

# ***MONITORING GUIDE***

## **A model for monitoring the implementation of the Convention on the Elimination of All Forms of Discrimination against Women**

Developed through the project: Facilitating the  
Fulfilment of State Obligation to Women's  
Equality



**International Women's Rights Action Watch Asia Pacific  
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# TABLE OF CONTENTS

1.	Acknowledgements	3
2.	Preface	4
3.	Overall Background	5
4.	Part I: Background to the Project	7
	On the Rationale, Timeliness and Relevance	7
5.	Part II: Project Objectives and Strategy	9
	A. Objectives of the Facilitating Project	9
	National levels	9
	Sub-regional and regional levels	10
	B. Users and Beneficiaries	10
	C. Strategy	10
	D. Designated roles and responsibilities of core groups and IWRAW	
	Asia Pacific	11
	E. Project Objectives	12
6.	Part III: Concepts	13
	A. Understanding the Women's Convention	13
	B. The Principle of Non-Discrimination	16
	C. Basic Principles of State Obligation	21
	Specific Measures	21
	Conclusion	22
7.	Part IV: NGOs and Their Role in Monitoring the Achievement of Progress Towards Gender Equality	23
8.	Part V: Monitoring Framework: Rationale and Guide	26
9.	Part VI: Baseline Report Format and Further Guidelines	35

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The Guide was first put together in 1997 at a South East Asian workshop and has since been discussed and refined at many other meetings.

IWRAW Asia Pacific would also like to acknowledge the contribution of Eleanor Conda to the conceptualisation of the ideas towards developing the monitoring framework during the first South East Asian workshop. Each night during the workshop saw a birth of new ideas as Eleanor and the director of IWRAW Asia Pacific along with Ramya Subrahmanian engaged in deep reflection, late into the night, trying to bring about a resolution of the complex questions that producing a monitoring guide posed. It is very tempting to say we gave birth during this workshop. Eleanor Conda has continued to be a source of support and expertise to IWRAW Asia Pacific on this project.

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## **PREFACE**

The International Women's Rights Action Watch (IWRAP Asia Pacific) was established in June 1993. It works through collaborative projects, primarily with women's groups, aimed at strengthening the domestic application of human rights norms in relation to women's rights. The key focus of the programme is to monitor and facilitate the implementation of the Convention on the Elimination of all Forms of Discrimination Against Women (the Convention).

The world has witnessed two decades of development for women. In spite of this, progress in the achievement of women's rights has been slow worldwide. Discrimination affects women throughout their lives and in many situations, discriminatory practices against women including violence against women start at the earliest stages in life.<sup>1</sup>

Non-governmental and grassroots organizations have a role to play in creating a social, economic, political and intellectual climate necessary for change. Such organizations can also play a critical role in monitoring the implementation of the Convention and action taken by governments to achieve equality between men and women.

It is in the area of information flow and monitoring that IWRAP Asia-Pacific sees itself as an enabler. The need to monitor state action has been felt by many others. The difference in this project is that it uses the principles of the Convention and its conceptual underpinnings to measure state action. The indicators of state progress, in the eyes of the Convention, lie not just in what the state does, but in what the state achieves in terms of real change for women. Thus the state is obligated to show results, not just frameworks of equality that are strong on paper. Secondly, the Convention recognises the inter relatedness of discrimination and the effects of unintended discrimination. That is to say, framing a policy for "people" implicitly including women and men, while not excluding women per se, may result in a de facto discrimination against women. Hence this Monitoring Guide was developed to take into consideration the need to collect information on all barriers *to de facto* equality.

The Guide is to be used in a long-term project that aims to gradually build capacity of national level groups to systematically monitor the improvements in women's access to justice and equality as a result of their governments fulfilling their international commitments towards this end. The project will focus on commitments of the governments under the Women's Convention while at the same time taking on board the contexts provided by the Beijing Platform for Action. This process will also facilitate purposeful and structured networking among the groups at the national level as they will share a common goal with specific tasks and shared responsibilities. Similar networking on a regional basis is also envisaged. As a common framework will be used for the monitoring, there is a potential for cross-country sharing of results, comparative analysis and regional and sub regional activism and advocacy. Monitoring and advocacy will be ongoing as an inter related process.

This outcome of this process will facilitate sustained activism and demands for reform that is specific to the situation and substantiated by a sound information base. The aspiration of this project is to provide the basis for moving from rhetorical demands to concrete action demands.

**Shanthi Dairiam**  
**Director, IWRAP Asia Pacific**  
**2002**

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<sup>1</sup> See Beijing Declaration and Platform for Action. 1995. Report of Fourth World Conference on Women. United Nations.

# ***MONITORING FRAMEWORK***

## **A MODEL FOR MONITORING THE IMPLEMENTATION OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN**

**Developed through the project: Facilitating the Implementation of State  
Obligation to Women's Equality**

### **OVERALL BACKGROUND**

The International Women's Rights Action Watch (IWRAP Asia Pacific) was established in June 1993. It works through collaborative projects, primarily with women's groups, aimed at strengthening the domestic application of human rights norms in relation to women's rights. The key focus of the programme is to monitor and facilitate the implementation of the Convention on the Elimination of all Forms of Discrimination Against Women (the Convention).

Non-governmental and grassroots organizations have a role to play in creating a social, economic, political and intellectual climate necessary for change. Such organizations can also play a critical role in monitoring the implementation of the Convention and action taken by governments to achieve equality between men and women.

It is in the area of information flow and monitoring that IWRAP Asia-Pacific sees itself as an enabler. The need to monitor state action has been felt by many others. The difference in this project is that it uses the principles of the Convention and its conceptual underpinnings to measure state action. The indicators of state progress, in the eyes of the Convention, lie not just in what the state does, but in what the state achieves in terms of real change for women. Thus the state is obligated to show results, not just frameworks of equality that are strong on paper. Its uniqueness lies in its mandate for the achievement of substantive equality for women requiring not only formal legal equality but also equality of results in real terms. Secondly, the Convention recognises the interrelatedness of discrimination and the effects of unintended discrimination. By identifying that discrimination is socially constructed and that laws, policies and practices can unintentionally have the "effect" of discriminating against women, the Convention sets the pace for a dynamic proactive approach to women's advancement. It is no longer possible to say that there is no discrimination against women if laws or policies do not overtly exclude women. Under the regime of the Convention, neutrality has no legitimacy. Positive actions, specific to the needs and the disadvantageous position women may find themselves in as women, are required of the State to promote and protect the rights of women.

Hence the monitoring framework will have to take into consideration the need to collect information on all barriers to *de facto* equality.

Therefore in 1997 IWRAP Asia Pacific engaged in a long-term project called Facilitating the Fulfilment of State Obligation to Women's Equality (Facilitating Project) that aims to gradually build capacity of national level groups to systematically monitor the improvements in women's access to justice and equality as a result of their governments fulfilling their international commitments towards this end. The project will focus on commitments of the governments under the Women's Convention while at the same time taking on board the contexts provided by the Beijing Platform for Action. This process will also facilitate purposeful and structured networking among the groups at the national level as they will share a common goal with specific tasks and shared responsibilities. Similar networking on a regional basis is also envisaged. As a common framework will be used for the monitoring, there is a potential for cross-country sharing of results, comparative analysis and regional and sub regional activism and advocacy. Monitoring and advocacy will be ongoing as an inter related process.

This outcome of this process will facilitate sustained activism and demands for reform that is specific to the situation and substantiated by a sound information base. The aspiration of this project is to provide the basis for moving from rhetorical demands to concrete action demands.

The project has three major components.

- The setting up of country focal points to act as monitors and to form networks of women's rights advocates and groups nationally and regionally, towards the long-term goal of setting up a monitoring process for the region on state progress towards the achievement of women's human rights, in conformity with existing international and national commitments made by states to standards of equality and non-discrimination on the basis of sex.
- The production of thematic base line reports for purposes of identifying discrimination against women, good practices of the state and for the identification of advocacy recommendations to governments.
- National, regional and international advocacy.
- Regional meetings to develop a framework for information gathering, drawing up of indicators and for evaluation and planning the various stages of the project.

The project started in South East Asia in 1997 and in South Asia in 1998.

## **PART I: BACKGROUND TO THE PROJECT<sup>2</sup>**

### **On the Rationale, Timeliness and Relevance**

Over the last 15 years, the Women's Convention has steadily gained acceptance among governments as indicated by the still increasing number of ratifications of the Convention to date. However, actual and ground level implementation has been uneven and at times slow. The Vienna Conference and the Fourth World Conference on Women in Beijing have provided momentum and pressure for governments to make true their commitments to advance the rights of women. The Beijing Platform for Action, an outcome of the Fourth World Conference on Women has an added significance for women in that it was a product of a conference that demonstrated the strength, dynamism and diversity of the global women's movement, and that stands as a moral in the document's formulation.

Over the years, NGOs have made valuable contributions to the UN in its search for a more meaningful role in the world community. NGOs have contributed significantly to the advancement of the goals of the UN by:

a) providing critical information and support to the UN during conferences and as partners in the implementation of UN - led and directed State actions and programs at the national level;

b) raising critical issues, concerns and questions which governments might not otherwise be able or be willing to recognize or articulate;

c) helping shape the agenda of the UN through their advocacy of women's priority issues especially those of particular groups such as grassroots, indigenous, refugee and migrant women, among others;

d) contributing in the popularization, dissemination and enforcement of human rights instruments and other international agreements.

