

GLOBAL GOOD PRACTICES IN ADVANCING GENDER EQUALITY AND WOMEN'S EMPOWERMENT IN CONSTITUTIONS



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Support for constitution-making is part of UNDP's mandate to strengthen effective and democratic governance and support peacebuilding efforts. Constitutions provide the strongest legal means to protect the human rights and fundamental freedoms of women. This booklet summarizes the UNDP publication entitled '**Global Good Practices in Advancing Gender Equality and Women's Empowerment in Constitutions**' and highlights just a few examples of global good practices to advancing gender equality in constitutions. These recommended good practice examples conform with key international treaties and standards, including those reflected in: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of Persons with Disabilities (CRPD), the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the Convention on the Rights of the Child (CRC) and relevant ILO conventions. This booklet provides a 'snapshot' of good practices in order to advance gender equality and women's empowerment in constitutions and includes substantive sections that provide analysis and good practice examples of: overarching issues relevant across constitutional provisions; advancing gender equality in civil and political rights; in economic, social and cultural rights, and in indigenous rights.

Discrimination against vulnerable groups of women is prohibited in good practice constitutional equality and non-discrimination provisions (discussed below). The summary discussion of Indigenous rights and indigenous women's rights presents further options for advancing women's rights in the context of constitutional provisions dealing with collective rights.

Although this summary poster and the UNDP guidance it supplements focuses on good practices in the content of constitutions, women's equal participation and leadership is also critical to all aspects of the constitution-making process.

Good Practice Approaches Across Constitutional Provisions

Sex and Gender

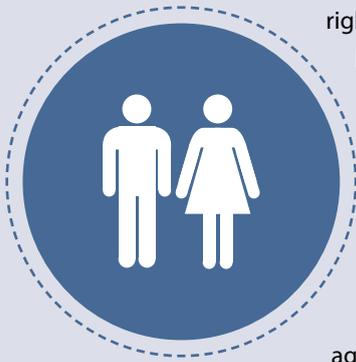
The terms 'sex' and 'gender' have different meanings and it is important that a constitution recognizes both as sources of inequality and discrimination.

Gender Inclusive Language

The language used in constitutions is important. Gender neutral terms such as person or citizen often result in the term 'man' being used to also mean woman which reinforces stereotypes that political and constitutional actors are presumed to be male. A constitution can more effectively promote gender equality if it explicitly refers to both men and women. (i.e. 'In its first sitting after its election, and whenever necessary to fill a vacancy, the National Assembly must elect a woman or a man from among its Members to be the President').

Equality and Non-Discrimination Provisions

Including a right to equality and non-discrimination as a core right in the constitution is critical. A good practice **equality right** provision includes: 1) a right to formal equality stating that women and men should receive equal treatment 2) a right to substantive equality guaranteeing equal opportunities, equal access and equal outcomes and 3) a positive duty on the state to advance and realize substantive equality. A good practice **right to non-discrimination** includes 1) the prohibition of both direct discrimination (a law that provides unequal or no inheritance to women and girls is an example of direct discrimination) and indirect discrimination (a law requiring that all employees are available to work at night is an example of indirect discrimination) 2) recognition of, in addition to sex and gender, different forms of discrimination such as race, health status, marital status, gender identity, religion, age and sexual orientation 3) the prohibition of discrimination by private and public persons and institutions and 4) a complaints process with remedies. (i.e. 'All direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status culture, language, age, mental or physical disability shall be prohibited.')



Temporary Special Measures (TSMs)

The constitution should authorize the use of temporary special measures by both public and private persons and institutions (known as 'affirmative action') when guarantees of formal equality are not sufficient to achieve substantive equality. TSMs can include positive action, preferential treatment or quota systems which advance women's participation in all areas of life including education, politics and employment. (i.e. 'The historical legacy of inequality and discrimination suffered by women in xxxx taken into account, women, in order to remedy this legacy, are entitled to affirmative measures. The purpose of such measures shall be to provide special attention to women so as to enable them to compete and participate on the basis of equality with men in political, social and economic life as well as in public and private institutions.'). TSMs should be explicitly excluded from being considered discriminatory, including within the scope and meaning of non-discrimination provisions.

