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# CEDAW and the Human Rights Based Approach to Programming

A UNIFEM GUIDE

United Nations Development Fund for Women



UNIFEM is the women's fund at the United Nations. It provides financial and technical assistance to innovative programmes and strategies to foster women's empowerment and gender equality. Placing the advancement of women's human rights at the centre of all of its efforts, UNIFEM focuses its activities on four strategic areas:

- Reducing feminized poverty;
- Ending violence against women;
- Reversing the spread of HIV/AIDS among women and girls;
- Achieving gender equality in democratic governance in times of peace as well as war.

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# Introduction

Promoting universal respect for human rights has been one of the fundamental goals of the United Nations since its creation, and the development of a comprehensive international human rights normative and standard-setting system within the United Nations was one of the great achievements of the 20th century. A more recent development, and one with great potential for further enhancing the impact of these human rights standards on the ground, is the adoption of the human rights-based approach (HRBA) to programming by United Nations agencies, funds and programmes.

Especially over the past decade, the UN system's commitment to the HRBA intensified. Following the lead of innovators such as UNICEF, many other agencies, funds and programmes, such as WHO, UNFPA, UNDP, and UNIFEM have paid increasing attention to human rights. Of particular note is the adoption in 2003 of the UN Inter-Agency Common Understanding on the human rights-based approach to programming, and the roll-out of Action II of the Secretary-General's reform programme. These two initiatives are making a substantial contribution to clarifying and focusing a UN system-wide approach to integrating human rights

considerations into programme support. The principle that development cooperation should further the realization of human rights has now gained wide acceptance.

At the current stage of the HRBA's evolution, the UN is tackling the challenge of fully translating this commitment into concrete, operational programming terms. What does the HRBA really mean for programming priorities, design, implementation, monitoring and evaluation? And—to be even more concrete—what does the HRBA tell us about the expectations that people themselves should rightly have of the UN's programming support?

The United Nations Development Fund for Women has worked for gender equality and women's empowerment for over 30 years, and since the 1990s the organization has placed a particular emphasis on supporting implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This guide consolidates insights and experiences gained by UNIFEM to date, to assist staff in further deepening the HRBA within programming. It's a contribution we share with partners in our common effort to advance women's human rights.



# SECTION 1

## Gender Equality as a Human Right



“Women have a right to gender equality.” It’s a simple and true statement, but its implications for how development assistance should be conducted are many and far-reaching. Before we begin addressing the nuts and bolts of the HRBA (Section 2), it is worth taking some time to explore just what it means, and why it matters, to approach gender equality as a human right.

## What are International Human Rights?

The international human rights system is a creation of the 20th century. The impetus to institute a global order to protect human rights came from the same source as the impetus to create the United Nations itself. In response to the devastation and inhumanity inflicted by World War II, there was consensus that rules and standards should be established which would, in the future, uphold human dignity and protect all people from such harm. The first step was the UN General Assembly’s adoption, in 1948, of the **Universal Declaration of Human Rights** (UDHR).

A treaty system was then introduced, allowing any Member State of the United Nations to undertake legal obligations to respect, protect and fulfill the most important human rights. In 1966, the first two treaties, the **International Covenant on Civil and Political Rights** (ICCPR) and the **International Covenant on Economic, Social and Cultural Rights** (ICESCR), were opened for ratification. The other core human rights treaties followed:

- **Convention on the Elimination of All Forms of Racial Discrimination** (CERD) 1965
- **Convention on the Elimination of All Forms of Discrimination against Women** (CEDAW) 1979

- **Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment** (CAT) 1984
- **Convention on the Rights of the Child** (CRC) 1989
- **Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** (CMW) 1990

Two new conventions—on the rights of persons affected by disabilities, and on protection from enforced disappearance—were adopted by the General Assembly in 2006. These conventions are waiting to receive the number of ratifications from Member States that will allow them to come into force.

The work to codify human rights into international law took many decades, and drew on the collective efforts of governments, non-governmental organizations, lawyers and academics from around the world, as well as the United Nations bodies. The result is that we now have a comprehensive normative and legal framework for human rights, which clearly identifies the content of these rights and the steps that should be taken to realize them. This framework has achieved global endorsement. The number of UN Member States that are parties to the treaties has grown continuously. By 2007 all States had ratified at least one of the treaties, and 80% had ratified four or more. The two most broadly endorsed human rights treaties—CEDAW and the CRC—have each been ratified by more than 90% of the UN membership.