The CEDAW Convention is the only comprehensive human rights instrument aimed at advancing equality and non-discrimination. Although NGOs might be quite aware of the importance of conference outputs such as the Beijing Platform for Action, they have not maximized the utilization of the Convention both as a critical tool for substantive advocacy on women's rights as well as a monitoring tool for the compliance of states with the Convention and the Beijing Platform for Action. NGOs need to appreciate that progressive realization of the goals of the Convention encompasses the basic goals and objectives of women's movements for equality and social justice.

In order for NGOs to make full use of the Convention for defending and promoting the rights of women, they must be at the forefront of demystifying human rights instruments from remote, legalistic and useless documents into living and potentially powerful tools for women's current struggles for equality. It is in this light that the project is relevant and timely.

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<sup>2</sup> Part I is based on a paper commenting on the proposal for this project written by Eleanor Conda and A Javate Dios.



The Project is principally anchored on the CEDAW Convention and its implementation. It is mainly because of this that the record of ratification, reservations and reporting of the states would have to be considered in project implementation, such as in the design of the framework, the preparation of the data collection system (including format), and the formulation of plans of actions by the focal points. The facts about the countries concerned vis-à-vis the Convention should help further fine tune and give direction to the implementation of the aforesaid project aspects or pinpoint areas for advocacy.

For example one would have to consider the matter of reservations to substantive provisions of the Convention. For NGOs and advocates in countries that have entered such reservations, it could be revealing and vital to their advocacy to look for and identify inconsistencies or dissonance in government initiatives with regards to issues covered by those reservations, in the fulfilment of conventional undertakings or of commitments under consensus documents such as the Beijing Platform for Action. Those inconsistencies could creatively point to potential openings, albeit probably limited and circumscribed, for lobbying with governments. Also, model strategies might be gathered from country comparisons, which show creative ways by which NGOs have advocated certain positions, notwithstanding or despite said reservations. Target users under the project might find far-reaching uses for such information.

The reporting record and schedules of the countries bear particularly on the planning of focal points' activities and the immediacy of the implementation of those activities. Avenues such as advocacy with governments for the preparation of reports, preparation of alternative reports and/or intervention in the preparation of the government reports, as well as direct lobbying with the CEDAW during the hearing of government reports are possible foci that might rally NGOS into co-operation with the country focal points and active engagement in Convention-related advocacy.

Some implications of the foregoing on project implementation can be in terms of integration of substantive inputs in the planning meeting design and indication by IWRAW Asia Pacific of other forms of assistance that it could provide focal points whose women's movements might decide to take on particular advocacy or campaigns as those mentioned earlier.

## **PART II: PROJECT OBJECTIVES AND STRATEGY**

This project takes the position that governments are the key responsible parties in realizing equality and human rights for women. Realistically however, it recognizes that the political will of governments and effective external pressure exerted upon them often move them into action. Thus, NGOs (who are mobilizing forces and catalysts in development work) should also assume responsibility in the achievement of that goal, not only through the direct work that they undertake but also through their government-directed advocacy. They, along with individual women and the general society, should look upon themselves as stakeholders in the process of Convention implementation, and as such should intervene. This project offers an entry point for such intervention.

The project principally banks on the dynamism, commitment and wealth of experience, especially of NGOs and women advocates, to make possible, the achievement of its objectives.

### **A. Objectives of the Facilitating Project**

The project aims in the long term to contribute in the implementation of the Convention and the BPA towards the promotion and achievement of equality for women and the enjoyment and realization of their rights. It also intends to help in strengthening the capacity of women and NGOs to actively engage in national advocacy and to intervene in CEDAW Committee's review processes. Greater awareness of the Convention and its potential uses is also expected to be generated in the course of and beyond project implementation.

Specific, short-term objectives of the project are as follows:

#### National levels -

a) to establish a foundation for a sustained and effective NGO-led system for monitoring state compliance with and fulfilment of obligations and commitments under the Women's Convention and the Beijing Platform for Action;

b) to contribute in creating greater clarity on the substantive application of the provisions of the Women's Convention in addressing women's priority issues;

c) to contribute in the determination of indicators by which to gauge and assess advances and progress made in the achievement of equality and the realization of rights for women;

d) to contribute in increasing greater awareness on the Convention and involvement by women and NGOs in CEDAW processes (such as by alternative reporting, public dissemination of concluding comments, creating a lobby presence during CEDAW sessions, etc.).

#### Sub-regional and regional levels -

a) to generate systematized, processed and analyzed data and information pertinent to the implementation in the identified countries of the Convention and the Beijing Platform for Action , (e.g. strategies, facilitating factors, barriers, etc. ) for advocacy and other uses;

b) to contribute in the intra-subregional and regional flow of critical information among NGOs and other institutions that could enhance advocacy on women's rights as well as implementation of the Convention;

c) to contribute in drawing up a subregional/regional picture of the fulfilment of state obligations and commitments under the Women's Convention and the Beijing Platform for Action towards greater understanding and clarity on strategies and approaches to Convention implementation.

In the long term, the aim of the project is develop a model for data gathering and implementation of the CEDAW Convention which it hopes will be taken up by relevant Governments.

## **B. Users and Beneficiaries**

The outputs of the project will be intended primarily for use by Governments, NGOs, other institutions for advocacy nationally or for intervention in international processes and venues – to pressure their respective governments in the fulfilment of the latter's obligations and commitments to promote women's rights under the Convention and the Beijing Platform for Action. They will also be useful to activists and scholars for studies and research projects on the Women's Convention in particular and on women's rights in general.

While NGOs and government related institutions as well as individual advocates will be the users and direct beneficiaries of the project, government agencies and the CEDAW and other concerned UN bodies (such as the Commission on the Status of Women) may likewise benefit from it through, among others, the reports and alternative information that will be furnished to them.

## **C. Strategy**

The foregoing objectives will be achieved through an information-based strategy anchored on the CEDAW Convention and the Beijing Platform of Action. It involves the creation of country focal points as the central implementing arms, linked sub-regionally and regionally through IWRAW Asia Pacific.

The focal points can be women's NGOs, research and academic institutions concerned with gender issues, or other non-governmental institutions or offices that are currently involved in certain aspects of Convention-related work and have a potential capacity to assume the role of a focal point.

IWRAW Asia Pacific and the focal points will be partners in the implementation of the project and in post-project maintenance. Details on the arrangements and commitments will be firmed up in the planning meeting.

#### **D. Designated roles and responsibilities of focal points and IWRAW Asia-Pacific**

Focal points are expected to be responsible for the following (subject to validation in the planning meeting):

- a) Initiate the establishment and organization of a data collection system at the national level that could facilitate NGO monitoring of state compliance with obligations under the Convention and the Beijing Platform for Action, and where relevant and appropriate, other human rights agreements ratified by their governments. Towards this end, they will collect and disseminate data in IWRAW Asia-Pacific's standardized format, establish and maintain linkages with concerned government agencies, women's research institutions, academic institutions with women's programs, NGOs, law schools, etc., and make available the data collected to concerned groups, institutions, or individuals. They may also repackage information, if necessary, for public awareness campaigns and for garnering support in lobbying with government.
- b) Facilitate the conduct of NGO dialogues among others to validate indicators and the collection system set up, foster co-operation and participation in the maintenance and sustenance of the monitoring system, and encourage NGO involvement in Convention-related work.
- c) Serve as a one-stop shop at the national level for Convention-related and other pertinent data and information, as well as sources of those data.
- d) Participate in intra-subregional/regional exchange of data and information towards strengthening and enhancing advocacy of women and groups in the subject countries within the region/sub-region.

IWRAW Asia Pacific as the project proponent and initiator assumes responsibility for the following:

1. Make preparatory contacts with prospective focal points for initial commitments to and/or inputs into the project;
2. Plan for and hold a meeting among prospective focal points and other concerned individuals to finalize and firm up project-related plans and formalize the creation of the monitoring and information network;
3. Support and assist focal points in their setting up and post-project maintenance of their activities;
4. Process, consolidate, and/or package data generated by the focal points to ensure their maximum use for different purposes by different groups;
5. Establish a data bank at its regional office consisting of focal point-sourced national data and information as well as those on human rights, international law and jurisprudence, etc. which can be accessed by groups in different countries for their advocacy;
6. Facilitate the intra-sub-regional and regional flow of critical information among NGOs and other institutions that could enhance advocacy on women's rights and implementation of the Convention.

