

CODING GUIDELINES

SDG INDICATOR 5.1.1: WHETHER OR NOT LEGAL FRAMEWORKS ARE IN PLACE TO PROMOTE, ENFORCE AND MONITOR EQUALITY AND NON-DISCRIMINATION ON THE BASIS OF SEX



Updated October 2023

Coding Guidelines for questions under SDG indicator 5.1.1: Whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex

For the questions below it is assumed, where appropriate, that:

- ❖ the woman resides in the main business city of the country being examined;
- ❖ where the answer differs according to the legal system applicable to the woman in question (as may be the case in countries where there is legal plurality), the answer used will be the one that applies to the majority of the population.

Area 1: Overarching Legal Frameworks and Public Life

PROMOTE

1) If customary law is a valid source of law under the constitution, is it invalid if it violates constitutional provisions on equality or non-discrimination?

- ❖ Customary law is the legal system practiced in particular communities based on traditions. Customary law may be codified or uncodified and may cover areas such as family, land, inheritance and others. This question is not meant to capture the use of customary practices in business transactions or terms of art.

The answer is “Yes” if:

- the constitution provides that customary law is considered invalid if it violates other provisions of constitutional law including provisions on non-discrimination or equality; or
- the constitution makes reference to methods by which customary law will be aligned with constitutional principles on non-discrimination or equality; or
- the constitution establishes that customary laws or rights are guaranteed equally to men and women.

The answer is “No” if:

- customary law takes precedence over constitutional provisions on non-discrimination or equality; or
- the constitution is silent on the hierarchy of laws or provisions; or
- there are no constitutional provisions on non-discrimination or equality.

The answer is “N/A” if:

- there is no explicit constitutional recognition of customary sources or systems of law; or the constitution recognizes customary law to be applied only for certain peoples in limited territorial areas; or
- there is no written constitution; or
- there is no constitution in force.

2) If personal law is a valid source of law under the constitution, is it invalid if it violates constitutional provisions on equality or nondiscrimination?

- ❖ Personal law includes law derived from religious belief and systematized into rules and regulations governing areas such as personal status, criminal law and commercial law. Examples include Canon Law, Halakha Law, Hindu Law and Sharia Law.
- ❖ Personal law is considered a valid source of law under the constitution when the constitution makes reference to methods by which personal law will be aligned with constitutional principles or by which personal law is to be determined, provides for a religious council or other body to advise on the passage of personal laws or recognizes religious systems of law or religious sources of law.

The answer is “Yes” if:

- the constitution provides that personal or religious law is considered invalid if it violates other provisions of constitutional law, including provisions on nondiscrimination and equality.

The answer is “No” if:

- personal or religious law takes precedence over constitutional provisions on nondiscrimination or equality; or
- the constitution is silent on the hierarchy of laws or provisions; or
- there are no constitutional provisions on nondiscrimination or equality.

The answer is “N/A” if:

- there is no explicit constitutional recognition of personal or religious sources or systems of law; or
- there is no written constitution; or
- there is no constitution in force.

3) Is there a discrimination law that prohibits both direct and indirect discrimination against women?

The answer is “Yes” if:

- there is a statutory, codified nondiscrimination law or legally binding mandate which is broad in scope, binds the public and private sectors, and specifically prohibits direct and indirect discrimination based on sex or gender (by mentioning the words or giving an exact definition).

The answer is “No” if:

- there is no law that prohibits discrimination based on sex or gender; or
- sex or gender is not a prohibited ground for discrimination; or
- the nondiscrimination law is limited in scope; or
- the nondiscrimination law binds only the private or only the public sector; or
- indirect discrimination is not mentioned in the nondiscrimination law.

4) Do women and men enjoy equal rights and access to hold public and political office (legislature, executive, judiciary)?

The answer is “Yes” if:

- the law provides women with the same rights as men to hold public and political office in the legislative sector; and
- the law provides women with the same rights as men to hold public and political office in the executive sector; and
- the law provides women with the same rights as men to hold public and political office in the judiciary sector; and
- the law applies to all groups of women.