## Gender Equality within the Human Rights Framework

The human rights obligation to eliminate sex-based discrimination against women in order to achieve

gender equality has been at the centre of international human rights from the beginning. The UDHR, ICCPR, ICESCR, and other core treaties contain clear statements on women's right to be free from discrimination. The centrality of this concern was made abundantly clear by the adoption of CEDAW. The core international human rights standards, taken together, provide a powerful normative framework for advancing gender equality.

In 1993, the Vienna World Conference on Human Rights took the centrality of women's rights to the international human rights regime as one of its primary concerns. As stated in the Vienna Declaration and Programme of Action, and reaffirmed many times since, including in the Beijing Platform:

- *The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights.*
- *The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.*
- *The human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women.*

### What are Women's Human Rights under CEDAW?

Provisions protecting women's human rights exist in all of the core international human rights treaties. But it is in CEDAW that the specifics of women's human right to

gender equality are set down in detail, and the broad range of actions that must be taken to achieve gender equality are mapped out. It is also in CEDAW that the international human rights system's understanding of the nature and meaning of sex-based discrimination and gender equality is most clearly articulated.

### CEDAW's Approach to Achieving Gender Equality

CEDAW is an "anti-discrimination" treaty, meaning that in CEDAW gender inequalities are understood to have been produced by sex-based discrimination. The State obligations imposed by CEDAW are primarily obligations to eliminate the many different forms of gender-based discrimination women face. CEDAW in that sense embodies both a theory of women's subordination, and a strategy for overcoming this subordination.

CEDAW is also informed by a particular understanding of what counts as equality, often called "substantive equality" or "equality of results." CEDAW takes a very concrete and three-dimensional view of equality. Rather than considering equality in formal and legalistic terms, and saying that laws and policies ensure equality between women and men simply by being gender-neutral, CEDAW requires that their actual impact and effect also be considered. Under CEDAW, the State has to do more than just make sure there are no existing laws that directly discriminate against women. It must also make sure that all of the necessary arrangements are put in place that will allow women to actually experience equality in their lives.

Finally, CEDAW makes States responsible not just for their own actions, but also for eliminating discrimination

that is being perpetrated by private individuals and organizations. CEDAW recognizes that discrimination is often most deeply rooted in spheres of life such as culture, the family, and interpersonal relations, and that if change does not take place at those levels, efforts to achieve gender equality will be frustrated.

## The Articles of CEDAW

The articles of CEDAW fall into three main groups. The first set of articles explains the nature and scope of the State's obligations. The second set of articles targets specific forms of discrimination and outlines measures that the State must undertake to eliminate discrimination in each of these areas. The last set of articles governs procedural and administrative matters, such as the composition of the CEDAW Committee and the way in which the reporting process operates.

**Article 1:** definition of discrimination against women

**Articles 2-5:** the full range of measures the State must take to eliminate discrimination and achieve gender equality



**Article 6:** trafficking and the exploitation of prostitution

**Article 7:** public and political life

**Article 8:** international affairs

**Article 9:** nationality

**Article 10:** education

**Article 11:** employment

**Article 12:** health care

**Article 13:** economic and social life

**Article 14:** rural women

**Article 15:** equality before the law

**Article 16:** equality in marriage and family life



**Articles 17-22:** the CEDAW Committee and the reporting process

**Articles 23-30:** ratification, reservations and other procedural matters

## How is CEDAW Monitored?

### The CEDAW Committee

Like all of the core international human rights treaties, CEDAW is overseen by a treaty body. The Committee on the Elimination of Discrimination against Women is a group of 23 gender equality experts. They are elected by the States parties to CEDAW, but once elected they serve in an independent capacity, not as representatives of their countries. The Committee membership is regionally representative, and at present has members from Algeria, Bangladesh, Brazil, China, Croatia, Cuba, Egypt, France, Germany, Ghana, Israel, Italy, Jamaica, Japan, the Republic of Korea, Malaysia, Mauritius, the Netherlands, Portugal, Singapore, Slovenia, South Africa, and Thailand. The Committee members bring a broad range of relevant expertise to bear, drawing from their careers as gender equality experts in law, academia, the private sector, government, and non-governmental organizations.

