



Constitution Assessment for Women's Equality



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.....
COUNTRY:

.....
CONSTITUTION (YEAR, DRAFT OR CURRENT):

.....
IMPLEMENTING ORGANIZATION/PERSON:



Constitution Assessment for Women's Equality



International IDEA resources on constitution-building processes

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Preface

Gender equality is a cornerstone of a democratic and just society, and International IDEA is committed to supporting democratic processes that empower women. The Institute has a long record of supporting women's enhanced participation and representation in politics, whether as members of parliament or elected officials, in leadership positions of political parties, or as active citizens at the local and national levels.

The constitution-building process provides an extraordinary opportunity for women and gender-equality advocates to participate in the framing of democratic governance, respond to current challenges and articulate aspirations for a future in which the political, economic and social equality of women is realized. International IDEA has supported inclusive constitutional reform processes in contexts as varied as Bolivia, Nepal and Tunisia. In each of these countries, gender-equality advocates seized the opportunity that constitution-building offers to organize, build coalitions, advocate for their rights and achieve concrete gains in new constitutions.

This Assessment provides a tool to support constitution-builders around the world advocating for constitutional reform that promotes women's substantive equality. The Assessment compiles questions for constitution builders to examine in order to identify gaps in constitutional protections for gender equality and to build on existing strengths. While analysing a constitution can seem a daunting, technical exercise, the Assessment guides users, step-by-step, through a spectrum of issues that are critical for protecting the rights of women and creating the conditions for women and girls to flourish and succeed. These rights have been articulated in the United Nations' Sustainable Development Goal Number 5: 'Achieve gender equality and empower all women and girls'. In doing so, the Assessment enables individuals or groups with a basic knowledge of the issues to engage with, understand, analyse and recommend changes to constitutional texts.

The issues addressed in the Assessment draw on both international and regional standards, including the Convention on the Elimination of all Forms of Discrimination against Women, and on a wide array of constitutional practices throughout the world. This reflects International IDEA's comparative global approach, which emphasizes both international governance and human rights obligations as well as learning from the rich diversity of democratic practice in different regions.

The Assessment empowers users through a simple methodology that familiarizes them with the text of their constitution or draft constitution, from the language used to describe the president or prime minister to the selection process for judges to the issue of who has the right to bring forward cases on the violations of fundamental rights. This enables gender-equality advocates to engage in the constitution-building process with a nuanced understanding of the multitude of ways that the constitution can promote—and hinder—women's substantive equality.

Constitution building is a national process that belongs to the people. *Constitution Assessment for Women's Equality: A Workbook* is an invaluable addition to the tools and resources offered by International IDEA to make constitution building more accessible, more understandable, and ultimately more responsive to citizens.

Yves Leterme
Secretary-General
International IDEA

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Introduction

Effective participatory constitution-making has to provide for women's equal representation in the process and outcome. No process which excludes or marginalizes the majority of the population can be representative. No constitution which has failed to fully ensure the perspectives and concerns of women can be seen as fully legitimate over time.

— Mary Robinson, Former United Nations High Commissioner for Human Rights (2010)

The *Constitution Assessment for Women's Equality* helps users analyse a constitution or draft constitution from the perspective of the substantive equality of women. Using a series of questions, short explanations and example provisions from constitutions around the world, the assessment guides you through an examination of the most critical constitutional issues that affect women's rights and gender equality.

This Assessment is designed for gender-equality advocates as well as those who are engaging in the topic of women's constitutional rights for the first time, whether as members of a constituent assembly, constitutional drafters, civil society members or concerned individuals. Since gender equality affects the quality of democracy and society, the Assessment is a resource for both men and women. It will help you systematically analyse the language and provisions of your constitution or draft constitution from the perspective of women's substantive equality; understand the related equality issues that can be addressed by inclusion of rights, recognition in the constitution and institutional design; compare how other countries have addressed these issues in their constitutions; and identify and prioritize the critical equality issues for advocacy in your country.

The Assessment draws on good practice in Africa, Asia, Latin America and the Caribbean, Oceania and West Asia. It provides examples from these regions in order to illustrate practice from a wide selection of countries and from countries whose constitutions may not be as widely studied or accessible as those from Europe and North America. The examples were selected on the basis of the text of the provision, rather than on how the provision is implemented in practice.

The questions in the assessment are informed by the standards contained in international and regional instruments such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Nationality of Married Women, the African Charter on Human and Peoples' Rights, and the Association of Southeast Asian Nations (ASEAN) Human Rights Declaration.

Chapter 1 outlines gender-sensitive approaches to constitutional analysis, and explains the format and structure of the *Constitution Assessment for Women's Equality*. Chapter 2 discusses the key issues covered by the Assessment as well as general democracy issues that are critical to gender equality.

The Assessment itself is composed of 55 questions divided into sections on values and principles; equality and non-discrimination; economic and social rights; citizenship; legislature and elections; government; implementation and enforcement; and constitutional interpretation. This document also includes an Annex listing international and regional instruments; a glossary of terms related to women's equality and constitutions; a list of references, further reading and resources on issues relating to gender equality; and an index of the 55 questions included in the Assessment.

1. Assessing gender equality in constitutions

1.1. Why include a gender-sensitive approach in the constitution?

Constitutions perform multiple important roles that can profoundly impact on women and men's political, economic and social equality. As the supreme law, they define the structure of the state, distribute political power, and recognize and protect the rights of the people. Beyond these basic functions, a country's constitution articulates a vision that reflects its values and history as well as aspirational objectives for the future. Because the constitution can present a roadmap toward robust democracy, constitutional reform offers a unique opportunity to transform the fundamental structure of governance by including guarantees of women's rights, inclusive language, and creating institutions and processes that protect and promote the substantive equality of women and men (Allen 2014: 16).¹

The transformative potential of constitutions has been realized around the world as citizens have seized the opportunity of constitutional reform to redefine the scope of the constitutional community by committing the state to respect, protect and fulfil the rights of women. Marginalized groups such as lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, minorities, indigenous groups and the economically disadvantaged have also successfully used the window of opportunity created by constitutional reform to ensure their rights are protected. Women, of course, are also part of these groups.

As the foundational national document, a constitution can support the advancement of women in political life as well as in economic and social life, as it regulates not only relations between the state and its inhabitants, but also among individuals, organizations and businesses. Constitutions can contribute to the achievement of gender equality in at least four ways.

First, constitutions may include provisions that contain clear and enforceable protection of rights, obligating the state to protect and fulfil these rights, and acting as a powerful indication of the state's commitment to gender equality (Lambert 2009: 338). Second, provisions that recognize and promote women's rights and equality send a strong signal regarding the nation's values to its people, including to groups that might resist policies that promote gender equality.

Third, the fact that constitutions are more difficult to change than regular law, and are not subject to the changing policy preferences of politicians and political parties, means that specific provisions to protect and promote women's rights are more effective than statutory law alone. Fourth, constitutional provisions that protect women's rights have the potential to shape the content of legislation and executive policies, and increase the likelihood of decisions favourable to women's equality in the courts.

¹ While this Assessment refers to women and men, the recognition, protection and fulfillment of the rights of persons with a non-binary gender identity are critical to the achievement of gender equality. Therefore, the reference to women and men in this Assessment does not exclude these individuals.

1.2. Why a Constitution Assessment for Women's Equality?

There are multiple approaches to gender equality, which fall broadly into two related categories: formal equality and substantive equality. These concepts are discussed in the 'Key concepts' section.

Almost every constitution developed since World War II has included gender equality and non-discrimination clauses (Lucas 2009: 134), which are the basic provisions that provide for formal equality. However, an increasing number of constitutions written in the past 20 years also include gender-specific provisions and gender-inclusive drafting styles to recognize, protect and promote substantive equality. While formal legal equality is a necessary precondition for accessing decision-making spaces and representation, it is not sufficient. To achieve equal outcomes, women must have equal access to opportunities and resources (Balakrishnan 2014: 2), which requires acknowledgment of their unequal position in society and for actions to be taken to overcome the conditions they face in order for them to be able to take advantage of these opportunities and resources.

Perhaps the most important trend in constitutional reform in recent decades has been the move toward inclusive, participatory constitution-building processes. Constitutional reform, formerly closed and elite driven, now most often takes the form of constitution-building, in which democratic bodies such as a constituent assembly or a specially mandated parliament drive the process, and citizens have a critical role.² Citizen engagement in constitutional reform includes civic education to promote understanding of key issues and the process and—critically—public consultation mechanisms to facilitate citizen input into the content of the new constitution. Referendums in which the public can vote to accept or reject the proposed draft constitution are also increasingly common. These mechanisms to make constitution-building more democratic by involving citizens and democratically elected bodies have opened spaces for women to participate in constitution-building and assert their interests as elected representatives and political party members, as members of civil society and academia, and as citizens and voters.

Women are often excluded from discussions about constitutional reform. Sometimes powerful groups try to exclude others, including women, on the pretext that they lack experience or knowledge of constitutional matters, and women themselves may feel they have insufficient expertise to participate in constitution-building. But constitution-building is not just for constitutional lawyers and high-level politicians: all citizens have a right to participate in how the constitution is made and to have a say in what it contains. No particular academic degree, political experience or social position is required. Women are best placed to identify their own interests, which are varied and multifaceted; their lived experiences as women from different social, economic and other kinds of groups qualifies them to have a voice in constitution-building.

However, constitutions—and how they affect people's lives—remain difficult to understand for many people. They can be daunting documents to read, and the impact and consequences of constitutional provisions can be difficult to envision. Without tools to help examine the current constitution, proposed drafts and the possibilities for reform, it is not easy for non-specialists to understand the present constitutional and governance context or to provide substantive inputs. The Assessment was developed to help in this process.

2 'Constitution building is defined expansively as a long-term and historical process. It is not an event and is not equated with constitution making—the period when a constitution is drafted. . . . Constitution building . . . includes establishing institutions, procedures and rules for constitution making or drafting, giving legal effect to the constitution, and implementation' (Wahiu, Boekenfoerde and Hedling 2011: 2).

1.3. Addressing women's equality and agency in a constitution

When drafting constitutions, there are multiple ways to entrench substantive equality in the text. Below are three broad categories; a constitution that effectively addresses women's equality and agency in the political, economic and social spheres will include elements of all three.

1. *Gender-inclusive drafting style.* The language of the constitution is both legally and symbolically important. Previously, constitutions were drafted in gender-exclusive style. Gender-exclusive language refers only to men and uses the male form of nouns and pronouns. While the male form was often intended to denote both men and women, gender-exclusive drafting symbolically excludes women.³ Gender-inclusive language indicates a commitment to gender equality by specifically including women, and helps undermine stereotypes that political actors are male. For example, a constitution that uses gender-inclusive language would not only refer to the president or prime minister as he/him, but would include she/her. Gender-neutral language avoids references to specific genders when gender is not relevant to the provision.
2. *Gender-specific provisions.* Gender-specific provisions directly address women's rights. These fall into five broad categories (Lucas 2009):
 1. gender equality and non-discrimination clauses;
 2. political rights;
 3. social rights and protections;
 4. economic rights and protections; and
 5. special measures and temporary special measures.
3. *Gender-responsive design of institutions and processes.* In addition to specific provisions that recognize and protect women's rights, the design of political institutions and processes is essential to achieving substantive equality. Gender-responsive design of institutions and processes considers how legislative, judiciary, executive and government processes affect women and men differently. Considering women's ability to participate in political processes is not only necessary for fulfilling their political rights and developing a democratic system; it is also crucial to ensuring that the state's laws, policies and administration respond to their diverse needs.

Examples of gender-responsive design include electoral systems that facilitate the election of women, judicial appointment mechanisms that include women and facilitate the appointment of female judges, the establishment of independent monitoring bodies such as a human rights commission or a commission for gender equality, and broad rules of standing that promote access to justice for women and other marginalized communities.

3 For more on gendered constitutional language see Irving (2008: Chapter 2).

1.4. How to use the Constitution Assessment for Women’s Equality

Getting started

An individual or group can complete the Assessment. Working in a group to complete the Assessment can be useful in order to discuss complex or confusing issues, such as the meaning of a constitutional provision or draft provision, the scope of a particular issue in your country, whether a particular issue is addressed in ordinary law, etc.

In order to use the Assessment, you will need a copy of the constitution or draft constitution you would like to assess. The Assessment contains 55 questions, which are divided into 8 sections based on the issues addressed in most contemporary constitutions. These draw on CEDAW and other core human rights treaties. The Assessment is designed to be flexible—you can either answer all the questions for a comprehensive assessment of a constitution or draft constitution, or focus on specific issues. The eight sections are:

1. Values and principles
2. Equality and non-discrimination
3. Economic and social rights
4. Citizenship
5. Legislature and elections
6. Government
7. Implementation and enforcement
8. Constitutional interpretation

We recommend that you skim through the entire Assessment first, to understand its format and the types of questions in each section. You can then decide whether you will complete all or some of the questions. The most important questions in each section, which cover fundamental issues that all constitutions should address in some form, are marked with a triangle.

If you are not familiar with the constitution or draft constitution you plan to assess, we suggest you skim through it first in order to familiarize yourself with its structure and drafting style.⁴ Pay attention to chapter and section headings to understand how it is organized. Provisions relevant to women’s equality and agency are not limited to general sections on rights or women, but are found throughout the constitution.

Structure

Each of the eight sections of the Assessment contains a set of questions, and each question addresses one issue or one aspect of a theme. The box underneath the question explains its relevance to women’s

4 For an introduction to constitutions see *What is a Constitution?* (International IDEA 2014). The complete series of International IDEA Constitution-Building Primers is available at <<http://www.constitutionnet.org/primers>>. You can view a short video, also titled ‘What is a Constitution?’, at <<http://www.constitutionnet.org/video/what-constitution>>.

equality and agency from a constitutional perspective. If you are unfamiliar with any of the terms, you can consult the Glossary. The sections on references and further readings also contain links to useful resources.

Underneath the explanation, a box lists sample provisions from constitutions around the world that are examples of good practice in addressing the issue at hand.⁵ The first column lists the country name and the year its constitution was promulgated.⁶ The second column lists the article number (and in some cases the chapter, section or sub-article) of the example provision. The third column lists the text of the example provision; we have indicated key language in bold. The fourth column identifies how the example provision addresses the issue raised in the question. The blank spaces at the bottom, labelled 'Findings' and 'Actions', are for you to fill in your findings and your views on what (if any) actions are required, based on your application of the information and comparative examples to your own context.

Reading the constitution or draft constitution

Use key words and phrases from the question, explanation and example provisions to find the relevant section in the constitution or draft constitution you are assessing. For example, for the question 'Is there a right to equal pay or equal remuneration for women?', look for 'equal pay', 'equal remuneration', 'work of equal value', 'equal pay for equal work' and 'discrimination'.

Many questions will relate to a single provision in the constitution, but in some cases there may be multiple relevant provisions. For example, for the question 'Is there a right to health and/or a right to health care?', you might find that there are several provisions related to health or health care in different parts of the constitution, for example in a section on the general rights of citizens, in the preamble or in a specific section on the rights of women. All relevant provisions should be noted.

Other questions ask you to make an assessment based not on a single provision, but on a broader assessment of multiple provisions read together or the whole constitution. For example: 'Does the constitution use gender-neutral or gender-inclusive language? Are the terms used to name or describe citizens, public officers, and officials neutral and/or gender inclusive?' Many provisions may use gendered terms, including in the preamble and references to the president and other elected officials, citizens and citizenship.

Findings and Actions

As you identify the provision(s) relevant to each question, make a note in the Findings section, including the article number(s), the text of the provision(s) or both. If there are provisions that are inconsistent or contradictory, you should note these in the Findings section. If you cannot find any relevant provisions, that should also be noted.

The most critical section is Actions. This details your analysis of how adequately the constitution addresses the issue(s) raised in each question, and the specific challenges that women face in regard to this issue in the country under examination.

5 The constitutional provisions included in this Assessment have been sourced from the Constitutional Database of the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), <<http://constitutions.unwomen.org>>; and the Constitute Database of the Comparative Constitutions Project at the University of Texas, Austin, <<https://www.constituteproject.org>>. Where relevant, provisions have been translated from the original into English.

6 For example, because the Constitution of Brazil was promulgated in 1988 the Assessment refers to it as 'Brazil 1988', despite the fact that it has undergone numerous amendments since that time.

For each issue, decide: ‘Can the constitution be improved, or is it adequate?’ based on:

- your understanding of the issue presented in the question and explanation sections;
- example provisions;
- relevant provisions you have identified in the constitution;
- the country context; and
- international agreements (conventions, treaties, etc.) the country has ratified.

If you decide the text can be improved, in the Actions section:

- List your suggestions for improvement;
- specific language that can added or changed; and
- general ideas about the direction or goals of a revised provision.

Finally, list issues to research further and include any other notes.

Note that the example provisions are intended to help you understand the issue and how other countries have addressed it. These examples can be sources of inspiration, but are not necessarily recommendations. Common language has emerged around some issues, such as non-discrimination, and the examples provided in some cases illustrate an established or emerging consensus. However, each context is unique, and you should take into account the studied country’s legal framework and societal context when determining whether (and how) to address a particular issue in the constitution.

In addition, constitution-builders—a term which encompasses both political actors and civil society actors engaging in the process of constitutional reform—must adhere to international legal obligations, which include the treaties and conventions to which individual countries are parties. They should also look to relevant sources of ‘soft law’—that is, non-binding international legal obligations—such as declarations of principles, to guide them. Annex A lists the major instruments relevant to each question.

Users should look out for any provisions in the constitution or draft constitution that might be damaging to women’s concerns, even if they are unrelated to any of the questions. Take note of any such provisions, including your suggestions for improving or removing them.

1.5. Important considerations for users

Scope of issues

The Assessment was designed to focus attention on issues that are fundamental to achieving the substantive equality of women. While the questions on pages with blue corners labelled ‘fundamental question’ are included in many newly written constitutions, most constitutions do not address every issue in the Assessment. Those issues may be addressed through ordinary law. The specific challenges to gender equality in each country should be the primary reference point for determining whether an issue is best addressed in the constitution or through ordinary law. You may also decide that a particular issue is not relevant to a particular country’s context.

Some of the issues raised in the Assessment may be new to you, either because you have not considered them before, or because you were unaware that it is possible to address a particular issue in the constitution. Constitutional reform is a unique opportunity to change the power relations

between women and men. Pioneering provisions that depart from a country's previous practices are frequently introduced during the constitutional reform process. Such ground-breaking changes may be related not only to women's rights, but also to human rights more broadly, the structure of government, constraints on the power of different branches of government, democratic processes such as elections, the creation of new institutions such as independent commissions, and many other issues.

You may also find that there are issues not raised in the Assessment that should be addressed in the constitution you are examining. Feel free to think creatively about constitutional options to improve gender equality. Constitution builders sometimes introduce completely new topics into a constitution, and—though perhaps more rarely—their country may be the first in the world to put forward a particular type of provision.

Reading the constitution as a whole

You should also remember that while individual provisions are the building blocks of a constitution, they must all be read together, and understood in relation to each other—and in relation to the constitution as a whole. For example, a constitution may include a preamble or directive principles, which frame the state's values and objectives. All other parts of the constitution should thus be read in conjunction with these sections to understand the ultimate objectives of the provisions, which is especially important for the legislature (since it will create laws to implement and fulfil the constitution) and the judiciary (which will interpret the meaning of the law and of the constitutional provisions).

How to use the completed Assessment

You will need to develop a strategy for using your findings.⁷ This strategy will depend in part on your role within the constitution-building process. In general, however, one of your primary objectives will be to share your findings and communicate the key messages you develop based on them. You must decide who your target audiences are. These will probably fall into three general categories:

1. *Key political decision-makers*, including political party leaders, members of constitution-making bodies, heads of the committees within these bodies and so on.
2. *Advocates and influencers*, including civil society organizations and the media.
3. *General stakeholders*, including the general public, citizens and non-citizens.

While the way in which you share your findings with these groups will vary, you could consider a report with a detailed analysis of your findings and recommendations to submit to the relevant constitutional commission and civil society. You might also consider policy overviews with short key messages for members of the constitution-making body, political party leaders and the media; round-table discussions or presentations to civil society and the media; social media and traditional media (e.g. radio, TV and newspaper) campaigns to target the general public; and public forums for general stakeholders.

In order to be effective, the messages must be crafted carefully, based on an understanding of the interests and priorities of the target audience you are trying to reach and influence.

7 For suggestions on how to approach dissemination see Beetham et al. (2008: 60–67).

Beyond an analysis of the text

Gender-equality advocates know that achieving gender equality is much more complex than passing laws; it involves shifting the unequal power relations between women and men in society, which requires changing deep-rooted social attitudes and patterns of behaviour over a long period of time. Acknowledging this reality does not undermine the significance of the law and the constitution, or the importance of analysing how it could be improved from a gender perspective. However, it highlights the importance of a nuanced appreciation of the political, economic and social context in which the constitution operates, and of the challenges that women and men face, in order to understand how the constitution can most effectively facilitate women's equality and agency.

The constitution-building process

As the understanding of the right of citizens to participate in governance has broadened to encompass constitutional reform, increasingly open and participatory constitution-building processes have become the norm, and are seen as critical to the legitimacy of a new constitution. These processes have opened space for women to participate as elected representatives and political party members, as members of civil society and academia, and as citizens and voters.

Gender-equality advocates should therefore not limit their analysis to the text of the constitution; their questions should examine women's representation and participation in the constitution-building processes.⁸ For example: are women represented in the constituent assembly or other body charged with developing the constitution? Are women able to effectively participate in these bodies and take leadership roles? Are women from diverse backgrounds represented? Have women in civil society and academia been able to mobilize effectively to lobby and provide technical expertise to the process? Are the views of poor and rural women solicited as part of public consultation mechanisms, and do these consultations yield concrete proposals? Are men and women working together on a gender-equality agenda?

While the Assessment does not address the constitution-building process, it prepares gender-equality advocates to more effectively participate in the process by deeply familiarizing them with the constitution or draft, alerting them to the scope of issues that the constitution may address, informing them about good practice around the world and helping them identify priorities for change.

8 See the Resources and Further reading sections for materials on women and constitution-building processes.

2. Key concepts related to gender equality and democracy

2.1. Formal and substantive equality

This chapter addresses some important concepts and the approach of the Assessment. It also covers democracy issues that are critical to gender equality, but are not covered in the Assessment due to their general nature. As noted in Chapter 1, approaches to gender equality fall into two general categories: formal and substantive equality. Formal equality is a key principle that refers to the equal treatment of women and men before the law. This type of equality is addressed in constitutions with provisions that (a) prohibit discrimination on the basis of sex and gender (non-discrimination provisions) and (b) state that women and men are equal (equality provisions). Formal equality is important in the context of exercising many rights, such as the right to free speech and to due process (fair and equal legal procedure). For example, if a person is accused of committing a crime, they deserve equal access to a fair trial, regardless of their gender.

The concept of substantive equality moves beyond formal equality to acknowledge past discrimination and the political, economic and social barriers women face in accessing opportunities, exercising their rights and making decisions that impact on their lives. Substantive equality also recognizes the differences between women and men due to (some) women's potential reproductive capacity. By taking into account the lived realities of women, substantive equality aims for equal access to opportunities and equality of outcomes, and is thus a more comprehensive notion of equality.

When a group does not experience substantive equality, equal treatment does not necessarily result in similar outcomes, because that group is already starting from a position of inequality and therefore is not able to access or take advantage of opportunities in the same way. For example, a university may treat female and male applicants equally and have the same set of admission standards, but if girls have more limited opportunities to attend primary and secondary school than boys, female applicants will be in a disadvantaged position when they apply to university and will probably not be accepted at the same rate as male applicants.

In addition to unequal outcomes, equal treatment may actually harm women and further contribute to their inequality. With reference to the above example, if women are not able to attend university at the same rate as men, then they may not be able to secure stable employment, making them vulnerable to poverty and to worse health and social outcomes. Further, they may be unable to provide for their own children's education, or may feel forced to prioritize the education of their sons if they have limited financial resources, thus reinforcing the cycle of inequality.

Women are frequently in an unequal position relative to men in political, economic and social life due to a number of factors related to direct and indirect discrimination.⁹ These include conscious and unconscious bias and stereotyping about women's roles, abilities and responsibilities (including a lack of regard for women's capacity as legitimate decision-makers in public and private life); structural disadvantage in the form of discriminatory laws, policies, programmes and their administration; traditional and cultural attitudes that assign unequal status to girls and women; and violence against women from both private sources (such as within the family) and public sources (such as by the military or police).

The relevance and impact of these factors vary by context. These forms of discrimination interact to limit the opportunities and resources available to women, and undermine their ability to take and act on decisions. Discrimination against women can also intersect with additional forms of discrimination based on other features such as ethnicity, religion, age, sexual orientation, gender

⁹ Indirect discrimination occurs when a policy, attitude or behaviour is not explicitly discriminatory, but the outcome negatively affects women. For example, an employer may have a job requirement that applies to both men and women, but is more difficult for women to meet. When there is no justifiable reason for the requirement, it would constitute indirect discrimination.

identity, economic status and disability to deepen the disadvantage that women face, creating more barriers to their equality and enjoyment of rights. This dynamic of intersecting forms of discrimination is referred to as multiple discrimination.¹⁰

One approach to recognizing difference between women and men in law is to focus on women's role as mothers and caregivers and their role within the family (Lambert 2009: 343), perpetuating the view that their primary functions and responsibilities are in the domestic sphere. A related approach views the vulnerabilities that women experience as the basis for taking protectionist measures, such as prohibiting them from holding certain jobs deemed dangerous or harmful. However, law and policy that take these approaches may 'reinforce the social and structural barriers to women's full participation in the political and economic arenas' (Lambert 2009: 343) and limit the opportunities and choices available to women on the grounds of 'protecting' them.

Substantive equality recognizes the gender and sex differences between women and men, and seeks to expand—rather than limit—opportunities and choice for women in the context of these differences. Examples include the prohibition of discrimination against pregnant women and the provision of maternity (and paternity) leave. These policies, both of which are enshrined in many constitutions, enable women to combine employment with maternity. By facilitating their choices to participate in both social (in this case family) life and economic life, women are able to reduce their vulnerability to poverty, provide financial resources for themselves and their families, and develop professional experience and skills.

Another example of a constitutional provision for substantive equality is one that prohibits violence against women in both the private and public spheres. Such a provision recognizes that gender-based violence is a form of discrimination that limits women's opportunities and choices, that it is a violation of fundamental rights, and that women are particularly vulnerable to violence committed by private actors such as family members and employers. This reflects a substantive approach to equality because the state seeks to prevent violations of women's rights and to remove barriers to women's potential due to both state and private actions, so they are able to achieve equality in all areas of life.

2.2. Equality and the role of the state

Under international human rights law, states have the responsibility to respect, protect and fulfil human rights (UN Office of the High Commissioner for Human Rights n.d.). In order to achieve substantive equality, or equality that is reflected in equal outcomes, states must not only refrain from action that harms women, such as discrimination, but also engage in positive actions to protect and fulfil rights. Such positive actions include legislation, policies and programmes that recognize women's unequal position in society and seek to eliminate the discriminatory practices and beliefs at their root and to proactively address their negative consequences.