The answer is “No” if:

- the law does not provide women with the same rights as men to hold public and political office in the legislature sector; or
- the law does not provide women with the same rights as men to hold public and political office in the executive sector; or
- the law does not provide women with the same rights as men to hold public and political office in the judiciary sector; or
- the law does not apply to all groups of women.

5) Are there quotas for women (reserved seats) in, or quotas for women in candidate lists for, national parliament?

- ❖ This question does not cover voluntary or recommended quotas.
- ❖ This question only assesses quotas for the lower house, such as a national or people’s assembly.

The answer is “Yes” if:

- there is a quota in place for reserved seats for women; or
- there is a quota for women in candidate lists.

The answer is “No” if:

- there is no quota in place for reserved seats for women; and
- there is no quota for women in candidate lists.

6) Do women and men have equal rights to confer citizenship to their spouses and their children?

- ❖ For the purposes of this question it is assumed the woman is a lawful citizen.

The answer is “Yes” if:

- the law provides married women with the same rights as married men to confer nationality to their spouse; and
- the law provides married women with the same rights as married men to confer nationality to their children; and
- the law provides unmarried women with the same rights as unmarried men to confer nationality to their children; and
- the law applies to all groups of women.

The answer is “No” if:

- married women are not allowed to confer nationality to their foreign spouse, while married men do; and/or
- married women are not allowed to confer nationality to their children, while married men do; and/or
- unmarried women are not allowed to confer nationality to their children, while unmarried men do; and/or
- the law does not apply to all groups of women.

ENFORCE AND MONITOR

7) Does the law establish a specialized independent body tasked with receiving complaints of discrimination based on gender (e.g., national human rights institution, women’s commission, ombuds-person)?

- ❖ This question looks at institutions that have been established in addition to courts but are state bodies with a constitutional and/or legislative mandate to protect and promote principles of equality. Although they are part of the state apparatus and funded by the state, they operate and function independently from the government.
- ❖ Independent bodies tasked with receiving complaints of gender discrimination considered may include women’s commissions, ombudspersons or national human rights institutions.

The answer is “Yes” if:

- the body is mandated to receive complaints of gender discrimination by public and private actors or there is a record of such filed complaints.

The answer is “No” if:

- there is no such body, or if the body in question is not mandated to receive complaints of gender discrimination by public and private actors.

8) Is legal aid mandated in criminal matters?

- ❖ Legal aid refers to legal advice, assistance and representation that is provided at no cost for persons without sufficient means or when the interests of justice so require.

The answer is “Yes” if:

- the constitution or another law establishes that an accused has the right to legal aid or assistance in most criminal matters.

The answer is “No” if:

- the constitution or another law establishes only the right to counsel or the mandatory presence of a defense attorney in criminal matters; or
- legal aid or assistance in criminal matters is provided only to victims of crime.

9) Is legal aid mandated in civil/family matters?

- ❖ Legal aid refers to legal advice, assistance and representation that is provided at no cost for persons without sufficient means or when the interests of justice so require.

The answer is “Yes” if:

- the constitution or another law establishes the right to legal aid or assistance in most civil and/or family matters.

The answer is “No” if:

- the constitution or another law provides for legal aid and assistance, but civil and/or family matters are not eligible; or
- the constitution or another law establishes only the right to counsel or the mandatory presence of an attorney in civil and/or family matters.

10) Does a woman’s testimony carry the same evidentiary weight in court as a man’s?

- ❖ This question covers the weight of women’s evidentiary testimony in all court cases and does not include differences in testimony when executing contracts (e.g., marriage).

The answer is “Yes” if:

- the law does not differentiate between the evidentiary value of women’s and men’s testimony.

The answer is “No” if:

- the law explicitly differentiates between the evidentiary value of women’s and men’s testimony.

11) Are there laws that explicitly require the production and/or dissemination of gender statistics?

- ❖ This question covers the existence of a legally binding document, such as a law, an act or an ordinance, that explicitly mandates the collection of gender statistics.

Answer is “Yes” if:

- the law explicitly requires the production and/or dissemination of gender statistics and/or sex-disaggregated data.

Answer is “No” if:

- the law does not explicitly mandate the production and/or dissemination of gender statistics and/or sex-disaggregated data; and/or
- there is a national statistical action plan, policy or programme that includes the production and/or dissemination of gender statistics and/or sex-disaggregated data, but it is not explicitly mandated in the statutory legal code.