The Committee is responsible for reviewing each State



party's progress, as well as the challenges they are experiencing in implementing the Convention. After reviewing progress and challenges, the Committee issues its Concluding Comments, which provide specific guidance on how this performance could be improved in national context. The Committee is also responsible for developing jurisprudence, a body of legal interpretation, primarily through the issuing of General Recommendations (GRs) and decisions under CEDAW's Optional Protocol. This jurisprudence helps clarify how the Convention applies to specific situations and emerging issues.

In the past, all of the other treaty bodies met in Geneva and received secretariat support from the Office of the High Commissioner for Human Rights (OHCHR), but the CEDAW Committee met in New York, and the Division for the Advancement of Women (DAW) served as its secretariat. Beginning in 2008, CEDAW will meet in Geneva and will be supported by the OHCHR.

## The CEDAW Reporting Process

States that are parties to CEDAW must submit regular reports to the CEDAW Committee. These reports contain detailed information about legislative, judicial, administrative and other measures that have been undertaken to implement CEDAW, as well as about obstacles that have been encountered. The reports need to provide a fairly comprehensive mapping of progress in achieving gender equality, and States will often call on DAW, the OHCHR and other UN organizations for assistance when drafting them.

The reports are reviewed during the CEDAW Committee's sessions, which are held several times a year in New York. The reporting State sends a govern-

ment delegation, including the heads of women's machineries and other key officials such as those responsible for foreign affairs and the administration of justice, to engage in a dialogue with the Committee members. When the Committee is considering the reports, it will also draw on information provided by UN agencies and women's NGOs from the reporting countries. There are specific meeting times set aside during the sessions for the Committee to hold discussions with the UN agencies, and with the women's NGOs. Women's NGOs can also submit alternative reports on their countries' progress—often called “shadow reports” —to the Committee.

The Committee places great value on hearing from women themselves about the situation in their countries. UNIFEM has for many years supported women's NGOs to attend the CEDAW sessions and present shadow reports through the “Global to Local” programme. The programme is run by the International Women's Rights Action Watch (IWRAP) Asia Pacific, an NGO based in Malaysia, and while initially supported only by UNIFEM, it is now also receiving support from UNFPA. Over the past decade, more than 80% of the women's NGOs from around the world that have attended the CEDAW sessions were sponsored by the Global to Local programme.

When the CEDAW session is completed, the Committee issues its concluding comments on each State party's report. They note successful steps that have been taken to achieve gender equality, then identify the most critical measures that need to be taken in the future to implement the Convention. The Concluding Comments are very important resources for gender equality work. First, they provide authoritative guidance about what CEDAW requires in specific national contexts: through the

Concluding Comments, the fairly general language of the Convention is given more concrete, real-life meaning. Second, the Concluding Comments are valuable advocacy tools for use by gender equality advocates to press for needed changes at the national level.

*For more information about CEDAW, and links to helpful resources, see Section 9 “Women’s Human Rights In-Depth.”*

## Summing Up: Gender Equality as a Human Right

Not everyone who works to advance gender equality approaches it as a human right. For example, it can be treated exclusively as a development concern. From that view, gender equality has importance because of its instrumental value in furthering development—because a country’s development objectives cannot be reached unless the situations of both men and women are significantly improved, attention must be paid to the challenges women face.

**What is gained by understanding gender equality as a human right? As outlined above, the human rights framework has a number of distinctive contributions to make:**

1. It provides the highest level of normative authority. Human rights are the only values on which there is global consensus. Political and economic regimes and cultural and religious traditions vary widely around the world, and questions about which system is right and which system is wrong are unanswerable. But common elements from all of these sources were brought together in the development of the international human rights framework. There is now a shared agreement, at least at the level of human

values, which allows us to have meaningful and productive discussions across our differences about how people should be treated.

One of the central principles human rights law has established is that all human beings, women included, are equal and should not be subjected to discrimination. Once gender equality is understood as a human right it needs no additional justification, and the legitimacy of work to advance gender equality does not depend on proving its usefulness for other purposes, such as those of development, or economic growth.