## Project Objectives

### *Long-term objectives*

- To contribute to the implementation of the Women's Convention and the Beijing Platform for Action
- Achievement of equality for women and the realization of their rights
- To strengthen capacity of women and NGOs to actively engage in national advocacy and to intervene in CEDAW processes

### *Short-term objectives*

#### National Level

- ◆ Establish a foundation for a sustained and effective NGO-led system for monitoring state compliance with and fulfilment of obligations under the Convention
- ◆ Contribute in the determination of indicators by which to assess advances in the achievement of equality
- ◆ Contribute in increasing greater awareness on the Convention and involvement by women and NGOs in CEDAW processes

### *Secondary objectives*

- \* Foster greater understanding of the Convention
- \* Create greater awareness and appreciation of the crucial need for and the rich potential of NGOs' active engagement in CEDAW processes in general and Convention-related monitoring in particular

#### Sub-regional and regional levels:

- ◆ Generate systematized, processed and analyzed data and information pertinent to the implementation of the Convention, in the identified countries
- ◆ Formulate strategies, facilitating factors, barriers, etc. for advocacy
- ◆ Contribute in the intra-subregional and regional flow of critical information among NGOs and other institutions
- ◆ Contribute in the drawing up of a subregional/regional picture of the fulfilment of state obligations and commitments under the Women's Convention of the Beijing Platform for Action

## PART III: CONCEPTS

### A: UNDERSTANDING THE WOMEN'S CONVENTION<sup>3</sup>

#### *About the Convention*

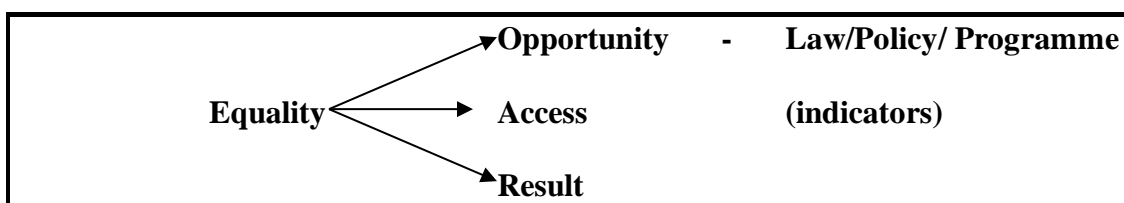
The Convention is an international treaty ratified presently in 156 countries. In South East Asia only Myanmar and Brunei have not yet signed the Convention. The Convention is monitored by the CEDAW committee which operates out of the United Nations in New York. States Parties to the Convention are obligated to report to the Committee one year after ratification, and thereafter every four years. Articles 1-16 of the Convention are substantive articles, while the remaining articles deal with procedural aspects of monitoring the implementation of the Convention. While the Convention does not detail exhaustively the specific types of discrimination that women may face in different cultures, it provides a framework within which a range of issues may be addressed, based on its core understanding of non-discrimination and equality. The Convention is being continually updated to include new insights and new issues that are brought to the Committee's attention, through the formulation of Special Recommendations.

#### *The substance of the Convention*

The framework of the Convention is based on three core principles:

- Principle of Equality
- Principle of non-discrimination
- Principle of state obligation

The principle of equality is central to the Convention. The Convention promotes the substantive model of equality:



The above diagram consolidates two central approaches to equality within the Convention. While the Convention stresses the importance of *equality of opportunity* in terms of women's access on equal terms with men to the resources of a country, secured by a framework of laws and policies, and supported by institutions and mechanisms for their operation, it goes further in emphasizing that the measure of a state's action to secure the human rights of women and men needs to ensure *equality of results*. The indicators of state progress, in the eyes of the Convention, lie not just in what the state does, but in what the state achieves in terms of real change for women. Thus the state is obligated to show results, not just frameworks of equality that are strong on paper. Hence the Convention stresses that equality must inform the *practice* of institutions.

<sup>3</sup> Based on a session conducted by Shanthi Dairiam.

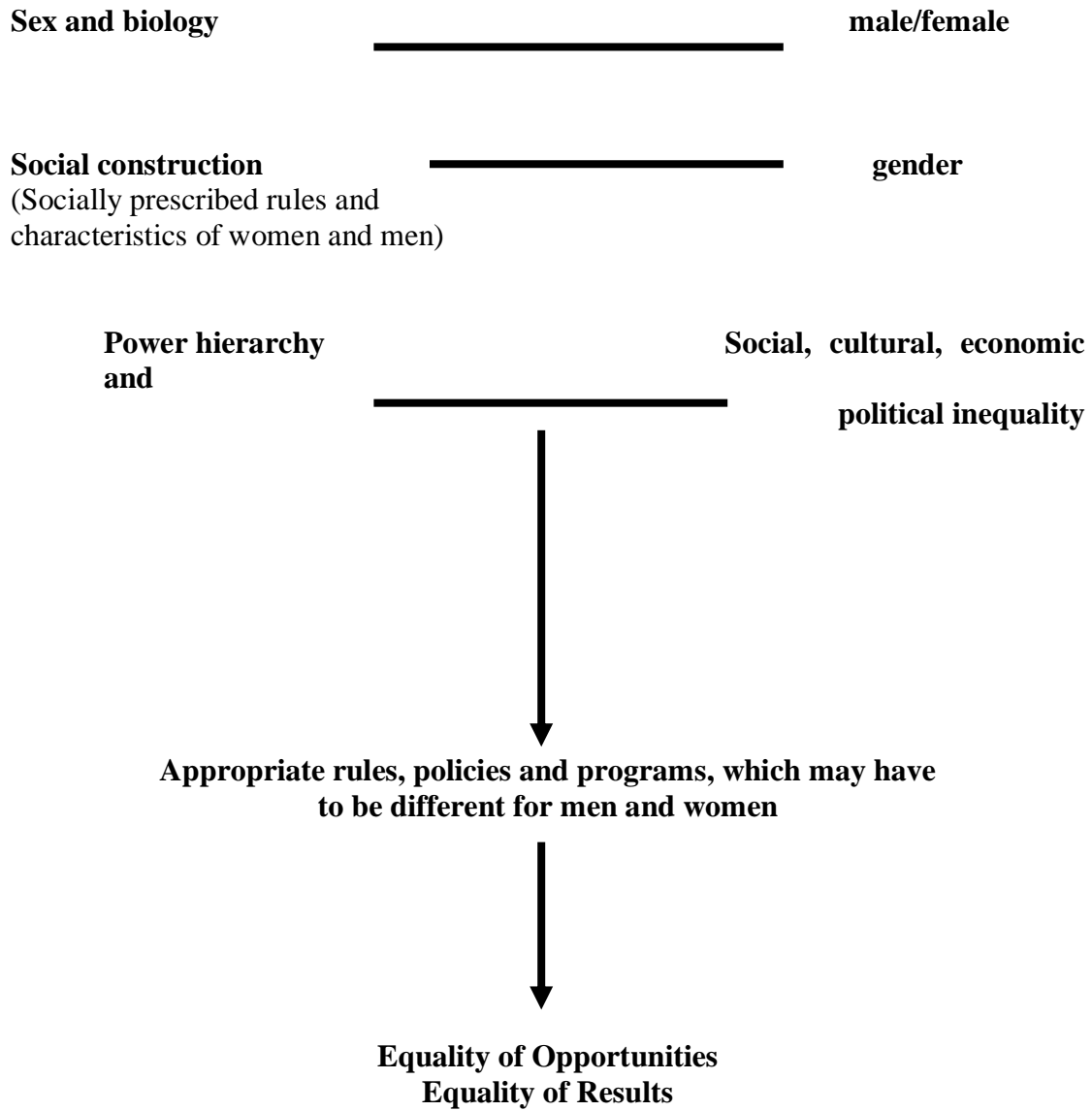
The conceptual framework underpinning this is the recognition that formal equality, often manifest in a gender-neutral framing of policy or law, may not be sufficient to ensure that women enjoy the same rights as men. *That is to say, framing a policy for “people” implicitly including women and men, while not excluding women per se, may result in a de facto discrimination against women.* This is because of the fact that women and men are not the same. Not only is there a significant biological difference between women and men (women bear children, not men), but gender differences (socially-created differences between men and women upheld by ideology and perpetuated by socialization processes) also result in norms and assumptions made about what women and men’s roles in society are, what their capabilities, needs and interests are, which influence both policy-making and its implementation. Differences between women and men whether based on biological (**sex**) difference or socially created (**gender**) differences results in women’s asymmetrical experience of:

- disparity
- disadvantage

Initiatives for the realization of women’s rights need to compensate for or cater to the difference, disparity or disadvantage. This means taking into account the **ways** in which women are different from men, and ensuring that these differences are acknowledged and responded to by policy or legal interventions and programmes. However, **how** this is done, depends on what kind of analysis informs the content of policy and programmes. All approaches that take into account differences between women and men are not immediately favourable to women – in fact, they could be discriminatory in effect, if not in intention. In order to be able to intervene effectively in favour of gender equality, it is important to have a conceptually sound understanding of **what** or **why** differences exist between women and men.

The diagrams below elaborate on the formal and substantive models of equality:

***SUBSTANTIVE MODEL OF EQUALITY***



Source: Evalyn Ursua, Women’s Legal Bureau, Philippines.

*IWRAW Asia Pacific Draft Training Materials*



Differences between women and men have the impact of **exclusion, restriction or nullification of women's rights**. There are two ways of responding to gender differences in policy or approach. A **protectionist** approach, while recognizing the differences, seeks to curtail or curb women's activities or freedoms with the rationale that the aim is to "protect" women from harm or wrong-doing. Protectionist approaches are inherently limiting in that they do not challenge gender discrimination, but reproduce it in the garb of protecting women. An example of a protectionist approach is the ban on women's employment in night shifts, which can be found in some countries; while this ban purports to protect women from working in unsafe environments at night, it serves to curtail women's freedom to work, which is a right men enjoy, and are not denied on the basis of their sex. Further, such a protectionist approach reproduces old myths: that women are less safe at night-time, that violence against women only happens at night; it also frees the state from carrying out its obligation to secure environments for women so that they are free to carry out activities of their choice at any time.