States can—and, depending on the language of their constitution, may be required to—use positive action to accelerate the achievement of substantive equality. Such measures include 'the full span of legislative, executive, administrative, budgetary and regulatory instruments, at every level in

10 The CEDAW Committee's General Recommendation No. 28 highlights the issue of intersectionality: 'Intersectionality is a basic concept for understanding the scope of the general obligations of States parties [to CEDAW]. . . . The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. State parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them'.

the state apparatus, as well as plans, policies, programmes and preferential regimes in areas such as employment, housing, education, culture, and participation in public life' (Committee on the Elimination of Racial Discrimination 2009: para. 13). These positive measures fall into three broad categories:

1. *Temporary special measures*: actions taken by the state that target women and/or girls 'to accelerate the improvement of the position of women to achieve their de facto or substantive equality with men, and to effect the structural, social and cultural changes necessary to correct past and current forms and effects of discrimination against women, as well as to provide them with compensation' (Committee on the Elimination of Discrimination Against Women 2004).¹¹

Such measures are not considered to be discriminatory against men, but rather a means of fulfilling the objective of substantive equality.¹² Because the state should be working to eliminate the effects of past discrimination and to eliminate current discrimination, the assumption is that at some point in the future, certain kinds of special measures will no longer be necessary and can be discontinued. Thus they are referred to as temporary, although they may be required for an extended and undetermined period of time. Examples include:

- a. quotas in parliament to increase women's representation;
 - b. targeted recruitment of women to the civil service;
 - c. programmes to increase the number of women in university; and
 - d. financial assistance for female political candidates.
2. *Special measures*: laws, policies and actions taken by the state that target women due to biological differences related to reproduction. These actions are not discriminatory or temporary. Examples include reproductive and maternal health care; special accommodation at work and educational institutions during pregnancy; and maternity leave.
 3. *Specially targeted positive action*: a third category of positive action that is described as 'general social policies adopted to improve the situation of women and the girl child' (Committee on the Elimination of Discrimination Against Women 2004).¹³ They are not considered to be discriminatory against men or boys, but are a means of achieving substantive equality. Examples include programmes that provide incentives to families to send female children to school; allocating funds to improve rural women's access to health care; and training programmes for women to learn work-related skills to enter the job market.

11 The distinction noted here between temporary special measures and special measures is derived from CEDAW articles 4.1 and 4.2.

12 Some types of temporary special measures are sometimes referred to as positive discrimination, but this is not the preferred term according to the CEDAW.

13 According to the CEDAW Committee's General Recommendation No. 25, 'States parties should clearly distinguish between temporary special measures taken under article 4, paragraph 1, to accelerate the achievement of a concrete goal for women of de facto or substantive equality, and other general social policies adopted to improve the situation of women and the girl child. Not all measures that potentially are, or will be, favourable to women are temporary special measures. The provision of general conditions in order to guarantee the civil, political, economic, social and cultural rights of women and the girl child, designed to ensure for them a life of dignity and non-discrimination, cannot be called temporary special measures.'

2.3. Autonomy and agency

Autonomy and agency are fundamental to the concept of substantive equality. Autonomy refers to ‘an individual’s legal and practical capacity to make and act upon her own life choices’ (Howard-Hassman 2011: 433). Autonomy involves women’s ability to independently determine their own interests, to make choices based on these interests and to realize these choices effectively. Agency refers to women’s capacity to have and exercise influence over their own lives, and in their families, communities and countries. This is in contrast to being the *subject* of the actions of others. Autonomy does not imply total independence from others, but rather that women have the resources and capacity to choose how to lead their lives, which may be highly embedded within family and community relationships (Howard-Hassman 2011: 434).

A key objective of policies that aim to achieve substantive equality is the expansion of women’s autonomy and agency. The constitution must respect, protect and fulfil the rights of women, which entails protecting them from discrimination and protecting their health during pregnancy. However, state policies to protect women should not infringe on or impede their capacity to make and act on choices that affect their lives through protectionist or paternalistic approaches that assume that the state, relatives or community members are in a better position to make choices on behalf of individual women or women as a group. This implies that the state also has a duty not to intervene in women’s personal decisions, for example those related to reproduction or what type of profession to pursue (Irving 2008: 198).

2.4. Legal pluralism

A complicating factor when examining constitutional reform from a gender-equality perspective is legal pluralism: when a country recognizes multiple systems of law. Legal pluralism is practiced in many countries, where in addition to state law, other legal systems such as customary law and/or religious law are also recognized and applied. For example, in some countries family issues such as marriage, divorce, child custody and inheritance are adjudicated according to religious or customary law rather than state law. In some countries, individuals may be able to choose which legal system applies (for example regarding marriage), while in other countries they may not have a choice. In some contexts, legal pluralism also means that there are multiple sources of law, and a specific religion is one source of law in addition to the state. It may also be the case that religion is considered to be the source of all law, such that even state lawmakers must consider religious law when enacting legislation.

The Assessment includes questions that address religious and customary law in the constitution, since these types of legal systems can have a profound impact on women’s personal lives. They may also be women’s first (or only) recourse to justice, especially in rural areas. Thus if you are assessing the constitution of a country that practices legal pluralism, it is important to understand the place of religious and customary law relative to the constitution. For example, with regard to the hierarchy of laws, it is important to consider whether the constitution has the status of supreme law, above all other legal systems, or whether it functions in parallel with (or will be a subsidiary to) other legal systems. It is also important to have at least a basic understanding of the position of the recognized plural legal systems toward key women’s rights issues, and how women’s lives are affected by different systems of law.

2.5. International law

Although constitution-building is a sovereign process, the law of every country is embedded in a system of international law. International and regional human rights treaties, their associated oversight bodies, and international and regional courts or other adjudication mechanisms form the basis of the global human rights regime. The constitution must be aligned with a state's international obligations, which are contained in the treaties it has signed. Additionally, there are sources of 'soft law' or non-binding non-treaty obligations—such as United Nations declarations and resolutions, statements, principles, codes of conduct, etc.—which form part of the global rights regime, which also should be considered when drafting a constitution.

The issues addressed in the Assessment are rooted in international law. Annex A contains a chart that indicates the relevant sections of international and regional treaties, as well as several 'soft' instruments, for each question in the Assessment. Some of the issues and good practices illustrated in the Assessment go beyond these international obligations, but they are all grounded in the values expressed in various international and regional legal instruments.

2.6. Fundamental rights

The core international human rights treaties, which include the International Convention on the Elimination of All Forms of Racial Discrimination, the ICCPR, the ICESCR and the CEDAW, as well as the Universal Declaration of Human Rights (UDHR), contain the fundamental rights that are respected, protected and fulfilled in democratic systems.¹⁴

The Assessment includes fundamental rights that are of particular concern in achieving the substantive equality of women, especially those that are often overlooked. However, not all fundamental rights are included in the Assessment, such as the rights to freedom of thought, freedom of expression and social security. Whether a right is included in the Assessment is not a reflection of its importance to women. Indeed, women's ability to fully participate in political, economic, social and cultural life requires the full range of associated basic rights.¹⁵

2.7. The role of the judiciary

The judiciary plays a crucial role in the achievement of substantive equality through its interpretation of the constitution and legislation, and has been pivotal in a number of countries' paths toward greater equality. In order to fulfil its role effectively, the judiciary must be impartial, non-partisan, and free of political interference and pressure. Its independence must therefore be guaranteed and protected in the constitution. Other important aspects of its independence include the appointment, removal and promotion of judges; public proceedings; the budget of the judiciary; liability of judges; and the interaction of the executive and legislature with the judiciary. An independent judiciary will be less likely to be subject to political or popular pressure if its decisions in favour of greater equality are unpopular among the majority of the population or a powerful minority.

14 The other core international human rights treaties are the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Convention on the Rights of Persons with Disabilities.

15 Howard-Hassmann (2011: 438) notes that 'Civil and political rights, moreover, are absolutely essential if women are to successfully demand their economic, social, and cultural rights'.

2.8. Federal and decentralized systems

In federal and decentralized systems, powers and responsibilities are divided between the national and subnational levels. The constitution may clearly state which powers are allocated to each level, and may indicate that unspecified powers are the domain of either level. As the rights and freedoms associated with gender equality should not vary across the country, the powers associated with realizing fundamental rights may be more effectively safeguarded at the national level. However, the responsibilities associated with achieving gender equality should span all levels of government.

Generally, the national level of government has greater revenue-raising ability, and therefore more resources for service delivery, including services that are important for gender equality, such as health care and education. However, local-level government may be more responsive to the needs of the communities it serves. When deciding which issues are the primary domain of the national or subnational levels, constitution drafters should think about which level has the capacity to most effectively address the issue at hand, and whether the issue applies to the entire country or is territorially specific. Constitutions may specify principles that will guide the distribution of powers between the different levels of government¹⁶ or identify the objectives of subnational levels of government in order to guide the distribution of powers and responsibilities.¹⁷ These principles or objectives may relate to the state's role in protecting and fulfilling the rights of the people and the provision of services.

16 See Constitution of Sudan 2005, article 25(c): 'The following principles shall guide the devolution and distribution of powers between all levels of government: . . . (c) acknowledgement of the role of the State in the promotion of the welfare of the people and protection of their human rights and fundamental freedoms'.

17 See Constitution of South Africa 1996, article 152: '1. The objects of local government are: (a) to provide democratic and accountable government for local communities; (b) to ensure the provision of services to communities in a sustainable manner; (c) to promote social and economic development; (d) to promote a safe and healthy environment; and (e) to encourage the involvement of communities and community organizations in the matters of local government. 2. A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).'

Constitution Assessment for Women's Equality

CONSTITUTION ASSESSMENT FOR WOMEN'S EQUALITY

Values and principles

Questions 1–3



Values and principles

1

Does the constitution use gender-neutral or gender-inclusive language? Are the terms used to name or describe citizens, public officers, and officials neutral and/or gender inclusive?

EXPLANATION

The language of the constitution is both legally and symbolically important. Gender-inclusive language indicates a commitment to gender equality by specifically including women. Gender-inclusive language also undermines stereotypes that political actors are male. For example, when discussing the powers of the president or prime minister, a constitution that uses gender-inclusive language would not only refer to the president or prime minister as he/him, but would include she/her, clearly indicating that the position can be held by either a woman or a man. Gender-neutral language avoids references to specific genders when gender is not relevant to the provision. Gender-inclusive language and gender-neutral language can both be used in the constitution.

Gender-inclusive language is important for the interpretation of the constitution, as it is unambiguous and helps judges interpret the constitution in ways that promote the equality of women. While there is a risk that gender-neutral language can later be interpreted to exclude women, gender-neutral language is preferable to masculine (gender-exclusive) language.

EXAMPLES

Portugal 1976	Article 4: Portuguese citizenship	All persons whom the law or international convention consider to be Portuguese citizens shall be such citizens.	<i>The style is neutral. The draft may repeat nouns (for example 'citizen', 'person', 'public official', 'member of parliament', etc.) and avoid pronouns (such as she, he, her, his)</i>
South Africa 1996	Chapter 4, Part A, National Assembly, 46 Composition and election	(1) The National Assembly consists of no fewer than 350 and no more than 400 women and men elected as members in terms of an electoral system (...)	<i>The style is positively inclusive of women, specifying women and using feminine pronouns (e.g. she and her)</i>
Timor Leste 2002	Part VI, Article 149(1)	The President of the Republic may request the Supreme Court of Justice to undertake an anticipatory review of the constitutionality of any bill submitted to him or her for promulgation.	<i>The style is positively inclusive of women, specifying women and using feminine pronouns (e.g. she and her)</i>
Fiji 2013	Chapter 3, Part C, Article 76(3)	The Supervisor of Elections must comply with any directions that the Electoral Commission gives him or her concerning the performance of his or her functions.	<i>The style is positively inclusive of women, specifying women and using feminine pronouns (e.g. she and her)</i>
Turkey 1982	Part 3, Chapter 2, I, D, Article 104	The President of the Republic also exercises powers of election and appointment, and performs the other duties conferred on him or her by the Constitution and laws.	<i>The style is positively inclusive of women, specifying women and using feminine pronouns (e.g. she and her)</i>

FINDINGS

List here each constitutional provision that is relevant to the question and your notes on its content (you may wish to search for multiple key words and provisions)

ACTIONS

Add here any potential actions that could help achieve substantive equality of women in light of the explanation and comparative examples provided, and the specific challenges in the examined country

Values and principles

2

Does the preamble describe an inclusive view of the people who make up the constitutional community by specifically including women? Does it recognize the contribution of women?

EXPLANATION

The preamble is the introductory section of the constitution that normally sets out some, or all, of the following: the history of the constitution, the values and aspirations of the people, the nature of the state, and the authority under which the constitution is created. While the preamble may not be directly enforceable by a court, it articulates the state's commitment to the values it describes, and is intended to guide the legislature, executive and judiciary. Preambles can be referred to by the state, especially by the judiciary, to guide the interpretation of other parts of the constitution. A preamble that specifically recognizes women sets an inclusive tone for the constitution, provides a context for interpreting the constitution in support of equality, and frames the future policy of the state.

EXAMPLES

Zambia 1991	Preamble	We, the people of Zambia ... recognize the equal worth of men and women in their rights to participate, and freely determine and build a political, economic and social system of their own free choice ...	<i>Women are recognized</i>
Iraq 2005	Preamble	... We, the people of Iraq, who have just risen from our stumble, and who are looking with confidence to the future through a republican, federal, democratic, pluralistic system, have resolved with the determination of our men, women, elderly, and youth to respect the rule of law, to establish justice and equality, to cast aside the politics of aggression, to pay attention to women and their rights ...	<i>Women are recognized</i>
Tunisia 2014	Preamble	Taking pride in the struggle of our people to gain independence and build the state, to free ourselves from tyranny, to affirm our free will and to achieve the objectives of the revolution for freedom and dignity, the revolution of December 17, 2010 through January 14, 2011, with loyalty to the blood of our virtuous martyrs, to the sacrifices of Tunisian men and women over the course of generations, and breaking with injustice, inequity, and corruption.	<i>Recognizes the contribution of women</i>
Dominican Republic 2010	Preamble	We, representatives of the Dominican people, free and democratically elected, gathered in [the] National Revisory Assembly ... encouraged by the selfless work of our men and women ...	<i>Recognizes the contribution of women</i>

FINDINGS

List here each constitutional provision that is relevant to the question and your notes on its content (you may wish to search for multiple key words and provisions)

ACTIONS

Add here any potential actions that could help achieve substantive equality of women in light of the explanation and comparative examples provided, and the specific challenges in the examined country

Values and principles

3

Is a commitment to gender equality stated as a value in the preamble?

EXPLANATION

Some constitutions include a statement of national values, which may express the state's commitment to gender equality. Such a statement may not be directly enforceable by a court, but it can have powerful popular meaning. The judiciary may use a statement of national values that includes gender equality to guide its interpretation of the constitution and legislation in favour of substantive gender equality.

EXAMPLES

Rwanda 2003	Preamble	10. Committed to ensuring equal rights between Rwandans and between women and men without prejudice to the principles of gender equality and complementarity in national development ...	<i>Articulates the state's commitment to gender equality</i>
Rwanda 2003	Preamble	9. Reaffirming our adherence to the principles of human rights enshrined in the United Nations Charter of 26 June 1945, the Convention on the Prevention and Punishment of the crime of Genocide of 9 December 1948, the Universal Declaration of Human Rights of 10 December 1948, the International Convention on the Elimination of All forms of Racial Discrimination of 21 December 1965, the International Covenant on Economic, Social and Cultural Rights of 19 December 1966, the International Covenant on Civil and Political Rights of 19 December 1966, the Convention on the Elimination of all Forms of Discrimination against Women of 1 May 1980 , the African Charter of Human and Peoples' Rights of 27 June 1981 and the Convention on the Rights of the Child of 20 November 1989 ...	<i>Reaffirms adherence to international instruments that prohibit discrimination against women</i>
Haiti 1987	Preamble	The Haitian people proclaim this constitution: To establish a governmental regime based on the fundamental liberties and the respect for human rights, the social peace, economic equity, the equity of gender , the concerted [action] and the participation of all the population in the grand decisions engaging the national life, by an effective decentralization. To assure to women a representation in the instances of power and of decision which must conform to the equality of the sexes and to equity of gender.	<i>Articulates the state's commitment to gender equality</i>

<p>Central African Republic 2004</p>	<p>Preamble</p>	<p>Reaffirms their adherence to the Charter of the Organization of the United Nations, to the Universal Declaration of the Rights of Man of 10 December 1948, to the International Pacts of 16 December 1966 concerning economic, social and cultural right on the one hand and civil and political rights on the other, Reaffirms its commitment to the African Charter of the Rights of Man and of Peoples of 27 June 1981, Reaffirms its adherence to all International Conventions duly ratified, notably those concerning the prohibition of all forms of discrimination with regard to women as well as those concerning the protection of the rights of the child.</p>	<p><i>Reaffirms adherence to international instruments that prohibit discrimination against women</i></p>
<p>Belize 1981</p>	<p>Preamble (e)</p>	<p>Whereas the people of Belize ... (e) require policies of state which protect and safeguard the unity, freedom, sovereignty and territorial integrity of Belize; which eliminate economic and social privilege and disparity among the citizens of Belize whether by race, ethnicity, colour, creed, disability or sex; which ensures gender equality ...</p>	<p><i>Articulates the state's commitment to gender equality</i></p>

FINDINGS

List here each constitutional provision that is relevant to the question and your notes on its content (you may wish to search for multiple key words and provisions)

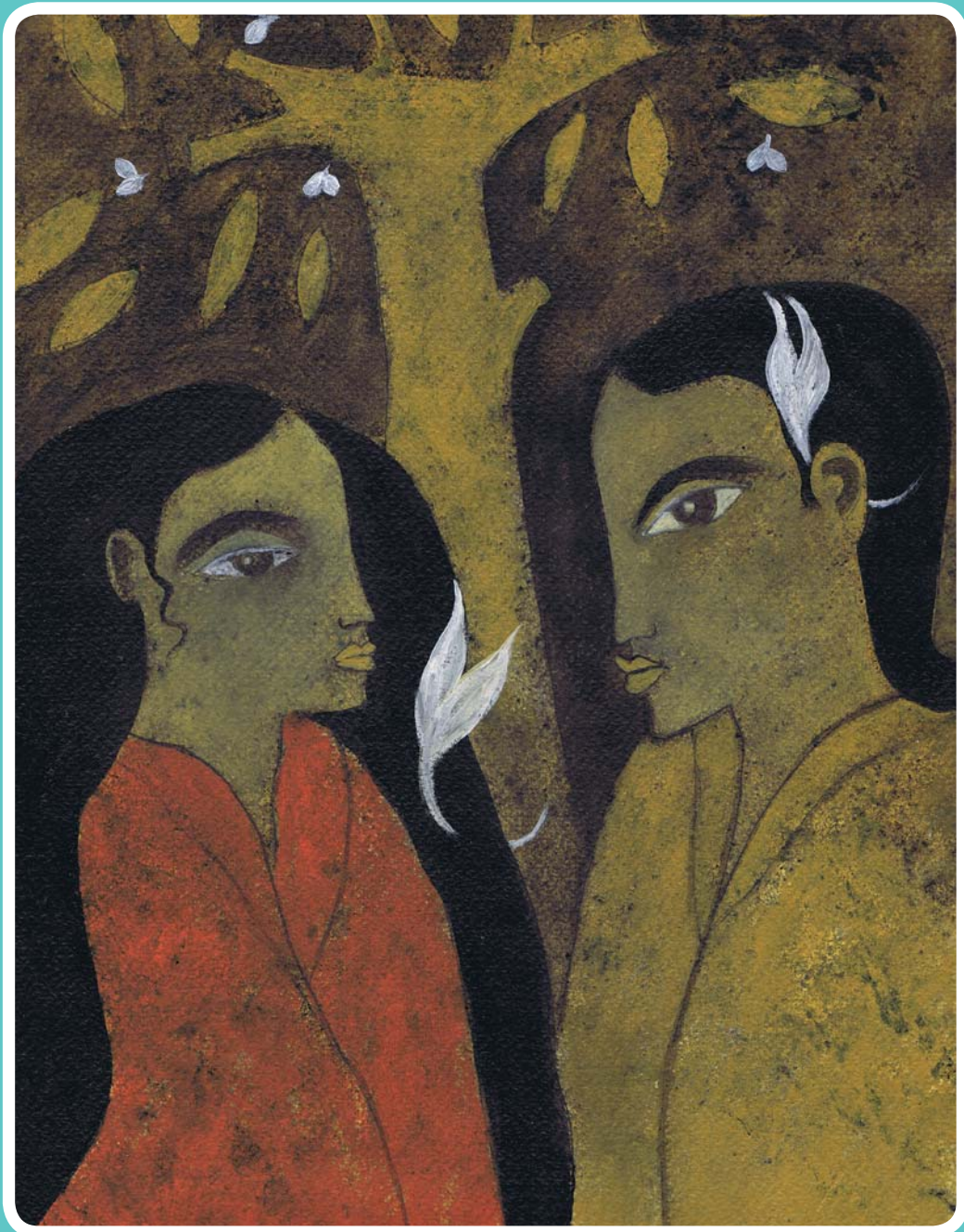
ACTIONS

Add here any potential actions that could help achieve substantive equality of women in light of the explanation and comparative examples provided, and the specific challenges in the examined country

CONSTITUTION ASSESSMENT FOR WOMEN'S EQUALITY

Equality and non-discrimination

Questions 4–14



Equality and non-discrimination

4

Is there a specific section, article, or several articles that specifically recognize and protect women’s rights?

EXPLANATION

Rights that are included in the constitution are enforceable by the judiciary and are more difficult to change than rights that are protected in laws passed by the legislature. Even though there may be an equality provision (stating that women and men are equal) and/or a non-discrimination provision (prohibiting discrimination on the basis of sex and/or gender), including rights for women in the constitution can more securely guarantee and protect these rights than an equality clause or a non-discrimination clause alone, because by specifying a right, the state must protect and promote it, and it is not as broadly subject to the interpretation of legislators and the judiciary.

EXAMPLES

Tunisia 2014	Title Two Rights and Freedoms, Article 46: Women’s Rights	The state commits to protect women’s accrued rights and work to strengthen and develop those rights. The state guarantees the equality of opportunities between women and men to have access to all levels of responsibility in all domains. The state works to attain parity between women and men in elected Assemblies. The state shall take all necessary measures in order to eradicate violence against women.	<i>There is a section on the rights of women</i>
Bolivia 2009	Chapter II Fundamental Rights, Article 15(II)	Everyone, in particular women, have the right not to suffer physical, sexual or psychological violence, in the family as well as in the society.	<i>Women’s rights are included in thematic sections, such as those on political participation and representation (e.g. a section on the legislature, the composition of committees or organs of the state), labour/employment, fundamental rights, etc.</i>
Congo 2001	Title Fundamental Rights and Freedoms, Article 8	All citizens are equal before the law. Any discrimination founded on origin, social or material situation, racial, ethnic or departmental affiliation, gender, education, language, religion, philosophy or place of residence is prohibited, under reserve for the provisions of Articles 58 and 96. The woman has the same rights as the man. The law guarantees and assures their promotion and their representativeness in all political, elective and administrative functions.	<i>Women’s rights are included in a general section on rights and freedoms</i>
Republic of Korea 1948	Chapter II Rights and Duties of Citizens, Article 32	1. All citizens shall have the right to work. The State shall endeavour to promote the employment of workers and to guarantee optimum wages through social and economic means and shall enforce a minimum wage system as prescribed by law.... 4. Special protection shall be accorded to working women and they shall not be subjected to unjust discrimination in terms of employment, wages and working conditions.	<i>Women’s rights are included in thematic sections, such as those on political participation and representation (e.g. a section on the legislature, the composition of committees or organs of the state), labour/employment, fundamental rights, etc.</i>

<p>Iraq 2005</p>	<p>Section III Federal Powers, Chapter I Legislative Power, One Council of Representatives, Article 49 (Fourth)</p>	<p>The elections law shall aim to achieve a percentage of representation for women of not less than one-quarter of the members of the Council of Representatives.</p>	<p><i>Women's rights are included in thematic sections, such as those on political participation and representation (e.g. a section on the legislature, the composition of committees or organs of the state), labour/employment, fundamental rights, etc.</i></p>
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FINDINGS

List here each constitutional provision that is relevant to the question and your notes on its content (you may wish to search for multiple key words and provisions)

ACTIONS

Add here any potential actions that could help achieve substantive equality of women in light of the explanation and comparative examples provided, and the specific challenges in the examined country

Equality and non-discrimination

5

Is ‘discrimination’ defined?

EXPLANATION

CEDAW defines ‘discrimination’ as ‘any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field’.

‘Effect or purpose’ means that the intention to discriminate is not required; a law is considered discriminatory if its outcome or impact will negatively impact on women’s recognition, enjoyment, or exercise of rights and freedoms. This point is critical, as an apparently neutral law or policy (that is, one that does not appear to discriminate) may have a discriminatory impact. Under a broad definition of discrimination, women will have recourse to the courts, ombudsman, human rights/equality committee, etc., to overturn laws and policies that can be proven to have a discriminatory impact, which is important because it can be difficult to prove discriminatory intent.

EXAMPLES

Somalia 2012	Article 11(2)	Discrimination is deemed to occur if the effect of an action impairs or restricts a person’s rights, even if the actor did not intend this effect.	<i>Discrimination is defined in terms of the effect of an action</i>
Venezuela 1999	Article 21(1)	All persons are equal before the law, and, consequently: 1. No discrimination based on race, sex, creed or social standing shall be permitted, nor, in general, any discrimination with the intent or effect of nullifying or encroaching upon the recognition, enjoyment or exercise, on equal terms, of the rights and liberties of every individual.	<i>Discrimination is defined in terms of the intent or the effect of an action</i>
Tanzania 1977	Article 13(5)	For the purposes of this Article the expression ‘discriminate’ means to satisfy the needs, rights or other requirements of different persons on the basis of their nationality, tribe, place of origin, political opinion, colour, religion, sex or station in life such that certain categories of people are regarded as weak or inferior and are subjected to restrictions or conditions whereas persons of other categories are treated differently or are accorded opportunities or advantage outside the specified conditions or the prescribed necessary qualifications except that the word ‘discrimination’ shall not be construed in a manner that will prohibit the Government from taking purposeful steps aimed at rectifying disabilities in the society ...	<i>Discrimination is defined</i>

FINDINGS

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ACTIONS

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Equality and non-discrimination

6

Is discrimination on the basis of sex and gender prohibited?

EXPLANATION

A provision that prohibits discrimination on the basis of both sex (which refers to biological differences) and gender (which refers to the socially constructed roles) in addition to an equality clause is stronger than an equality clause alone, because it explicitly protects women from discrimination. A provision that prohibits discrimination on the basis of sex and gender will guide legislation, judicial interpretation and state policy to prevent and remedy discrimination against women. The principle of non-discrimination is fundamental to gender equality.

Sometimes other provisions may violate the right to equality and non-discrimination, creating contradictions in the text of the constitution. For example, citizenship provisions may treat men and women differently, in violation of the prohibition on sex and gender discrimination. Less obvious contradictions may include, for example, qualifications for public office that have a discriminatory impact on women because they are difficult for women to meet or because many fewer women than men meet those qualifications. It is therefore important to be alert to provisions in the constitution that contradict or have a disproportionately negative impact on women, and to determine whether these provisions violate the prohibition of discrimination on the basis of sex and gender, other rights of women or values identified elsewhere in the constitution.