Incorporating (or domesticating) International Law and Treaties

Integrating international law (the universal system of rules and principles concerning relations between states) including ratified treaties such as CEDAW into domestic legal systems is important, including for achieving gender equality through the courts. To ensure this the constitution should include a provision that clearly states that CEDAW and/or other treaties are incorporated in the national laws. (i.e. '(1) The legal system of xxx shall adopt the general or customary principles of international law. (2). Rules provided for in international conventions, treaties and agreements shall apply in the internal legal system of xxx following their approval, ratification or accession by the respective competent organs and after publication in the official gazette. (3). All rules that are contrary to the provisions of international conventions, treaties and agreements applied in the internal legal system of xxx shall be invalid.')



National Gender Equality Institution

A good practice measure is to establish a national gender equality institution or a national human rights institution through the constitution in order to give it appropriate legal and symbolic standing. The national institution should be independent, have an explicit mandate to protect and promote gender equality, be adequately funded, and have appropriate rules and procedures for membership including experience and knowledge of gender equality and a monitoring mechanism to ensure the institution carries out its duties and responsibilities. Such a national institution provides a critical link between the state's international obligations to advance gender equality and the domestic implementation of those obligations through law and policy.

Civil and Political Rights

Right to Vote and Right to Run for Office

A constitutional guarantee of the equal right to vote and the equal right to be elected to public office at any level including national, provincial, local and traditional/customary councils is an important formal equality measure. It is important symbolically that both rights are constitutionally protected and also important in practice since they provide a concrete foundation for women to contribute to the governance of the nation.

Equal Representation in Public Office

A constitution can include measures that require, promote or advance the participation of women. In particular, gender quotas are a form of TSMs that have proven successful in this area.



Equal Representation in Parliament

Two forms of gender quotas can increase women's representation in parliament – reserved seat quotas and candidate quotas. **Reserved seat quotas** mean that a certain number of parliamentary seats are reserved exclusively for women. **Candidate quotas** mean that each political party must have a minimum percentage of women candidates. (i.e. 'Candidates shall file their candidacy applications on the basis of parity between men and women. Lists shall be established in such a way to alternate between men and women. Lists that do not follow this principle shall only be admitted when the number of seats, in the relevant constituency, is odd.')

Equal Representation in Public Administration

The overall representation of women in public administrations is uneven across countries, and is particularly low in decision-making positions. In addition to being a right in all contexts, the equal participation of women at all levels in public administration is important for women's economic empowerment in many contexts where it is one of the only actual or acceptable employers of women.

Equal Representation in Sub-National Government

Equal representation of women is important not only at the national level of government but at the local level where day-to-day administration occurs. The representation of women in local level administrative bodies can be constitutionally advanced through the use of gender quotas. (i.e. 'Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women.')



Equal Representation in the Judiciary

Equal representation of women is important in the judiciary which plays a powerful role in upholding and enforcing the constitution and protecting women's human rights in all levels of the court system. Gender quotas can increase women's representation in the judiciary. (i.e. 'The Constitutional Court consists of nine (9) members, including at least three (3) women.')

Right to Freedom of Religion

The right to freedom in religion is routinely incorporated into modern constitutions. In countries where the legal system is based on religion the constitution may nominate religion as 'a' or 'the' primary source of law. However, some religious interpretations and practices are not in accord with the principles of equality and non-discrimination and, in particular, discriminate against women and girls. A good practice constitutional approach is to reaffirm the importance of religious traditions, but to also clearly place women's rights to equality and non-discrimination above inconsistent interpretations of religion. In particular instances, harmful religious practices should be prohibited. i.e. 'Every person shall be entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the terms of this Constitution and further subject to the condition that the rights protected by this Article do not impinge upon the rights of others or the national interest.' (The ICCPR recognizes the right to freedom of thought, conscience and religion in Article 18).

Right to Citizenship

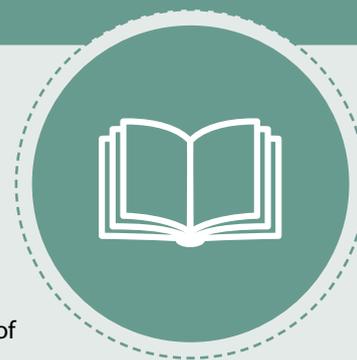
Citizenship is critical to women's (and girl's) full participation in society since it affects her right to vote or stand for public office, her choice of residence and mobility, and her access to a range of public services and benefits. The following good practice measures should be incorporated into citizenship provisions: 1) citizenship granted to both spouses upon marriage without a waiting period, 2) no loss of citizenship for either spouse because of marriage or divorce (which may leave a woman stateless), 3) a guarantee that a citizen may hold dual nationality (to ensure a woman can return to her country of birth after divorce or her husband's death), and 4) a guarantee that citizenship is transmitted to children through both parents equally. (Article 15 of the UDHR states that '[e]veryone has the right to a nationality' and Article 9 of CEDAW states that States parties must 'grant women equal rights with men to acquire, change or retain their nationality'.')