2. It provides the definitive certainty of law. International human rights standards are not “law” in the same sense as, for example, a nation’s criminal code is law—their enforcement is a more complex matter. But one of the common characteristics of both international human rights law and national law is that obligations—what must be done, what must not be done, and who has responsibility for these actions—are very clearly defined. By becoming a party to CEDAW, for example, a State undertakes to implement a long series of specific measures to advance gender equality. The content of these obligations is not open to alteration by individual governments or organizations.
3. At the same time, it responds to country realities and emerging issues. A universal set of detailed gender equality requirements could actually be an obstacle rather than an asset for gender equality work, if it was too abstract or rigid. The challenges women face vary so much from country to country, and even within a country they can change significantly over time. Fortunately, the international human rights system is designed to be responsive and flexible.



Country-specific perspectives are, for example, built into CEDAW in multiple ways: the text of the Convention was drafted and negotiated by people from all parts of the world; the CEDAW Committee's membership is regionally balanced; and in addition to the government's own regular reports, the Committee considers the views expressed by women's groups in the country, and information available from UN organizations working there. All of these combine to make CEDAW's Concluding Comments quite a useful source of guidance about what the current priorities for gender equality work should be in individual country contexts.

Through the Concluding Comments, the General Recommendations, and decisions under CEDAW's Optional Protocol, the Committee takes the opportunity to explore how the Convention should apply to new issues that weren't in the minds of CEDAW's drafters, such as HIV/AIDS, for example, or economic globalization.

For UNIFEM, one of the main advantages of the human rights-based approach is that it helps us to strengthen our programming by making systematic use of the benefits that come from gender equality's status as a human right. The sections that follow explore the ways in which UNIFEM has already implemented the HRBA in our programmes, and ways in which this approach can be deepened.



## SECTION 2

# UNIFEM and the HRBA



## The United Nations and the Human Rights-Based Approach

The HRBA is by no means a new programming approach for the UN system. For many years, UN agencies, programmes and funds have, each in their own way, been exploring and developing human rights-based approaches to their programming. A number of UN organizations were particularly engaged with human rights because they saw a very direct link to their individual mandates (such as UNICEF's with the Convention on the Rights of the Child, and UNIFEM's with CEDAW). In 1997, interest in implementing the HRBA increased significantly, as the Secretary-General called on all UN organizations to mainstream human rights into their work in the context of the UN programme for reform.

What is relatively new is the UN system's adoption of a standard approach to the HRBA. In 2003, at the Stamford Inter-Agency Workshop on a Human Rights-Based Approach, a "Common Understanding" of the HRBA was negotiated for the UN system as a whole. The UN Common Understanding was then endorsed by the UN Development Group (UNDG), and incorporated into the Common Country Assessment/UN Development Assistance Framework (CCA/UNDAF) Guidelines. In the second stage of the Secretary-General's UN reforms, an initiative called Action II was created. Action II is a global programme to strengthen the UN's support for the promotion and protection of human rights, led by a core task force composed of OHCHR, UNDP, UNFPA, UNICEF, UNIFEM, UNDG and OCHA. It is focused on strengthening the human rights-related programming capacities of UN country teams (UNCTs), so that they can support Member States to realize human rights in line with the Millennium Development Goals (MDGs). Human rights trainings for

the UNCTs will be rolled out by Action II in 2007, and these trainings take their guidance on the HRBA from the UN Common Understanding.

The UN Common Understanding on the HRBA is a short document that sets out three main points of agreement about the HRBA, then provides basic explanations of each of these points.

# UN Common Understanding

- 1** All programmes of development cooperation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
- 2** Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.
- 3** Development cooperation contributes to the development of the capacities of "duty-bearers" to meet their obligations and/or of "rights-holders" to claim their rights.

## UNIFEM's 2004-7 Multi-Year Funding Framework and the HRBA

The Common Understanding's three points of agreement are framed in fairly general and abstract terms, and the concrete implications really only become clear once they're interpreted in light of an organization's mandate. What does the Common Understanding actually imply for UNIFEM's work? This section will highlight some of the key implications. In Section 3, the Common Understanding's human rights principles will be explored in greater depth, and in connection with our own programming experiences.

### 1. All programming should further the realization of human rights

There is virtually no aspect of development cooperation that doesn't make at least some contribution to the realization of human rights. For example, anything done to improve access to water may help realize the right to health, and anything done to improve access to education can help realize the right to education. In the earlier stages of the UN system's use of the rights-based approach, there was a tendency to simply repackage existing programming and programming approaches by inserting human rights language into documents. But the HRBA should not be treated as an exercise in rights rhetoric.