EXAMPLES

Honduras 1982	Article 60	All Hondurans are equal before the law. All forms of discrimination on account of sex , race, class, or any other reason prejudicial to human dignity shall be punishable. The law shall establish the crimes and penalties for violators of this provision.	<i>Discrimination on the basis of sex is prohibited</i>
Egypt 2014	Chapter 3, Article 53	Citizens are equal before the law, possess equal rights and public duties, and may not be discriminated against on the basis of religion, belief, sex, origin, race, colour, language, disability, social class, political or geographical affiliation, or for any other reason.	<i>Discrimination on the basis of sex is prohibited</i>
Timor-Leste 2002	Part II, Title I, Article 16(2)	No one shall be discriminated against on grounds of colour, race, marital status, gender , ethnical origin, language, social or economic status, political or ideological convictions, religion, education and physical or mental condition.	<i>Discrimination on the basis of gender is prohibited</i>

<p>Bolivia 2009</p>	<p>Article 14 (II)</p>	<p>The State prohibits and punishes all forms of discrimination based on sex, colour, age, sexual orientation, gender identity, origin, culture, nationality, citizenship, language, religious belief, ideology, political affiliation or philosophy, civil status, economic or social condition, type of occupation, level of education, disability, pregnancy, and any other discrimination that attempts to or results in the annulment of or harm to the equal recognition, enjoyment or exercise of the rights of all people.</p>	<p><i>Discrimination on the basis of sex and gender identity is prohibited</i></p>
<p>South Africa 1996</p>	<p>Chapter 2, Article 9(3)(4)</p>	<p>3. The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. 4. No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3).</p>	<p><i>Discrimination on the basis of sex and gender is prohibited</i></p>

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Equality and non-discrimination

7

Is there a provision that commits the state to gender equality?

EXPLANATION

A commitment to gender equality empowers the state to take specific actions to achieve substantive equality. A gender-equality clause empowers the state more than one that prohibits discrimination. While the removal of discrimination is essential to achieving gender equality, additional actions to overcome entrenched bias, a history of discrimination, and the unequal positions of women and men in society are also necessary.

EXAMPLES

Bolivia 2009	Chapter II, Article 8(2)	The State is based on the values of unity, equality, inclusion, dignity, liberty, solidarity, reciprocity, respect, interdependence, harmony, transparency, equilibrium, equality of opportunity, social and gender equality in participation, common welfare, responsibility, social justice, distribution and redistribution of the social wealth and assets for well being.	<i>Gender equality is stated as a value, principle or objective of the state</i>
Zimbabwe 2013	Chapter I, Article 3 (1)(g)	Zimbabwe is founded on respect for the following values and principles: (g) gender equality ...	<i>Gender equality is stated as a value, principle or objective of the state</i>
Timor-Leste 2002	Section 6(j)	The fundamental objectives of the State shall be: (j) To create, promote and guarantee the effective equality of opportunities between women and men.	<i>Gender equality is stated as a value, principle or objective of the state</i>

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Equality and non-discrimination

8

Are discrimination and unfair treatment on the basis of issues that may contribute to multiple forms of discrimination prohibited?

EXPLANATION

In addition to gender and sex, women have other characteristics, identities and beliefs that may make them vulnerable to discrimination and unfair treatment. These may be fixed or may change over time, and may include (but are not limited to) marital status, pregnancy, maternity, health status (such as HIV status), ethnicity, tribe, caste, clan, national origin, nationality, religious beliefs, sexual orientation, gender identity, age, economic class or financial status, language, political beliefs, political affiliation, occupation, level of education, disability and culture.

This list is not exhaustive, but includes some of the common categories for which discrimination may be prohibited. Even if a constitution contains strong gender-equality provisions, if women (and men) can be discriminated against for other reasons, such as ethnicity or religion, these forms of discrimination create barriers to equality and contribute to inequality in many spheres of life.

EXAMPLES

<p>Ecuador 2008</p>	<p>Article 11(2)</p>	<p>All persons are equal and shall enjoy the same rights, duties and opportunities. No one shall be discriminated against for reasons of ethnic belonging, place of birth, age, sex, gender identity, cultural identity, civil status, language, religion, ideology, political affiliation, legal record, socio-economic condition, migratory status, sexual orientation, health status, HIV carrier, disability, physical difference or any other distinguishing feature, whether personal or collective, temporary or permanent, which might be aimed at or result in the diminishment or annulment of recognition, enjoyment or exercise of rights. All forms of discrimination are punishable by law. The State shall adopt affirmative action measures that promote real equality for the benefit of the rights-bearers who are in a situation of inequality.</p>	<p><i>Discrimination is prohibited on the basis of fixed and/or permanent characteristics, identities and beliefs</i></p>
<p>Mongolia 1992</p>	<p>Chapter 2, Article 14(2)</p>	<p>No person shall be discriminated against on the basis of ethnic origin, language, race, age, sex, social origin and status, property, occupation and position, religion, opinion and education. Every one shall be a person before the law.</p>	<p><i>Discrimination is prohibited on the basis of fixed and/or permanent characteristics, identities and beliefs</i></p>
<p>Zimbabwe 2013</p>	<p>Chapter 4, Part 2, Article 56(3)</p>	<p>Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, pregnancy, disability or economic or social status, or whether born in or out of wedlock.</p>	<p><i>Discrimination is prohibited on the basis of fixed and/or permanent characteristics, identities and beliefs</i></p>

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Equality and non-discrimination

9

Does the constitution include a list of prohibited grounds of discrimination? If so, is it clear that additional kinds of discrimination may also be prohibited?

EXPLANATION

No constitution can mention every characteristic, identity or belief that might be used as the basis of discrimination. Additionally, even if a certain category is not currently considered to qualify for protection from discrimination, this may change over time. In order for the constitution to have the flexibility to accommodate evolving understandings of rights and non-discrimination, it is important that the language of the provisions prohibiting discrimination can be interpreted to be non-exclusive, and are open to including additional non-specified grounds.

EXAMPLES

Kenya 2010	Article 27(4)	The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.	<i>Language indicates that the list of grounds on which discrimination is prohibited is not exclusive (for example, 'including' and 'such as')</i>
Fiji 1997	Section 38(2a)	A person must not be unfairly discriminated against, directly or indirectly, on the ground of his or her: (a) actual or supposed personal characteristics or circumstances, including race, ethnic origin, colour, place of origin, gender, sexual orientation, birth, primary language, economic status, age or disability ...	<i>Language indicates that the list of grounds on which discrimination is prohibited is not exclusive (for example, 'including' and 'such as')</i>
Armenia 1995	Article 14.1	... Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or other personal or social circumstances shall be prohibited.	<i>Language indicates that the list of grounds on which discrimination is prohibited is not exclusive (for example, 'including' and 'such as')</i>

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Equality and non-discrimination

10

Are special measures aimed at accelerating the substantive equality between women and men recognized as permitted?

EXPLANATION

Efforts to achieve substantive equality require that the differences between women and men, and the differences in their actual circumstances, are acknowledged and addressed. Because women face particular barriers in political, economic and social life due to their gender, including past discrimination, the equal treatment of women and men may not be sufficient to address inequality. Therefore states may choose to implement laws, policies and programmes that aim to accelerate the achievement of substantive equality between women and men.

In order to achieve substantive equality, the state may allow preferential treatment for women in education, employment, political participation, economic life and other areas. These measures may appear to discriminate against men, and therefore to violate equality provisions. However, special measures to accelerate substantive equality do not violate the value of non-discrimination, as the purpose of non-discrimination provisions is to promote the substantive equality (rather than the mere formal equality) of marginalized and underrepresented groups, including women.

Temporary special measures are state actions that are put in place to achieve equality for women, and may include preferential treatment and/or special programmes for women. Temporary special measures are not intended to be permanent, but to be ‘discontinued when the objectives of equality of opportunity and treatment have been achieved’ (CEDAW Article 4.1). Special measures that are related to biological difference, such as maternity, can be permanent.

EXAMPLES

South Africa 1996	Chapter 2, Section 9(2)	Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.	<i>Language emphasizes ‘true’, ‘full’ or ‘substantive’ equality— which can be read as permitting special measures</i>
Argentina 1994	Section 75(23)	The Congress shall have power: To legislate and promote positive measures guaranteeing true equal opportunities and treatment, the full benefit and exercise of the rights recognized by this Constitution and by the international treaties on human rights in force, particularly referring to children, women , the aged, and disabled persons. To issue a special and integral social security system to protect children from abandonment, since pregnancy up to the end of elementary education, and to protect the mother during pregnancy and the period of lactation.	<i>Language that permits special (‘positive’) measures</i>

Greece 1975	Article 116(2)	Adoption of positive measures for promoting equality between men and women does not constitute discrimination on grounds of sex. The State shall take measures for the elimination of inequalities actually existing , in particular to the detriment of women.	<i>Language that permits special ('positive') measures</i>
Ecuador 2008	Article 331	The State shall guarantee to women equal access to employment, vocational and professional training and advancement, equitable pay, and the option to self-employment. All necessary measures shall be taken to eliminate inequality. Any form of discrimination, harassment or violent action, of any nature, whether direct or indirect, affecting women at work is forbidden.	<i>Language that permits special ('positive') measures</i>
Turkey 1982	Article 10	Men and women shall have equal rights. The State has the duty to ensure that this equality is put into practice. Measures taken for this purpose shall not be interpreted as contrary to the principle of equality.	<i>Language that permits special ('positive') measures</i>
Kyrgyzstan 2010	Article 16(2)	The Kyrgyz Republic shall respect and ensure human rights and freedoms to all persons on its territory and under its jurisdiction. No one may be subject to discrimination on the basis of sex, race, language, disability, ethnicity, belief, age, political and other convictions, education, background, proprietary and other status as well as other circumstances. Special measures defined by law and aimed at ensuring equal opportunities for various social groups in accordance with international commitments shall not be considered as discrimination.	<i>Language that permits special ('positive') measures</i>
Namibia 1990	Articles 23(2) and (3)	(2) Nothing contained in Article 10 here of shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in the Namibian society arising out of discriminatory laws or practices, or for achieving a balanced structuring of the public service, the defence force, the police force, and the correctional service. (3) In the enactment of legislation and the application of any policies and practices contemplated by Sub-Article (2) hereof, it shall be permissible to have regard to the fact that women in Namibia have traditionally suffered special discrimination and that they need to be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation.	<i>Language that permits special ('positive') measures</i>
Papua New Guinea 1975	Articles 55(1), 55(2)	1. Subject to this Constitution, all citizens have the same rights, privileges, obligations and duties irrespective of race, tribe, place of origin, political opinion, colour, creed, religion or sex. 2. Subsection (1) does not prevent the making of laws for the special benefit, welfare, protection or advancement of females, children and young persons, members of under-privileged or less advanced groups or residents of less advanced areas.	<i>Language that permits special ('positive') measures</i>

FINDINGS

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Equality and non-discrimination

11

Does the constitution state that fundamental rights (such as the right to not be discriminated against on the basis of gender and sex) are applicable in both the public and private spheres? Do fundamental rights apply not only between the state and individuals, but also between individuals, within the family, and between private organizations (such as businesses) and individuals?

EXPLANATION

Traditionally, human rights were thought of as protecting citizens from the state. However, freedom from discrimination and the rights to equal treatment and opportunities must also be protected in the private (non-state) sphere in order to achieve substantive equality between women and men. A provision that protects fundamental rights in both public and private life would impose greater responsibility on the state to prevent, impose sanctions, and remedy violations of rights by private persons, organizations and enterprises, including violations related to gender-based violence, such as spousal abuse. This measure would also prohibit discrimination against women in employment in the private sector, and access to private health care and private education.

EXAMPLES

Mozambique 2004	Article 56(1)	Individual rights and freedoms shall be directly applicable, shall bind both public and private entities , shall be guaranteed by the State, and shall be exercised within the Constitutional framework and the law.	<i>Private (non-state) actors must respect fundamental rights</i>
Angola 2010	Article 28(1)	The constitutional principles regarding fundamental rights, freedoms and guarantees are directly applicable to, and binding upon, all public and private entities .	<i>Private (non-state) actors must respect fundamental rights</i>
Somalia 2012	Articles 12(1), 12(2)	(1) The fundamental rights and freedoms recognized in this Chapter shall always be respected in the making and application of the law. Likewise, they must be respected by all individuals and private organisations , as well as by every state institution and state official as they carry out their official functions. (2) It is the responsibility of the state not only to ensure it does not violate rights through its actions, but also to take reasonable steps to protect the rights of the people from abuse by others.	<i>Private (non-state) actors must respect fundamental rights</i>
Ecuador 2008	Article 331	The State shall guarantee to women equal access to employment, vocational and professional training and advancement, equitable pay, and the option to self-employment. All necessary measures shall be taken to eliminate inequality . Any form of discrimination, harassment or violent action, of any nature, whether direct or indirect, affecting women at work is forbidden.	<i>Language that permits special ('positive') measures</i>
Turkey 1982	Article 10	Men and women shall have equal rights. The State has the duty to ensure that this equality is put into practice. Measures taken for this purpose shall not be interpreted as contrary to the principle of equality .	<i>Language that permits special ('positive') measures</i>

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Equality and non-discrimination

12

Does the constitution state that customary and traditional practices, and customary law, must respect gender and sex equality and non-discrimination?

EXPLANATION

A constitution may recognize customary and traditional practices and customary law. It may also recognize a right to culture and/or indicate a respect for culture and tradition. However, some cultural, customary and traditional practices—including some aspects of customary law—may prevent or restrict women’s enjoyment of fundamental rights, or undermine their right to equality. Therefore it is necessary for the constitution to balance rights, such as the right to culture and the right to freedom from discrimination on the basis of sex and gender. Constitutions can indicate a hierarchy of rights, whereby gender equality and non-discrimination are prioritized, and traditional practices and customary law must adhere to these principles and other rights in the constitution.

EXAMPLES

Ecuador 2008	Article 57	Indigenous communes, communities, peoples and nations are recognized and guaranteed, in conformity with the Constitution and human rights agreements, conventions, declarations and other international instruments, the following collective rights: ... 10. To create, develop, apply and practice their own legal system or common law, which cannot infringe constitutional rights, especially those of women, children and adolescents ... The State shall guarantee the enforcement of these collective rights without any discrimination, in conditions of equality and equity between men and women.	<i>No practices that degrade or discriminate against women or others are permitted</i>
Nepal 2007	12th Amendment, Article 29(2)	No person shall be exploited in the name of custom, tradition and practice, or in any other way.	<i>No practices that degrade or discriminate against women or others are permitted</i>
South Africa 1996	Chapter 2(39)(2)	When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.	<i>The interpretation of any legislation or customary law must be consistent with rights provisions</i>
South Africa 1996	Chapter 2(30)	Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.	<i>No practices that are inconsistent with the rights in the constitution are permitted</i>
Angola 2010	Article 7	The validity and legal force of custom which does not contradict the Constitution and does not threaten human dignity shall be recognised.	<i>No practices that are inconsistent with the rights in the constitution are permitted</i>

<p>Angola 2010</p>	<p>Article 223</p>	<p>1. The state shall recognise the status, role and functions of the institutions of the traditional authorities founded in accordance with customary law which do not contradict the Constitution.</p> <p>2. Recognition of the institutions of the traditional authorities shall oblige public and private entities to respect, in their relations with these institutions, the values and norms of customary law that are observed within traditional political and community organisations and do not conflict with the Constitution or the dignity of the human person.</p>	<p><i>No practices that are inconsistent with the rights in the constitution are permitted</i></p>
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Equality and non-discrimination

13

If religious law is recognized in the constitution, does the constitution state that it must respect gender and sex equality and non-discrimination?

EXPLANATION

A constitution may recognize religious law. It may also recognize a right to culture and/or indicate a respect for culture and tradition. However, some aspects of religious law may prevent or restrict women's enjoyment of fundamental rights, or undermine their right to equality. Constitutions can indicate that gender equality and non-discrimination are prioritized and that religious law must adhere to the principles of gender equality, non-discrimination and other rights in the constitution.

EXAMPLES

Gambia 1996	Article 32	Every person shall be entitled to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and to the condition that the rights protected by this section do not impinge on the rights and freedoms of others or the national interest, especially unity.	<i>No practices that negatively affect the rights of others are permitted</i>
Uganda 1995	Article 32(2)	(2) Laws, cultures, customs and traditions which are against the dignity, welfare or interest of women or any other marginalised group ... or which undermine their status, are prohibited by this Constitution.	<i>Practices that harm women are prohibited</i>

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Equality and non-discrimination

14

Does the constitution recognize multiple discrimination?

EXPLANATION

Women may experience discrimination and disadvantage not only because they are women, but also because of other characteristics, identities and/or beliefs. For example, women who belong to a marginalized economic class, ethnicity, religion, sexual orientation or who have a disability may face discrimination and inequality due to these factors, in addition to the disadvantage they experience due to gender. Thus the negative impact on women of discrimination due to multiple causes is increased.

Additionally, according to CEDAW General Recommendation No. 28 (On the Core Obligations of States Parties under Article 2 of the Convention), ‘Discrimination on the basis of sex or gender may affect women belonging to such [marginalized] groups to a different degree or in different ways to men,’ or may affect women belonging to such groups in different ways than those who do not belong to them. Constitutional recognition of multiple discrimination requires the state to develop legal responses to prohibit and eliminate multiple discrimination.

EXAMPLES

South Africa 1996	Section 9	(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds , including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3) [above]. National legislation must be enacted to prevent or prohibit unfair discrimination.	<i>Discrimination on one or more grounds is prohibited</i>
Bolivia 2009	Article 14 (II)	The State prohibits and punishes all forms of discrimination based on sex, colour, age, sexual orientation, gender identity, origin, culture, nationality, citizenship, language, religious belief, ideology, political affiliation or philosophy, civil status, economic or social condition, type of occupation, level of education, disability, pregnancy, and any other discrimination that attempts to or results in the annulment of or harm to the equal recognition, enjoyment or exercise of the rights of all people.	<i>Prohibition of different forms of discrimination</i>

FINDINGS

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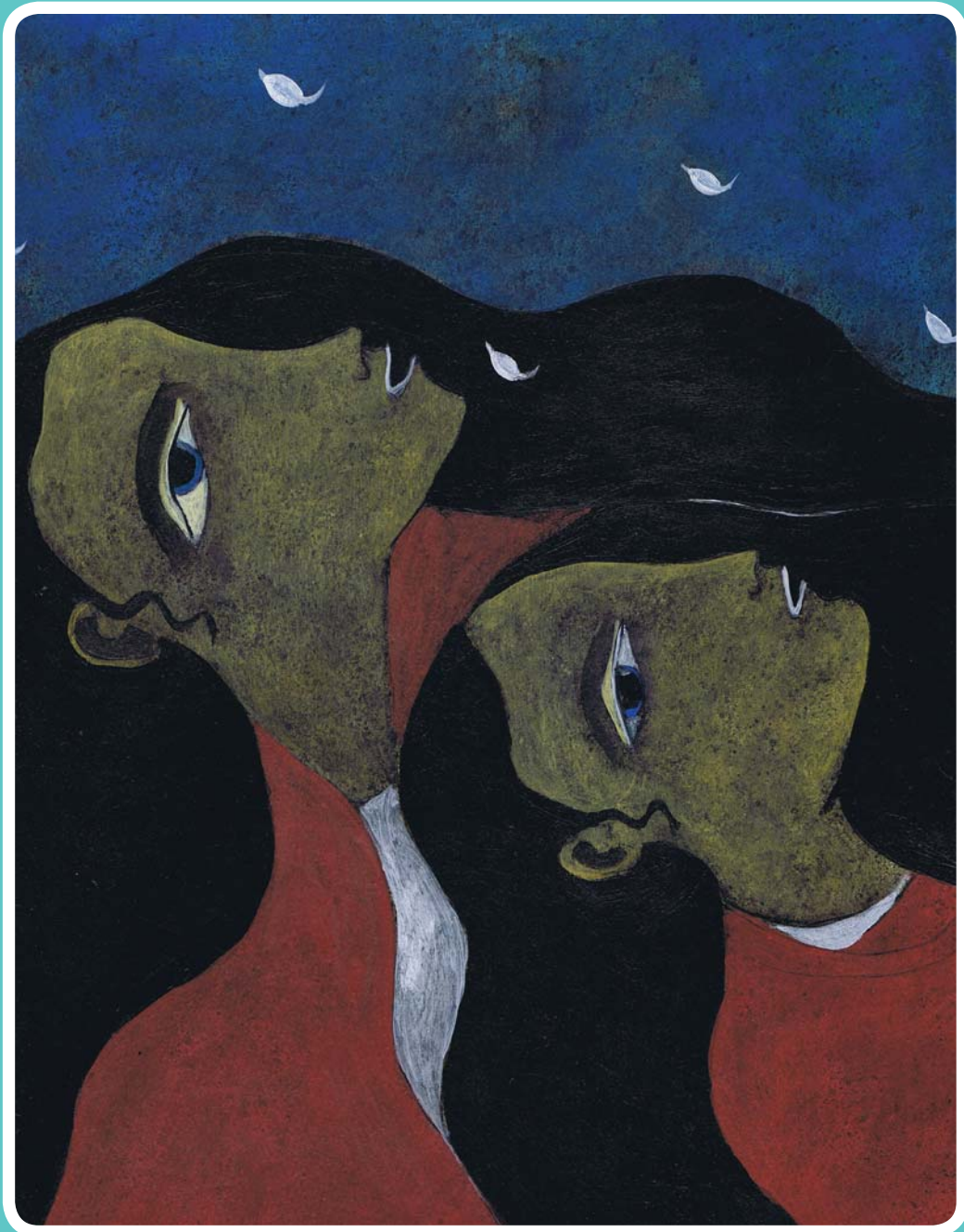
ACTIONS

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CONSTITUTION ASSESSMENT FOR WOMEN'S EQUALITY

Economic and social rights

Questions 15–28



Economic and social rights

15

Does the constitution specify that women have the right to equality in different spheres of life such as political, economic and social spheres?

EXPLANATION

Provisions elaborating the right to equality in different spheres of life will send a clear message that future legislation and executive policy must address these areas, and judicial interpretation must consider them. These provisions can also form a foundation for temporary special measures to accelerate de facto equality between women and men.

EXAMPLES

Kenya 2010	Article 27(3)	Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.	<i>Women are equal in all spheres including politics, public life, education, health, economy and society</i>
Guyana 1980	Part 1, Chapter II, Article 29(1)	Women and men have equal rights and the same legal status in all spheres of political, economic and social life. All forms of discrimination against women on the basis of their sex are illegal.	<i>Women are equal in all spheres including politics, public life, education, health, economy and society</i>
Tunisia 2014	Article 46	The state guarantees the equality of opportunities between women and men to have access to all levels of responsibility in all domains.	<i>Women are equal in all domains</i>
China 1982	Chapter II, Article 48	Women in the People’s Republic of China enjoy equal rights with men in all spheres of life, political, economic, cultural and social, and family life.	<i>Women are equal in all spheres including politics, public life, education, health, economy and society</i>

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Economic and social rights

16

Is there a right to equal pay or equal remuneration for women?

EXPLANATION

What constitutes ‘equal pay’ is hard to define if women and men do not do similar work, so ‘equal pay for work of equal value’ is a concept that can also be used. An equal pay or equal remuneration provision offers greater specificity, and therefore greater protection, than a general non-discrimination provision. An equal pay provision can help women overcome entrenched biases such as:

- stereotypes about the quality of women’s labour, why women work and the occupations they can work in;
- formal or informal segregation of occupations by gender; and
- undervaluing of occupations with a greater proportion of women.

EXAMPLES

Lesotho 1993	Article 30	Lesotho shall adopt policies aimed at securing just and favourable conditions of work and in particular policies directed to achieving— (a) remuneration which provides all workers, as a minimum with— (i) fair wages and equal remuneration for work of equal value without distinction of any kind, and in particular, women being guaranteed conditions of work, including pension or retirement benefits, not inferior to those enjoyed by men, with equal pay for equal work ...	<i>Women’s right to equal pay and equal remuneration is protected</i>
Vietnam 1992	Article 63	Male and female citizens have equal rights in all fields—political, economic, cultural, social, and the family.... Men and women shall receive equal pay for equal work.	<i>Women’s right to equal pay for equal work is protected</i>
Burkina Faso 1991	Article 19	The right to work is recognized and is equal for all. It is prohibited to discriminate in matters of employment and of remuneration founded notably on sex, colour, social origin, ethnicity or political opinion.	<i>Discrimination in remuneration is prohibited</i>
Myanmar 2008	Article 350	Women shall be entitled to the same rights and salaries as that received by men in respect of similar work.	<i>Women’s right to equal pay for similar work is protected</i>
Dominican Republic 2010	Articles 62(1), 62(9)	The State guarantees the equality and equity of women and men in the exercise of the right to work; Every worker has the right to a just and sufficient salary that permits [them] to live with dignity and to cover the basic material, social and intellectual needs of themselves and their family. The payment of equal salary for work of equal value is guaranteed, without discrimination of gender or other kind and under identical conditions of capacity, efficiency and seniority.	<i>Women’s right to equal pay for work of equal value is protected</i>

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Economic and social rights

17

Are there provisions designed to protect the rights of women in business, employment or in other economic activities?

EXPLANATION

The ability to earn a livelihood and participate on equal terms with men in economic activities is essential to ensure the autonomy and well-being of women and families. It is important for unmarried, married, divorced and widowed women to be able to fully participate in economic life—such as starting a business, obtaining financial credit, etc.—and to do so independently of male family members. It is also important that married women are able to make economic decisions and participate fully in economic life without requiring the consent of her spouse or male relatives. Provisions protecting the equal rights of women with respect to economic activities can form the basis of temporary special measures to accelerate the achievement of substantive equality between women and men.

EXAMPLES

Ecuador 2008	Article 331	The State shall guarantee to women equal access to employment, vocational and professional training and advancement, equitable pay, and the option to self-employment. All necessary measures shall be taken to eliminate inequality. Any form of discrimination, harassment or violent action, of any nature, whether direct or indirect, affecting women at work is forbidden.	<i>Equal access to employment is protected</i>
Guyana 1980	Part 1, Chapter II, Article 29(1)	Women and men have equal rights and the same legal status in all spheres of political, economic and social life. All forms of discrimination against women on the basis of their sex are illegal.	<i>Right to equality includes economic life</i>
Sudan 2005	Article 32	The State shall guarantee equal right of men and women to the enjoyment of all civil, political, social, cultural and economic rights, including the right to equal pay for equal work and other related benefits.	<i>Right to equality includes economic rights</i>

FINDINGS

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ACTIONS

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Economic and social rights

18

Are women's equal rights to own and inherit land and other property recognized?

EXPLANATION

Women's access to land and property is important for their economic empowerment. It is especially important for women in rural areas, where livelihoods are often based on access to land.

A provision that protects the right of women to buy, own and inherit land and property on an equal basis with men is a safeguard in contexts where the application of traditional practices, customary law and/or religious law may limit women's rights regarding land and property. If the constitution identifies a hierarchy of rights that specifies that customary and religious law must adhere to the rights provisions contained in the constitution, women's land and property rights should in principle be protected under a general equality clause. However, the inclusion of a specific provision that affirms women's right to purchase, own and inherit land and other property will more strongly entrench and protect this right.