Economic, Social and Cultural Rights

Right to Culture

In some countries where traditions, practices and cultural beliefs dominate in social systems, constitutions often give culture and custom powerful status. However, some cultural practices are not in accord with the principles of equality and non-discrimination. While it is important that the constitution recognizes the right to culture and the right of everyone to take part in cultural life (i.e. in accordance with Article 15 of the ICESCR), it must not override women's rights and gender equality. A good practice approach is for the constitution to reaffirm the importance of cultural traditions, but also to clearly place women's rights to equality and non-discrimination above inconsistent aspects of custom. (i.e. 'The state prohibits tribal traditions that are in contradiction with human rights.')

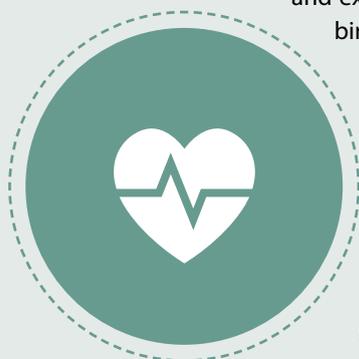


Equal Right to Education

Educated women are healthier, participate more in the formal labor market, earn a higher income, have fewer children, and provide better health care and education to their children, all of which improve the well-being of all individuals and lift households out of poverty. Good practice constitutional provisions to advance gender equality in education include a general right to education and prohibit discrimination, provide compulsory free education at primary and secondary levels, and include a temporary special measures provision enabling preferential treatment, scholarships or quota systems in education to ensure equal access for girls and women to all levels of education. (i.e. 'Education is a right for every citizen and the State shall provide access to education without discrimination as to religion, race, ethnicity, gender or disability. (2) Primary education is compulsory and the State shall provide it free.'). (The ICESCR recognizes the right of everyone to education in Article 13).

Right to Health

Good practice constitutional provisions to advance gender equality in health include a general right to health and health services for all citizens, a right to sexual and reproductive freedom, a prohibition on discrimination and non-consensual medical treatment and experimentation and a guarantee of appropriate and adequate services in connection with pregnancy, birthing and the postnatal period. (i.e. '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; and (c) not to be subjected to medical or scientific experiments without their informed consent.'). (The ICESCR recognizes the right to health in Article 12).



Equal Right to Inherit

A constitutional guarantee of equal inheritance for women and men is important to ensure women receive equal access to land and property. Inheritance laws in some countries (often customary) often leave women with a smaller share of their husband or father's property upon death than widowers, sons or brothers, justified by stereotyped assumptions that women marry and leave the family of origin and will be cared for by her husband and his family (i.e. 'Sons and daughters shall have equal rights to their ancestral property.').

Equal Right in all Aspects of Work & Equal Right to Economic Opportunities

In all countries world-wide, women earn less than men regardless of education and work-experience, are more likely to be unemployed, to be in 'vulnerable' employment, to have poor and inadequate working conditions, are less likely to occupy the upper management levels of organizations and institutions and have less access to finance and business opportunities. Good practice constitutional guarantees to advance gender equality in the area of work include: a guarantee that everyone has a right to work and a prohibition on discrimination; a guarantee that women are afforded the same rights, opportunities, choices and benefits in relation to all forms of economic opportunities as men, a guarantee of equal pay for work of equal value, a guarantee of adequate child care to enable women to engage in paid work and education a guarantee of parental leave (for both fathers and mothers). (Article 6 of the ICESCR recognizes a general right to work for everyone, Article 7 recognizes a right to equal remuneration for work of equal value, a right for women to have the same work conditions as men and a right to equal opportunity for promotion).

Equal Right to Own, Manage, Enjoy and Dispose of Property and Land

Constitutional protection of women's equal right to own, manage, enjoy and dispose of property and land both within and outside marriage is of major significance for women. The control and ownership of land and property by women, especially in rural areas, is critical to their livelihoods, food security, economic independence and physical security yet women own only a fraction of land and property world-wide. Although the detail of land and property law is appropriately left to legislation, a good practice constitutional measure is to include a guarantee of equal ownership and usage of land and property and a prohibition on discrimination (i.e. '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.').