A **corrective or substantive approach** recognizes that in order to **redistribute benefits equally between women and men**, approaches to promoting women's rights must **transform** the unequal power relations between women and men in the process. For this to happen, policies, laws and programmes must aim to provide the following:

- **enabling conditions**, in the form of the basic social, economic and cultural contexts within which women may be able to lead their lives with dignity
- **affirmative action in the form of temporary special measures** where women's needs are specially recognized and catered for in the context of employment, education, financial services, politics and all other spheres of life in order to enable women to overcome historical barriers to their participation in public areas of life.

This approach recognizes that women and men cannot be treated the same, and for equality of results to occur, women and men may need to be treated differently.

## **B: THE PRINCIPLE OF NON-DISCRIMINATION**

The Convention is very clear in its recognition that women have been discriminated against and that this is the cause of the inequalities suffered by women. This is based on the understanding that discrimination is socially constructed and that it is not an essential or natural principle of human interaction. This recognizes the need for and paves the way for concerted action against inequality and the institutional mechanisms which perpetuate it.

It is significant that the name of the Convention boldly calls for the elimination of all forms of discrimination. In fact it is this emphasis on discrimination, combined with the principle of substantive equality that gives the Convention its holistic approach. Taken together they become a powerful framework for realizing the rights of women. The State is held responsible for the practical realization of equal rights (article 2). No longer can the State say that it has put in place appropriate laws or policies and that its duties cease after this. The Committee in reviewing State party reports constantly asks for the results of such interventions. In fact the guidelines for reporting drawn up by the Committee states that specific information should be provided in relation to the *de facto* position of women as distinct from the *de jure* position of women. In order to achieve

the practical realization of rights, all elements of discrimination both current and historic has to be recognised and proactive measures need to be taken to eliminate it. How do we recognize discrimination?

Most municipal legislation does not condone discrimination and almost all our constitutions provide guarantees for prohibiting discrimination on the basis of sex. Why has this not worked? Non-discrimination on the basis of sex can be very narrowly defined as differential treatment given to two sets of people who are similarly situated. So when we have two sets of people with different needs, (not similarly situated) and if one of them is disadvantaged by what may be a neutral rule that does not disadvantage the other, then it is not considered to be discrimination. It is seen as a weakness of the person who is disadvantaged. For example, if credit facilities are offered to women and men on the same conditions (neutral rule) such as that collateral needs to be provided, then women may not be able to access the credit, as the laws of inheritance or social practice may prevent them from owning property that they can offer as collateral. The credit institution may feel that it has done its best by offering credit to women. It will not take responsibility for the fact that women cannot access the credit. The Convention however requires us to understand that where women are disadvantaged as compared to men, applying a neutral rule for women and men will constitute discrimination. There has to be a different rule for women to access credit.

Discrimination therefore needs to be defined as direct and indirect discrimination or intended and unintended discrimination. as defined in the Convention. Article 1 of the Convention states that any distinction, exclusion or restriction made on the basis of sex which has “the **intention** or **effect**” of “nullifying or impairing” the “recognition, enjoyment and exercise” by women of all rights in the social, cultural, political and economic spheres is discrimination.

Therefore, under the Convention discrimination will occur when an apparently neutral condition or requirement is imposed that has a discriminatory **effect** on women, although discrimination was not intended. For example, an aquaculture project in Bangladesh was found to discriminate against women because it required that all those aspiring to participate had to own ponds. Since women did not inherit their parents’ property, or those who did did not have access to the pond because they had moved to their husbands’ village, they could not participate in the project. In Australia, women retrenched from a steel mill because of the ruling “last hired, first retrenched” filed a case of discrimination successfully. While it is true that the women concerned were hired last, the fact was that this mill had had a discriminatory policy several years ago of not recruiting women. At that time it was considered inappropriate for women to work in steel mills. The fact that women were the last to be hired was the consequence of historic discrimination, hence applying the rule of “last hired, first retrenched” in the case of these women was considered to be discriminatory against them although it was unintentional.

Women as compared to men, face many obstacles sanctioned by culture, religious practice, by entrenched male interests in key institutions such as political parties, trade unions, religious institutions, the courts, etc. Hence neutral rules or laws may disadvantage them. Not putting in place enabling conditions or not altering rules to benefit women and thus facilitating their access to opportunities is considered to be discrimination under the Convention although no discrimination was intended.

The Convention also recognises variations of historic or past discrimination and introduces the concept of **corrective measures** to overcome the effect of past discrimination that leaves women handicapped vis-à-vis the men. For example, if a development initiative is offered to women on the same footing as the men, according to the principle of equal rights or equal opportunity, it might still turn out that men benefit more than women, because men have more experience, confidence or simply because the environment is male dominated and is more conducive to male participation. This is the effect of past discrimination.

Again, in many of our countries, women may not have been appointed in officer grade posts within government in the past as a matter of policy. With current enlightenment this policy may have been removed and in fact there may no longer be a formal barrier to even appointing women into senior top-level posts in government. But the *de facto* situation may still be that no women are appointed into the senior posts because women may not be able to fulfil a condition that may exist that the eligibility to fill the senior posts requires x number of years experience at officer grade. Women may not have the required number of years' experience at officer level because of the previously discriminating policy of not appointing women at officer level. Men may then continue to hold the senior positions although there is no current discrimination in policy.

The existence of conditions for eligibility that women cannot fulfil through no fault of their own and which privileges men has the effect of discriminating against women although no discrimination was intended. Under these circumstances the state is obligated to put in place some temporary special measure or affirmative action to help correct the effect of past discrimination.

Article four provides for measures through which affirmative action and women centred development policy measures can be legitimised to ensure *de facto* equality for women. The Convention goes beyond the law and obligates governments to implement extra legal measures. The provisions under article four has to be enforced to obligate governments to implement policy and programme interventions, called special measures, even to the extent of reverse discriminations in order to enable women to access the rights guaranteed in the law.

A situation that requires keen understanding of the requirements of the Convention is when it has to be implemented in adverse circumstances such as poverty, conflict situations or where economic sanctions have been imposed. Under these conditions the State may feel that it is not in a position to fulfil its obligations to women under the Convention. What has to be kept in mind is that no uniform standards of good health, employment, education etc are expected to be achieved by all States. The Convention is based on the principle of non-discrimination. The standards against which a State will be assessed is not what has been achieved in other States but what has been achieved by the State for men in that country and whether women benefit according to those standards.. In situations of conflict or where a State is experiencing the ill effects of sanction, then the State is expected to ensure that the rights of women are not violated according to the circumstances of that context. For example, the State must ensure that humanitarian assistance is channelled equally to men as well as to women, that there are protective measures to ensure that women do not have to pay a price for such assistance such as granting sexual favours to authorities, that women do not suffer from violence etc.

The definition of discrimination also provides a guide for assessing when the different treatment accorded to women is permissible. For example, protective measures like barring women from some forms of work could be construed as discrimination as they could work against women's interests in the long term and may nullify or impair the enjoyment of rights.

It is essential to have clarity on these principles if we are to use the Convention as a tool for advocacy to promote the advancement of women. These principles provide the framework for formulating strategies and identifying actions for the advancement of women.

For example, the framework of the Convention put simply, is:

- Equality of opportunity and Equality of results (*de jure / de facto*), the goal being the practical realization of rights (article 2).

To bridge the gap between the *de jure and de facto* rights the issue of **access** to and the ability to benefit from the opportunity is critical.

Any development programme for women needs to assess the barriers to

- Equality of opportunity (law, policy and programmes)
- Equality of Access
- Equality of benefit

These barriers may lie in ideological, material or institutional causes. They need to be identified on the basis of their discriminatory implications whether intended or unintended. The development programme concerned must formulate initiatives to address these barriers. Under articles 3 and 4 of the Convention they will fall into the category of enabling conditions and affirmative action or temporary special measures.

Another criteria for identification of barriers is their cross cutting effect. While we may be working women's right to economic opportunities, we may find that one of the barriers lies in their lack of access to education and training, or their lack of access to decision making in the area of public policy.

By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms. Some of these measures are:

- to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
- to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
- to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

## **DISCRIMINATION**

**DIRECT:                    THAT WHICH HAS THE  
                                 INTENTION OF  
                                 DISCRIMINATING**

**INDIRECT:                UNINTENDED, ANY ACTION  
                                 OR INACTION THAT HAS THE  
                                 EFFECT OF DENYING WOMEN  
                                 THE EXERCISE OF ALL  
                                 RIGHTS IN ALL FIELDS**

**DISCRIMINATION MAY BE**

**CURRENT,**

**CROSSCUTTING OR**

**HISTORIC**

**(WOMEN MAY BE SUFFERING FROM THE  
EFFECT OF PAST DISCRIMINATION)**

## C: BASIC PRINCIPLES OF STATE OBLIGATION

The Convention carries with it the principle of State Obligation. Under this treaty the dynamics of relationship between the State and women is no longer one of the dependency of women on the good will or vagaries of the State, but one in which the State has responsibilities to women from which it cannot withdraw. Theoretically, the implementation of the Convention is binding on all State Parties. There is also a monitoring mechanism. All State Parties have to submit periodic reports to the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Some basic principles of state obligation are as follows:

**Obligation of means** through laws and policies and **obligation of results**. The latter requires that the state ensures the practical realization of rights by undertaking extra measures implementing enabling conditions etc. so that women's capacity to access the opportunities provided is enhanced. This means:

- Not just guarantees of rights but ensuring the realization of rights  
(Not just *de jure* but also *de facto*)
- The state is obligated not only to regulate itself but also the actions of private persons and institutions.