The Common Understanding commits UN organizations to engaging with human rights in a more systematic, deliberate and purposeful way. The Common Understanding notes that programming activities which "incidentally" contribute to rights realization don't qualify as implementing the HRBA. Rather, programmes must be consciously designed with the intention of realizing

human rights—they must identify and support the actual changes on the ground that will further the realization of rights.

This first point of agreement in the Common Understanding also underlines that work to further the realization of human rights is not something that should be treated as its own discrete sector. In the past, many UN organizations, including UNIFEM, have located their human rights work only in specific programmes, or as a discrete organizational goal. To implement the HRBA, however, programming in all sectors must be designed to realize rights.

How was the first point of the Common Understanding reflected in UNIFEM's 2004-7 Multi-Year Funding Framework (MYFF)? Rather than having a separate goal on women's human rights, achieving gender equality is an overarching goal of all programming. The absence of a specific MYFF goal on human rights does not mean that there can't be any human rights programmes, and we are indeed currently implementing many of these programmes. What the framework implies is that there should not be programmes in any of our MYFF goal areas—reducing feminized poverty, ending violence against women, halting and reversing the spread of HIV/AIDS, and achieving gender equality in democratic governance—that are not designed to help realize the relevant human rights for women.

There are rights under CEDAW directly corresponding to each of our MYFF goal areas. In the chart that follows, some of the key rights under CEDAW are identified, as well as General Recommendations of the CEDAW Committee that provide additional guidance on the State's obligations in these areas.



MYFF Goal	CEDAW
<b>Goal 1:</b> Reduce feminized poverty and exclusion	<b>Article 11:</b> employment <b>Article 13:</b> economic and social life <b>Article 14:</b> rural women <b>GR 13:</b> equal remuneration <b>GR 16:</b> unpaid women workers
<b>Goal 2:</b> End violence against women	<b>Article 6:</b> trafficking and prostitution <b>Article 5:</b> customary and other practices <b>Article 16:</b> marriage and family relations <b>GR 19:</b> violence against women
<b>Goal 3:</b> Halt and reverse the spread of HIV/AIDS among women and girls	<b>Article 12:</b> healthcare <b>GR 15:</b> HIV/AIDS <b>GR 24 :</b> health
<b>Goal 4:</b> Achieve gender equality in democratic governance in times of peace and in recovery from war	<b>Article 2:</b> constitutional and other legal reform <b>Article 7:</b> public and political life <b>GR 23:</b> public and political life <b>GR 25:</b> temporary special measures

## 2. Human rights standards and principles should guide all aspects of programming

As discussed in Section 1, the human rights standards in treaties such as CEDAW are a source of quite detailed guidance on the measures that need to be taken to realize women's human rights. The Common Understanding's second point of agreement is underlining that programming should make very conscious use of this guidance. In order to implement the HRBA properly, programming should be informed by knowledge of the specific human rights standards that apply, and of the measures that should be taken to further them. This information is found in the articles of the human rights treaties, in their Committee's General Recommendations, and in the Committee's application of the standards to country situations in their concluding comments.

Some of the uses that should be made of human rights standards are highlighted in the UNIFEM MYFF. For example, ensuring that "legislation and policies are formulated and implemented to promote and protect women's human rights" is the MYFF's first outcome level result. Among the indicators accompanying this outcome are the removal of discriminatory provisions from legislation and policies, the incorporation of gender equality provisions into national constitutions, and the reflection of gender equality commitments in poverty reduction strategies. However, human rights standards are more than a tool for legislative review and reform. As the second point of the Common Understanding stresses, they provide guidance that applies to all programming areas—i.e. they are just as useful when supporting women's political participation, or improved services relating to violence against women.

The most helpful first step for ensuring that a programme will further the realization of women's human rights is to incorporate a careful review of the application of human rights standards into the situation analysis. If you begin with an accurate picture of what CEDAW actually entitles women to in your programme context, and what measures the government is obligated to implement under CEDAW in that context, your ability to set objectives, outcomes and activities that will be most effective for realizing the right is greatly increased.