Equal Representation in the Management of the Environment and Natural Resources

Constitutional protection of natural resources and the environment is significant for women as they are often responsible for providing their households with the basic necessities of life relying heavily on natural resources from land, forests, lakes, rivers and fisheries which provide food, fuel, medicines, and fresh water. Both women and men should participate equally at all levels of management of natural resources including decisions about the distribution of resources (i.e. 'Women have the right to full consultation in the formulation of national development policies, the designing and execution of projects, and particularly in the case of projects affecting the interests of women.').



Right to Adequate Housing

Adequate housing is intimately connected to the security, health, livelihood and overall well-being of women however many women experience discrimination and inequality in all aspects of housing. A good practice constitutional measure is to guarantee the right to adequate housing to women and men and prohibit discrimination (i.e. 'Everyone has the right to have access to adequate housing, and (2) the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right'). (Article 11 of the ICESCR recognizes the right of everyone to adequate housing).



Right to a Life Free from Violence

A constitutional right to a life free of violence is an important right for women since gender-based violence is globally recognized as an endemic, pervasive, and widespread phenomenon in both developing and developed countries. It occurs in times of stability, transition and during and following crisis. Worldwide estimates suggest up to 7 out of every 10 women experience physical and/or sexual violence in their lifetime. The constitution should prohibit all forms of violence in public and private spheres of life (i.e. 'All forms of violence and abuse in the family, school and society shall be prohibited'). Constitutional provisions could explicitly prohibit specific forms of gender-based violence such as domestic/intimate partner violence, marital rape, and/or acid attacks.

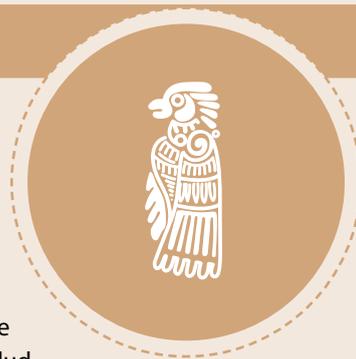
Equality in Marriage and Family Relations

A constitutional guarantee of equality and the prohibition of discrimination in marriage and family relations is an important measure for the advancement of gender equality as gender discrimination in all aspects of marriage and family relationships continues worldwide. In particular constitutions can prohibit under-age marriage, forced marriage, bigamy and polygamy, fault based divorce and the failure to provide proper maintenance after separation and divorce. (Article 16 of CEDAW recognizes a right to equality in marriage and family relations and specifically mandates the prohibition of a range of discriminatory practices).



Indigenous Rights

There are approximately 370 million indigenous people in 70 countries worldwide who are the most disadvantaged and vulnerable groups of peoples in the world today. Constitutions in some countries have started recognizing the rights of indigenous peoples. Indigenous women are, in turn, the most vulnerable among indigenous peoples as they face double disadvantage. Indigenous rights are collective rights which, if constitutionally recognized, can advance the rights of indigenous peoples but these rights should be used to also advance, not undermine the rights of indigenous women and girls. Constitutional provisions on indigenous rights would be strengthened by particular references to the rights of indigenous women and girls. Good practice constitutional protection of Indigenous rights, including some explicit references to indigenous women's rights, includes: **a right to cultural diversity** to counter policies of assimilation by colonizing nations, which have particularly impacted indigenous women; **a right to self-determination** to recognize indigenous peoples' right to govern themselves and to enjoy their rights to land, territories, resources, culture, spirituality, language and education. i.e. 'Self-determination is guaranteed to peasant indigenous peoples under the unity of the state – that is their right to autonomy, self-government, their culture, recognition of its institutions and the consolidation of its territorial units...'; **a right to political participation** as Indigenous peoples and in particular indigenous women are poorly represented in political processes despite formal equal eligibility for political offices in most countries. i.e. 'Indigenous people have the right to political participation. The State will guarantee indigenous representation in the National Assembly and in the deliberating bodies of federal and local entities...' This would be strengthened by reserving seats for indigenous women; **a right to possess, conserve, and administer lands, territories, and ancestral resources** which is vital for the physical and cultural survival of indigenous peoples who have a special relationship with land and resources; **a right to the protection of indigenous languages and the right to receive an education in the maternal language** is fundamental to safeguarding the heritage of indigenous peoples and to ensure the recognition of indigenous women as keepers of languages and traditional knowledge.



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