### Specific Measures

Articles 2-4 spell out the broad state obligation while articles 5-16 provide substance and context in which the principles of state obligation has to be applied. These substantive articles may not show all the context of women's lives, but the very fact that the Convention obligates states to eliminate all forms of discrimination against women means that every context is included. Article one which defines discrimination helps us to include all contexts.

Article 2 obligates the state to do the following:

- Enact a policy of non-discrimination through which the principle of equality will be embodied in national constitution and other laws (article 2 a)
- The obligation to protect women's rights also involves the act of prohibiting discrimination through the enactment of relevant law and policy such as an anti sex discrimination act and impose sanctions if necessary (article 2 b)
- **Protect rights** of women by setting up effective mechanisms through which women can obtain redress if their rights are violated (article 2 c)
- **Respect rights** of women by not doing anything that can be constituted as discrimination against women and to ensure that no public authority or institution violates the rights women.. In this regard the state is obligated to repeal all discriminatory laws and policies. (articles 2 d, f and g)

- This includes the protection of women by taking measures to eliminate discrimination by any person or enterprise (the private sphere and sector) (article 2e)

**Fulfil rights** of women by promoting equality through all appropriate means: This includes pro-active measures and enabling conditions that are needed to ensure the full development and advancement of women (article 3)

In this respect, the state is also obligated to put in place affirmative action to accelerate de facto equality (article 4)

In conclusion: **Specific measures for state action** highlighted in the Convention include:

*Articles 2-4:*

1. Policy of non-discrimination
  - National Constitution and other laws
 Principle of Equality
  - Prohibit discrimination
  - Protect rights of women
  - Respect rights of women (Article 2)
2. Promote equality through all appropriate means (Proactive measures – enabling conditions)
3. Affirmative action to accelerate de facto equality (Article 4)

## Summary

### State Obligation:

- Prevent discrimination
- Prohibit discrimination
- Identify and redress
- Impose sanctions against discriminating acts
- Promote women's rights and equality through proactive measures
- Accelerate de facto equality

## CONCLUSION

The notion of State obligation has to be fully exploited. By ratifying the Convention, States are saying that:

- They recognise discrimination and inequality.
- They recognise the need for State action.
- They commit themselves to do certain things and not do certain things.
- They are willing to be held accountable at state and international levels.

#### **PART IV: NGOS AND THEIR ROLE IN MONITORING THE ACHIEVEMENT OF PROGRESS TOWARDS GENDER EQUALITY<sup>4</sup>**

The framework of state obligations articulated in the last section provides the starting-point for the discussion on the role of NGOs in monitoring state action on gender equality. The areas of state obligation identified include:

- \* *Prevention of discrimination*
- \* *Prohibition of discrimination*
- \* *Identification and redress of discrimination*
- \* *Imposition of sanctions against discriminating acts*
- \* *Promotion of women's rights and equality through proactive measures*
- \* *Acceleration of de facto equality*

NGOs can play a crucial role in alerting states to their obligations, collaborating with states on their programs where NGOs are better placed to forge links with communities and households, developing alternative models to state models of intervention, and monitoring state activities and their impact. Importantly, NGOs can serve as a facilitating link with communities and individuals, and feed information to and from state institutions to citizens.

NGOs become particularly vital centres of advocacy around women's interests and rights given state resistance to implementing change. This may arise in different contexts from a combination of factors: the ideology of governing parties or rulers, the resources that a state has and how it chooses to distribute them, the people who staff state institutions and their biases and prejudices, their distance from communities and field realities, the size of implementing agencies and so on. NGOs offer a viable organizational alternative, particularly where they may be smaller in size, and located within communities. NGOs, particularly where staffed or influenced strongly by feminist agendas, can play a particularly effective role in addressing issues of women's rights and empowerment at local levels, and feeding insights from the field into international advocacy.

There are several levels at which NGOs can play a role in using international fora to highlight national and local concerns. NGOs, particularly in countries which encourage democratic participation of NGOs, are political forces who can influence a range of actors. In relation to the Women's Convention there are several roles that NGOs can play, and are allowed to play vis-à-vis the monitoring process. States Parties to the Convention, despite ratification, are often reluctant to pursue the process of reporting, particularly where the ratification has been done to achieve international recognition or acceptance. Women's issues are considered to be the lowest in the priorities of states, particularly where there are huge cultural issues that remain obstacles to open discussions of women's rights. Getting states to report, and ensuring that they do so in time is an important task for NGOs.

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<sup>4</sup> Based on a session conducted by Eleanor Conda.



Influencing the content, the clarity, accuracy and transparency of government reports is also key, in addition to ensure that the representation at the Committee is sufficiently knowledgeable and accountable to ensure that the comments of the Committee are followed up domestically. States have a tendency to send local UN representatives to the CEDAW sessions, who are often not in a position to respond with authority to the issues raised by the Committee. NGO observers are permitted to be present at the Committee and feed information back to their networks at home about commitments made by their representative, and at the same time domestic pressure may help to ensure that appropriate officials are sent to attend the meeting.

NGOs can also submit their own reports confidentially to the Committee to enable the Committee's preparation for the reporting process. Committee members are glad to use any information that they can get that can help them to assess the information they are receiving from State reports. NGOs can particularly ensure that they are representing the voices of women who may not be visible to the bureaucrats who write state reports. In particular, NGOs can critically engage with the reporting and monitoring process by providing:

- Data (collected through micro-studies particularly)
- Information on the real situation of women
- Information on impact and progress made
- Gaps in policies and their realisation.

Reports on state action may also help to reveal why women's rights commitments often remain de jure commitments rather than representing de facto change. It enables NGOs to identify areas for intervention where the state may not be able to intervene effectively, and where NGOs may provide support services to create enabling conditions for women's rights to be achieved.

As the diagram below shows, NGO interventions and advocacy in relation to specific processes of the Convention can have several spin-off effects. At the international level, NGO involvement in the Convention reporting process can help to feed important information to other bodies of the UN and ultimately influence international processes, policies and programmes. It can also importantly work its influence domestically, where it helps to bring NGOs together to discuss important aspects of state action, emphasise collaborative work in expanding ideas and activism around rights, create greater media awareness, and ensure that state interventions are being monitored and assessed for effectiveness. NGOs can also publicize state reports and the Committee's comments to a wider national audience, where states may avoid doing so. At the local-level, discussions around concepts and practice of women's rights can provide a very sound basis for influencing policy and creating spaces for change.

NGO strategies will necessarily vary from context to context, as there are countries where NGOs are provided little independent space for action. In Singapore, in Lao PDR and in Vietnam, NGO activities are regulated very carefully. Collaboration may be the only option in some countries, but even such an approach can enrich state action. Conflict is not the only model for progress, but where democratic processes are allowed, NGO activism vis-à-vis the state can provide a strong basis for progress on the agenda for achieving gender equality. Also, the spaces that NGOs have to interact with diverse actors also increases their possibilities for finding diverse strategies of influencing

international, national and local processes – whether through data collection, whether through negotiation with the state, whether through subversion. Different strategies need to be evolved for different contexts, circumstances and at different times.

With respect to partnership between governments and NGOs, however, it was pointed out that a common framework is required for groups or agencies to work together, and until governments and NGOs share a common understanding of the approach to achieving gender equality true partnership cannot evolve. Most states are reluctant to put in place transformatory policies that they think will conflict with the interests of male citizens, and hence are not able to work in partnership with NGOs on truly empowering processes and programs. However, there are growing numbers of exceptions to this. It was also pointed out by participants that all NGOs are not necessarily working in women’s interests, and it is important to constantly clarify which NGOs can be included among those considered committed to women’s rights. It can also not be assumed that NGOs are always more clear, or conceptually more sophisticated than states.

### **Summary of Monitoring Process under the Convention**

#### *The Committee*

- The only monitoring mechanism for State progress under the Convention is the reporting process. This thus becomes a key area for NGO intervention
- CEDAW meets for two sessions in a year, 3 weeks in January and 3 weeks in July
- CEDAW’s scope for intervention while hearing State reports is through seeking clarifications, additional information, raising questions and presenting concluding comments, with suggestions for the next report.

#### *NGO intervention*

- Participation in the formulation of country reports
- Submission of alternative reports
- Influencing selection of CEDAW members from their own countries, and the selection of officials involved in the reporting process
- Helping CEDAW experts formulate appropriate questions for the monitoring process
- Provide a lobbying presence during the monitoring process, as NGO presence forms a source of pressure for state representatives

## PART V: MONITORING FRAMEWORK: RATIONALE AND GUIDE

The value of participating in international levels of advocacy for the consolidation and promotion of local-level gain has been elaborated in the earlier sections, along with the importance of monitoring state action. This has in particular emphasized a key point: how discrimination is analyzed is vital to the formulation of appropriate and effective mechanisms for policy and law. In order to monitor “progress”, NGOs need a clear idea of what it is we are measuring, and how we can measure it. This brings us to the concepts and methodology for developing indicators of change. While the concepts have been laid out in Part III of this report, using the Convention’s definitions of equality, non-discrimination and state obligation as a framework, the methodology or framework will be presented here.

