
20. The National Committee for the Advancement of Women in Viet Nam. n.d.
21. Republic of Indonesia 2010.
22. Party-List System Act 1995.
23. The Indigenous Peoples Rights Act 1997: Section 26.
24. UNDP 2010.
25. CEDAW 2005c.
26. Law of the Republic of Indonesia, Act No 12. 2006 on Citizenship: Article 26 (1).
27. Labor Code of Socialist Republic of Viet Nam 1994 (as amended in 2002): Article 5 (1).
28. Labor Code of Socialist Republic of Viet Nam 1994 (as amended in 2002): Article 111(2).
29. Wages Boards Ordinance 1941.
30. Anti-Sexual Harassment Act 1995: Section 3.
31. Constitution of the Democratic Socialist Republic of Sri Lanka 1978: Article 12 (1).
32. Civil Code of the Socialist Republic of Viet Nam 1995 (amended in 2005): Article 5.
33. Jaffna Matrimonial Rights and Inheritance Ordinance 1911: Section 8.
34. String extension marriages are marriages related to customary practices followed by some ethnic groups. For instance in the Brau ethnic group, a younger brother who is single or whose wife is dead is entitled to getting married with his sister in law if his older brother dies. In the Ro Mam ethnic group a brother in law is entitled to marry his wife's younger sister if his wife is dead.
35. The Family Code of the Philippines 1987: Articles 96; 124 and 211.
36. Jaffna Matrimonial Rights and Inheritance Ordinance 1911: Sections 6; 8.
37. CEDAW 2005a.

## Chapter 2

1. UN n.d.
2. Constitution of the Republic of Indonesia 2002: Article 28(I) 2.
3. Constitution of the Republic of Indonesia 2002: Article 28D.
4. Constitution of the Republic of Indonesia 2002: Section 28(I) 4.
5. Law of the Republic of Indonesia. No. 39, 1999 concerning Human Rights: Article 1 (3).
6. Penal Code of Indonesia 1999.
7. Law Regarding Elimination of Violence in Household 2004.
8. CEDAW Working Group Initiative 2007.
9. Penal Code of Indonesia 1999: Article 287(2).
10. Penal Code of Indonesia 1999: Article 285.
11. The Presidential Decree on the National Commission on Human Right 1993.
12. Presidential Decree on the National Commission on Violence against women 2005.
13. Constitution of the Republic of Indonesia 2002: Article 28H (2).
14. CEDAW 2005b.
15. CEDAW 2005b.
16. Constitution of the Republic of Indonesia 2002: Article 18B (2).
17. Republic of Indonesia 2010.
18. Bari 2010.
19. Penal Code of Indonesia 1999: Article 296.