Investment at this initial level of analysis will benefit the programme throughout its lifetime. Some of UNIFEM's larger programmes, such as the land rights programme in the CIS sub-region, or Asia Pacific's migration programme, were able to invest the resources needed to conduct very comprehensive human rights analysis at the programme design stage. These studies continued to be drawn on throughout the programmes' implementation periods. The land rights analysis, for example, assisted in the drafting of legislative amendments in several countries to better secure women's land ownership. The migration rights analysis supported advocacy for the creation of a standard contract for migrant domestic workers in Jordan, has been used in university curricula in Southeast Asia, and was provided to support the drafting of the CEDAW Committee's General Recommendation on migration.

### **3. Programming should support development of the capacities of duty-bearers to meet their obligations, and of rights-holders to claim their rights**

The third point of agreement is underlining that human rights are essentially about a relationship between

governments and people. Once human rights obligations have been undertaken (through the ratification of treaties such as CEDAW), governments are responsible for their implementation so that people can fully enjoy their rights. And people are entitled to claim these rights, demanding that governments make good on their obligations.

You'll notice that this relationship is not one in which the UN figures prominently. In earlier models of development that were not based on rights, it may have been acceptable for UN organizations to understand their work as directly providing for the needs of people in developing countries. The HRBA is certainly not a service delivery model for programming. Rather, it's a capacity-building model. According to the HRBA's capacity-building model, the UN has a more supporting role, of facilitating the conditions necessary in a country for rights to be realized. The primary actors, the agents of change, are always the rights-holders and duty-bearers.

In the MYFF outcome areas, UNIFEM has identified three levels at which our programming supports capacity development for both duty-bearers and rights-holders:

- At the macro level, support is provided for improvements to legislative and policy frameworks
- At the meso level, we are concerned with supporting gender responsiveness in mainstream institutions and enhanced ability of gender equality advocates to influence policy agendas
- At the micro level, support is provided for eliminating discriminatory attitudes and stereotypes



## SECTION 3

# Applying the HRBA Principles



Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.

The second point of agreement in the UN Common Understanding says that human rights standards and principles should guide programming. The human rights standards can be found in the treaties, but what are the human rights principles? The Common Understanding provides a list:

- Universality and inalienability
- Indivisibility
- Interdependence and interrelatedness
- Equality and non-discrimination
- Participation and inclusion
- Accountability and the rule of law

Some of the most important programming requirements for implementing the HRBA are contained in these human rights principles. Their implications for UNIFEM's work are discussed below.

## Universality and Inalienability

The first article of the Universal Declaration of Human Rights states: "All human beings are born free and equal in dignity and rights." All people everywhere in the world are entitled to human rights—the person who

possesses rights cannot voluntarily give them up, and others cannot take them away.

Women are one of the groups of people whose very entitlement to their human rights is most often challenged or ignored. There are situations in which their rights can often be treated as irrelevant—as, for example, where governments consider internal family relations as private, and beyond the law's reach. Even within human rights and development work itself, the reality that half of the people concerned are women, with specific rights of their own that must be respected, has often been overlooked. As Radhika Coomaraswamy, the former Special Rapporteur on violence against women has observed, women frequently face a culture of impunity, and the failure of the rule of law, where their human rights are concerned.

How has UNIFEM responded to this fundamental challenge under the MYFF? Considerable programme support has been devoted to ensuring that the so-called "private realm" is not a zone where women's rights are violated. The famous slogan "Women's Rights are Human Rights" was first associated with campaigns to ensure that women received protection from gender-based violence, and UNIFEM sub-regional offices have supported groundbreaking work in this area. These programmes have, for example, led to the adoption of a country's first domestic violence laws, and the criminalization of rape within marriage for the first time.

## Indivisibility

The principle of indivisibility reminds us not to proceed as if there was a hierarchy among human rights, with some being more important or more critical than others. All human rights have equal status. The need for such a

principle became apparent during the cold war stage of the human rights system's evolution, when one bloc pressed for priority attention to civil and political rights, and the other insisted on the precedence of economic, social and cultural rights. The equal status of civil and political rights and economic, social and cultural rights is now widely accepted in the human rights world. But the principle of indivisibility still has relevance, especially as a reminder of the importance of attending to the rights of groups subjected to discrimination and disadvantage, under treaties such as CEDAW, CERD and the CRC.