EXAMPLES

Bolivia 2009	Article 402(2)	The State has the obligation to: 2. To promote policies aimed at eliminating all forms of discrimination against women in the access to, ownership and inheritance of land.	<i>The state has the obligation to eliminate discrimination in women's access to land</i>
Nepal (Interim constitution) 2007	12th amendment, Article 20	Sons and daughters shall have equal rights to ancestral property.	<i>There is a provision that explicitly recognizes the right of women to own and inherit land/property</i>
Ethiopia 1995	Article 35	Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property.	<i>There is a provision that explicitly recognizes the right of women to own and inherit land/property</i>

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Economic and social rights

19

Is equality with regard to marriage recognized?

EXPLANATION

Marriage is not just a private matter. The constitution, directly or indirectly, affects the laws that regulate marriage and the rights and opportunities of married, widowed and divorced women. Marriage can be addressed in constitutions with regard to equality in their choice of spouse (that is, women can freely choose who to marry), in entering a marriage, during a marriage and at the end of a marriage. In addition to equal rights, equal obligations are also sometimes recognized.

Recognition of the equality of spouses to enter into marriage, and during all phases of a marriage, guides law and policy to ensure the rights of women in this critical aspect of private life. Recognition of equality in marriage matters protects women's independence and ability to make decisions and choices freely. If the constitution recognizes customary and/or religious law and establishes that their practice must conform to other rights in the constitution, marriage equality rights will serve as an important protection for women who enter into marriage under customary or religious law. Marriage equality protects women from forced marriage and forced divorce, ensures that the minimum legal age for marriage is the same for men and women, ensures that property can be divided equally at the dissolution of the marriage, safeguards inheritance in the event of the death of a spouse, supports equal guardianship of children and guarantees equal say over communal property.

Recognition of a de facto union (a 'common law marriage') as having the same effects or being equal to marriage offers further protection to women who have not entered into a legal marriage but who have a similar relationship.

EXAMPLES

<p>Namibia 1990</p>	<p>Article 14</p>	<p>(1) Men and women of full age, without any limitation due to race, colour, ethnic origin, nationality, religion, creed or social or economic status shall have the right to marry and to found a family. They shall be entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses.</p>	<p><i>Equality in entering, during and ending a marriage is recognized</i></p>
<p>Nicaragua 1987</p>	<p>Articles 72 and 73</p>	<p>72. The marriage and in fact stable common law unions are protected by the State; they rest on the voluntary agreement of men and women and they can be dissolved by mutual consent or by the will of one of the parties ... 73. Family relations are based on respect, solidarity and absolute equality of rights and responsibilities between men and women.</p>	<p><i>De facto unions are recognized as equal to marriage</i></p>

Bolivia 2009	Articles 63(I), 63(II)	<p>I. The marriage between a man and a woman is formed by legal bond and is based on equality of the rights and duties of the spouses.</p> <p>II. The free unions or de facto unions, which meet the conditions of stability and singularity and that are maintained between a man and a woman without legal impediment, shall have the same effects as a civil marriage, both in the personal and property relations of the couple as well as with respect to adopted children or to children born to the couple.</p>	<p><i>Marriage is based on the equality of the spouses</i></p> <p><i>De facto unions are recognized as equal to marriage</i></p>
Japan 1946	Article 24	<p>Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis. With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.</p>	<p><i>Equality in entering, during and ending a marriage is recognized</i></p>

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Economic and social rights

20

Is there a right to education? Are the rights of girls and women to education protected?

EXPLANATION

Education is one of the most powerful ways to address inequalities between women and men. Globally, girls and women are educated at lower rates than boys and men. Specifying girls' right to an education places obligations on the state to ensure access to education, to adopt laws and policies to ensure enrolment below a certain age, and to address the conditions preventing the equal access and enrolment of girls.

EXAMPLES

Afghanistan 2004	Article 44	The State shall devise and implement effective programs to create and foster balanced education for women , improve education of nomads as well as eliminate illiteracy in the country.	<i>Right of girls and women to access education</i>
Interim Constitution of Nepal 2007	Responsibilities, Directive Principles and Policies of the State, Article 35(8)	The State shall pursue a policy of encouraging maximum participation of women in national development by making special provision for their education , health and employment.	<i>Right of girls and women to access education</i>
Cuba 1976	Article 43	The State establishes the right, won by the Revolution, of its citizens, without distinction based on race, colour, sex, religious creeds, national origin, or any other type offending human dignity to ... have a right to education at all national educational institutions, ranging from elementary schools to the universities , which are the same for all.	<i>Discrimination on the basis of gender and/or sex or discrimination against women with regard to education is prohibited</i>
Ecuador 2008	Article 43(1)	The State shall guarantee the rights of pregnant and breast-feeding women to: (1) Not be discriminated against for their pregnancy in education , social, and labour sectors.	<i>Discrimination on the basis of gender and/or sex or discrimination against women with regard to education is prohibited</i>
Democratic Republic of the Congo 2006	Article 45	...All persons have access to establishments of national education, without discrimination of place of origin, of race, of religion, of sex, of political or philosophical opinions, of their physical, mental or sensorial state in accordance with their capacities...	<i>Discrimination on the basis of gender and/or sex or discrimination against women with regard to education is prohibited</i>
Gambia 1996	Article 30(a)	All persons shall have the right to equal educational opportunities and facilities and with a view to achieving the full realisation of that right- (a) basic education shall be free, compulsory and available to all ...	<i>Right to free education, sometimes specified through a certain level, for example through the primary level</i>
Turkey 1982	Article 42	... Primary education is compulsory for all citizens of both sexes and is free of charge in state schools.	<i>Right to free education, sometimes specified through a certain level, for example through the primary level</i>

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Economic and social rights

21

Is there a right to food security and drinking water?

EXPLANATION

Women are more vulnerable to poverty than men, and therefore are affected disproportionately by food insecurity, especially in rural areas. Food insecurity is often related to social inequalities, and is connected to women's ability to achieve a sustainable livelihood. A right to food obliges the state to pursue laws and policies to ensure food security, and to address the underlying inequalities that lead to food insecurity.

EXAMPLES

Ecuador 2008	Article 3(1)	The State's prime duties are: (a) Guaranteeing without any discrimination whatsoever the true possession of the rights set forth in the Constitution and in international instruments, especially the rights to education, health, food, social security and water for its inhabitants.	<i>The state guarantees the right to food and water</i>
Democratic Republic of the Congo 2005	Title II, Chapter 2, Article 47	The right to health and to [a] secure food supply is guaranteed. The law specifies the fundamental principles and the rules of organization for public health and [a] secure food supply.	<i>The state guarantees the right to food</i>
Egypt 2014	Chapter 3, Article 79	Each citizen has the right to healthy, sufficient amounts of food and clean water. The state shall provide food resources to all citizens.	<i>Recognition of the right to food and water</i>
Fiji 2013	Chapter 2, Article 36(1)	The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to be free from hunger, to have adequate food of acceptable quality and to clean and safe water in adequate quantities.	<i>State obligated to progressively realize the right to food and water</i>
South Africa 1996	Chapter 2, Article 27(1)(b)	Everyone has the right to have access to – (b) sufficient food and water ...	<i>Recognition of the right to food and water</i>
Bolivia 2009	Article 16	I. Every person has the right to water and food. II. The State has the obligation to guarantee food security, by means of healthy, adequate and sufficient food for the entire population.	<i>Recognition of the right to food and water; state has the responsibility to guarantee food security</i>
Morocco 2011	Article 31	The State, the public establishments and the territorial collectivities work for the mobilization of all the means available [disponibles] to facilitate the equal access of the citizens [feminine] and the citizens [masculine] to conditions that permit their enjoyment of the right: ... to the access to water and to a healthy environment ...	<i>State obligated to progressively realize the right to food and water</i>

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Economic and social rights

22

Is there a right to health and/or a right to health care? Is there a specific right to reproductive health and/or reproductive health care? Do women have the right to make their own reproductive choices and to have control over their own bodies?

EXPLANATION

The right to health and health care, and the right to reproductive health, include a wide range of issues of importance to women. The right to health implies not only a right that can be asserted by an individual, but the protection of health that obligates the state to provide (or facilitate the accessibility of) health care, including family planning.

Reproductive health is a critical facet of women’s health due to women’s reproductive capacity, and is essential to women’s agency and independence. Inclusion of reproductive health rights helps ensure that the state addresses this aspect of health that has specific importance for women. Access to care is a necessary but not sufficient condition for equality and agency; women must also be able to control decisions related to their bodies and physical and psychological health, including whether to have children, the number of children and the timing of having children.

EXAMPLES

Ecuador 2008	Article 32	Health is a right guaranteed by the State and whose fulfilment is linked to the exercise of other rights, among which the right to water, food, education, sports, work, social security, healthy environments and others that support the good way of living. The State shall guarantee this right by means of economic, social, cultural, educational, and environmental policies; and the permanent, timely and non-exclusive access to programs, actions and services promoting and providing integral healthcare, sexual health, and reproductive health.	<i>Right to health</i> <i>Right to health care</i> <i>Right to reproductive health</i>
Ecuador 2008	Article 363(6)	The State shall be responsible for: (6) Ensuring sexual and reproductive health actions and services and guaranteeing the integral healthcare and the life of women, especially during pregnancy, childbirth and postpartum.	<i>Right to maternal healthcare</i>
Ecuador 2008	Article 66(9), 66(10)	The following rights of persons are recognized and guaranteed: (9) The right to freely take informed, voluntary, and responsible decisions on one’s sexuality and one’s sexual life and orientation. The State shall promote access to the necessary means so that these decisions take place in safe conditions. (10) The right to take free, responsible and informed decisions about one’s health and reproductive life and to decide how many children to have.	<i>Right to make decisions in relation to reproduction and on the number of children to have</i>
Bolivia 2009	Article 66	Women and men are guaranteed the exercise of sexual rights and their reproductive rights.	<i>Guarantee of sexual and reproductive rights</i>
Angola 2010	Article 77	The state shall promote and guarantee the measures needed to ensure the universal right to medical and health care , as well as the right to child care and maternity care ...	<i>Right to health care</i> <i>Right to maternal healthcare</i>

Nepal 2007	Article 20(2)	Every woman shall have the right to reproductive health and other reproductive rights.	<i>Right to reproductive health</i>
Paraguay 1992	Article 61	The State recognizes the right of persons to freely and responsibly decide the number and the frequency of the birth of their children ...	<i>Right to make decisions in relation to the number and frequency of children</i>
Kenya 2010	Chapter 4, Part 2, Article 43(1a)	Every person has the right (a) to the highest attainable standard of health , which includes the right to health care services, including reproductive health care...	<i>Right to the highest attainable standard of health Right to reproductive health care</i>
Iraq 2005	Section 2, Chapter 1, Article 31	Every citizen has the right to health care.	<i>Right to health care</i>

FINDINGS

ACTIONS

Economic and social rights

23

Is the medical termination of pregnancy (abortion) mentioned?

EXPLANATION

Reproductive autonomy is essential to human dignity, and is intrinsic to the substantive equality between women and men. Reproductive autonomy includes control over the number and timing of pregnancies, which entails access to safe reproductive care, such as contraception and abortion.

Although abortion is not frequently specified in constitutions, most constitutions include a right to life, which can be interpreted as forbidding abortion. Provisions that guarantee rights concerning reproduction—such as a right to health, right to bodily integrity and the right to make decisions regarding reproduction—provide for the possibility that the constitution may be interpreted to allow abortion. By not specifying that the medical termination of pregnancy is prohibited, the constitution allows for this issue to be addressed via the political process through legislation.

EXAMPLES

Tunisia 2014	Article 38	Health is a right for every human being.	<i>Right to health</i>
Nepal 2007	Article 20(2)	Every woman shall have the right to reproductive health and other reproductive rights.	<i>Right to reproductive health</i>
South Africa 1996	Sections 12(2a) and (2b)	Everyone has the right to bodily and psychological integrity, which includes the right (a) to make decisions concerning reproduction; (b) to security in and control over their body ...	<i>Right to physical and psychological integrity</i>
Ecuador 2008	Articles 66(9), 66(10)	The following rights of persons are recognized and guaranteed: (9) The right to freely take informed, voluntary, and responsible decisions on one's sexuality and one's sexual life and orientation. The State shall promote access to the necessary means so that these decisions take place in safe conditions. (10) The right to take free, responsible and informed decisions about one's health and reproductive life and to decide how many children to have.	<i>Right to make decisions regarding reproduction</i>

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Economic and social rights

24

Is there a right to paid maternity leave?

EXPLANATION

Maternity leave for employed women is an essential element of the realization of substantive equality. Full enjoyment of the right to take maternity leave requires that maternity leave be paid, so as not to endanger the livelihood of mothers. In addition to maternity leave, protection from employment termination due to pregnancy, due to maternity and during maternity leave fulfil the purpose of maternity leave, which is to allow the full participation of women in social and economic life. Social security benefits provided on the basis of maternity also contribute to the conditions that allow women to participate fully in economic life.

Paternity leave is also an important right that supports the achievement of substantive equality by recognizing the father's role in child care and the domestic sphere.

EXAMPLES

Ethiopia 1995	Article 35(5)(a) and (b)	5(a) Women have the right to maternity leave with full pay. The duration of maternity leave shall be determined by law taking into account the nature of the work, the health of the mother and the well-being of the child and family. (b) Maternity leave may, in accordance with the provisions of law, include prenatal leave with full pay ...	<i>Right to paid maternity leave</i>
Ghana 1992	Article 27(1)	Special care shall be accorded to mothers during a reasonable period before and after child-birth; and during those periods, working mothers shall be accorded paid leave.	<i>Right to paid maternity leave</i>
Timor-Leste 2002	Article 39(4)	Maternity shall be dignified and protected, and special protection shall be guaranteed to all women during pregnancy and after delivery and working women shall have the right to be exempted from the workplace for an adequate period before and after delivery, without loss of remuneration or any other benefits, in accordance with the law.	<i>Right to paid maternity leave</i>
Cambodia 1993	Article 46	... The dismissal of woman worker for reason of pregnancy shall be prohibited. Woman shall have the right to take maternity leave with full pay and with guarantee of her seniority in employment and of other social benefits.	<i>Protection from dismissal</i> <i>Right to paid maternity leave</i>
Brazil 1988	Chapter II, Article 7(18) and (19)	In addition to any others designed to improve their social condition, the following are rights of urban and rural workers: ... (18) maternity leave without loss of job or wages for a period of one hundred-twenty days; (19) paternity leave, as provided by law ...	<i>Protection from dismissal</i> <i>Right to paid maternity leave</i> <i>Right to paternity leave</i>

Ecuador 2008	Article 332	<p>The State shall guarantee respect for the reproductive rights of all workers, including the elimination of labour risks affecting reproductive health, access to employment and job security, without limitations due to pregnancy or number of children, maternity and breast-feeding rights, and the right to paternity leave.</p> <p>The dismissal of a working woman because of pregnancy and maternity, along with discrimination in connection with reproductive roles, is forbidden.</p>	<p><i>Right to maternity and paternity leave</i></p> <p><i>Protection from dismissal</i></p>
Ecuador 2008	Article 369	<p>Mandatory universal insurance shall cover the contingencies of illness, maternity, paternity, labour hazards, termination of employment, unemployment, old age, invalidity, disability, death and those provide for by the law.</p>	<p><i>Universal insurance coverage for maternity and paternity</i></p>

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Economic and social rights

25

Is the right of women to be free and protected from violence committed by the state recognized? Is the right of women to be free from violence from non-state actors (such as family members, employers, businesses, private organizations, etc.) recognized?

EXPLANATION

Violence against women (also known as gender-based violence) is a form, cause and consequence of discrimination and inequality, and is a violation of women’s human rights and fundamental freedoms, including the rights to life, health, equal protection, security and liberty (Rights of Women 2011: 15). Violence can be physical, sexual or psychological (for example domestic violence, female genital mutilation, forced marriage, sexual harassment, rape, trafficking, etc.). Some women may experience multiple discriminations due to disability, age, race, ethnicity, language, immigration status, religion and sexual orientation, making them particularly vulnerable to violence. Custom, religion or tradition cannot be a justification for violence against women. The state must act to prevent and impose sanctions for violence against women, whether committed by state actors (such as the police or military) or private actors (such as a spouse or an employer).

EXAMPLES

Dominican Republic 2010	Article 42(2)	Inter-family and gender violence in all its forms is condemned. The State shall guarantee through the law the adoption of the necessary measures to prevent, sanction and eradicate violence against women.	<i>State obligation to prevent, punish and eliminate violence against women</i>
Tunisia 2014	Article 46	... The state shall take all necessary measures to eradicate violence against women.	<i>State obligation to eliminate violence against women</i>
Bhutan 2008	Article 9(17)	The State shall endeavour to take appropriate measures to eliminate all forms of discrimination and exploitation against women including trafficking, prostitution, abuse, violence , harassment and intimidation at work in both public and private spheres.	<i>State obligation to eliminate violence against women in the public and private spheres</i>
Zimbabwe 2013	Article 52(a)	Every person has the right to bodily and psychological integrity, which includes the right (a) to freedom from all forms of violence from public or private sources ...	<i>Right to freedom from violence by public or private actors</i>
Bolivia 2009	Articles 15(I), 15(II), 15(III)	I. Every person has the right to life and physical, psychological and sexual integrity. No one shall be tortured, nor suffer cruel, inhuman, degrading or humiliating treatment. The death penalty does not exist. II. Everyone, in particular women, have the right not to suffer physical, sexual or psychological violence, in the family as well as in the society. III. The State shall adopt the necessary measures to prevent, eliminate and punish sexual and generational violence, as well as any action or omission intended to be degrading to the human condition, to cause death, pain, and physical, sexual or psychological suffering, whether in public or private spheres.	<i>Right to freedom from violence by public or private actors</i> <i>State obligation to prevent, eliminate, and punish violence in the public and private spheres</i>

FINDINGS

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Economic and social rights

26

Is trafficking prohibited?

EXPLANATION

Human trafficking is a serious human rights violation that includes the recruitment, transportation, transfer, harbouring or receipt of persons, if it happens for the purposes of exploitation, and the consent of the person is achieved through using some form of coercion, abduction, fraud, deception, exchange of payments or benefits, abuse of power or a *position of vulnerability*. Exploitation includes various forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. It is considered a form of modern slavery, and women and children make up the majority of victims. Trafficking violates many of the rights, prohibitions and protections that are commonly found in constitutions, including protection from exploitation; prohibition of slavery, compulsory labour, torture and degrading treatment; freedom of movement; and the right to dignity. Specific reference to trafficking can strengthen the state's commitment to protecting victims of trafficking and enable it to more effectively investigate, prosecute and punish this offence.

EXAMPLES

Bhutan 2008	Article 9(17)	The State shall endeavour to take appropriate measures to eliminate all forms of discrimination and exploitation against women including trafficking , prostitution, abuse, violence, harassment and intimidation at work in both public and private spheres.	<i>State obligation to eliminate exploitation, including trafficking</i>
Iraq 2005	Chapter 2, Article 37, Third section/ paragraph	Forced labour, slavery, slave trade, trafficking in women or children, and sex trade shall be prohibited .	<i>Prohibition of forced labour and trafficking</i>
Venezuela 1999	Chapter 3, Article 54	No person shall be subjected to slavery or servitude. Traffic of persons, in particular women , children and adolescents, in any form, shall be subject to the penalties prescribed by law .	<i>Freedom from slavery and trafficking</i>
Sierra Leone 1991	Chapter 3, Article 19(1)	No person shall be held in slavery or servitude or be required to perform forced labour or traffic or deal in human beings .	<i>Freedom from slavery and trafficking</i>

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Economic and social rights

27

Is sex work or sexual exploitation mentioned?

EXPLANATION

Criminalization of sex work unjustly penalizes people who may be victims of forced prostitution, who require protection rather than prosecution. CEDAW requires states to ‘suppress... exploitation of prostitution of women’; therefore states should focus on violations that facilitate the exploitation of prostitution, such as trafficking, deprivation of liberty, forced labour, deprivation of dignity and health, while addressing the conditions that make women vulnerable to sexual exploitation or that may lead women to choose to engage in sex work, such as poverty, discrimination and unemployment. Decriminalization of the act of prostitution or sex work (as opposed to the procurement of services, for example) allows people engaged in sex work to come forward without fear of legal repercussions in order to obtain health care and education, to pursue safe working conditions, to participate in social security schemes and to seek rehabilitation services.

EXAMPLES

Ecuador 2008	Article 66(3)(a) and (b)	<p>The following rights of persons are recognized and guaranteed: ...3. The right to personal well-being, which includes: (a) Bodily, psychological, moral and sexual safety. (b) A life without violence in the public and private sectors.</p> <p>The State shall adopt the measures needed to prevent, eliminate, and punish all forms of violence, especially violence against women, children and adolescents, elderly persons, persons with disabilities and against all persons at a disadvantage or in a vulnerable situation; identical measures shall be taken against violence, slavery, and sexual exploitation.</p>	<i>The state will eliminate sexual exploitation</i>
Serbia 2006	Part 2, Article 26	<p>Forced labour is prohibited. Sexual or financial exploitation of person in unfavourable position shall be deemed forced labour.</p>	<i>Prohibition of sexual exploitation</i>

FINDINGS

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Economic and social rights

28

Is speech that is motivated by the intention to harm women prohibited?

EXPLANATION

Rights can be legitimately limited, such as when they conflict with the rights of others. Speech that incites hatred, hostility, discrimination, intolerance and/or violence is frequently limited because it violates the rights of others and may violate guiding principles of the state, such as building a democratic society, seeking social justice, equality, human dignity, etc. Speech that incites violence or discrimination against women harms their fundamental rights and undermines equality, particularly through the perpetuation of misogynist practices and stereotypes. Specifying gender as a category that is protected from hate and discriminatory speech affirms the state's commitment to gender equality.

EXAMPLES

Zimbabwe 2013	Chapter 4, Part 2, Article 61(5)	Freedom of expression and freedom of the media exclude: (b) advocacy of hatred or hate speech.	<i>Prohibition of hate speech</i>
Fiji 2013	Chapter 2, Article 17(3)(b)(i) and (4)	(3) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights and freedoms mentioned in subsection (1) in the interests of: (b) the protection or maintenance of the reputation, privacy, dignity, rights or freedoms of other persons, including - (i) the right to be free from hate speech, whether directed against individuals or groups. (4). In this section, 'hate speech' means an expression in whatever form that encourages, or has the effect of encouraging discrimination on a ground listed or prescribed under section 26 [actual or supposed personal characteristics or circumstances, including race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, disability, age, religion, conscience, marital status or pregnancy; or opinions or beliefs, except to the extent that those opinions or beliefs involve harm to others or the diminution of the rights or freedoms of others, or on any other ground prohibited by this Constitution.]	<i>Limits on expression when it infringes on the rights, freedoms and/or privacy of others</i>
Egypt 2014	Chapter 3, Article 53	Discrimination and incitement to hate are crimes punishable by law.	<i>Prohibition of incitement to hate</i>

FINDINGS

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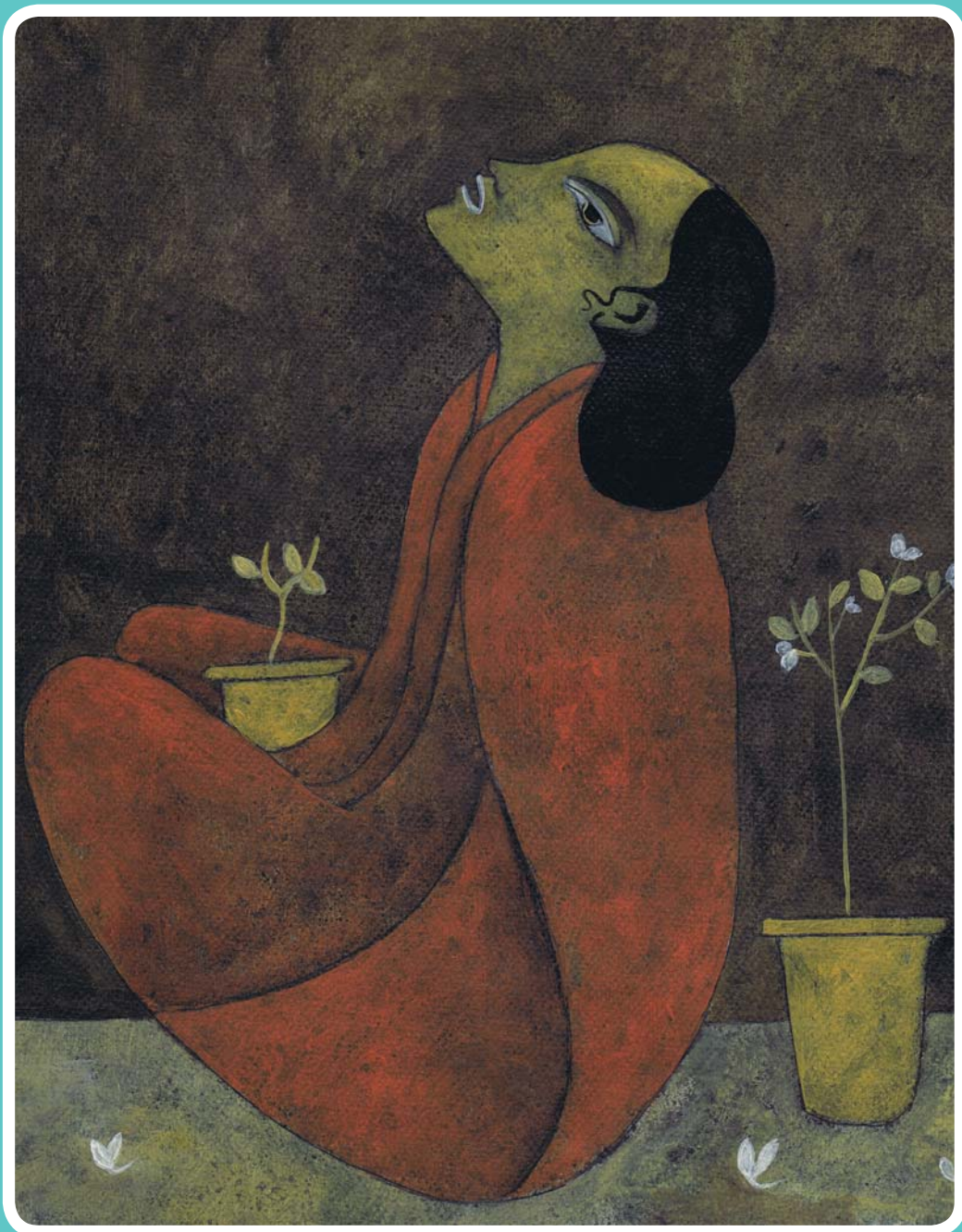
ACTIONS

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CONSTITUTION ASSESSMENT FOR WOMEN'S EQUALITY

Citizenship

Questions 29–33





Citizenship

29

Can women and men acquire, change and retain citizenship on equal terms?

EXPLANATION

Equal conditions of citizenship allow women to fully claim the rights and protections that are granted to citizens, and to participate fully in public life. A provision that states equal terms for women and men to acquire citizenship prevents the passage of legislation that creates different conditions for acquiring or retaining citizenship for women and men. For example, equal citizenship conditions would prevent women from losing their citizenship upon marriage to a non-citizen. Likewise, women and men should be able to change and retain their citizenship on equal terms.