The methodology presented below has been developed based on the conceptual framework of the Convention. It attempts to systematize to the extent possible, steps that can help work through the indicators that we can use to identify whether change has taken place, if so what kind of change, and what impact that change has had. The importance of a framework is that it enables partnership between different organizations and different country contexts, especially if the analysis is based on shared understandings, which can only facilitate better advocacy initiatives. It also makes explicit to users of data generated through such a process, the reasons why some manifestations of difference between women and men constitute discrimination, rather than naturally created divides, thus helping NGOs to make the case for “action”. We thus talk in terms of “evidence” to emphasise the importance for NGOs of learning how to make a case, and substantiate that case in the course of advocacy initiatives. A framework also helps us to focus our attention on gathering relevant information, and provides a format for effective presentation and advocacy. Above all, frameworks also alert us to the importance of rigour and sound evidence to ensure that our claims are irrefutable. Sound analysis is a valuable form of advocacy in itself.

The framework presented below is divided up into the following sections.

Section I contains the conceptual analysis of discrimination in a given sector including:

- ***Evidence of Disparities***: this refers to the presentation of the existing situation of women vis-à-vis men in a particular sector or theme, which we may also call the manifestations of the problems identified.
- ***Evidence of Discrimination***: this refers to the analysis of causes and barriers that have led to the inequality identified above. This is a critical section because of possible conflicts over the concepts used in the analysis. The use of “gender” as an organizing concept is critical here, although there may be a lot of resistance to identifying unequal power relations between women and men as emerging from social processes that are reversible and can be changed. Resistance comes from those people who believe that differences between women and men are natural (biological) and irreversible, and that discrimination emerges from natural laws of difference between women and men. How evidence of discrimination is presented is critical to changing the mindset of policy-makers and planners who do not understand. Related to this is the ability to identify the *impact* of discrimination as laid out in Part III: is

it exclusion; is it distinction; or is it a restriction of women's fundamental freedoms and rights? Identification of causes and barriers helps us to also identify what kinds of programs and policies we need, what their content and process should be.

Section I helps us to identify quantitative (evidence of inequality) as well as qualitative (evidence of discrimination) indicators of change.

Section II deals with state obligation and helps us to develop on the analysis of Section I, and provides a schema for assessing the types of initiatives, changes required.

- **State Obligations (What should be done?):** Identifying the range of obligations that the state has to undertake in order to create conditions for change is an important first step setting our parameters for action. This is our advocacy framework vis-à-vis the state; it provides us with a starting-point for critical engagement with the state. The range of obligations can be obtained from Constitutional guarantees, legal provisions, existing policy commitments, international commitments, whether through human rights conventions (such as the Women's Convention), or whether through commitments made at conferences such as the Beijing Platform for Action
- **Current State actions/initiatives:** These can be derived again from policy and other commitments already made by the state, and the kinds of programmes put in place.
- **Assessment of State actions/initiatives:** Here the emphasis is not just on what states do, but also analyzing the content of state programmes and the strategies they develop.

State actions can be assessed based on the qualitative indicators developed in Section I. Because the nature of social change is so complex and dynamic, they need to be assessed on the basis of short-term change, medium-term or intermediate change, and long-term progress towards equality. Indicators here need to provide **evaluative information** on the kinds of results that can be found.

- **Identification of gaps:** Assessment of state actions makes visible the gaps that exist in state initiatives, in terms of strategy, content and process, and provide a constructive way to take debates on change forward.
- **NGO actions:** Finally, there is a need to simultaneously collect data on what NGOs are doing, also monitoring the strategies, content and processes of NGO initiatives.

A word on research methods is important here. While the workshop did not spend time on discussing the importance of research methods, there is no question that **how** we go about generating evidence to back our claims determines how strong our advocacy is. Representing women's voices will help us to make our case effectively, so that we cannot be dismissed by policy-makers as representing a minority of women or speaking on behalf of others. Similarly, having sound data, collected in a methodologically sound way can help refute alternative interpretations which may seek to dismiss our findings. This means that secondary data available needs to be validated and enriched through periodic field-level evaluations and assessments of the impact of state action, whether in law or policy.

The monitoring framework is presented in a format below.

## Monitoring the Implementation of the Convention<sup>5</sup>

### (Monitoring Progress in the Elimination of Discrimination against and achievement of Equality for Women)

#### SECTION I

Evidence of disparity	Evidence of discrimination	Effect of discrimination
<p>Inequalities/Disparity in: Treatment (Art. 4(1)) Access or Opportunity (Art. 4(1)) Results or the actual enjoyment of rights (Art. 2(a); Art. 4(1))</p> <ul style="list-style-type: none"> <li>• The practical realization of the principle of equality</li> <li>• De facto equality</li> </ul> <p>NB: refer also to relevant articles in Women's Convention according to theme.</p>	<p>Causes or Barriers: Public and Private spheres (Art. 2(d), Art. 2(e), pp 13)</p> <ul style="list-style-type: none"> <li>• Customs and practices (Art. 2(f))</li> <li>• Prejudices, customs and all other practices (Art. 5 (a))</li> <li>• Laws, regulations (Art. 2(f)) and other government measures (implied Art. 2(d))</li> <li>• Others (Art. 3, by implication, pp 14), e.g. absence of or inadequate enabling conditions</li> </ul>	<p>Applying the Art.1 test (pinpointing and understanding the discrimination)</p> <p>(1) Is there a:</p> <ul style="list-style-type: none"> <li>• distinction?</li> <li>• exclusion?</li> <li>• restriction?</li> </ul> <p>(2) Is it made on the basis of sex?</p> <p>(3) Does such distinction, exclusion, restriction...</p> <ul style="list-style-type: none"> <li>• impair, or</li> <li>• nullify</li> </ul> <p>the</p> <ul style="list-style-type: none"> <li>• recognition</li> <li>• enjoyment or</li> <li>• exercise</li> </ul> <p>by women of human rights and freedoms whether:</p> <ul style="list-style-type: none"> <li>• in effect, or</li> <li>• by purpose</li> </ul>