While it is not acceptable to give one set of human rights priority over another, it has been recognized that some rights may necessarily take more time to be realized than others. Some of the social, economic and cultural rights, for example, may take more time to realize than some of the civil and political rights, because they require a greater investment of resources, or the accomplishment of more substantial structural changes. Where a State cannot realistically be expected to achieve a right immediately, its obligation is understood to be “progressive,” and can be satisfied by genuine efforts producing incremental progress to rights realization. It should be noted, though, that the obligation to not discriminate—against women or any other group—is not progressive, it is always immediate.

## Interdependence and Interrelatedness

The realization of one right will often very much depend on the realization of other rights as well. The principles of interdependence and interrelatedness remind us of the importance of a comprehensive and holistic programming vision.

When the HRBA advises us to programme with a very clear idea in mind of the right to be furthered, this is not a call to develop tunnel vision around that right; quite the opposite. The actual realization of a right can be a complex and long-term matter—most rights cannot be realized within the scope and time frame of an individual project or programme. In order to programme in a way that effectively serves to advance a human right you don't have to adopt unrealistically bold objectives. What is needed is attention to the possibility that other rights must also be realized, and awareness of the various stages that must be reached before a right can be realized. With this picture in mind, the real contribution the programme can make—as connected with efforts of other actors, and work that must follow after the completion of the programme—can be identified.

These principles again underline the importance of strong situation analysis. Rights realization always takes time, but it will take less time if the full set of challenges involved is understood from the outset.

For example, it's better to support the drafting of a new law already knowing that chronic gender-based discrimination in budgetary processes is hampering the implementation of existing laws, and to factor this challenge into programme design, than to discover such an obstacle after programme completion.

## Equality and Non-Discrimination

As the UN Common Understanding explains these principles: “All individuals are equal as human beings and by virtue of the inherent dignity of each person. All human beings are entitled to their human rights without discrimination of any kind, such as race, colour, sex, ethnicity, age, language, religion, political or other

opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.”

Equality and non-discrimination are two sides of the same coin. People are entitled to equality. Inequality is understood in the human rights framework as the product of discrimination. People are therefore also entitled to the elimination of discrimination—in whatever form it takes, sexual, racial, religious, or on other grounds—as a means to achieve equality.

It should be noted that there is no closed, permanent list of the prohibited grounds of discrimination. New forms of discrimination can develop over time—for example, discrimination against migrant workers only becomes a major human rights problem once migration for work becomes a widespread phenomenon. And situations and treatment that have in the past been considered natural, if perhaps unfortunate, can come to be recognized as discriminatory. Sex-based discrimination is a classic example. While it may once have been common sense to think that women weren’t suited by nature to exercising political power, entering into contracts, owning property, and so on, it is now clearly recognized in human rights law that depriving women of these entitlements is just as serious as singling out a racial or religious minority for such treatment.

As the UN Common Understanding points out, the treaty bodies are often the first place that a new prohibited ground of discrimination is identified. For example, in a recent General Comment, the Committee on Economic, Social and Cultural Rights recognized sexual orientation as a prohibited ground of discrimination.

Gender has unequivocal recognition from the human rights system as a prohibited ground of discrimination,

and one of the core human rights treaties is exclusively concerned with gender-based discrimination. While this is certainly a good thing, it creates a potential blind spot for people who are programming on gender. It would be easy, and comfortable, to assume that the HRBA principles of equality and non-discrimination are not a concern for programmes that directly address gender inequality. The UN Common Understanding is a reminder that we need to be alert to the multiple forms of discrimination women may face. A variety of UNIFEM programmes—including those focusing on migrant women workers, women living with HIV/AIDS, and women from ethnic and racial minority groups—are engaging with the intersection of different forms of discrimination.

## Participation and Inclusion

According to the UN Common Understanding, “Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized.” The principles of participation and inclusion direct our attention both to the objectives of programming, and to programming processes.

The Office of the High Commissioner for Human Rights has identified a series of measures that may be required to realize the right to participation:

- Building the capacity of civil society organizations to engage with duty-bearers
- Increasing transparency of policies and processes
- Creating new channels and mechanisms for participation of marginalized groups



- Civic education and human rights awareness-raising
- Media and communication campaigns
- Advocacy for and capacity-building of networks
- Broadening alliances across civil society organizations

*Source: OHCHR, “Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation” (2006)*

The principle of participation and inclusion requires, at the level of programme objectives, that programmes support the empowerment of people to be active citizens with genuine ownership and control over their countries’ development. There are multiple sources of the right to participation in human rights law, including in the ICCPR, the UN Declaration on the Right to Development and Articles 7, 8 and 14 of CEDAW. The political empowerment of women has long been a central focus for UNIFEM, and is strongly reflected in the 2004-7 MYFF. Examples of UNIFEM initiatives include support for bringing women to the peace table, supporting women’s ability to stand for election, support for the formation of civil society organizations and networks, and support for gender-budgeting exercises.