EXAMPLES

Malawi 1994	Article 24(1)(a) (iv)	Women have the right to full and equal protection by the law, and have the right not to be discriminated against on the basis of their gender or marital status which includes the right (a) to be accorded the same rights as men in civil law, including equal capacity (iv) to acquire and retain citizenship and nationality.	<i>Principle of non-discrimination applied to citizenship and nationality</i>
Uruguay 1966	Section III, Article 74	All men and women born at any place within the territory of the Republic are natural citizens.	<i>Identical conditions to acquire citizenship for men and women</i>
Bolivia 2009	Article 141	Bolivian nationality is acquired by birth or by naturalization. Persons who are born in the territory of Bolivia are Bolivians by birth , with the exception of children of foreign personnel on diplomatic mission; persons born abroad of a Bolivian mother or father are Bolivians by birth.	<i>Identical conditions to acquire citizenship for men and women</i>

FINDINGS

ACTIONS

Citizenship

30

Is dual or multiple citizenship permitted?

EXPLANATION

Dual or multiple citizenship protects women who live in a country other than the country of their birth, ensuring freedom of movement and domicile between the countries if she can acquire a second citizenship. It also protects women who marry non-citizens if they wish to also acquire the citizenship of the country of their spouse's origin.

EXAMPLES

Ghana 1996	Chapter 3, Article 8(1) and (3)	(1) A citizen of Ghana may hold the citizenship of any other country in addition to his citizenship of Ghana. (3) Where the law of a country requires a person who marries a citizen of that country to renounce the citizenship of his own country by virtue of that marriage, a citizen of Ghana who is deprived of his citizenship by virtue of that marriage shall, on the dissolution of that marriage, become citizen of Ghana.	<i>Dual or multiple citizenship is permitted</i> <i>Citizenship lost due to marriage can be regained</i>
Fiji 2013	Chapter 1, Section 5, Article 4	Citizens of Fiji may hold multiple citizenship, which means that- (a) upon accepting the citizenship of a foreign country, a person remains a citizen of Fiji unless he or she renounces that status; (b) a former citizen of Fiji, who lost that citizenship upon acquiring foreign citizenship, may regain citizenship of Fiji, while retaining that foreign citizenship unless the laws of that foreign country provide otherwise; and (c) upon becoming a citizen of Fiji, a foreign person may retain his or her existing citizenship unless the laws of that foreign country provide otherwise.	<i>Dual or multiple citizenship is permitted</i> <i>Citizenship lost due to acquiring a foreign citizenship can be regained</i>
Gambia 2004	Article 12A(1) and (2)	A Citizen of The Gambia who acquires the Citizenship of another Country may, if he or she so desires, retain his or her citizenship of The Gambia.	<i>Dual or multiple citizenship is permitted</i>
Malta 1964	Chapter III, Article 22(2)	Dual or multiple citizenship is permitted in accordance with any law for the time being in force in Malta.	<i>Dual or multiple citizenship is permitted</i>
Ecuador 2008	Article 6	Ecuadorian nationality is obtained by birth or naturalization and shall not be forfeited because of marriage or its dissolution or by acquiring another nationality.	<i>Citizenship is not lost through marriage or the dissolution of a marriage</i>
Zimbabwe 2013	Article 40	Zimbabwean citizenship is not lost through marriage or the dissolution of marriage.	<i>Citizenship is not lost through marriage or the dissolution of a marriage</i>
Bolivia 2009	Article 142(II)(1)	...Foreign citizens who acquire citizenship by marriage with Bolivian citizens do not lose it in the case of widowhood or divorce.	<i>Citizenship is not lost through widowhood (death of spouse) or dissolution of a marriage</i>

Bolivia 2009	Article 143	I. Bolivians who marry foreign citizens shall not lose their nationality of origin. Nor shall Bolivian nationality be lost by acquiring foreign citizenship. II. Foreigners who acquire Bolivian nationality shall not be obligated to renounce their nationality of origin.	<i>Citizenship is not lost through acquiring a foreign citizenship</i> <i>Renouncing original citizenship is not required to gain citizenship</i>
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FINDINGS

List here each constitutional provision that is relevant to the question and your notes on its content (you may wish to search for multiple key words and provisions)

ACTIONS

Add here any potential actions that could help achieve substantive equality of women in light of the explanation and comparative examples provided, and the specific challenges in the examined country

Citizenship

31

Can a woman independently pass citizenship to her children?

EXPLANATION

The right of women to transmit citizenship independently to their children without conditions (such as marital status) protects the autonomy of women and protects children by ensuring that children can be citizens of the same country as their mother; that children can access the rights (for example, education and health care) and protections conferred to citizens; that women and children will not face restrictions on their movement; and protects children from statelessness if the mother and father are citizens of different countries.

EXAMPLES

Dominican Republic 2010	Article 18(1) Article 18(4)	(1) Dominicans (feminine) and Dominicans (masculine) are the sons and daughters of a Dominican mother or father ; (4) Dominicans are those born abroad, of Dominican father or mother , notwithstanding having acquired, by place of birth, a different nationality from [that of] their parents.	<i>A mother can transmit citizenship independently to children.</i>
Nicaragua 2007	Article 16(2) Article 16(3)	(2) Nationals are the children of Nicaraguan fathers or mothers (3) Nationals are those born abroad, of a father or mother who were originally Nicaraguan, provided they request it after reaching the majority of age or emancipation.	<i>A mother can transmit citizenship independently to children</i>
Kenya 2010	Article 14(1)	A person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen .	<i>A mother can transmit citizenship independently to children</i>
Zimbabwe 2013	Article 36(1)(a)	Persons are Zimbabwean citizens by birth if they are born in Zimbabwe and, when they are born: (a) Either their mother or their father was a Zimbabwean citizen	<i>A mother can transmit citizenship independently to children</i>
Turkey 1982	Article 66	The child of a Turkish father or a Turkish mother is a Turk	<i>A mother can transmit citizenship independently to children</i>
Timor-Leste 2002	Section 3(2)(a) Section 3(3)	(2) The following citizens shall be considered original citizens of East Timor, as long as they are born in the national territory : (a) Children of father or mother born in East Timor (3) Irrespective of being born in a foreign country, children of a Timorese father or mother shall be considered original citizens of East Timor	<i>A mother can transmit citizenship independently to children</i>
Fiji Islands 1997	Section 12(1)	A child born outside Fiji on or after the date of commencement of this Constitution may become a citizen by registration if, at the date of the child's birth, either parent was a citizen.	<i>Either parent can transmit citizenship independently to children</i>
Gambia 1996	Article 9	Every person born in The Gambia after the coming into force of this Constitution shall be presumed to be a citizen of The Gambia by birth if at the time of his or her birth, one of his or her parents is a citizen of The Gambia.	<i>Either parent can transmit citizenship independently to children</i>

FINDINGS

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ACTIONS

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Citizenship

32

Can a female citizen transmit citizenship to her spouse on the same terms as a male citizen?

EXPLANATION

The equal ability of women to transmit citizenship to their spouses supports women's freedom to marry a spouse who is a citizen of a different country without risking a loss of rights or protections for her family, such as freedom of movement and domicile.

The ability to transmit citizenship on equal terms also signals that women and men are both fully members of the constitutional community, that the terms of their citizenship is equal and that the state does not privilege men above women.

EXAMPLES

Mozambique 2004	Article 26(1)	A foreign person who has been married to a Mozambican citizen for at least five years acquires Mozambican nationality, except in cases of statelessness, provided that all of the following conditions are met: (a) That he or she declares that he or she wishes to acquire Mozambican nationality; (b) That he or she meets the requirements and offers the guarantees prescribed by law.	<i>Both women and men have the right to acquire citizenship and to convey citizenship to their spouse</i>
Namibia 1990	Article 4(3)(a)	The following persons shall be citizens of Namibia by marriage (a) those who are not Namibian citizens under Sub-article (1) or (2) hereof and who: (aa) in good faith marry a Namibian citizen or, prior to the coming into force of this Constitution, in good faith married a person who would have qualified for Namibian citizenship if this Constitution had been into force; and (bb) subsequent to such marriage have ordinarily resided in Namibia as the spouse of such person of not less than ten years	<i>Both women and men have the right to acquire citizenship and to convey citizenship to their spouse</i>
Barbados 1966	Article 3A(1)(b)	The following descriptions of persons also have the right upon application to be registered as citizens of Barbados , namely (b) a person who has been married to a citizen of Barbados , and has cohabited with that citizen, for such period as may be prescribed immediately preceding that person's application.	<i>Both women and men have the right to acquire citizenship and to convey citizenship to their spouse</i>
Panama 1972	Article 10(2)	The following can solicit Panamanian nationality by naturalization : (2) the foreigners with three consecutive years of residence within the territory of the Republic [...] of a spouse of Panamanian nationality ...	<i>Both women and men have the right to acquire citizenship and to convey citizenship to their spouse</i>

FINDINGS

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ACTIONS

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Citizenship

33

Are basic rights and fundamental freedoms protected for all people, not just citizens? If some rights are limited to citizens, are they reasonable in a democratic state and respectful of international obligations?

EXPLANATION

Basic rights and fundamental freedoms are inherent to all persons, independent of their citizenship status. International law insists that most rights—with the exception of some political rights like the right to vote or to stand in elections, and freedom of movement—should not be limited to citizens.

The limitation of rights to citizens is especially relevant to women and persons who may have difficulty establishing their citizenship, for example due to movement as a result of conflict. The rights of non-citizens are also important to women who immigrate or migrate from another country to work, who may be particularly vulnerable. Protecting the rights of non-citizen residents is critical to the attainment of a just and equitable society.

EXAMPLES

Zimbabwe 2013	Article 76(1)	Every citizen and permanent resident of Zimbabwe has the right to have access to basic health-care services, including reproductive health-care services.	<i>Permanent residents have the right to education and social services</i>
Bolivia 2009	Article 17	Every person has the right to receive an education at all levels, which is universal, productive, free, comprehensive and inter-cultural, without discrimination.	<i>All persons have the right to education</i>
Colombia 1991	Article 2	The authorities of the Republic are established in order to protect all persons residing in Colombia, in their life, honor, property, beliefs, and other rights and freedoms, and in order to assure the fulfilment of the social duties of the State and of individuals.	<i>All persons have rights and freedoms</i>
Bosnia and Herzegovina 1995	Article II(3)	All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include: (a) The right to life. (b) The right not to be subjected to torture or to inhuman or degrading treatment or punishment. (c) The right not to be held in slavery or servitude or to perform forced or compulsory labour. (d) The rights to liberty and security of person. (e) The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings. (f) The right to private and family life, home, and correspondence. (g) Freedom of thought, conscience, and religion. (h) Freedom of expression. (i) Freedom of peaceful assembly and freedom of association with others. (j) The right to marry and to found a family. (k) The right to property. (l) The right to education. (m) The right to liberty of movement and residence.	<i>The human rights and fundamental freedoms of all persons are protected</i>

FINDINGS

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ACTIONS

Add here any potential actions that could help achieve substantive equality of women in light of the explanation and comparative examples provided, and the specific challenges in the examined country

CONSTITUTION ASSESSMENT FOR WOMEN'S EQUALITY

Legislature and elections

Questions 34–37



Legislature and elections

34

Are there provisions that aim to increase women's participation and representation in political parties?

EXPLANATION

Political parties are the 'gatekeepers' to elected office, so how they function internally (and whether women are able to gain leadership positions within parties) is critical to women's participation and representation in the political system. Although 'women play important roles in campaigning and mobilizing support for their parties, they rarely occupy decision-making positions in these structures' (Shvedova 2005: 37). Many parties have women's units (women's wings), and although they can play a role in the party, their influence on party decisions can be limited. Women should also be integrated into party structures, including key decision-making bodies. In order for parties to fulfil their critical functions of aggregating and expressing the political interests of the public, women must be able to take part in setting the priorities and agendas of parties.

EXAMPLES

Argentina 1994	Section 37	... Actual equality of opportunities for men and women to elective and political party positions shall be guaranteed by means of positive actions in the regulation of political parties and in the electoral system.	<i>Political parties must uphold certain principles, including gender equality</i>
Colombia 1991	Article 107	The Political Parties and Movements shall be democratically organized and shall hold with high principles of transparency, objectivity, morality, gender equity , and the duty to present and disseminate their political programs.	<i>Political parties must uphold certain principles, including gender equality</i>
Haiti 1987	Article 31(1)(1)	Any law concerning the Political Parties must reserve in its structures and in its mechanisms of functioning a treatment in conformity with the principle of the quota of at least thirty percent (30%) of women [as] expressed in Article 17.1.	<i>Guarantee of women's representation and participation within political parties through regulation of political parties by law or by the electoral management body</i>
Bolivia 2009	Article 210	The internal election of the leaders and the candidates of the citizen associations, and of the political parties, shall be regulated and supervised by the Pluri-National Electoral Organ, which shall guarantee the equal participation of men and women.	<i>Guarantee of women's representation and participation within political parties through regulation of political parties by law or by the electoral management body</i>
Nepal 2007	Article 142(3c)	(3) Political parties shall fulfil the following conditions while filing an application pursuant to clause 1 - (c) there should be a provision [in the constitution or rules governing the party] for the inclusion of members from neglected and oppressed groups including women and Dalits in the executive committees at various levels ...	<i>Guarantee of women's representation in leadership bodies of political parties</i>

Uganda 1995	Article 71(1d)	A political party in the multiparty political system shall conform to the following principles - (d) members of the national organs of a political party shall be regularly elected from citizens of Uganda in conformity with the provisions of paragraphs (a) and (b) of this article and with due consideration for gender ...	<i>Inclusion of women in leadership bodies of political parties</i>
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FINDINGS

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ACTIONS

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Legislature and elections

35

Is the electoral system favourable to the election of women?

EXPLANATION

The type of electoral system has a profound impact on women’s political representation, both in systems that use quotas and in those that do not. Multiple aspects of the electoral system must be considered when determining the design of a system that will facilitate the election of women.

Electoral systems around the world fall into three broad categories—proportional representation, plurality/majority and mixed systems (combining characteristics of the former two systems). Different aspects that characterize these electoral systems can substantially influence women’s electoral chances: the electoral formula used to translate votes into seats; the district magnitude, or number of seats available for election in a district; and the ballot structure—that is, how voters are allowed to express their preferences among candidates or political parties (International IDEA 2007: 15).

Proportional representation systems with closed lists (i.e. where voters vote for a party’s list as the order of candidates is fixed) and large district magnitudes have been found to facilitate the election of women to a greater degree than plurality/majority systems with single-member districts, as they provide parties with opportunities to present more balanced and diverse lists of candidates, and women and men do not have to compete within a party for the nomination to a single district seat.

Add here any potential actions that could help achieve substantive equality of women in light of the explanation and comparative examples provided, and the specific challenges in the examined country

In federal or decentralized systems, it is important that measures to ensure women’s political participation apply at every level.

EXAMPLES

Burundi 2005	Article 168	The election of the Deputies takes place following the ballot for the bloc lists by proportional representation. These lists must have a multiethnic character and take into account the equilibrium between men and women. For three candidates registered together on a list, only two may belong to the same ethnic group, and at least one in four must be a woman.	<i>Proportional representation electoral system</i> <i>Quotas for women on party candidate lists</i>
Zimbabwe 2013	Article 120(2)	Elections of Senators must be conducted in accordance with the Electoral Law, which must ensure that the Senators referred to in subsection (1)(a) are elected under a party-list system of proportional representation: ...and b. in which male and female candidates are listed alternately, every list being headed by a female candidate.	<i>Proportional representation electoral system</i> <i>Requirements for placement of women on party candidate lists</i>
Argentina 1994	Section 37	True equality of opportunity between men and women in running for elected and party offices shall be guaranteed through affirmative actions in the regulation of political parties and in the electoral system.	<i>General electoral system and political party requirements to be implemented by law</i>

Ecuador 2008	Article 116	For multi-person elections, the law shall establish an electoral system in line with the principles of proportionality, equality of vote, equity, parity and alternation of power between women and men and shall determine the voting precincts inside and outside the country.	<i>General requirements for gender equality in the electoral system to be implemented by law</i>
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Add here any potential actions that could help achieve substantive equality of women in light of the explanation and comparative examples provided, and the specific challenges in the examined country

FINDINGS

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Legislature and elections

36

Are there provisions that guarantee or facilitate women's participation and representation in the legislature?

EXPLANATION

Women's representation in legislatures varies greatly around the world, but a proportion of 30 per cent women is generally regarded as the minimum or 'critical mass' level for women to participate effectively. Overcoming entrenched biases and systematic discrimination to increase women's representation in the legislature can be challenging, and therefore mechanisms to improve their representation should be considered. Quotas are one such mechanism, and can be of the following types: legislated candidate quotas (quotas that are enshrined in law and must be followed by political parties), reserved seats for women, gender-neutral quotas (which usually specify a maximum level for either gender, for example neither gender can occupy more than 60 per cent of seats) and voluntary political party quotas.

When candidate quotas are in place, specified in the constitution or electoral law, they should set a high quantitative benchmark, require a placement or ranking rule to ensure that women who stand as candidates gain access to 'winnable' positions on the list and entail effective sanctions (for example, denying a party list the ability to register if it does not meet the quota law requirements). A growing number of countries have revised their constitutions and legislation to require parties to submit candidate lists that include equal numbers of female and male candidates alternating across the list (so-called zipper or zebra lists)—a development that sets gender parity as one of the principle and permanent requirements for electoral candidate lists.

Reserved seats can also be enshrined in either the constitution or in electoral law. They stipulate the number of women to be elected to legislative bodies, in which case particular attention should be paid to ensuring that laws are developed to promote democratic and transparent rules for selecting female candidates to take up the reserved seats. Voluntary political party quotas are not usually mentioned in constitutions, but should be viewed as a form of temporary special measure protected under the relevant constitutional clauses. The selection of appropriate mechanisms must consider the type of electoral system, as some quotas are only effective when used with a specific electoral system.

Enforcement mechanisms and sanctions for non-compliance are essential for mechanisms to be effective, and are typically addressed through legislation. Public funding of parties may be used as an incentive or sanction for parties to include more female candidates.

It is also important to be alert to possible barriers to the election and participation of women in the legislature. For example, certain qualifications for public office may have a discriminatory impact on women because they are difficult for women to meet or because many fewer women than men meet those qualifications. These include electoral rules stating specific requirements for higher education as eligibility criteria for election to public office, which may often have a disproportionately negative effect on women. This is of particular concern in countries with a considerable gender gap between primary and higher educational attainment rates.

Barriers to women's political participation may violate other provisions in the constitution, such as a non-discrimination provision. Non-discrimination provisions can sometimes be interpreted to forbid special measures to increase the representation of women. Clear provisions stating that such measures are not contrary to the constitution will avoid later legal challenges.

EXAMPLES

Tunisia 2014	Article 34	The rights to election, voting, and candidacy are guaranteed, in accordance with the law. The state seeks to guarantee women's representation in elected bodies.	<i>General requirements for women's representation</i>
Tunisia 2014	Article 46	The state works to attain parity between women and men in elected Assemblies.	<i>General requirements for women's representation</i>
Argentina 1994	Section 37	Suffrage shall be universal, equal, secret and compulsory. Actual equality of opportunities for men and women to elective and political party positions shall be guaranteed by means of positive actions in the regulation of political parties and in the electoral system.	<i>General requirements for women's representation</i>
Afghanistan 2004	Article 83	The elections law shall adopt measures to attain, through the electorate system, general and fair representation for all the people of the country, and proportionate to the population of every province, on average, at least two females shall be the elected members of the House of People from each province.	<i>Reserved seats for women in the upper and/or lower house</i>
Burundi 2005	6, 2, Article 164	The National Assembly is composed of at least one hundred Deputies... including a minimum of 30% of women , elected by universal direct suffrage ...	<i>Quotas for women in the upper and/or lower house</i>
South Sudan 2011	Part 2, Article 16(3) and (4a)	(3) Women shall have the right to participate equally with men in public life. (4) All levels of government shall: (a) promote women's participation in public life and their representation in the legislative and executive organs by at least twenty-five per cent as an affirmative action to redress imbalances created by history, customs, and traditions ...	<i>Quotas for women in all legislative bodies</i>
South Sudan 2011	Part 11, Article 163(7)	In fulfilment of the principle of affirmative action, women shall be allocated at least twenty-five per cent of the seats and positions in each legislative and each executive organ of each state, without prejudice to their right to compete for the remaining seats and positions in such organs.	<i>Quotas for women in sub-national legislative bodies</i>
Kenya 2010	Chapter 4, 2(27) (8)	In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.	<i>Gender-neutral quotas in the upper and/or lower house</i>
Thailand 2007	Section 97	In an election of members of the House of Representatives on a party-list basis, the party-list shall be done as follow: (2) The names of the party-list (1) shall not be repeated by the names of candidates in the election on the constituency basis of any parties, and to take into consideration of the opportunity, acceptable quota and the equality between men and women.	<i>Political parties must consider gender equality when selecting candidates for party lists</i>

FINDINGS

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ACTIONS

Add here any potential actions that could help achieve substantive equality of women in light of the explanation and comparative examples provided, and the specific challenges in the examined country

<p>Angola 2010</p>	<p>Section III, Article 156</p>	<p>The Standing Committee shall be chaired by the President of the National Assembly and composed of the following members: (a) The Vice-Presidents of the National Assembly; (b) Chairpersons; (c) The Chairs of the Parliamentary Groups; (d) Chairs of the Standing Committees on Labour; (e) The Chair of the Administrative Council; (f) The Chair of the Group of Parliamentary Women; (g) Twelve Members, in accordance with the number of seats held in the National Assembly.</p>	<p>Parity or quotas for legislative bodies/commissions</p>
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FINDINGS

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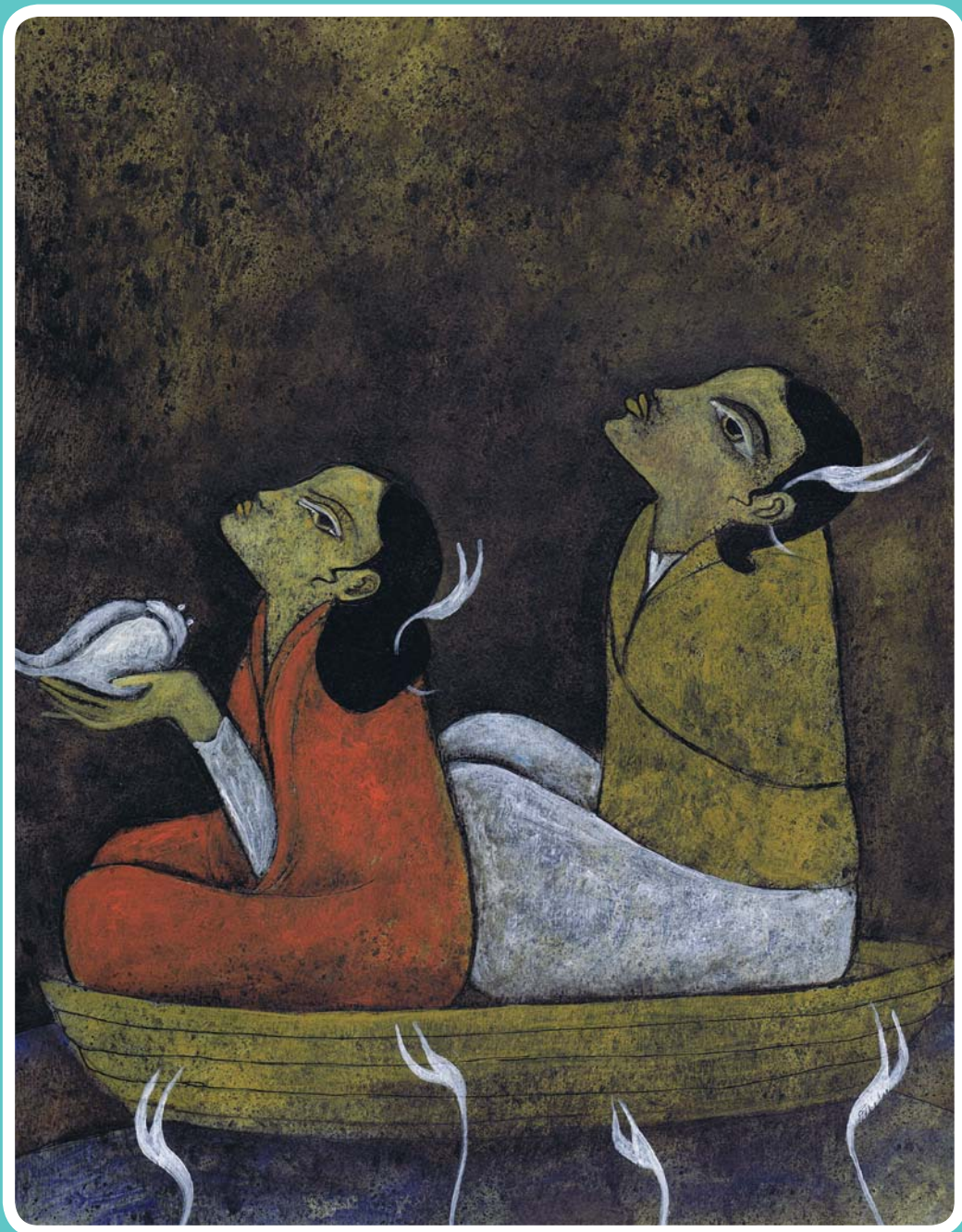
ACTIONS

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CONSTITUTION ASSESSMENT FOR WOMEN'S EQUALITY

Government

Questions 38–45



Government

38

Is there a provision directing that gender is mainstreamed in government policy-making?

EXPLANATION

Mainstreaming gender involves analysing current and future state law, policies and programmes to determine how they impact on women and men differently, and applying this analysis toward the empowerment and equality of women. Gender mainstreaming is important because although law and policy may appear to be gender neutral, their impact may create or sustain inequality between women and men.

EXAMPLES

Ecuador 2008	Article 70	The State shall draw up and implement policies to achieve equality between women and men, through the specialized mechanism set up by law, and shall mainstream the gender approach in plans and programs and shall provide technical assistance for its mandatory enforcement in the public sector.	<i>The state shall mainstream gender in government policy</i>
Guyana 1980	Article 212G(1) Article 212Q(1) Article 212J(2) Article 212R	(1) There are hereby established the following Commissions, the goals of which are to strengthen social justice and the rule of law - (a) the Human Rights Commission; (b) the Women and Gender Equality Commission ; (c) the Indigenous Peoples' Commission; (d) the Rights of the Child Commission. (1) The Women and Gender Equality Commission shall promote national recognition and acceptance that women's rights are human rights, respect for gender equality and the protection, development and attainment of gender equality. (2) A Commission, other than the Human Rights Commission, shall have the following general functions (a) to monitor and review all existing and proposed legislation, policies and measure for compliance with the objects and matters under its purview and report the need for any amendment to any legislation to the National Assembly... In addition to the functions specified in article 212J(2), the functions of the Women and Gender Equality Commission are to ... (b) promote the integration of women's needs and interests and mainstreaming of gender issues ... (j) recommend and promote the implementation of legislation and the formulation of policies and measures so as to enhance and protect the status of women ...	<i>A specified body will have responsibility for mainstreaming gender in government policy</i>
Kenya 2010	Article 59	(1) There is established the Kenya National Human Rights and Equality Commission. (2) The functions of the Commission are ... (b) to promote gender equality and equity generally and to coordinate and facilitate gender mainstreaming in national development ...	<i>A specified body will have responsibility for mainstreaming gender in government policy</i>

**South
Sudan**
2011

Article 166(6h)

(6) The objects of local government shall be to:
... (h) **ensure gender mainstreaming in local
government ...**

*The state shall mainstream
gender in government policy*

FINDINGS

List here each constitutional provision that is relevant to the question and your notes on its content (you may wish to search for multiple key words and provisions)

ACTIONS

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Government

39

Is there a provision to guarantee or facilitate the recruitment or appointment of women to civil service positions and independent bodies?