12) Are there sanctions for noncompliance with mandated candidate list quotas, or incentives for political parties to field women candidates in national parliamentary elections?

The answer is “Yes” if:

- there are legal sanctions for violating mandated candidate list quotas for national elections, such as inadmissibility of candidate lists, rejection of candidate registration, mandatory replacement of candidates of the underrepresented gender, vacancies, fines or reduction/loss of funding; or
- political parties or individuals can receive or apply for financial benefits, compensation for costs or reduction of fees when including women on candidate lists or otherwise promoting female candidates for national parliamentary elections. This benefit must be separate from a regulated financial sanction to enforce a mandatory quota; or
- there is no mandatory quota, but public funding is reduced for political parties that do not field a certain number of women candidates; or
- elected women can receive financial benefits directly or parties receive benefits for elected women; or
- there are reserved seats quotas, as these are effective without the need of additional action.

The answer is “No” if:

- there are no legal sanctions for violating mandated candidate list quotas; or
- there are no financial incentives for political parties to field women candidates in national parliamentary elections.

Area 2: Violence against Women

- ❖ "Violence against women" is defined as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.¹ 'Gender-based violence', is violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.²
- ❖ "Domestic violence" is defined as a form of gender-based violence commonly directed against women, that occurs within the private sphere, generally between individuals who are related through blood or intimacy. Domestic violence may take on different forms, including physical, sexual, psychological, and economic violence.³

PROMOTE

13) Is there legislation specifically addressing domestic violence?

The answer is "Yes" if:

- there is legislation addressing domestic violence that includes criminal sanctions or provides for protection orders for domestic violence.

The answer is "No" if:

- there is no legislation addressing domestic violence, if the domestic violence legislation does not provide for sanctions or protection orders or if only a specific category of women or family member is protected; or
- there is only a provision that increases penalties for general crimes covered in the criminal code if committed between spouses or within the family.

14) Have provisions exempting perpetrators from facing charges for rape if the perpetrator marries the victim after the crime been removed or never existed in legislation?

The answer is "Yes" if:

- there is no law or provision exempting perpetrators from facing charges for rape if they marry the victim after the crime, including where such laws have been repealed or have never existed.

¹ Article 1 of the Declaration on the Elimination of Violence against Women (1993).

² CEDAW General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35.

³ Resolution adopted by the General Assembly on 22 December 2003 [on the report of the Third Committee (A/58/501)] 58/147. Elimination of domestic violence against women, para 1.

The answer is “No” if:

- the legislation on rape or sexual assault, or general criminal law, exempts the perpetrator from being charged with the offense if he marries the victim after the crime; or
- the legislation provides for mitigated penalties if the perpetrator marries the victim after the crime.

15) Have provisions reducing penalties in cases of so-called honor crimes been removed, or never existed in legislation?

The answer is “Yes” if:

- there is no law or provision specifically providing for the reduction of penalties for crimes committed in the name of so-called honor, including where such provision has been removed or never existed in legislation; or
- the law or provision specifically provides for the reduction of penalties for crimes committed by spouses against each other in a reciprocal way, e.g., crimes of passion.

The answer is “No” if:

- there is a law or provision that specifically provides for the reduction of penalties for crimes committed in the name of so-called honor; or
- the law or provision specifically provides for the reduction of penalties for crimes committed by husbands or male family members against their wives, female family members, or family members, but no reciprocal provision exists for crimes committed by wives; or
- the law or provision specifically provides for the reduction of penalties for crimes committed by male family members against female members of the household, where the head of household is necessarily a man.

16) Are laws on rape based on lack of consent, without requiring proof of physical force or penetration?

The answer is “Yes” if:

- there is a law addressing sexual violence that includes rape; and
- the law on rape is based on lack of consent, or “coercive circumstances” and includes a broad range of “coercive circumstances”; and
- the law on rape does not require the victim to provide proof of physical force; and
- the law on rape does not require the victim to provide proof of penetration; and
- the law on rape applies to all groups of women.