At the level of programming process, the Common Understanding is drawing our attention to the fact that it is not enough to programme for women, we must also be programming with women. The priorities and views of the women affected should be reflected in our programming choices, and their active involvement should be sought at all programming stages. UNIFEM’s long history of partnerships with and support for women’s NGOs is a good example of the participation principle in action. But beyond the partnerships themselves, attention should be paid to enhancing

and expanding women’s direct involvement in specific programming stages, such as programme design and monitoring and evaluation.

## Accountability and the Rule of Law

The necessary legal procedures and mechanisms must be in place within a country that will hold duty-bearers accountable for their human rights obligations. According to the UN Common Understanding, “States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.”

The UN Common Understanding places a great deal of emphasis on ensuring that human rights standards are actionable through domestic legal systems. This is a critical means of fostering human rights accountability, and is reflected in the first outcome level result of UNIFEM’s 2004-7 MYFF: “Legislation and policies are formulated and implemented to promote and protect women’s human rights.” All of UNIFEM’s offices are supporting legal reform initiatives, to ensure that the standards set by CEDAW and the other human treaties are given legal force at the national level, in areas ranging from violence against women, to land ownership, to electoral processes.

One of the most powerful ways in which human rights standards can gain domestic legal force is through their integration into national constitutions. The constitution is a nation’s highest law, and all other laws must conform

with its requirements. The inclusion of gender equality and other women's human rights provisions within a constitution is the best long-term guarantee that the country's legal framework will respect women's human rights.

Where constitutions have come up for revision, UNIFEM has supported women's groups to press for important changes. Some of the biggest opportunities to advance gender equality arise when a new constitution is being drafted, as often occurs in the context of post-conflict reconstruction. UNIFEM provided support for the inclusion of constitutional guarantees of gender equality and women's human rights in several new constitutions during the 2004-7 period. It should also be noted, though, that constitutional reform can be an especially challenging area for advancing women's human rights, as the political stakes in the negotiations will be high for all sectors of the society. Where competing interests and agendas are strong, even the best efforts may fail to produce the desired results.

Apart from the legal framework, there are other critically necessary components to ensuring accountability. Government institutions and officials need to be responsive to women's human rights entitlements. The second outcome level result of UNIFEM's MYFF is focused on ensuring that "Mainstream institutions demonstrate leadership, commitment, technical capacity and accountability to support gender equality and women's empowerment." When it comes to getting governmental institutions to recognize and have political will for women's human rights, have the technical knowledge to put them into practice, and set up the mechanisms and procedures that will make this possible, there's no standard procedure or rulebook to follow. Some approaches, such as judicial or police

trainings, are common to most of the UN's HRBA programming. But there are challenges that are specific to women's human rights. For example, many governments approach CEDAW implementation as the exclusive responsibility of their women's machineries. The obligation to implement CEDAW rests with the State as a whole, and in Africa UNIFEM has introduced an innovative programme to engage all sectors of government in the implementation of the Convention. It's important to keep in mind that institutional buy-in for women's human rights can be increased through much less confrontational methods than the language of the Common Understanding might suggest. In South Asia for example, UNIFEM-supported intergovernmental roundtables on CEDAW have allowed governments in the region to share positive experiences and successes in implementing the Convention, and these roundtables have led to improved institutional arrangements in a number of countries.

Finally, the UN Common Understanding highlights an additional dimension of accountability in the capacity of rights-holders to make claims against duty-bearers. UNIFEM's work in this regard has already been mentioned above, under the principle of participation. While the reference to rights-holder capacity in the Common Understanding places a major emphasis on the ability of individuals to advance their claims through the courts, it should be noted that the most important accountability-related capacity rights-holders can have is their capacity to work together. Women's NGOs, NGO networks and civil society organizations have always been the true driving force behind the realization of women's human rights, and support for these organizations is an essential component of the HRBA.