EXPLANATION

Some constitutions indicate that the civil service should reflect national and gender diversity. Provisions regarding the selection of members of the civil service and of independent bodies (such as ombudsmen and human rights commissions) that only focus on merit or competency may appear gender neutral, but are likely to advantage men and disadvantage women due to inequalities in the existing ratios of women and men in the civil service, in education, and due to social and/or cultural biases. A clause that identifies diversity, parity between men and women, or equal opportunities for women as obligations or objectives will facilitate specialized recruitment measures and the appointment of women in the civil service.

EXAMPLES

Haiti 1987	Chapter 1, Art. 17(1)	The principle of the quota of at least thirty percent (30%) of women is recognized at all levels of national life, notably in the public services ...	<i>Quotas for the civil service</i>
Democratic Republic of the Congo 2006	Article 14	... Women have the right to an equitable representation within the national, provincial and local institutions. The State guarantees the implementation of man-woman parity in these said institutions ...	<i>Parity is guaranteed at all levels of government institutions.</i>
Ecuador 2008	Article 224	The members of the National Electoral Council and the Electoral Dispute Settlement Court shall be designated by the Council for Public Participation and Social Control, after selection by a competitive and merit-based examination, with candidacies submitted by the citizenry and citizen right to challenge, as well as the guarantee of equity and parity between men and women , in accordance with the law.	<i>Parity is guaranteed in independent institutions.</i>
Kenya 2010	Article 27(8)	... the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.	<i>Gender-neutral quota for appointed institutions</i>
Kenya 2010	Chapter 13, Part 1, Article 232(1i)	The values and principles of public service include- (i) affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of- (i) men and women ...	<i>Parity/equality or equal opportunities for men and women is an objective.</i>

Kenya 2010	Chapter 15, 248(2), 250(11)	The commissions are- (a) the Kenya National Human Rights and Equality Commission; (b) the National Land Commission; (c) the Independent Electoral and Boundaries Commission; (d) the Parliamentary Service Commission; (e) the Judicial Service Commission; (f) the Commission on Revenue Allocation; (g) the Public Service Commission; (h) the Salaries and Remuneration Commission; (i) the Teachers Service Commission; and (j) the National Police Service Commission. 10. The members of a commission shall elect a vice-chairperson from among themselves. 11. The chairperson and vice-chairperson of a commission shall not be of the same gender.	<i>Parity is guaranteed in the leadership positions of independent institutions.</i>
Zimbabwe 2013	Chapter 9, Article 194(1k)	Public administration in all tiers of government, including institutions and agencies of the State, and government, and government-controlled entities and other public enterprises, must be governed by the democratic values and principles enshrined in this Constitution, including the following principles: (k) employment, training and advancement practices must be based on merit, ability, objectivity, fairness, the equality of men and women and the inclusion of persons with disabilities; and the State must take measures, including legislative measures, to promote these values and principles.	Parity/equality or equal opportunities for men and women is an objective.

FINDINGS

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ACTIONS

Add here any potential actions that could help achieve substantive equality of women in light of the explanation and comparative examples provided, and the specific challenges in the examined country

Government

40

Is the importance of having women in government recognized?

EXPLANATION

Recognizing the importance of women’s representation in government, in both elected and appointed positions, in all branches (legislative, executive and judicial, as well as in independent commissions), expresses a critical value that frames political dialogue, laws and policies. It creates the political and legal space for special measures to promote women’s participation and representation.

EXAMPLES

South Sudan 2011	Article 112	Ministers of the National Government shall be selected with due regard to the need for inclusiveness based on integrity, competence, ethnic and regional diversity and gender .	<i>A general requirement of gender diversity</i>
Timor-Leste 2002	Section 63(1)	Direct and active participation by men and women in political life is a requirement of, and a fundamental instrument for consolidating, the democratic system. 2. The law shall promote equality in the exercise of civil and political rights and nondiscrimination on the basis of gender for access to political positions.	<i>Women’s participation in political life is recognized as essential to democracy</i>
Ecuador 2008	Article 65	The State shall promote equality with respect to the representation of women and men in publicly appointed or elected office, in its executive and decision-making institutions, and political parties and movements. As for candidacies in multi-person elections, their participation shall be respected by rotation of power and sequencing.	<i>The state has a duty to promote gender equality in appointed or elective office and in other state institutions</i>
Egypt 2014	Article 11	The state commits to taking the necessary measures to ensure appropriate representation of women in the houses of parliament, in the manner specified by law. It grants women the right to hold public posts and high management posts in the state, and to appointment in judicial bodies and entities without discrimination.	<i>Right to hold high state positions without discrimination</i>
Zimbabwe 2013	Article 104(4)	In appointing Ministers and Deputy Ministers, the President must be guided by considerations of regional and gender balance.	<i>A general requirement of gender diversity</i>
Uganda 1995	National Objectives and Directive Principles of State Policy, Article VI	The State shall ensure gender balance and fair representation of marginalised groups on all constitutional and other bodies.	<i>A general requirement of gender diversity</i>

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Government

41

Is there a provision that states that security forces (police, military, intelligence services) must respect human rights?

EXPLANATION

Security forces are institutions and agents of the state; domestically their role is to uphold the law and thus protect rights, prevent violations of rights and investigate violations of law. In doing so, they must act within the law, including respecting human rights. When security forces fail to respect, protect and uphold human rights, they undermine the rule of law and access to justice, which are essential preconditions for the realization of equality between women and men. Security interests cannot override fundamental human rights. If the constitution allows for the limitation of rights during states of emergencies, it should also specify the rights that are non-derogable (i.e., which must be respected in full at all times).

Women who experience multiple discriminations are particularly vulnerable to human rights violations by security forces, such as indigenous women, poor women and women who belong to minority groups.

EXAMPLES

El Salvador 1983	Article 159	The National Civil Police will have at its charge [cargo] the functions of [the] urban police and [the] rural police to guarantee the order, the security and the public tranquillity, as well as [the] collaboration in the investigation of a crime, and all of it in accordance with the law and with strict respect for the human rights.	<i>Police will adhere to the law and respect human rights</i>
Ecuador 2008	Article 158	The employees and officers of the Armed Forces and the National Police Force shall be trained in the basic principles of democracy and human rights and shall respect the dignity and human rights of persons without any discrimination and with full observance of the legal regulatory framework.	<i>The armed forces and the police will be trained in human rights, adhere to the law and respect human rights</i>
Gambia 1996	Article 187(3)	It shall be the duty of the members of the Gambia Armed Forces to respect the fundamental rights and freedoms of other persons.	<i>Armed forces will respect human rights</i>
Mozambique 2004	Article 254(1)	The function of the Police , in collaboration with other State institutions, shall be to guarantee law and order, to safeguard the security of persons and property, to keep public peace and to ensure respect for the democratic rule of law and the strict observance of the fundamental rights and freedoms of citizens.	<i>Police will adhere to the law and respect human rights</i>
Kenya 2010	Article 244	The National Police Service shall ... (c) comply with constitutional standards of human rights and fundamental freedoms; (d) train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity ...	<i>The police will be trained in human rights, adhere to the law and respect human rights</i>

<p>Iraq 2005</p>	<p>Article 9, First D</p>	<p>The Iraqi National Intelligence Service shall collect information, assess threats to national security, and advise the Iraqi government. This Service shall be under civilian control, shall be subject to legislative oversight, and shall operate in accordance with the law and pursuant to the recognized principles of human rights.</p>	<p><i>The national intelligence body will adhere to the law and respect human rights</i></p>
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FINDINGS

ACTIONS

Government

42

Is there a provision to ensure that women can reach the top levels of the executive branch?

EXPLANATION

Full equality means that women can (and do) rise to the executive level as heads of state, heads of government and members of the cabinet. In parliamentary and semi-presidential systems, cabinet members are appointed from among sitting legislators, and political party seniority and other dynamics affect the selection process. Therefore the representation of women in the legislature and in the leadership of parties is critical. A general provision that expresses the principle and value of gender equality in the appointment of executive officers and cabinet ministers can help overcome discrimination and bias in the selection process.

EXAMPLES

Rwanda 2003	Fundamental Principles Article 9	The State of Rwanda commits itself to conform to the following fundamental principles and to promote and enforce the respect thereof: ... 4. building a state governed by the rule of law, a pluralistic democratic government, equality of all Rwandans and between women and men reflected by ensuring that women are granted at least thirty per cent of posts in decision making organs ...	<i>Women must be represented in decision-making bodies</i>
Bolivia 2009	Article 172(22)	The attributes of the President of the State, in addition to those established by this Constitution and the law, are the following: (22) To designate the Ministers of State, respecting the Pluri-national character of the country and gender equity in the composition of the ministerial cabinet.	<i>Gender equity in the composition of the ministerial cabinet</i>
Central African Republic 2004	Article 61(1)	The following are the domain of the law (1) the rules concerning the following matters: <ul style="list-style-type: none"> • Compliance (respect) concerning the quota granted to women in decision-making bodies. 	<i>Women must be represented in decision-making bodies</i>
Colombia 1991	Article 40	The authorities will guarantee the adequate and effective participation of women in the decision-making levels of the Public Administration.	<i>Women must be represented in decision-making bodies</i>
Zimbabwe 2013	Article 104(4)	In appointing Ministers and Deputy Ministers, the President must be guided by considerations of regional and gender balance.	<i>Gender balance in the composition of the ministerial cabinet</i>

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Government

43

Is the importance of having women in the judiciary recognized? Do the judicial appointment mechanisms to all levels of courts, but especially to the supreme or constitutional courts, facilitate the appointment of women?

EXPLANATION

In order to achieve legal equality, women must be represented at all levels of the judiciary, including the highest level. All judges bring their life experiences to bear in their judgements; the interpretation of law is not a gender-neutral practice. Therefore in order for women as a group to have equal access to justice, with their rights protected and enforced, they must be represented in the judiciary.

Mechanisms for judicial appointments can impact on the diversity of nominees and appointees. Generally, a formal process of identification is more likely to yield a gender-diverse pool of nominees than one based on the preferences of the executive or other institution. A non-partisan judicial commission or committee to nominate judges can broaden the pool of nominees to be considered. It is important that this commission is diverse, both in gender and in the fields from which its members are drawn (in addition to the judiciary, judicial service commission members could be drawn from practicing lawyers, academics, representatives of the public, members of the legislature). In order to be appointed to the highest court, women must have opportunities to serve as judges on lower courts. Recruitment to the constitutional court on the basis of seniority in the legal community may disadvantage women.

EXAMPLES

Ecuador 2008	Article 183(3) Article 434	The judges of the National Court of Justice shall be elected by the Judiciary Council in conformity with a procedure entailing a competitive merit-based examination, subject to challenge and social monitoring. Parity between men and women shall be fostered. In the membership of the [Constitutional] Court , efforts shall be made to ensure parity between men and women.	<i>Parity between men and women is an objective</i>
South Africa 1996	Article 174(1) Article 174(2)	Any appropriately qualified woman or man who is a fit and proper person may be appointed as a judicial officerThe need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed.	<i>Gender balance must be considered in judicial appointments</i>
South Sudan 2011	Article 122(6)	There shall be a substantial representation of women in the judiciary having regard to competence, integrity, credibility and impartiality.	<i>General requirements for the representation of women in the judiciary</i>

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Government

44

Is the importance of gender diversity in the security forces recognized, and are there mechanisms to ensure women’s participation in the security forces?

EXPLANATION

Women face some different security concerns than men, including a vulnerability to gender-based violence. In order to be responsive to the needs of women, the gender diversity of the security sector is important, especially the police and military. It is imperative that a non-sexist culture of human rights is developed and respected within the security sector; the presence of women can facilitate this. Oversight bodies such as legislative committees and police commissions also have a role in promoting the participation of women in the security sector and developing organizational cultures that respect human rights, and therefore also need to be diverse.

EXAMPLES

Ecuador 2008	Article 160	Members of the Armed Forces and the National Police Force shall be subject to specific laws governing their rights and obligations and subject to their system of advancement and promotions based on merit and gender equity criteria.	<i>Gender equality applied to advancement opportunities</i>
Burundi 2005	Article 187	The Senate is provided with the following competences:... 5) Controlling the application of the constitutional provisions by demanding [exigent] the ethnic and gender representativeness and the equilibrium in all the State structures and institutions, notably the public administration and the Corps of Defence and of Security...	<i>Gender balance in all state structures and institutions</i>
Burundi 2005	Article 247	The Corps of Defence and of Security develop within them a nondiscriminatory, non-ethnicist and non-sexist culture.	<i>The security sector must develop a non-discriminatory and non-sexist culture</i>
Somalia	Article 127(2)	Every Somali citizen is entitled to be considered for positions in the national armed forces at all levels, without discrimination and the rights of women shall be protected in this respect.	<i>Non-discrimination in the armed forces</i>
Kenya 2010	Chapter 15, 248(2), 250(11)	The commissions are- (j) the National Police Service Commission. 10. The members of a commission shall elect a vice-chairperson from among themselves. 11. The chairperson and vice-chairperson of a commission shall not be of the same gender.	<i>Heads of oversight institution must have gender balance</i>
Nepal 2007	Article 144(4A)	In order to give the Nepal Army a national character and make it inclusive, enlisting of Madhesi, indigenous ethnic groups, Dalits, women , and people from backward regions into the armed forces on the basis of the principles of equality and inclusiveness shall be ensured by law.	<i>Gender equality in the armed forces</i>

FINDINGS

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Government

45

Is it clear that human rights must be respected at all levels of government?

EXPLANATION

In order to be effective, the rights and freedoms required to achieve gender equality must be respected and enforced at all levels of government in federal systems as well as in unitary states that practice any form of decentralization.

EXAMPLES

Sudan 2005	Article 25	The following principles shall guide the devolution and distribution of powers between all levels of government :-... (c) acknowledgement of the role of the State in the promotion of the welfare of the people and protection of their human rights and fundamental freedoms ...	<i>Human rights guides the distribution of powers between all levels of government</i>
Zimbabwe 2013	Article 44	The State and every person, including juristic persons, and every institution and agency of the government at every level must respect, protect, promote and fulfil the rights and freedoms set out in this Chapter [Chapter 4, Declaration of Rights].	<i>Every level of government must respect human rights</i>
India 1949	Part III, Article 12	In this Part [Fundamental Rights] , unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.	<i>All government institutions, including state and local authorities, must respect the rights in the constitution</i>

FINDINGS

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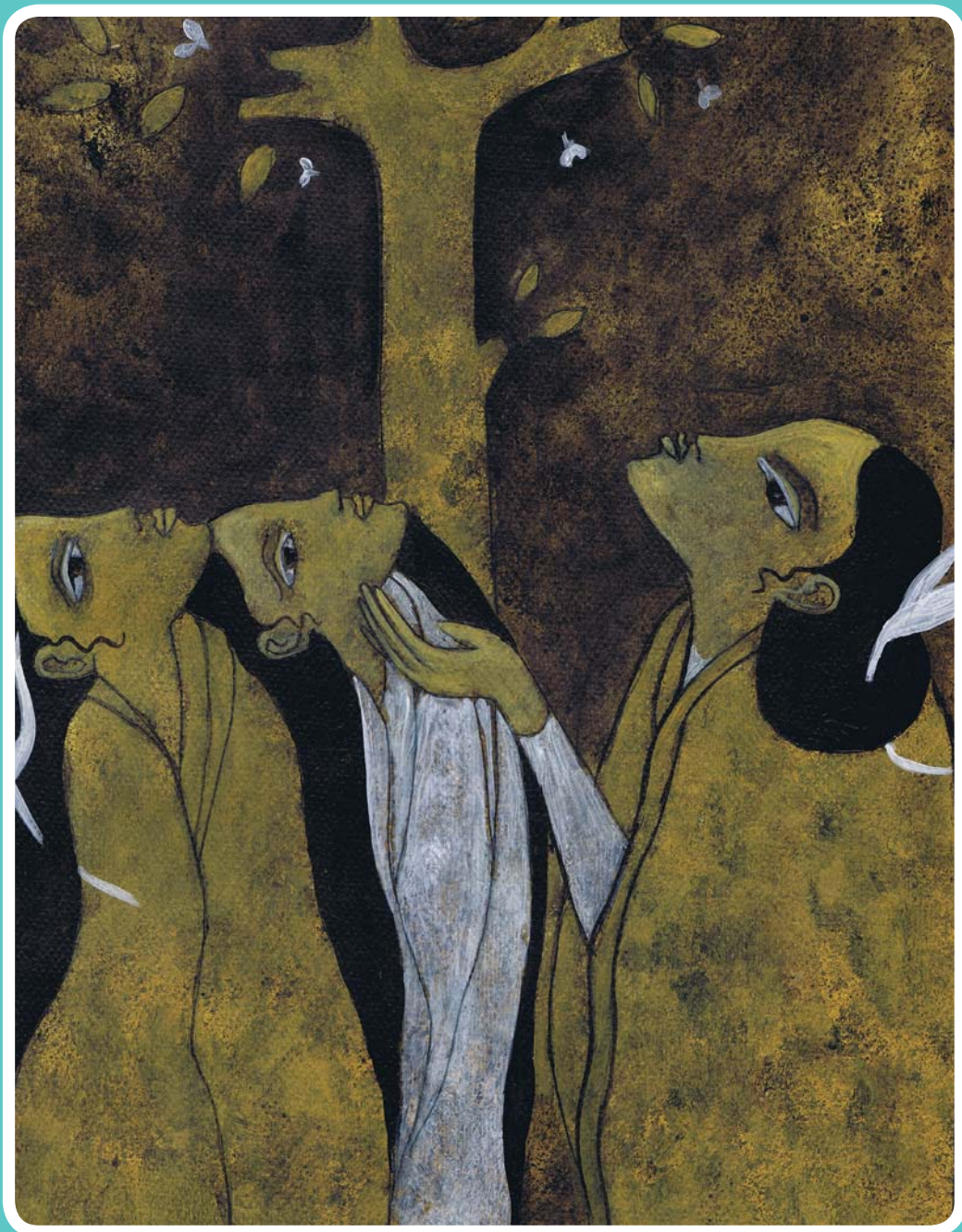
ACTIONS

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CONSTITUTION ASSESSMENT FOR WOMEN'S EQUALITY

Implementation and enforcement

Questions 46–50



Implementation and enforcement

46

Does the constitution establish independent commissions and ombudsman bodies? Are there mechanisms to ensure women's representation on these commissions?

EXPLANATION

In addition to the judiciary, independent commissions and ombudsmen can play an important oversight and enforcement function. These bodies may also be more accessible to the public than the judiciary, especially for the poor, and therefore can increase women's access to justice. The constitutional entrenchment of these bodies gives them a higher status than bodies established through legislation.

EXAMPLES

Angola 2010	Article 192(1)	The Ombudsman shall be an independent public body whose purpose shall be to defend the rights, freedoms and guarantees of citizens ensuring, by informal means, the justice and legality of the public administration.	<i>Establishment of ombudsman</i>
Mozambique 2004	Article 256	The Ombudsman is an office established to guarantee the rights of citizens and to uphold legality and justice in the actions of the Public Administration.	<i>Establishment of ombudsman</i>
Panama 1972	Article 129	The Office of the Ombudsman monitors the protection of the fundamental rights and guarantees recognized in this Constitution as well as of those which are provided for by international human rights conventions and the law through the non-judicial control of the facts, acts and omissions of public servants and providers of public services and makes sure that they are observed.	<i>Establishment of ombudsman</i>
Bolivia 2009	Article 218	I. The Public Defender shall oversee the enforcement, promotion, dissemination of and compliance with human rights, both individual and collective, that are established in the Constitution, laws and international instruments. The function of the Public Defender shall extend to the administrative activity of the entire public sector and the activity of private institutions that provide public services. II. The Public Defender shall also promote the defence of the rights of the nations and rural native indigenous peoples, of urban and intercultural communities, and of Bolivians who are abroad. III. The Public Defender is an institution with operational, financial and administrative autonomy, in accordance with the law. Its functions shall be governed by the principles of free services, accessibility, swiftness and solidarity. In the exercise of its functions it does not receive instructions from the organs of the State.	<i>Establishment of independent public body to protect and defend human rights</i>

Sri Lanka 1978	Article 156(1)	Parliament shall by law provide for the establishment of the office of the Parliamentary Commissioner for Administration (Ombudsman) charged with the duty of investigating and reporting upon complaints or allegations of the infringement of fundamental rights and other injustices by public officers and officers of public corporations, local authorities and other like institutions , in accordance with and subject to the provisions of such law.	<i>Establishment of ombudsman</i>
Haiti 1987	Chapter 4, Article 207(1), 207(2), 207(2BIS)	An office known as the Office of Citizen Protection is established to protect all individuals against any form of abuse by the government. (1) The office is directed by a citizen bearing the title of Protector of Citizens. He is chosen by consensus of the President of the Republic, the President of the Senate and the President of the Chamber of Deputies. His term is seven (7) years and may not be renewed. (2) His intervention on behalf of any complainant is without charge, whatever the court having jurisdiction might be. (2BIS) In the exercise of its functions, it will pay a special attention to the complaints presented by women, particularly in that relating to the discriminations and the aggressions of which they may be victims notably in their work.	<i>Establishment of public body to address abuse by the government, with special attention to women</i>
Zimbabwe 2013	Article 232(1)(b) Article 233	The following are the independent Commissions – (b) the Zimbabwe Human Rights Commission The independent Commissions have the following general objectives in addition to those given to them individually-- a. to support and entrench human rights and democracy; b. to protect the sovereignty and interests of the people; c. to promote constitutionalism; d. to promote transparency and accountability in public institutions; e. to secure the observance of democratic values and principles by the State and all institutions and agencies of government, and government-controlled entities; and f. to ensure that injustices are remedied.	<i>Establishment of human rights or equality commission</i>
Guyana 1980	Article 212G(1)(a)	(1) There are hereby established the following Commissions, the goals of which are to strengthen social justice and the rule of law - (a) the Human Rights Commission ;	<i>Establishment of human rights or equality commission</i>
Fiji 1997	Section 42	(1) This section establishes a Human Rights Commission . (2) Its functions are: (a) to educate the public about the nature and content of the Bill of Rights, including its origins in international conventions and other international instruments, and the responsibilities of the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and other organs of the General Assembly of the United Nations for promoting respect for human rights; (b) to make recommendations to the Government about matters affecting compliance with human rights, including the making of a recommendation that a particular question about the legal effect of a provision of the Bill of Rights be referred to the Supreme Court for its opinion; and (c) to perform such other functions as are conferred on it by a law made by the Parliament.	<i>Establishment of human rights or equality commission</i>

Philippines 1987	Section 18(7), Article XIII	The Commission on Human Rights shall have the following powers and functions. 1. Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights; ... 3. Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection; 4. Exercise visitatorial powers over jails, prisons, or detention facilities. 5. Establish a continuing program of research, education, and information to enhance respect for the primacy of human rights. 6. Recommend to the Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families, 7. Monitor the Philippine Government's compliance with international treaty obligations on human rights ... 9. Request the assistance of any department, bureau, office, or agency in the performance of its functions, ...11. Perform such other duties and functions as may be provided by law.	<i>Establishment of human rights or equality commission</i>
Maldives 2008	Article 199	a. There shall be an Anti-Corruption Commission of the Maldives. b. The Anti-Corruption Commission is an independent and impartial institution. It shall perform its duties and responsibilities in accordance with the Constitution and any laws enacted by the People's Majlis. The Anti-Corruption Commission shall work to prevent and combat corruption within all activities of the State without fear. c. The Anti-Corruption Commission shall function as provided for by the statute governing the Anti-Corruption Commission. Such statute shall specify the responsibilities, powers, mandate, qualifications, and ethical standards of members.	<i>Establishment of anti-corruption commission</i>
Somalia 2012	Article 111C(1)	There shall be an Anti-Corruption Commission and its mandate is to investigate allegations of corruption that implicate the public sector.	<i>Establishment of anti-corruption commission</i>
Tunisia 2014	Article 130	The Good Governance and Anti-Corruption Commission contributes to policies of good governance, and preventing and fighting corruption. It is responsible for following up on the implementation and dissemination of these policies, for the promotion of a culture of good governance, and for the consolidation of principles of transparency, integrity and accountability.	<i>Establishment of anti-corruption commission</i>
Burundi 2005	Article 91(g)	The [Electoral] Commission is given the charge of the following missions:... g) To assure the respect for the provisions of this Constitution relative to multiethnicity and to gender and to take cognizance of <i>[connaître]</i> the claims in this respect.	<i>Establishment of electoral commission</i>
Bhutan 2008	Article 15(4)(b)	A political party shall be registered by the Election Commission on its satisfying the qualifications and requirements set out hereinafter, that:... (b) Its membership is not based on region, sex, language, religion or social origin...	<i>Establishment of electoral commission</i>
Kenya 2010	Article 88(1) Article 88(4)	1. There is established the Independent Electoral and Boundaries Commission . 4. The Commission is responsible for conducting or supervising referenda and elections to any elective body or office established by this Constitution, and any other elections as prescribed by an Act of Parliament....	<i>Establishment of electoral commission</i>

FINDINGS

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ACTIONS

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Implementation and enforcement

47

Does the constitution establish a national women’s or gender commission, or establish other bodies and institutions that comprise a ‘gender machinery’?

EXPLANATION

A national women’s machinery is comprised of ‘government offices, departments, commissions or ministries that provide leadership and support to government efforts to achieve greater equality between women and men’ (Canadian International Development Agency 2007). The role of the national women’s machinery (or gender machinery) is to ‘design, promote the implementation of, execute, monitor, evaluate, advocate and mobilize support for policies that promote the advancement of women’ (United Nations 1995: 84). Such a machinery may be made up of several bodies across the government such as the legislature (for example, a specialized committee), executive (for example, a ministry that has responsibility for women’s affairs) and an independent commission. The lead body is often a specialized independent body such as a gender commission or a ministry that has responsibility for women’s affairs. In order to be effective, this body must receive adequate funding and be invested with the authority to carry out its mandate.

In addition to coordinating and overseeing the implementation of a national gender policy, the lead body of the national women’s machinery oversees the implementation of international obligations, and is responsible for coordinating national reporting on CEDAW.