20. Law of the Republic of Indonesia on the Eradication of Criminal Act of Trafficking in Persons 2007.
21. CEDAW 2005b.
22. Constitution of the Republic of Indonesia 2002: Article 27 (1).
23. Republic of Indonesia 2010.
24. Republic of Indonesia 2010.
25. Republic of Indonesia 2010.
26. CEDAW Working Group Initiative 2007.
27. Republic of Indonesia 2010.
28. UNDP 2010.
29. Law of the Republic of Indonesia Act 12, 2006 on Citizenship: Article 3.
30. Law of the Republic of Indonesia Act 12, 2006 on Citizenship: Article 21 (1).
31. Law of the Republic of Indonesia Act 12. 2006 on Citizenship: Article 26 (1).
32. Law of the Republic of Indonesia Act 12. 2006 on Citizenship: Article 26(3).
33. Constitution of the Republic of Indonesia 2002: Article 31 (2).
34. Act of the Republic of Indonesia. No. 20, 2003 on National Education System: Article 7.
35. Constitution of the Republic of Indonesia 2002: Article 31 (4).
36. Republic of Indonesia 2010.
37. Constitution of the Republic of Indonesia 2002: Article 28 (2).
38. Act of the Republic of Indonesia No.13, 2003 concerning Manpower.
39. CEDAW 2005b.
40. Act of the Republic of Indonesia No.13, 2003 concerning Manpower: Article 81(1).
41. Act of the Republic of Indonesia No.13, 2003 concerning Manpower: Article 76 (3 and 4).
42. CEDAW 2005b.
43. CEDAW 2005b.
44. Penal Code of Indonesia 1999: Article 341.
45. CEDAW 2005b.
46. CEDAW 2005b.
47. CEDAW 2005b.
48. CEDAW Working Group Initiative 2007.
49. Constitution of the Republic of Indonesia 2002: Article 27 (1).
50. Indonesian Civil Code 1847.
51. CEDAW 2005b.
52. Indonesian Civil Code 1847: Article 1006.
53. Indonesian Civil Code 1847: Article 21.
54. Salim and Azra 2003.
55. Constitution of the Republic of Indonesia 2002.
56. Law of the Republic of Indonesia No 39, 1999 concerning Human Rights.
57. Law Regarding Elimination of Violence in Household 2004.
58. CEDAW 2005b.
59. Penal Code of Indonesia 1999.
60. Act of the Republic of Indonesia No 23, 2002 on National Child Protection.
61. The Presidential Decree on the National Commission on Human Right 1993.
62. Presidential Decree on the National Commission on Violence against women 2005.
63. The Ministry of Women and Child Protection of the Republic of Indonesia 2010.
64. CEDAW 2005b.
65. Simamora 2009.
66. CEDAW 2005b.
67. Law of the Republic of Indonesia on the Eradication of Criminal Act of Trafficking in Persons 2007.
68. CEDAW 2005b.
69. Republic of Indonesia 2010.
70. Bari 2010.
71. Republic of Indonesia 2010.
72. UNDP 2010.
73. Law of the Republic of Indonesia, Act No. 12, on Citizenship 2006.
74. In order to retain citizenship, a written declaration is to be made before an Indonesian Official or State Representative within 3 years of marriage-Article 26 Law of the Republic of Indonesia, Act No 12, concerning Citizenship 2006.
75. Republic of Indonesia 2010.
76. Republic of Indonesia 2010.
77. Act of the Republic of Indonesia No. 20, 2003 on National Educational System.
78. Republic of Indonesia 2010.
79. CEDAW Working Group Initiative 2007.
80. Act of the Republic of Indonesia No. 13, 2003 concerning Manpower.
81. CEDAW 2005b.
82. OHCHR 2007.
83. CEDAW 2005b
84. CEDAW 2005b.
85. CEDAW 2005b.
86. CEDAW 2005b.
87. CEDAW 2005b.
88. CEDAW Working Group Initiative 2007
89. CEDAW 2005b.
90. Indonesian Civil Code 1847.
91. Salim et al 2003.
92. Salim et al 2003.