<sup>5</sup> All references to Articles are to the Women's Convention

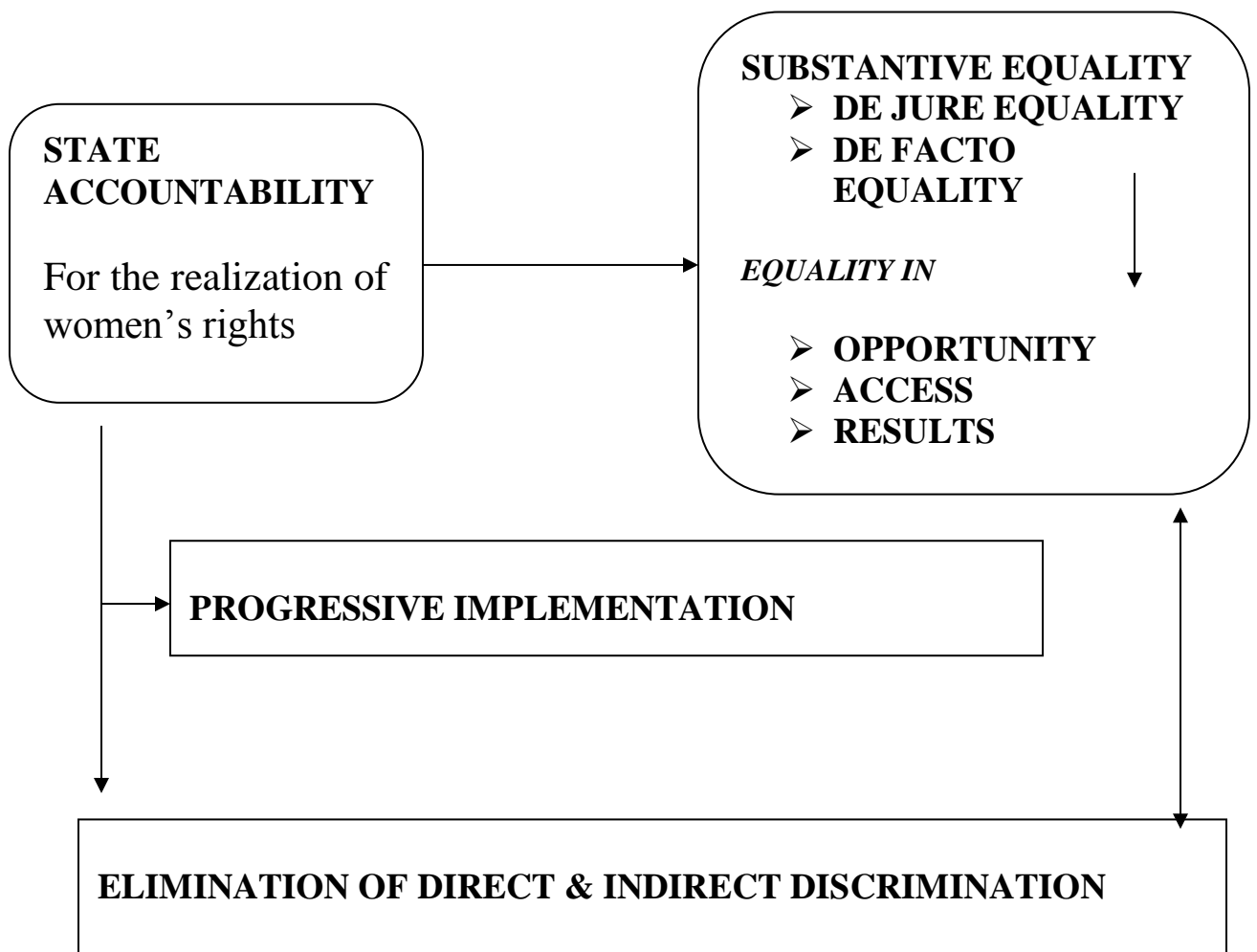
## SECTION II

State Obligations	State Actions/ Initiatives	Assessment of State actions/ initiatives	Identification of gaps	NGO Initiatives
<p>Art.2: Embodiment of the principles of equality in the Constitution or law</p> <p>Ensuring through law or other appropriate means, <u>practical</u> realization of the principle</p> <ul style="list-style-type: none"> <li>• Enabling conditions (Article 3)</li> <li>• Temporary Special Measures (Article 4)</li> </ul> <p>Prohibition of discrimination – through law and other measures including sanctions</p> <p>Legal protection of the rights of women</p> <p>Effective protection of women against any act of discrimination – through national tribunals and other public institutions</p> <p>Refraining from engaging in any act or practice of discrimination against women; ensuring that public authorities and institutions shall act in conformity with this obligation</p> <p>Taking all appropriate measures to eliminate discrimination against women by any <b>person or organisation or enterprise</b></p> <p>Taking all appropriate measures including</p>	<p><i>To be assessed on the basis of the previous column</i></p>	<p>1. Achievement of immediate objectives or purposes of state actions and initiatives</p> <p>1.1. Indicators 1.2. Facilitating or Constraining Factors, Barriers, or Obstacles</p> <p>2. Contribution towards Eliminating Discrimination and Inequalities</p> <p>2.1 Indicators 2.2 Facilitating or Constraining Factors, Barriers or Obstacles</p> <p>3. Contribution towards achieving Equality</p> <p>3.1 Indicators 3.2 Facilitating or Constraining Factors, Barriers or Obstacles</p>	<p>1. State Obligations vs. Actions/ Initiatives</p> <p>2. Purposes/ Objectives of an Action/ Initiative vs. Results</p> <p>3. Action/ Initiative vs. Elimination of Discrimination/ Achievement of Equality</p>	<p>1. Inequalities, their causes</p> <p>2. Strategies to eliminate them, if any</p> <p>3. Strategies to promote achievement of non-discrimination and equality</p>

<p>legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women</p> <p>Repeal of all discriminatory penal provisions</p> <p>Art.5:  a) taking all appropriate measures to <b>modify social and cultural patterns of conduct of men and women</b>, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of <b>inferiority</b> or the <b>superiority</b> of either of the sexes or on the <b>stereotyped roles</b> for men and women</p> <p>b) ensuring that <b>family education</b> includes ... proper understanding of <b>maternity as a social function and recognition of common responsibility of men and women</b> in the upbringing and development of their children</p>				
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# SUMMARY OF THE MONITORING FRAMEWORK BASED ON THE WOMEN'S CONVENTION

## PRINCIPLES AND CONCEPT





## ***APPLICATION OF THE MONITORING FRAMEWORK***

**CHOOSE AN ISSUE AND PRESENT THE SITUATION OF WOMEN WITH RELEVANT INDICATORS THAT WILL IDENTIFY THE ELEMENTS OF:**

**❖ WOMEN'S SITUATION**

- DISPARITY / DISADVANTAGE AS COMPARED TO MEN**
- CAUSES / CONTRIBUTORY FACTORS**
- EFFECTS ON WOMEN**

**❖ ASSESS THE FULFILLMENT OF STATE OBLIGATION WITH REFERENCE TO THE ABOVE**

- STANDARDS SET**
- EFFECTIVENESS OF STATE ACTION**  
**( HAVE ALL THE CAUSES BEEN ADDRESSED AND HAVE GOALS AND TARGETS BEEN MET )**
- GAPS IN STATE ACTION**
- RECOMMENDATIONS FOR ADVOCACY**

## **EXAMPLE**

### **ISSUE: EMPLOYMENT OF WOMEN**

#### **ELEMENTS OF DISPARITY TO BE IDENTIFIED IN THE AREAS OF:**

- **Labour force participation**
- **Sectoral balance**
- **Category of jobs**
- **Level of the posts**
- **Wages and benefits**
- **Job security**
- **Opportunities for promotion and training**
- **Other conditions of work, occupational hazards, harassment etc**

#### **CAUSES:**

- **Lack of opportunity: laws and policies that discriminate**
- **Discriminatory practices**
- **Lack of enabling conditions e.g. lack of transport for night work, lack of safety in public places, lack of maternity benefits, day care services, hostels for working women**
- **Women not having information on job opportunities**
- **Women not empowered enough to know their rights and make claims**
- **Women not having the right kinds of education and skills**
- **Culture and ideology that sees as women as secondary wage earners**

#### **EFFECTS ON WOMEN:**

- **Elaboration of the effects on women of their inferior employment status**

#### **EFFECTIVENESS OF STATE ACTION:**

- **What should the state do to address the causes**
- **What has the state done and with what results**
- **What are the gaps in state action and**
- **What are the specific recommendations for state action that will help address the causes and eventually reduce the disparities.**

### MONITORING FRAMEWORK AT A GLANCE

1	2	3	4	5	6	7	8	9
Indicators of Evidence of Disparity and Disadvantage	Contributory Factors	Effects on Women (short/long term)	Full range of State Obligations to Address the Contributory Factors	Current State Interventions	Effectiveness of State Interventions	Gaps in 1) what the State should be doing but is not (refer to column 2 to 4) 2) what are the specific weaknesses of State interventions (refer to column 5)	Priority recommendations for advocacy	NGO action critique
The example included in the monitoring framework below was adapted from the Malaysian Non-Muslim Monitoring Framework dealing on the 'Rights of Women in Marriage': <i>Right to Citizenship Status</i>								
Statistics, data, cases and anecdotal evidence on the number of foreign men married to local women conferred with citizenship status is far less when compared with that of foreign men marrying local women	Ideological – women need to be protected from unsavoury influences.  Institutional – the laws are discriminatory	Effectively forces women to leave their country of birth as their husbands would not be allowed to stay in Malaysia.		Federal Constitution Second Schedule Part 1 Article 14(1)(a) and Part II Article 14(1)(b)				

## **PART VI: BASELINE REPORT FORMAT AND FURTHER GUIDELINES**

### **BASELINE REPORT FORMAT**

The following format is suggested

- Introduction: Relevant macro background of the country that affects the status of women
- Statement of the issue
  - Rationale for selection of the issue in relation to the context provided in the introduction
  - Scope of the investigation or aspects looked into
- Status of the data available
- Evidence of disparity/disadvantage
- Evidence of causes or barriers (discrimination that has led to the disparity or disadvantage)
- Effects on women
- State Obligation
  - What should the state be doing
  - What has it done and how effectively
  - What are the gaps and weaknesses
- Priority recommendations for advocacy with the state
- Critique of NGO Action and recommendations for NGO activism

### **GUIDELINES AND EXPLANATIONS**

#### **1. Introduction**

Give the social, economic, political, legal and cultural background/context to your particular country. Add a brief historical context to give a better understanding of the current situation. Show women's role in society in each era – where women were, where they are now and will be in the future.

The context of the particular situation should run through the entire report.

#### **2. Statement of the Issue or Concern**

The baseline outline/report should have a clear definition/statement of the issue or concern addressed by the baseline research, reflecting the substantive equality framework of the Convention – Equality of opportunity, access and results. This framework would require the identification and analysis of barriers to women's substantive equality based on biological and socially constructed differences that leads to women's disadvantage and the need for enabling conditions/special measures specifically for women to help them overcome the barriers they face.

A comprehensive and clear issue definition can help guide and systematize the analysis in the succeeding sections on disparities/disadvantages, causes/barriers and contributory factors, and government initiatives.

**Explanation:** The concept of substantive equality requires attention to equality of opportunity and results. The level of opportunity that officially exists for women would indicate the *de jure* situation or what is actually provided for in law and policy and the results aspect would indicate the *de facto* situation or how far women have been able to exercise or enjoy the rights provide for in law or policy. Access is therefore a critical element indicating that there are barriers, which can be construed as discrimination, that prevents women from enjoying *de jure* rights. The Convention draws a distinction between *de jure* and *de facto* rights. In this regard it recognizes not only current discrimination but also past discrimination and introduces the concept of **corrective measures** to overcome the effect of discrimination that leaves women handicapped vis-à-vis the men. For example, if a development initiative is offered to women on the same footing as the men, it might still turn out that men benefit more than women, because men have more experience, confidence or simply because the environment is male-dominated and is more conducive to male participation. This is the effect of past discrimination.

Article 1 which defines discrimination states that any distinction, exclusion or restriction that has the **effect** or **purpose** of denying women the enjoyment of rights in all fields is discrimination. This definition takes into consideration not only direct discrimination i.e. that which has the purpose of denying women the enjoyment of rights but also indirect discrimination. This refers to the situation where formal equality or *de jure* has been provided for but the law, policy or programme does not consider the particular situation of women and they are expected to behave according to male standards. So although the law, policy or procedure does not have the intention of discriminating against women, it has the effect of discriminating against them. The Convention goes beyond the law and obligates governments to implement extralegal measures.