EXAMPLES

Guyana 1980	Article 212G	There are hereby established the following Commissions, the goals of which are to strengthen social justice and the rule of law - (b) the Women and Gender Equality Commission...	
South Africa 1996	Section 187	(1) The Commission for Gender Equality must promote respect for gender equality and the protection, development and attainment of gender equality. (2) The Commission for Gender Equality has the power, as regulated by national legislation, necessary to perform its functions, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality. (3) The Commission for Gender Equality has the additional powers and functions prescribed by national legislation.	
Kenya 2010	Article 59	(1) There is established the Kenya National Human Rights and Equality Commission. (2) The functions of the Commission are... (b) to promote gender equality and equity generally and to coordinate and facilitate gender mainstreaming in national development;...	<i>The human rights commission has responsibility for gender equality and mainstreaming</i>

Zimbabwe 2013	Article 232(1)(c)	The following are the independent Commissions – (c) the Zimbabwe Gender Commission	<i>Establishment of gender commission</i>
	Article 245(2)	Members of the Zimbabwe Gender Commission must be chosen for their integrity and their knowledge and understanding of gender issues in social, cultural, economic and political spheres, and the genders must be equally represented on the Commission.	
	Article 246	The Zimbabwe Gender Commission has the following functions: a. to monitor issues concerning gender equality to ensure gender equality as provided in this Constitution; b. to investigate possible violations of rights relating to gender; c. to receive and consider complaints from the public and to take such action in regard to the complaints as the Commission considers appropriate; d. to conduct research into issues relating to gender and social justice, and to recommend changes to laws and practices which lead to discrimination based on gender; e. to advise public and private institutions on steps to be taken to ensure gender equality; f. to recommend affirmative action programmes to achieve gender equality; g. to recommend prosecution for criminal violations of rights relating to gender; h. to secure appropriate redress where rights relating to gender have been violated; and i. to do everything necessary to promote gender equality.	
	Article 247	In addition to the report it is required to submit in terms of section 323, the Zimbabwe Gender Commission may, through the appropriate Minister, submit reports to Parliament on particular matters relating to gender issues which, in the Commission’s opinion, should be brought to the attention of Parliament.	
Rwanda 2003	Article 185	Gender Monitoring Office is an independent public institution. Gender Monitoring Office shall submit each year its program and activity report to the Cabinet and provide a copy thereof to other State organs as may be determined by the Law. A Law shall determine the responsibilities, organisation and functioning of this Office.	<i>Establishment of gender monitoring office</i>
	Article 187	The National Women Council is an independent institution in its management. A Law shall determine the responsibilities, organization and functioning of the Council and its relationship with other State organs.	<i>Establishment of women’s council</i>

FINDINGS

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Implementation and enforcement

48

Are the rules for ‘standing’ (the basis that permits a person to challenge a law or governmental action in court) sufficiently open and accessible, so that individuals who are marginalized or disadvantaged are able to access justice?

EXPLANATION

Standing can be defined in the constitution with regard to specific rights, such as fundamental rights. Generally, the broader the rules of standing, the greater the access of women and marginalized individuals and groups to the justice system. Allowing an individual or group that has not experienced direct harm to bring a case means that those with greater resources can legally advocate for those with fewer resources. Further, allowing standing for cases that anticipate a hypothetical harm (rather than requiring actual harm) protects women who may experience injury.

An ombudsman can also be granted the authority to approach a court to rule on the constitutionality of a law. Such a provision further expands access to justice for those with fewer resources, as it allows the ombudsmen to take up constitutional violations directly with the courts and does not rely on the resources and capacities of individuals and non-governmental organizations.

EXAMPLES

<p>South Africa 1996</p>	<p>Section 38</p>	<p>Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are: a. anyone acting in their own interest; b. anyone acting on behalf of another person who cannot act in their own name; c. anyone acting as a member of, or in the interest of, a group or class of persons; d. anyone acting in the public interest; and e. an association acting in the interest of its members.</p>	<p><i>Ombudsman, affected individuals, and others on behalf of affected individuals or groups can approach the court alleging that rights have been (or are threatened to be) violated</i></p>
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Zimbabwe 2013	Part 4, Article 85(1) Part 4, Article 85(2) Part 4, Article 85(3) Part 4, Article 85(4)	<p>1. Any of the following persons, namely-- a. any person acting in their own interests; b. any person acting on behalf of another person who cannot act for themselves; c. any person acting as a member, or in the interests, of a group or class of persons; d. any person acting in the public interest; e. any association acting in the interests of its members; is entitled to approach a court, alleging that a fundamental right or freedom enshrined in this Chapter [Chapter 4: Declaration of Rights] has been, is being or is likely to be infringed, and the court may grant appropriate relief, including a declaration of rights and an award of compensation.</p> <p>2. The fact that a person has contravened a law does not debar them from approaching a court for relief under subsection (1).</p> <p>3. The rules of every court must provide for the procedure to be followed in cases where relief is sought under subsection (1), and those rules must ensure that-- a. the right to approach the court under subsection (1) is fully facilitated; b. formalities relating to the proceedings, including their commencement, are kept to a minimum; c. the court, while observing the rules of natural justice, is not unreasonably restricted by procedural technicalities; and d. a person with particular expertise may, with the leave of the court, appear as a friend of the court.</p> <p>4. The absence of rules referred to in subsection (3) does not limit the right to commence proceedings under subsection (1) and to have the case heard and determined by a court.</p>	<p><i>Affected individuals, others on behalf of affected individuals or groups, and those acting in the public interest can approach the court alleging that rights have been (or are threatened to be) violated</i></p> <p><i>The courts must be accessible</i></p>
Argentina 1994	Section 43	<p>Any person may file an expeditious and swift action of ‘amparo,’ whenever no other more appropriate judicial means exists, against any act or omission by public authorities or by private individuals, that presently or imminently harms, restricts, alters or threatens, in an arbitrary or manifestly illegal manner, the rights and guarantees recognized by this Constitution, by a treaty, or by a law. As appropriate, the judge may declare the norm upon which the harmful act or omission is founded unconstitutional. [When] this action complains of any form of discrimination, or regards the rights that protect the environment, competition, the user, the consumer, or rights of a collective nature in general, it may be brought by the affected party, the Defender of the People [ombudsman], and the associations that support these ends that are registered as required by a law that shall determine the requirements and forms of their organization.</p>	<p><i>Right to amparo that can be brought by affected persons, the ombudsman or others on behalf of affected persons</i></p>
Honduras 1982	Title IV, Chapter I, Article 183	<p>The state recognizes the writ of amparo. Consequently, every aggrieved person, or any other in his behalf, has the right to file a petition for a writ of amparo: 1. To have the enjoyment of his rights and guarantees under the Constitution, treaties, conventions, and other international instruments maintained or restored; and 2. For a declaratory judgment in particular cases that a law or resolution or act of authority does not bind the petitioner, and is not applicable because it contravenes, limits or restricts any of the rights guaranteed by this Constitution.</p>	<p><i>Right to amparo that can be brought by affected persons or others on behalf of affected persons</i></p>

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Implementation and enforcement

49

Is publicly funded legal aid to persons unable to afford private legal representation guaranteed? If so, does it extend to civil as well as criminal cases?

EXPLANATION

The right to legal aid (support to pay for legal representation and advice, or cost-free legal representation and advice provided by the state), especially for the poor, can be important in order for women to have equal access to the justice system. Especially important for women is legal aid for family and civil matters, not only criminal matters.

EXAMPLES

Samoa 1962	Article 9(4)(c)	Every person charged with an offence has the following minimum rights: (c) To defend himself in person or through legal assistance of his own choosing and, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.	<i>Legal aid available in criminal matters</i>
Marshall Islands 1979	Article II, Section 4(4)	In all criminal prosecutions , the accused shall enjoy the right to be informed promptly and in detail of the nature and cause of the accusation against him; to a prompt judicial determination of whether there is good cause to hold him for trial; to a speedy and public trial before an impartial tribunal; to have adequate time and facilities for the preparation of his defence; to defend himself in person or through legal assistance of his own choice and, if he lacks funds to procure such assistance, to receive it free of charge if the interests of justice so require; to be confronted with the witnesses against him; and to have compulsory process for obtaining witnesses in his favour.	<i>Legal aid available in criminal matters</i>
Mozambique 2004	Article 62(2)	The accused shall have the right freely to choose a defence counsel to assist in all acts of the proceedings. It shall be ensured that adequate legal assistance and aid is given to accused persons who, for economic reasons, are unable to engage their own attorney.	<i>Legal aid available in criminal matters</i>
Namibia 1990	Article 95(h)	The State shall actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at the following: (h) a legal system seeking to promote justice on the basis of equal opportunity by providing free legal aid in defined cases with due regard to the resources of the State.	<i>Legal aid available without specifying type of matter (criminal, civil, family)</i>
El Salvador 1983	Article 194(II)	It corresponds to the Procurator General of the Republic: (II) To provide legal assistance to persons of limited economic resources and to represent them judicially in defending their individual liberty and labour rights.	<i>Legal aid available without specifying type of matter (criminal, civil, family)</i>

India 1949	Article 39A	The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid , by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.	<i>Legal aid available without specifying type of matter (criminal, civil, family)</i>
Kazakhstan 1995	Article 13(3)	Everyone shall have the right to qualified legal assistance . In cases stipulated by law, legal assistance shall be provided free of charge.	<i>Legal aid available without specifying type of matter (criminal, civil, family)</i>
Philippines 1987	Article III – Section 11 Article VIII – Section 5	Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty. The Supreme Court shall have the following powers: Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights.	<i>Legal aid available without specifying type of matter (criminal, civil, family)</i>
Tunisia 2014	Article 108	The right to litigation and the right to defence are guaranteed. The law facilitates access to justice and provides legal assistance to those without financial means.	<i>Legal aid available without specifying type of matter (criminal, civil, family)</i>

comparative examples provisions, and the specific challenges in the examined country

FINDINGS

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Implementation and enforcement

50

Is there an implementation mechanism for the constitution?

EXPLANATION

In order for the rights and freedoms contained in the constitution to have effect, the constitution must be implemented through the creation of new laws, institutions, administrative systems, policies and regulations as well as the review of existing provisions. An implementation schedule can act as a roadmap for the legislature and executive to ensure that the constitution is implemented fully and in a timely manner. Specialized bodies such as a commission for the implementation of the constitution can monitor, facilitate and oversee constitutional implementation.

EXAMPLES

Serbia 2006	Article 18	Human and minority rights guaranteed by the Constitution shall be implemented directly .	<i>Immediate implementation of selected provisions</i>
Afghanistan 2004	Article 157	The Independent Commission for supervision of the implementation of the Constitution shall be established in accordance with the provisions of the law. Members of this Commission shall be appointed by the President with the endorsement of the House of People.	<i>A special body is responsible for overseeing implementation</i>
Kenya 2010	Chapter 18, Article 261(1), 261(5), 261(7)	1. Parliament shall enact any legislation required by this Constitution to be enacted to govern a particular matter within the period specified in the Fifth Schedule, commencing on the effective date. 5. If Parliament fails to enact any particular legislation within the specified time, any person may petition the High Court on the matter. 7. If Parliament fails to enact legislation in accordance with an order under clause (6) (b), the Chief Justice shall advise the President to dissolve Parliament and the President shall dissolve Parliament.	<i>Schedule for the creation of implementing legislation and new institutions</i>

<p>Kenya 2010</p>	<p>Fifth Schedule: Legislation to be enacted by parliament (Article 261)</p> <p>[Selections]</p>	<p>Chapter Three- Citizenship</p> <ul style="list-style-type: none"> • Legislation on citizenship (Article 18)- One year <p>Chapter Four- the Bill of Rights:</p> <ul style="list-style-type: none"> • Family (Article 45)- Five years • Fair administrative action (Article 47)- Four years • Fair hearing (Article 50)- Four years • Rights of persons detained, held in custody or detained (Article 51)- Four years • Kenya National Human Rights and Equality Commission (Article 59)- One year <p>Chapter Seven- Representation of the People</p> <ul style="list-style-type: none"> • Legislation on elections (Article 82)- One year • Electoral disputes (Article 87)- One year • Independent Electoral and Boundaries Commission (Article 88)- One year • Legislation on political parties (Article 92)- One year <p>Chapter Eight- The Legislature</p> <ul style="list-style-type: none"> • Promotion of representation of marginalised groups (Article 100)- Five years <p>Chapter Ten- Judiciary</p> <ul style="list-style-type: none"> • System of courts (Article 162)- One year • Vetting of judges and magistrates (Sixth schedule, Section 23)- One year <p>Chapter Eleven- Devolved Government</p> <ul style="list-style-type: none"> • County assembly gender balance and diversity (Article 197)- Three years <p>General</p> <ul style="list-style-type: none"> • Any other legislation required by this Constitution- Five years 	<p><i>Schedule for the creation of implementing legislation and new institutions</i></p>
<p>Kenya 2010</p>	<p>Sixth Schedule: Transitional and consequential provisions (Article 262) – Part 1, Section 5 Commission for the Implementation of the Constitution</p> <p>1, 6, 7</p>	<p>1. There is established the Commission for the Implementation of the Constitution.</p> <p>6. The functions of the Commission shall be to-</p> <ol style="list-style-type: none"> a. monitor, facilitate and oversee the development of legislation and administrative procedures required to implement this Constitution; b. co-ordinate with the Attorney-General and the Kenya Law Reform Commission in preparing, for tabling in Parliament, the legislation required to implement this Constitution; c. report regularly to the Constitutional Implementation Oversight Committee on- <ol style="list-style-type: none"> i. progress in the implementation of this Constitution; and ii. any impediments to its implementation; and d. work with each constitutional commission to ensure that the letter and spirit of this Constitution is respected. <p>7. The Commission for the Implementation of the Constitution shall stand dissolved five years after it is established or at the full implementation of this Constitution as determined by Parliament, whichever is sooner, but the National Assembly may, by resolution, extend its life.</p>	<p><i>A special body is responsible for overseeing implementation</i></p>

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CONSTITUTION ASSESSMENT FOR WOMEN'S EQUALITY

Constitutional interpretation

Questions 51–55



Constitutional interpretation

51

Are there guidelines for constitutional interpretation and/or judicial review that allow for the progressive interpretation of constitutional provisions?

EXPLANATION

Some constitutions provide guidance or principles for interpreting the constitution. For example, the constitution may provide that rights be interpreted in accordance with international treaties, conventions and norms. There may be a stipulation that the constitution, or the rights and freedoms contained in the constitution, are interpreted ‘progressively’, or in a manner most favourable/beneficial to the individual or group concerned.

A progressive approach to constitutional interpretation also takes into account new and evolving understandings of rights, which may change over time. Using such an approach allows the constitution, which is intended to be a durable document, to be understood in relation to contemporary political and social norms, which change over time. It may be possible, therefore, for the practical application of constitutional rights guarantees to expand over time.

EXAMPLES

Dominican Republic 2010	Article 74(4)	The interpretation and regulation of the fundamental rights and guarantees, recognized in this Constitution , shall be governed by the following principles: (4) The public powers interpret and apply the norms concerning fundamental rights and their guarantees, in the most favourable sense (that is) entitled thereto and, in case of conflict between fundamental rights, shall seek to harmonize the assets and interests protected by this Constitution.	<i>Rights should be interpreted in the most favourable manner</i>
Venezuela 1999	Article 19	The State shall guarantee to every individual, in accordance with the progressive principle and without discrimination of any kind, no renounceable, indivisible and interdependent enjoyment and exercise of human rights .	<i>Rights should be interpreted in the most favourable manner</i>
Ecuador 2011	Article 427	Constitutional provisions shall be interpreted by the literal meaning of its wording that is mostly closely in line with the Constitution as a whole. In the event of any doubt, it is the most favourable interpretation of the full and effective force of rights and that best respects the will of the constituent, in accordance with the general principles of constitutional interpretation, that shall prevail.	<i>Rights should be interpreted in the most favourable manner</i>
Fiji Islands 1997	Section 3(b)	In the interpretation of a provision of this Constitution :... (b) regard must be had to the context in which this Constitution was drafted and to the intention that constitutional interpretation take into account social and cultural developments , especially: (i) developments in the understanding of the content of particular human rights ; and (ii) developments in the promotion of particular human rights .	<i>Developments in the understanding of rights will be applied in their interpretation</i>

Cape Verde 2010	Article 17(2) Article 17(3)	The extent and essential content of constitutional norms on the rights, freedoms and guarantees may not be constrained by way of interpretation. The constitutional and legal provisions relating to fundamental rights shall be interpreted and incorporated in accordance with the Universal Declaration of Human Rights.	<i>Rights should be interpreted in accordance with international law</i>
Guyana 1980	Article 39(2)	In the interpretation of the fundamental rights provisions in this Constitution a court shall pay due regard to international law, international conventions, covenants and charters bearing on human rights.	<i>Rights should be interpreted in accordance with international law</i>
Serbia 2006	Article 18	Provisions on human and minority rights shall be interpreted to the benefit of promoting values of a democratic society, pursuant to valid international standards in human and minority rights , as well as the practice of international institutions which supervise their implementation.	<i>Rights should be interpreted in accordance with international law</i>

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Constitutional interpretation

52

Are rights related to gender equality protected from unreasonable limitations?

EXPLANATION

Constitutions can specify the reasons or circumstances under which some rights may be limited, such as during a state of emergency. However, fundamental rights must still be respected even in such unusual circumstances, and the limitations that may be placed on fundamental rights should be clearly articulated and limited.

The exercise of certain rights, such as the freedom of expression or the right to practice customary law, may conflict with gender-equality provisions. Gender-equality rights may be undermined by the exercise of other rights. The protection of gender equality can prioritize gender-equality rights and limit other rights.

EXAMPLES

<p>South Africa 1996</p>	<p>Article 36</p>	<p>1. The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-</p> <ul style="list-style-type: none"> a. the nature of the right; b. the importance of the purpose of the limitation; c. the nature and extent of the limitation; d. the relation between the limitation and its purpose; and e. less restrictive means to achieve the purpose. <p>2. Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.</p>	<p><i>Allowable limitations to rights are narrow, and the limitation must be necessary according to defined criteria</i></p>
<p>South Africa 1996</p>	<p>Article 37(5c)</p>	<p>5. No Act of Parliament that authorises a declaration of a state of emergency, and no legislation enacted or other action taken in consequence of a declaration, may permit or authorize ... c. any derogation from a section mentioned in column 1 of the Table of Non-Derogable Rights, to the extent indicated opposite that section in column 3 of the Table. <small>COLUMN 1. SECTION - NUMBER 9 COLUMN 2. SECTION TITLE - Equality COLUMN 3. EXTENT TO WHICH THE RIGHT IS NON-DEROGABLE - With respect to unfair discrimination solely on the grounds of race, colour, ethnic or social origin, sex, religion or language.</small></p>	<p><i>Rights that cannot be limited are specified</i></p>

<p>South Sudan 2011</p>	<p>Article 188</p>	<p>During a state of emergency, the President may, by law or orders, take any measures that shall not derogate from the provisions of this Constitution except as provided herein: (a) to suspend part of the Bill of Rights. However, there shall be no infringement on the right to life, prohibition against slavery, prohibition against torture, the right of non-discrimination on the basis of race, sex, religious creed, the right to litigation or the right to fair trial...</p>	<p><i>Rights that cannot be limited are specified</i></p>
<p>Serbia 2006</p>	<p>Article 18</p>	<p>The Constitution shall guarantee, and as such, directly implement human and minority rights guaranteed by the generally accepted rules of international law, ratified international treaties and laws. The law may prescribe manner of exercising these rights only if explicitly stipulated in the Constitution or necessary to exercise a specific right owing to its nature, whereby the law may not under any circumstances influence the substance of the relevant guaranteed right.</p>	<p><i>Laws and government policy cannot compromise rights protected in the constitution or in ratified international law</i></p>
<p>Honduras 1982</p>	<p>Article 64</p>	<p>Laws and governmental provisions or any other provisions that regulate the exercise of declarations, rights and guarantees recognized by this Constitution shall not be enforced if they diminish, restrict, or evade such rights and guarantees.</p>	<p><i>Laws and government policy cannot compromise rights protected in the constitution</i></p>
<p>Zimbabwe 2013</p>	<p>Article 86</p>	<ol style="list-style-type: none"> 1. The fundamental rights and freedoms set out in this Chapter must be exercised reasonably and with due regard for the rights and freedoms of other persons. 2. The fundamental rights and freedoms set out in this Chapter may be limited only in terms of a law of general application and to the extent that the limitation is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom, taking into account all relevant factors, including: <ol style="list-style-type: none"> a. the nature of the right or freedom concerned; b. the purpose of the limitation, in particular whether it is necessary in the interests of defence, public safety, public order, public morality, public health, regional or town planning or the general public interest; c. the nature and extent of the limitation; d. the need to ensure that the enjoyment of rights and freedoms by any person does not prejudice the rights and freedoms of others; e. the relationship between the limitation and its purpose, in particular whether it imposes greater restrictions on the right or freedom concerned than are necessary to achieve its purpose; and f. whether there are any less restrictive means of achieving the purpose of the limitation. 3. No law may limit the following rights enshrined in this Chapter, and no person may violate them: <ol style="list-style-type: none"> a. the right to life, except to the extent specified in section 48; b. the right to human dignity; c. the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment; d. the right not to be placed in slavery or servitude; e. the right to a fair trial; f. the right to obtain an order of habeas corpus as provided in section 50(7)(a). 	<p><i>Allowable limitations to rights are narrow, and the limitation must be necessary according to defined criteria</i></p> <p><i>Rights that cannot be limited are specified</i></p>

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Constitutional interpretation

53

Are courts and other bodies permitted to consider foreign law when they interpret and apply human rights provisions?

EXPLANATION

If gender-equality provisions are new or have never been extensively applied or tested, it may be helpful for courts and other interpretative bodies (such as ombudsmen) to look to foreign law and foreign case law when developing their own jurisprudence. Considering how other countries have understood and addressed similar issues can promote interpretation that is aligned with international consensus, and may even inspire innovative constitutional interpretation where one or a small number of countries have expanded or understood rights in new ways.

EXAMPLES

Zimbabwe 2013	Article 46(1)(e)	When interpreting this Chapter, a court, tribunal, forum or body (e) may consider relevant foreign law (Chapter 4 – Declaration of Rights)	<i>Courts and other bodies may consider foreign law</i>
Malawi 1994	Article 11(2)(c)	In interpreting the provisions of this Constitution , a court of law shall (c) where applicable, have regard to current norms of public international law and comparable foreign case law	<i>Courts and other bodies may consider foreign law</i>
South Africa 1996	Article 39(1)(c)	When interpreting the Bill of Rights, a court, tribunal or forum (c) may consider foreign law	<i>Courts and other bodies may consider foreign law</i>

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Constitutional interpretation

54

Are courts and other bodies encouraged or required to consider international law when they interpret and apply human rights provisions?

EXPLANATION

The breadth of international law, captured in international and regional treaties/conventions and in international declarations and principles ('soft law')—and the depth of guidance in its interpretation through the judgements of international courts and recommendations of commissions/committees mandated to oversee the implementation of treaties—can be valuable when interpreting the constitution and legislation. International law and 'soft law' may be particularly helpful in cases when the standard for protecting and realizing gender equality may be higher in international law; thus recognizing international law can expand domestic understandings and obligations of gender equality.

EXAMPLES

Turkey 1982	Article 90	In case of a conflict between the laws and international agreements duly put into effect in the field of fundamental rights and freedoms due to different provisions on the same matter, the provisions of the international agreements shall prevail .	<i>Description of hierarchy of laws and norms—international law has supremacy</i>
Fiji 1997	Section 43(2)	In interpreting the provisions of this Chapter [Bill of Rights], the courts must promote the values that underlie a democratic society based on freedom and equality and must, if relevant, have regard to public international law applicable to the protection of the rights set out in this Chapter.	<i>Rights and duties in the constitution must/may be interpreted in accordance with signed treaties</i>
Somalia 2012	Article 40(2)	In interpreting these rights, the court may consider the Shari'ah, international law, and decisions of courts in other countries, though it is not bound to follow these decisions.	<i>Rights may be interpreted according to international law</i>
Angola 2010	Article 26(2) and 26(3)	2. Constitutional and legal precepts relating to fundamental rights must be interpreted and incorporated in accordance with the Universal Declaration of the Rights of Man, the African Charter on the Rights of Man and Peoples and international treaties on the subject ratified by the Republic of Angola. 3. In any consideration by the Angolan courts of disputes concerning fundamental rights, the international instruments referred to in the previous point shall be applied, even if not invoked by the parties concerned.	<i>Rights may be interpreted according to international law</i>
Maldives 2008	Article 68	When interpreting and applying the rights and freedoms contained within this Chapter [Chapter II, Fundamental Rights and Freedoms], a court or tribunal shall promote the values that underlie an open and democratic society based on human dignity, equality and freedom, and shall consider international treaties to which the Maldives is a party.	<i>Rights to be interpreted according to international law</i>

Timor-Leste 2002	Section 23	Fundamental rights enshrined in the Constitution shall not exclude any other rights provided for by the law and shall be interpreted in accordance with the Universal Declaration of Human Rights.	<i>Rights to be interpreted according to international law</i>
Dominican Republic 2010	Article 74(3)	The treaties, pacts and conventions concerning human rights, subscribed and ratified by the Dominican State, have constitutional hierarchy and are of direct and immediate application by the tribunals and other organs of the State.	<i>Description of hierarchy of laws and norms—international law has supremacy</i>
Ecuador 2008	Article 172	Judges shall administer justice subject to the Constitution, international human rights instruments and the law.	<i>Rights to be interpreted according to international law</i>
Bolivia 2009	Article 256	I. The international treaties and instruments in matters of human rights that have been signed and/or ratified, or those that have been joined by the State, which declare rights more favorable than those contained in the Constitution, shall have preferential application over those in this Constitution. II. The rights recognized in the Constitution shall be interpreted in agreement with international human rights treaties when the latter provide more favourable norms.	<i>International law regarding human rights has supremacy when it is more favourable than the constitution Rights to be interpreted according to international law</i>

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Constitutional interpretation

55

Do international human rights treaties take effect directly?

EXPLANATION

It is more efficient for signed and ratified international treaties to apply directly—that is, to automatically become law—because for various reasons, including a lack of political will or opposition from a powerful constituency, there may be a significant or perpetual delay in integrating international law into domestic law. The indirect application of international treaties and conventions requires that domestic legislation be passed in order to operationalize the obligations contained in those instruments. Direct application will give women more immediate access to rights contained in international treaties and conventions.

EXAMPLES

Brazil 1988	Article 5(3)	International treaties and conventions on human rights approved by both houses of the National Congress, in two different voting sessions, by three-fifths votes of their respective members, shall be equivalent to Constitutional Amendments.	<i>International legal instruments apply directly following parliamentary approval</i>
Kenya 2010	Article 2(5) Article 2(6)	The general rules of international law shall form part of the law of Kenya. Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.	<i>International legal instruments apply directly following parliamentary approval</i>
Kyrgyzstan 2010	Article 6(3)	International treaties to which the Kyrgyz Republic is a party that have entered into force under the established legal procedure and also the universally recognized principles and norms of international law shall be the constituent part of the legal system of the Kyrgyz Republic. The provisions of international treaties on human rights shall have direct action and be of priority in respect of provisions of other international treaties.	<i>International legal instruments apply directly</i>
Venezuela 1999	Article 23	The treaties, pacts and conventions relating to human rights which have been executed and ratified by Venezuela have a constitutional rank, and prevail over internal legislation, insofar as they contain provisions concerning the enjoyment and exercise of such rights that are more favourable than those established by this Constitution and the laws of the Republic, and shall be immediately and directly applied by the courts and other organs of the Public Power.	<i>International legal instruments apply directly following parliamentary approval</i>
Haiti 1987	Article 276(2)	Once international treaties or agreements are approved and ratified in the manner stipulated by the Constitution, they become part of the legislation of the country and abrogate any laws in conflict with them.	<i>International legal instruments apply directly following parliamentary approval</i>
South Sudan 2011	Article 9(3)	All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified or acceded to by the Republic of South Sudan shall be an integral part of this Bill.	<i>International legal instruments apply directly</i>

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Glossary

Full citations for all sources referred to in this Glossary can be found in the References section.