## Chapter 3

- 1 UN.n.d.
- 2 Constitution of Islamic Republic of Pakistan 1973: Articles 15 to 20.
- 3 Constitution of Islamic Republic of Pakistan, 1973: Article 34.
- 4 Constitution of Islamic Republic of Pakistan 1973: Article 25(2).
- 5 Constitution of the Islamic Republic of Pakistan 1973:Articles 184(3); Article 199
- 6 Substantive equality refers to actual/real equality. It requires equality of access, opportunity and results.
- 7 Pakistan Penal Code 1860.
- 8 Protection of Women (Criminal Laws Amendment) Act 2006.
- 9 Protection of Women (Criminal Laws Amendment) Act 2006.
- 10 Code of Criminal Procedure 1898: Section 545.
- 11 Ghauri 2009.
- 12 The Offence of Zina (Enforcement of Hudood) Ordinance 1979.
- 13 Human Rights Council 2008.
- 14 The Qanun-e-Shahadat Order 1984: Article 17.
- 15 CEDAW 2005c.
- 16 Bettencourt 2000.
- 17 Asian Centre for Human Rights 2007.
- 18 National Commission on the Status of Women 2008.
- 19 ADB 2008.
- 20 Local Government Plan 2000: Section 18; Legal Framework Order 2002.
- 21 National Assembly Secretariat 2010.
- 22 Criminal Law (amendment) Act 2004.
- 23 Human Rights Council 2008.
- 24 Constitution of Islamic Republic of Pakistan, 1973: Article 37 (g).
- 25 Pakistan Penal Code 1860: Sections 371 A; 371 B.
- 26 Prevention and Control of Human Trafficking Ordinance 2002.
- 27 Constitution of Islamic Republic of Pakistan, 1973: Article 51 (2).
- 28 Constitution of Islamic Republic of Pakistan 1973: Articles 41; 91.
- 29 National Commission for Justice and Peace and Democratic Commission for Human Development 2007.
- 30 CEDAW 2005c.
- 31 Indian Succession Act 1925.
- 32 CEDAW 2005c.
- 33 The West Pakistan Maternity Benefit Ordinance 1958.
- 34 The Protection Against Harassment of Women at the Workplace Act 2010 : Sections 4(4) ii ; 4(4) i.
- 35 CEDAW 2005c.
- 36 The Mines Act 1923.
- 37 ADB 2008.
- 38 Pakistan Penal Code 1860: Section 338 A.
- 39 First Women Bank.n.d.
- 40 CEDAW 2005c.
- 41 Benazir Income Support Programme 2009.
- 42 Constitution of Islamic Republic of Pakistan, 1973: Article 25.
- 43 Constitution of Islamic Republic of Pakistan, 1973: Article 23.
- 44 Prevention of Anti-Women Practices (Criminal Law Amendments) Act 2008.
- 45 Muslim Family Law Ordinance 1961: Section 6.
- 46 Dissolution of Muslim Marriages Act 1939.
- 47 Prevention of Anti-Women Practices (Criminal Law Amendments) Act 2008: Section 498A.
- 48 Muslim Family Law Ordinance 1961.
- 49 Dissolution of Muslim Marriages Act 1939: Section 2.
- 50 Under Islamic law, dower is a gift-money or property given to wife by husband at the time of marriage or after marriage.
- 51 Child Marriage Restraint Act 1929.
- 52 CEDAW 2005c.
- 53 Constitution of the Islamic Republic of Pakistan 1973: Articles 184(3); 199.
- 54 Constitution of the Islamic Republic of Pakistan 1973: Article 25 (2).
- 55 CEDAW 2005c.
- 56 CEDAW 2005c.
- 57 Ghauri 2009.
- 58 Pakistan Penal Code 1860: Section 509.
- 59 Ghauri 2009.
- 60 The Offence of Zina (Enforcement Of Hudood) Ordinance 1979.
- 61 Human Rights Council 2008.
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- 49 String extension marriages are marriage related customary practices followed by some ethnic groups. For instance in the Brau ethnic group, a younger brother who is single or whose wife is dead is entitled to getting married with his sister in law if his older brother dies. In the Ro Mam ethnic group a brother-in-law is entitled to marry his wife's younger sister if his wife is dead.
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The aim of this publication is to reveal *de jure* challenges and legal gaps that undermine women's fundamental freedoms and rights. Based on case studies from Asia, it reviews the legal systems of Indonesia, Pakistan, the Philippines, Sri Lanka and Viet Nam to assess the extent of their legislative compliance with the articles of the Convention on the Elimination of Discrimination against Women (CEDAW). It uses a total of 113 indicators to assess legislative compliance with the sixteen substantive articles of CEDAW that encompass diverse aspects of public and private spheres affecting women's legal rights—constitutional, criminal, civil, political, economic, social and family laws.

Even without going into the *de facto* situation on the ground, the study demonstrates how women continue to face significant discrimination within the legal systems they face. This is despite legal reform—legislative change and the use of progressive judicial precedents. More specifically, legal challenges are three-fold: absence of laws; the existence of discriminatory laws; and conflicts between constitutional guarantees of equality vis-à-vis unequal customary laws and practices. It is to these three-fold challenges that one must turn for positive change in laws.



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