Articles three and four provide for measures through which enabling conditions, as well as affirmative action and women centred development policy measures can be legitimised to ensure *de facto* equality for women. The provisions under article four can be used to obligate governments to implement policy and programme interventions in the form of affirmative action even to the extent of reverse discriminations in order to enable women to access the rights guaranteed in the law. Not having such measures in place could constitute discrimination.

This section should contain the following:

- (a) the **rationale or reasons** for the choice of the issue or concern, which should be linked to the to the background/context presented in the introduction.
- (b) the **scope of the investigation on the issue or concern** which can cover a combination of the following areas in which there might be disparities between women and men:

- **categories of women pertinent to the issue** that the country group has decided to include within the ambit of the research. For example, a baseline report on employment could consider a combination of urban and rural working women, employed and self-employed women, etc.
- **Categories of employment/livelihood.** If the research issue is on violence against women, the scope of the research could include various forms of abuse.
- **Geographical location**
- **substantive aspects or elements of the issue.** Determination of these aspects or elements should be guided by the equality framework of the Convention, i.e. equality in opportunity or access, treatment, and results and the corresponding state obligations. In the example of employment, these aspects can include the following:
  - opportunity and access to employment as in recruitment, access to jobs in various sectors as well as categories of occupation. (Is therefore job segregation)
  - remuneration and package of benefits
  - job security
  - favourable conditions of work: safe labour conditions, including a violence-free work environment; and health protection
  - opportunities for promotion and career building
  - social security
  - availability of services for reproduction and child-caring responsibilities

In this instance, the baseline report intends to examine the fulfilment by the government of its primary obligation to ensure substantive equality in these aspects or elements of the issue of employment.

The issue selected should reflect a dimension of gender inequality bearing in mind that not all forms of inequality can be analysed on a comparative basis with men or be presented as an issue of disparity.

**Explanation:** *There are various dimensions of gender inequality that need to be considered. The following could be considered:*

- Both women and men enjoy or are deprived of a certain right but in different degrees. Hence there is a **disparity** between them e.g. illiteracy, education, health etc.
- Only women are affected or it is largely women who are affected, e.g. Maternal mortality, trafficking in women or other forms of violence against women. This could be referred to as a **disadvantage** that has no real basis for comparison with men. The issue in itself constitutes discrimination.
- Women and men are both affected but women are affected more because of their gender. This is referred to as a **gender-intensified** problem, e.g. poverty.
- Anyone can be affected but the population affected at a given time or place is largely women, e.g. workers in the free trade zone. There is a clear gender issue here. It is because of the ideology of gender that women are drawn into the free trade zones and exploited as cheap labour.

Where the issue chosen is in itself already a form of discrimination, such as trafficking, the definition or statement of the issue should still reflect the Convention's approach to equality. However, in contrast to an issue like employment, what the baseline report aims to do in this instance is to look into state compliance with the obligation to eliminate the discrimination (that is trafficking), along with the state's obligation to ensure that the rights of the women concerned are promoted and protected. The existence of such discrimination is a barrier to the enjoyment of the rights of women. Such issues can be called a disadvantage. Given this, the main obligation of the government is to eliminate this form of violence against women and to ensure that the rights of the women which are impaired or nullified (e.g. right to liberty and security, right to life, right to health, right to freedom from cruel, inhuman and degrading treatment, right to freedom of movement, to work, to self-determination etc.), are protected and promoted.

The aspects investigated which could be named as disadvantage could include the following:

- Incidence of women being trafficked and flow i.e. from where to where. In any country are women being trafficked from that country and are there women from other countries being trafficked into the country concerned as well the purposes for which they are trafficked; along with socioeconomic characteristics of the abused women (profile of the trafficked women). You may be able to get this from secondary sources.
- What forms of abuse are they subject to in the country to which they have been trafficked, what are the rights denied?
- Who are the perpetrators (profile of the traffickers)?
- What problems do they face in trying to free themselves of the bondage and in returning to their countries?
- What problems do they face on repatriation and in attempting to reintegrate into their countries?

### **3. Evidence of Disparity and Disadvantage**

- (i) The meaning of '*disparity*' and '*disadvantage*' should be clearly defined. This section is exposing the various dimensions of inequality. An explanation should be given as to why one word is used as opposed to the other. There should be consistency in the language used.
- (ii) The starting point should be with the present situation of women with regard to the issue or concern selected and indicators to show that there is a disparity vis-à-vis men or disadvantage should be developed. In situations where both women and men are affected, highlight the gender-intensified disadvantages faced or experienced by women.

This section should pick up the substantive aspects enumerated in the item on Scope of the Investigation and identify indicators to show the extent and nature of the problem as well as which categories of women are most affected.

#### **4. Evidence of Causes and Barriers**

- (i) Clear justification or links should be made evident between causes and barriers and the elements of disparity/disadvantage.
- (ii) Causes and barriers can be examined, according to immediate, intermediate or underlying causes or barriers. Macro and micro factors causing, facilitating or contributing to the issue or concern should be presented in this section.
- (iii) Using the substantive equality framework would require an identification and analysis of barriers to women's substantive equality based on biological and socially constructed differences that lead to women's disadvantage. This would also mean that the absence of enabling conditions or special measures, specific to women to help them overcome the biological and gender based differences would also constitute a barrier that can be interpreted as discrimination. This interpretation is based on the Convention definition of discrimination to mean any action or practice that has not only the purpose but also the effect of denying women the enjoyment of a right. In this regard not having enabling conditions like provision of maternity benefits or correcting a hostile environment and providing safety for women is discrimination against women.

Causes and barriers can be presented in a separate chapter but sequenced or linked with each of the evidence of disparities/disadvantages earlier identified.

- (iv) Where an issue like trafficking is concerned, causes and barriers should take on micro and macro factors as well. The micro factors should deal with all the elements of the channels and actors facilitating the process of trafficking and bondage of women in receiving, sending and transit countries and the macro factors would deal with the underlying factors associated with push and pull factors involving economic, political, sociological and gender dimensions in both sending and receiving countries.

#### **5. Effects on women**

These should be substantiated through data or anecdotal evidence.

#### **6. State obligation**

This section has to be approached in the following way:

- (i) Spell out the full scope of government obligations/initiatives required from the identified causes and barriers, ensuring that supporting articles of the Convention are mentioned. (See tables beginning page 28 for the various state obligations and pertinent articles/parts of the Convention.) Articles 2, 3 and 4 are particularly important. Government initiatives should be as specific as possible and should be clearly linked to causes and barriers.
- (ii) Spell out the existing initiatives being undertaken in relation to the issue and identify the gaps in the fulfillment of state obligation.



- (iii) Secondly, assess the effectiveness of existing government initiatives analysed from the point of view of the scope and coverage, relevance of content, sensitivity to women and appropriateness of underlying philosophy, efficiency of implementation, and capacity of the implementation structures such as budgetary allocation, workable procedures or structures, availability of trained implementers and contents or substance of what is implemented. The effectiveness should also be assessed from the point of view of whether Government itself is monitoring the effectiveness and whether there are mechanisms for complaint or redress in case of failure in achieving the intentions of the initiatives.
- (iv) Mention the major institutions set up to deal with human rights and women's rights protection such as human rights commissions, national machinery for women and briefly assess their effectiveness.<sup>6</sup>
- (v) Examine any specific mechanism or procedures set up to implement the Convention including the writing of the report to CEDAW and comment on its effectiveness.

## **7 Recommendations**

Recommendations should be as specific as possible, identifying for example the department or institution concerned, among others. They should be linked to specific gaps or failures in government initiatives.

## **8 Supporting data**

- (i) We have used the expression evidence of disparity or evidence of causes and barriers because there has to be supporting data for what goes into the report. This will give credibility to the issues we raise. Recognising that available data may not always be credible in our countries, we suggest that a section be included explaining the status of official data collection system and methodology in the particular country.
- (ii) There should always be a basis for comparison of data e.g. rural vs urban, men vs women or changes over a period of time (historical trends) where applicable or comparison with absolute figures etc.
- (iii) Where applicable, statistics should be broken down e.g. by age, geographical area, categories of groups etc.
- (iv) Format and presentation of data
  - Insert headings according to framework
  - Insert tables of statistics as annex to clarify disparities.
  - Consider visual presentation of statistics by graphs, pie charts etc.

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<sup>6</sup> Items iv and v refer to a more broad aspect of state obligation that needs to be considered as opposed to the specific actions that states need to take with regard to a particular issue (items i-iii). Items iv and v relate to actions at a more macro level such as taking the necessary legal and administrative steps to absorb the principles of the Convention into domestic, law and policy, identifying and making effective the institutions through which the Convention can be implemented, monitored as a whole, building capacity of the relevant institutions (bureaucracy, human rights commissions, judiciary, law enforcers) and creating publicity around the Convention. Research on these broad aspects may have to be commissioned separately.

## **9 Critique of NGO activism**

Give a brief critique of NGO activism to assess whether current advocacy is appropriate in relation to the gaps in the fulfillment of state obligation surfaced in the base line report. Formulate appropriate recommendations for improving NGO activism.

## **10 Other suggestions**

- (i) Ensure that throughout the report, the macro and micro situation is presented and analyzed as the case may be.
- (ii) In the presentation of the report, have clear headings and sub-headings.