Amparo

A special legal procedure intended to protect the constitutional rights of individuals from violation by the government or a government agency.

Discrimination against women

‘Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field’

(CEDAW: Part I, article 1)

Equality between women and men (gender equality)

‘The equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same but that women’s and men’s rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration—recognizing the diversity of different groups of women and men. Gender equality is not a ‘women’s issue’ but should concern and fully engage men as well as women. Equality between women and men is seen both as a human rights issue and as a precondition for, and indicator of, sustainable people-centred development.’

achieve substantive equality of women in light of the explanation and comparative examples provided, and the specific challenges in the examined country
(UN Office of the Special Advisor on Gender Issues and Advancement of Women 2001: 1)

Gender

‘The socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for men and women.’

(World Health Organization [n.d.])

‘Gender refers to the roles, behaviors, activities, and attributes that a given society at a given time considers appropriate for men and women. In addition to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, gender also refers to the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes. They are context/time-specific and changeable. Gender determines what is expected, allowed and valued in a woman or a man in a given context. In most societies there are differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources, as well as decision-making opportunities. Gender is part of the broader socio-cultural context, as are other important criteria for socio-cultural analysis including class, race, poverty level, ethnic group, sexual orientation, age, etc.’

(UN Women Training Centre [n.d.])

The term 'gender' refers to socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can likewise be changed by culture, society and community.

(CEDAW General Recommendation 28: 2)

Gender equity

Fairness of treatment for women and men, according to their respective needs. This may include equal treatment or treatment that is different but which is considered equivalent in terms of rights, benefits, obligations and opportunities.

(International Labour Organization 2000: 92)

Gender-inclusive language

Gender-inclusive language refers to both women and men, and uses both feminine and masculine pronouns (and both feminine and masculine nouns in languages in which nouns are gendered, such as *un citoyen* [a male citizen] and *une citoyenne* [a female citizen] in French).

Gender-neutral language

Gender-neutral language does not refer to women or men, and does not use feminine or masculine pronouns.

Multiple discrimination (Intersectionality)

'The idea of "intersectionality" seeks to capture both the structural and dynamic consequences of the interaction between two or more forms of discrimination or systems of subordination. It specifically addresses the manner in which racism, patriarchy, economic disadvantages and other discriminatory systems contribute to create layers of inequality that structures the relative positions of women and men, races and other groups. Moreover, it addresses the way that specific acts and policies create burdens that flow along these intersecting axes contributing actively to create a dynamic of disempowerment.'

(United Nations, Division for the Advancement of Women 2000)

Non-derogable right

A right that cannot be taken away or compromised, and must be protected under all circumstances, including in times of internal or international disturbance or armed conflict.

(Source: UN General Assembly 2003)

Quota (legislative or parliamentary)

'The number of seats in an elected body or a proportion of candidates nominated by a party or grouping which are required to be filled by representatives of a particular kind [such as women] used to ensure the nomination and election of a minimum number of women.'

(International IDEA 2007: 24)

Sex

‘The term ‘sex’ refers to biological differences between men and women.’

(CEDAW General Recommendation 28: 2)

Substantive equality

The concept of substantive equality moves beyond formal equality to acknowledge past discrimination and the political, economic and social barriers women face in accessing opportunities, exercising their rights and making decisions that impact on their lives. Substantive equality recognizes the differences between women and men due to (some) women’s potential reproductive capacity. By taking into account women’s lived realities, substantive equality aims not only for equal treatment, but also for equal access to opportunities and equality of outcomes, and is thus a more comprehensive notion of equality.

‘[T]he achievement of substantive equality requires action in three interrelated areas: redressing women’s socioeconomic disadvantage; addressing stereotyping, stigma and violence; and strengthening women’s agency, voice and participation.’

(UN Women 2015: 13)

Trafficking in persons

‘The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.’

(Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Article 3)

Violence against women

‘Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.’

(UN Declaration on the Elimination of Violence against Women, article 1)

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A searchable database of national constitutions, in English and Arabic

International Institute for Democracy and Electoral Assistance (International IDEA), ConstitutionNet, <<http://www.constitutionnet.org/about>>

Online portal designed to help legislators, constitutional lawyers and other constitutional practitioners find useful and relevant information, share knowledge and build a community of best practice

Swiss Centre of Expertise in Human Rights, Women's Human Rights [app], <<http://womenshumanrights.ch/overview.html>>

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United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), Constitutional Database, <<http://constitutions.unwomen.org/>>

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A list of the recommendations made by the Committee on the Elimination of Discrimination against Women

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Annex. International and regional legal instruments

QUESTION	ACHPR	P ACHPR	ACRWC	APA	ACHR	ACHRAP	ASEAN HRD	BD	CD	CCER	WBAC
Q1: Does the constitution use gender neutral or inclusive language? Are the terms used to name or describe citizens, public officers, and officials neutral and/or gender inclusive?	Arts. 1-3; 19	Art. 2.1(a)	Art. 2				Art. 2	e.g., Art. 8	Arts. 1; 8; 23		
Q2: Does the preamble describe an inclusive view of the people who make up the constitutional community by specifically including women? Does the preamble recognize the contribution of women?	P.; Arts. 2, 18.3	Art. 2.1(a)	P.	P.	Art. 1		P.	Arts. 3-7	P.; Arts. 1; 8		
Q3: Is there a commitment to gender equality as a value in the preamble?	P.; Arts. 2; 18.3	Art. 2.1(a)	P.	P.	Art. 1	Art. 3	P.	Arts. 3-7	P.; Arts. 1; 8		
Q4: Is there a specific section, article, or several articles that specifically recognize and protect women's rights?	Arts. 2; 18.3; 19	See generally	Art. 3	See generally		Arts. 3; 6	Arts. 2; 4	See generally	Arts. 1; 3(a); 6(a); 7(a); 13		
Q5: Is discrimination defined?		Art. 1(f)	Art. 3								
Q6: Is discrimination on the basis of sex and gender prohibited?	Arts 2; 18.3; 19; 28	See generally	Art. 3		Art. 1	Art. 3	Art. 2	Art. 24	Arts. 1; 8		
Q7: Is there a provision that commits the state to gender equality?	Arts. 2; 18.3; 23	Arts. 2-6; 8; 25			Arts. 1; 23; 24	Arts. 1-3	Arts. 2; 5; 9; 33; 36	Arts. 24; 36-38		Arts. 2-3	
Q8: Are discrimination and unfair treatment on the basis of issues that may contribute to multiple forms of discrimination prohibited?	Art. 18.1-18.3	See generally			Art. 4-5	Arts. 6; 7(a); 9; 15.1-15.3(a)	Arts. 4; 19; 30	Arts. 17; 29	Arts. 3(a); 6(a); 7-8; 13		
Q9: If the constitution has a list of prohibited bases of discrimination, is it clear that additional kinds of discrimination may also be prohibited?	Art. 2		Art. 3		Art. 1	Art. 3	Arts. 2; 9	Art. 32	Art. 1		
Q10: Are special measures aimed at accelerating the substantive equality between women and men recognised as permitted?	Arts. 1; 25-26				Art. 26	Arts. 1-2; 6	Art. 30.2-30.3	Arts. 19; 24			

CSTPEPO	CCQRC	CEDAW	CEDAW GR	CNMW	CPRW	CRC	DAW ASEAN	DEVAW ASEAN	IAC	ICCP	ICESCR	PPSPTP	UDHR	UNSC 1325	VC
		Art. 2(a)							P.	P.; Arts. 2.1; 3; 26	e.g., Art. 1	e.g., Art. 2(a)	e.g., Art. 1		
		P.; Art. 2(a)			P.				P.			P.	P.		
		P.; Art. 2(a)			P.				P.	P.; Arts. 2; 26	P.		P.		
		Art. 3			See generally		See generally	See generally	Art. 1	Arts. 3; 26	Arts. 2.2; 3	See generally	Art. 2		
		Art. 1													
		Art. 3			Arts. 1-3					Arts. 2.1; 3; 26	Arts. 2.2; 3		Art. 2		
See generally		Arts. 2; 7-8	See generally				Arts. 3-5	See generally		Arts. 2.1; 3; 16; 25-26		Arts. 9-13		See generally	
		Arts. 9-16	Nos. 16-17; 19.6; 19.11; 19.16	See generally	See generally		Art. 3	See generally		Art. 3		See generally		See generally	
		Arts. 3; 11.1; 11.3								Arts. 2.1; 26	Art. 2.2		Art. 2		
		Art. 4	Nos. 5-6; 8; 23.15; 25	See generally			Arts. 3-5	See generally			Art. 2.1				

QUESTION	ACHPR	P ACHPR	ACRWC	APA	ACHR	ACHR AP	ASEAN HRD	BD	CD	CCER	WBAC
Q11: Does the constitution state that fundamental rights (such as the right to not be discriminated against on the basis of gender and sex) are applicable in both the public and private spheres? Do fundamental rights apply not only between the state and individuals, but also between individuals, within the family, and between private organizations (such as businesses) and individuals?	Arts. 17; 18.1-18.3; 19-20; 22; 27-28	Art. 2	Art. 20	Arts. 1-2	Arts. 1; 27	Art. 3			Arts. 8; 9(b); 13; 16; 23		
Q12: Does the constitution state that customary and traditional practices, and customary law, must respect gender and sex equality and non-discrimination?	Arts. 9.2; 19; 27-28	Arts. 4.1; 4.2(d); 5	Arts. 1.3; 21		Arts. 27; 32	Art. 5	Arts. 8-9; 22				
Q13: If religious law is recognized in the constitution, does the constitution state that it must respect gender and sex equality and non-discrimination?	Arts. 8; 19; 27-28	Arts. 4.1; 4.2(d); 5	Arts. 1.3; 21		Arts. 12.3; 13.5; 16; 29; 32	Art. 5	Arts. 8; 22				
Q14: Does the constitution recognize multiple discrimination?	Art. 2		Art. 3		Art. 1	Art. 3	Art. 2	Art. 2	Art. 1		
Q15: Does the constitution specify that women have the right to equality in different spheres of life such as the political, economic, and social spheres?	Arts. 17; 18.1-18.3; 19; 22; 28		Art. 12		Arts. 1; 3; 16.1	Art. 3	Arts. 26; 33; 35	Art. 13	Arts. 8; 9(b); 13; 16; 23		
Q16: Is there a right to equal pay or equal remuneration for women?	Arts. 15; 18.3; 28				Art. 10	Art. 7(a)	Art. 9	Art. 16	Art. 13	Arts. 1-3	
Q17: Are there provisions designed to protect the rights of women in business, employment or in other economic activities?	Arts. 15; 18.3; 21; 28	Arts. 13; 19	Arts. 15; 27; 29	Art. 29		Arts. 6-9	Arts. 9; 26-37	Art. 16	Arts. 6(a); 11(a); 13	Arts. 1-3	Arts. 2-4
Q18: Are women's rights to own and inherit land and other property recognized?	Arts. 14; 18.3; 28	Arts. 6(j); 21			Art. 21		Art. 9	Art. 15	Arts. 6(a); 15		
Q19: Is equality with regard to marriage recongized?	Arts. 18.1-18.3; 28	Arts. 6-7	Art. 18		Art. 17	Arts. 15.1-15.3(a)	Art. 19		Arts. 5; 6(a); 7		

CSTPEPO	CCQRC	CEDAW	CEDAW GR	CNMW	CPRW	CRC	DAW ASEAN	DEVAW ASEAN	IAC	ICCPR	ICESCR	PPSPTP	UDHR	UNSC 1325	VC
		Arts. 2; 10-13; 15-16	Nos. 11.1; 19.9				Art. 1			Arts. 2.1-2.2; 26					
		Arts. 2-3; 5	No. 14; see generally nos. 19 & 21							Arts. 2.1-2.2; 3	Arts. 4-5		Art. 29.2-29.3		
		Art. 3	Nos. 14; 21.13; 21.16(1) (a)-(b)							Arts. 2-1; 3; 18.3; 20.2	Arts. 4-5		Art. 29(2)-(3)		
		Art. 2	Nos. 25.12; 25.28; 25.38; No.28.18							Arts. 2.1; 26	Art. 2.2		Art. 2		
		Arts. 2-3					Art. 1			Art. 3	Arts. 1.1; 3; 15		Arts. 22; 27-29		
See generally		Art. 11.1(d)	No. 13.3								Art. 7(a)		Art. 23.2-23.3		
		Arts. 11.1-11.3	Nos. 5; 13; 16-17; 19.6; 19.11					Art. 5			Arts. 6-9	See generally	Arts. 23-25		
		Arts. 13(a)-(b)	No. 21										Art. 17		
		Arts. 16.1-16.2	No. 21							Art. 23	Art. 10.1		Arts. 16; 23.1		

QUESTION	ACHPR	P ACHPR	ACRWC	APA	ACHR	ACHRAP	ASEAN HRD	BD	CD	CCER	WBAC
Q20: Is there a right to education? Are the rights of girls and women to education protected?	Arts. 12; 17.1; 18.3; 28		Art. 11			Arts. 13; 16	Arts. 27.3; 31	Arts. 27; 30; 35	Arts. 7; 9(b); 17(c)		
Q21: Is there a right to food security and drinking water?	Arts. 4; 16	Art. 15	Arts. 5; 14			Art. 12	Arts. 28(a)-(e)		Arts. 7(a); 17(c)		
Q22: Is there a right to health and/or a right to health care? Is there a specific right to reproductive health and/or reproductive health care? If so, do women have the right to make their own reproductive choices and to have control over their own bodies?	Arts. 4; 14; 16; 18.1-18.3; 27-28		Arts. 5; 14			Arts. 7; 9-12	Arts. 19; 28(d); 29-30	Arts. 17; 30	Arts. 6(a); 7(a); 13; 17		
Q23: Is the medical termination of pregnancy (abortion) mentioned?								Art. 17			
Q24: Is there a right to paid maternity leave?		Art. 14.2(c)				Arts. 6; 9; 15.1-15.3(a)	Art. 30	Art. 16	Art. 17		Arts. 2-4
Q25: Is the right of women to be free and protected from violence committed by the state recognized? Is the right of women to be free from violence from non-state actors (such as family members, employers, businesses, private organizations, etc.) recognized?	Arts. 3-7; 15; 20-21; 23-24; 26-28	Arts. 3-5; 8-9; 11; 12.1(c)-(d); 13	Arts. 5; 7-10; 15-17; 22; 27; 29		Arts. 1; 3-5; 11; 25; 27; 29; 32	Arts. 6-8; 10.1; 11	P.; 10-34	Art. 29	Arts. 2; 3(a); 4; 6(a); 7(a); 8; 11; 13; 15(b); 17-20; 22-23		
Q26: Is trafficking prohibited?	Arts. 5; 27-28	Arts. 3.3; 4.2(g); 5	Arts. 15-16; 27; 29		Arts. 6.1-6.2; 7-9		Art. 13		Arts. 11(a); 20		
Q27: Is sex work or sexual exploitation mentioned?	Arts. 5; 28	Arts. 3.3; 4.1; 5	Arts. 15-16; 27				P.; Arts. 27.1; 27.3		Arts. 11(a); 20		
Q28: Is speech that is motivated by the intention to harm women prohibited?					Arts. 13.5; 32						
Q29: Can women and men acquire, change, and retain citizenship on equal terms?		Arts. 4(g); 6					Arts. 15-16; 18				
Q30: Is dual or multiple citizenship permitted?											

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		Art. 10	Nos. 3; 5								Arts. 6; 13		Art. 26		
		Art. 3								Art. 6.1	Art. 11		Art. 25.1		
		Arts. 1; 2(b); 12	Nos. 19; 21; 24								Art. 12		Art. 25		
		Art. 12	Nos. 19.22; 24.31(c)												
		Arts. 11.1; 11.2(a)-(b)	No. 24.28								Art. 10.2		Art. 25		
See generally		Art. 3	Nos. 11; 14; 19					Arts. 1-8		Arts. 2; 6.1; 7; 9-10; 14-15; 17; 20.2	Art. 7	See generally	Arts. 3; 6-15; 20	Arts. 10-11	
See generally		Art. 6	No. 19							Arts. 8.1-8.3(a)		See generally	Art. 3		
Arts. 1-4		Art. 6	No. 19.6									Art. 3(a)	Art. 5		
										Art. 20.2	Art. 4				
	Arts. 8-11	Art. 9.1		Arts. 1-3									Art. 15		
	Arts. 3-6			Arts. 1-3											

QUESTION	ACHPR	P ACHPR	ACRWC	APA	ACHR	ACHRAP	ASEAN HRD	BD	CD	CCER	WBAC
Q31: Can a woman independently pass citizenship to her children?		Art. 6	Art. 6		Art. 18						
Q32: Can a female citizen transmit citizenship to her spouse on the same terms as a male citizen?											
Q33: Are basic rights and fundamental freedoms protected for all people, and not limited to citizens? If some rights are limited to citizens, are they reasonable in a democratic state and respectful of international obligations?											
Q34: Are there provisions that aim to increase women's participation and representation in political parties?	Art. 13			Art. 3					Art. 23(b)		
Q35: Is the electoral system favorable to the election of women?				Art. 3			Art. 25		Art. 23(b)		
Q36: Are there provisions that guarantee or facilitate women's representation in the legislature?	Art. 13			Art. 3			Art. 25.1		Art. 23(b)		
Q37: Is the full participation of women members of the legislature protected?	Art. 3(g)						Art. 25.1		Art. 23(b)		
Q38: Is there a provision directing that gender is mainstreamed in government policy making?				Art. 3							
Q39: Is there a provision to guarantee or facilitate the recruitment or appointment of women to civil service positions and independent bodies?				Art. 3					Art. 23(b)		
Q40: Is the importance of having women in the government recognized?				Art. 3			Art. 25.1		Art. 23(b)		
Q41: Is there a provision that states that security forces (police, military, intelligence, etc.) must respect human rights?		Art. 8		Art. 3							
Q42: Is there a provision to ensure that women can reach the top levels of the executive branch?				Art. 3			Art. 25.1		Art. 23(b)		

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	Arts. 13-16	Art. 9.2				Arts. 7-8									
	Arts. 8-11	Art. 9		Arts. 1-3											
											Art. 4				
		Arts. 7-8				Arts. 1-3	Art. 1		Art. 1	Art. 3			Art. 21	Arts. 1-2	
		Art. 7					Art. 1		Art. 1				Art. 21		
		Art. 7				Arts. 1-3	Art. 1		Art. 1	Art. 25			Art. 21		
		Art. 7							Art. 1				Art. 21		
		Arts. 1-5; 7-8					Art. 1-3		Art. 1				Art. 21		
							Art. 1						Art. 21		
		Arts. 7-8					Art. 1		Art. 1				Art. 21		
		Arts. 7-8					Art. 1		Art. 1				Art. 21		

QUESTION	ACHPR	P ACHPR	ACRWC	APA	ACHR	ACHRAP	ASEAN HRD	BD	CD	CCER	WBAC
Q43: Is the importance of having women in the judiciary recognized? Do the judicial appointment mechanisms to all levels of courts, but especially to the supreme or constitutional court, facilitate the appointment of women?		Art. 8		Art. 3							
Q44: Is the importance of gender diversity in the security forces recognized and are there mechanisms to ensure diversity		Art. 8		Art. 3							
Q45: Is it clear that human rights must be respected at all levels of government?		Art. 2	Art. 1	Art. 3			Arts. 4; 6-8				
Q46: Does the constitution establish independent commissions and ombudsman bodies? Are there mechanisms for women's representation on these commissions?				Art. 3							
Q47: Does the constitution establish a national women or gender commission, or establish other bodies and institutions that comprise a 'gender machinery'?				Art. 3							
Q48: Are the rules for 'standing' (the basis that permits a person to challenge a law or governmental action in court) sufficiently open and accessible, so that individuals who are marginalized or disadvantaged are able to access justice?	Arts. 3; 7	Art. 8		Art. 3	Arts. 24-25		Arts. 3, 5, 20.1		Arts. 8; 19		
Q49: Is publicly funded legal aid to persons unable to afford private legal representation guaranteed? If so, does it extend to civil as well as criminal cases?		Art. 8		Art. 3	Art. 8.1		Art. 20.1				
Q50: Is there an implementation mechanism for the constitution?											
Q51: Are there guidelines for constitutional interpretation and/or judicial review that allow for progressive interpretation of constitutional provisions?		Art. 8		Art. 3						Art. 4	

CSTPEPO	CCQRC	CEDAW	CEDAW GR	CNMW	CPRW	CRC	DAW ASEAN	DEVAW ASEAN	IAC	ICCPR	ICESCR	PPSPTP	UDHR	UNSC 1325	VC
		Art. 7					Art. 1							Art. 8	
							Art. 1								
		Arts. 2-3					Arts. 1-5			Arts. 2-3	Arts. 2-3; 5		P.; Art. 30		
		Art. 7					Art. 4						Art. 21.2		
							Art. 1								
		Art. 15								Arts. 2.3; 14-16; 26			Arts. 6-8; 10		
		Art. 15													
		Art. 2													Arts. 27; 46
		Arts. 2-5													

QUESTION	ACHPR	P ACHPR	ACRWC	APA	ACHR	ACHRAP	ASEAN HRD	BD	CD	CCER	WBAC
Q52: Are rights related to gender equality protected from unreasonable limitations by the state?					Arts. 12(3), 27(1), 27(2), 30, 32(2)	Art. 5	Art. 8				
Q53: Are courts and other bodies permitted to consider foreign law when they interpret and apply human rights provisions?											
Q54: Are courts and other bodies encouraged or required to consider international law when they interpret and apply human rights provisions?											
Q55: Do international human rights treaties take effect directly?	Art. 1					Art. 2	Arts 33; 39				

CSTPEPO	CCQRC	CEDAW	CEDAW GR	CNMW	CPRW	CRC	DAW ASEAN	DEVAW ASEAN	IAC	ICCPR	ICESCR	PPSPTP	UDHR	UNSC 1325	VC
			Nos. 24(14), 28(11), 30(2), 73(c)			Arts. 13(2), 14(3), 15(2)				Arts. 4(1), 4(2), 18(3), 25	Arts. 4, 5, 28		Art. 29(2)		
															Arts. 27; 46
															Arts. 27; 46
								Art. 1.4	Art. 2						Arts. 27; 46

Abbreviations

ACHPR	African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986)
P ACHPR	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005)
ACRWC	African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999)
APA	African Platform for Action (adopted November 1994)
ACHR	American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978)
ACHR AP	American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights Additional Protocol (adopted 17 November 1988, entered into force 16 November 1999)
ASEAN	Association of Southeast Asian Nations
ASEAN HRD	ASEAN Human Rights Declaration (adopted 18 November 2012)
BD	Fourth World Conference on Women, Beijing Declaration (adopted 15 September 1995, endorsed by United Nations General Assembly Resolution 50/203 on 22 December 1995)
CD	Cairo Declaration on Human Rights in Islam (adopted 5 August 1990)
CCER	Convention (No. 100) Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (adopted 29 June 1951, entered into force 23 May 1953)
CSTPEPO	Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (adopted 2 December 1949, entered into force 25 July 1951)
CCQRC	Convention on Certain Questions Relating to the Conflict of Nationality Laws—The Hague (adopted 12 April 1930, entered into force 1 July 1937)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981)
CEDAW GR	Convention on the Elimination of All Forms of Discrimination against Women, General Recommendations
CNMW	Convention on the Nationality of Married Women (adopted 29 January 1957, entered into force 11 August 1958)

CPRW	Convention on the Political Rights of Women (adopted 31 March 1953, entered into force 7 July 1954)
CRC	Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990)
DAW ASEAN	Declaration of the Advancement of Women in the ASEAN region (adopted 5 July 1988)
DEVAW ASEAN	Declaration of the Elimination of Violence against Women in the ASEAN region (adopted 30 June 2004)
IAC	Inter-American Convention on the Granting of Political Rights to Women (adopted 2 May 1948, entered into force 29 December 1954)
ICCPR	International Convention on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976)
ICESCR	International Covenant on Economic, Social, and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976)
PPSPTP	Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (adopted 15 November 2000, entered into force 25 December 2003)
UDHR	Universal Declaration of Human Rights (adopted 10 December 1948)
UNSC 1325	United Nations Security Council Resolution 1325 (31 October 2000)
VC	Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980)
WBAC	Convention (No. 3) Concerning the Employment of Women Before and After Childbirth, as Modified by the Final Articles Revision Convention, 1946

About the author

Melanie Allen is a Programme Officer with International IDEA's Constitution-Building Processes Programme. Her work focuses on global comparative resources on gender and capacity-building related to constitution-building processes. Her current projects focus on empowering gender-equality advocates to engage in constitution-building to promote the political, social and economic equality of women.

About the artist

Chirag Bangdel is an artist, writer and poet based in Kathmandu, Nepal. He exhibits regularly in Nepal and abroad. Apart from figurative paintings, he also creates mixed media collages, called *Tattva*, and an ongoing series of performance and installation art works, 'Experience Red', in which he explores the futility of violence.

Bangdel has exhibited his work in more than 20 solo shows in Nepal, as well as shows in Dubai, Germany, the Netherlands and Pakistan. His eighth solo exhibition of paintings, in Kathmandu in 2006, was organized and hosted by the World Bank to mark International Women's Day. He has also been commissioned by WaterAid Nepal to create a series of installation art works about sanitation and women's reproductive health.

He is the author of four collections of poetry, a collection of stories and haiku (*Mist around the Stupa*) and contributes regular columns for various magazines. He is also the Founder President of the annual South Asian Poetry Festival for Peace, which takes place in Kathmandu.

Chirag Bangdel's work has also appeared on the cover of a previous International IDEA publication, *Women Members of the Constituent Assembly* (2011).

About International IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization that supports sustainable democracy worldwide. International IDEA's mission is to support sustainable democratic change by providing comparative knowledge, assisting in democratic reform, and influencing policies and politics.

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In the fields of elections, constitution-building, political parties, gender in democracy and women's political empowerment, democracy self-assessments, and democracy and development, we undertake our work in three activity areas:

1. providing comparative knowledge derived from practical experience on democracy building processes from diverse contexts around the world;
2. assisting political actors in reforming democratic institutions and processes, and engaging in political processes when invited to do so; and
3. influencing democracy building policies through the provision of our comparative knowledge resources and assistance to political actors.

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The *Constitution Assessment for Women's Equality* helps users analyse a constitution or draft constitution from the perspective of the substantive equality of women. Using a series of questions, short explanations and example provisions from constitutions around the world, the Assessment guides you through an examination of the most critical constitutional issues that affect women's rights and gender equality.

This Assessment is designed for gender-equality advocates as well as those who are engaging in the topic of women's constitutional rights for the first time, whether as members of a constituent assembly, constitutional drafters, civil society members or concerned individuals. Since gender equality affects the quality of democracy and society as a whole, the Assessment is a resource for both men and women.

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