The answer is “No” if:

- there is no law addressing sexual violence that includes rape; and/or
- the law on rape is not based on lack of consent or “coercive circumstances” including a broad range of “coercive circumstances”; and/or
- the law on rape requires proof of physical force; and/or
- the law on rape requires proof of penetration; and/or
- the law on rape does not apply to all groups of women.

17) Does legislation explicitly criminalize marital rape or does legislation entitle a woman to file a complaint for rape against her husband or partner?

The answer is “Yes” if:

- there is legislation that explicitly criminalizes the act of marital rape by providing that rape or sexual assault provisions apply irrespective of the nature of the relationship between the perpetrator and victim, or that no marriage or other relationship shall constitute a defense to a charge of rape or sexual assault under the legislation; or
- there is legislation that explicitly criminalizes the act of rape between (1) persons in marital relationships; (2) relatives, when the law explicitly recognizes spouses as relatives (but not for relatives in general); or (3) persons in situations of abuse or dependency of family, when the law clearly includes spouses within the definition of family; or when legislation that explicitly criminalizes the act of rape states that the spouse is a potential offender or is not exempt from charges; or
- marital relationships are an aggravating factor for the crimes of rape or sexual assault that includes elements of rape, or if the law sets out conditions in which the penalty for marital rape or rape by the husband is mitigated so that the criminalization of marital rape can be inferred; or
- there is a law or provision on rape or sexual assault which does not exclude spouses from its applicability, i.e., where spousal exemption provisions have been removed or never existed.

The answer is “No” if:

- there are no criminal sanctions for the offense of rape between spouses (e.g. the law only “prohibits” the act, provides for the application of protection orders or allows a judge to order a husband not to rape his wife); or
- the provision on marital rape applies only if the spouses are separated or in the process of getting separated; or
- the provision covers only relationships of dependency in general, or financial or official dependence; or
- the provision on rape applies only in certain circumstances, such as sickness or pregnancy; or
- the provision applies only to family members, but spouses are not clearly included in the definition of family; or
- the provision on marital rape states that prosecution may only be instituted with authorization of the Attorney General or similar authority; or
- rape is not a codified crime; or
- the law or provision on rape or sexual assault exempts husbands or spouses from facing charges for rape, or if the law or provision clearly states that there is no crime of rape between husband and wife or within marriage; or
- the law or provision on rape or sexual assault lists circumstances in which husbands or spouses are exempted from facing charges for the offense; or

- the law or provision explicitly presumes the existence of consent in cases of sexual intercourse with a spouse, subjecting the charge or rape against a spouse to a rebuttable presumption or consent clause.

18) Is there legislation that specifically addresses sexual harassment?

- ❖ "Sexual harassment" is defined as any unwelcome sexual advance, request for sexual favor, verbal or physical conduct or gesture of a sexual nature, or any other behavior of a sexual nature that might reasonably be expected or be perceived to cause offence or humiliation to another. Sexual harassment may occur when it interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment. It may also occur outside the workplace, in public and private spaces and institutions, such as eve teasing, verbal harassment and street harassment.⁴

The answer is "Yes" if:

- there is a law or provision that specifically addresses and protects against sexual harassment, including unwelcome sexual advances, requests for sexual favors, verbal or physical conduct or gestures of a sexual nature, annoyance if understood to include harassment with sexual content, or any other behavior of a sexual nature that might reasonably be expected or be perceived to cause offense or humiliation to another; or
- sexual harassment is considered a form of "discrimination" and legislation protects against discrimination.

The answer is "No" if:

- there is no law or provision that specifically addresses sexual harassment; or
- the behavior or gesture of sexual nature is performed by the use or threat of force or violence, which is understood to constitute a crime, e.g., sexual assault or abuse; or
- the conduct covered in the legislation is not directed at a specific individual; or
- the law only allows an employee to terminate employment based on sexual harassment but provides for no other protection or form of redress; however, a provision allowing the employer to terminate an employee's contract for committing sexual harassment will be considered; or
- the law or provision protects only a specific category of women or those in a specific area or sector of employment, e.g., protection from sexual harassment in political functions, or applicable only to government or state-owned enterprises; or
- the law or provision accounts only for sexual acts, including intercourse or copulation, as clearly involving contact of or with genital organs; or
- the law or provision states only that the employer has a duty to prevent sexual harassment, but no provisions exist to prohibit it or provide sanctions or other form of redress for sexual harassment; or

⁴ CEDAW General Recommendation No. 19 (11th session, 1992) Violence against women, par 18.

- the law addresses harassment in general but makes no reference to acts of a sexual nature or contact.

ENFORCE AND MONITOR

19) Are there budgetary commitments provided for by government entities for the implementation of legislation addressing violence against women by creating an obligation on government to provide budget or allocation of funding for the implementation of relevant programmes or activities?

The answer is “Yes” if:

- there is a law or provision that specifically creates an obligation on government to provide budget or allocation of funding for the implementation of relevant programs or activities addressing violence against women; or
- the government budget in effect specifically allocates funding for programs, activities or services addressing violence against women; or
- the government has created an entity within its structure to specifically address or deal with issues of violence against women (e.g. a Department or Directorate for protecting families/women/children from domestic violence) or effectively provides services to women victims of violence.

The answer is “No” if:

- there is no law or provision that specifically provides for budgetary commitments by government entities and there is no budget in effect allocating funding for programs, activities or services addressing violence against women; or
- the law mandates the provision of services addressing violence against women by government, but no actual services are provided, and no government structure exists to specifically address such issues.

20) Are there budgetary commitments provided for by government entities for the implementation of legislation addressing violence against women by allocating a specific budget, funding and/or incentives to support non-governmental organizations for activities to address violence against women?

The answer is “Yes” if:

- there is a law or provision that establishes the allocation of budget or funding to non-governmental organizations for the implementation of activities addressing violence against women; or
- the government budget in effect specifically allocates funding for the implementation of activities addressing violence against women by non-governmental organizations; or
- the government entity addressing or dealing with issues of violence against women provides funds or allocates budget for activities carried out by non-governmental organizations to address violence against women.

The answer is “No” if:

- there is no law or provision establishing the allocation of budget or funding to non-governmental organizations for the implementation of activities addressing violence against women, or no government budget in effect allocates such funding.

21) Is there a national action plan, policy or strategy to address violence against women that is overseen by a national mechanism with the mandate to monitor and review implementation?

- ❖ The threshold for this question is NAPs that address at least the common manifestations of violence: domestic violence and/or sexual violence.⁵

The answer is “Yes” if:

- there is a national action plan, policy or strategy to address violence against women; and
- the national action plan, policy or strategy is overseen by a national mechanism with the mandate to monitor and review implementation.

The answer is “No” if:

- there is no national action plan, policy or strategy to address violence against women; and/or
- the implementation of the national action plan, policy or strategy is not overseen by a national mechanism; and/or
- the national mechanism has no mandate to monitor and review implementation.

⁵ See: WHO, Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and nonpartner sexual violence, 2013, available at: http://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625_eng.pdf;jsessionid=3099F203C31311BE18B3F2C7D6E63173?sequence=1; UN Women, Essential Services Package for Women and Girls Subject to Violence, available at <http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2015/essential-services-package-module-1-en.pdf?la=en&vs=3347>; UN Women, Framework to Underpin Action to Prevent Violence against Women, available at: http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2015/prevention_framework_un-women_nov2015.pdf?la=en&vs=5223; Elimination and prevention of all forms of violence against women and girls 2013 Commission on the Status of Women Agreed Conclusions, available at: [http://www.un.org/women-watch/daw/csw/csw57/CSW57_Agreed_Conclusions_\(CSW_report_excerpt\).pdf](http://www.un.org/women-watch/daw/csw/csw57/CSW57_Agreed_Conclusions_(CSW_report_excerpt).pdf)

Area 3: Employment and Economic Benefits

- ❖ Collective bargaining agreements are considered a legal source in countries where they cover more than 50 percent of the workforce in the food retail sector and apply to individuals who were not party to the original collective bargaining agreement.

PROMOTE

22) Does the law mandate nondiscrimination on the basis of gender in employment?

The answer is “Yes” if:

- the law prohibits employers from discriminating based on sex or gender or mandates equal treatment of women and men in employment.

The answer is “No” if:

- the law does not prohibit such discrimination or only prohibits it in one aspect of employment, such as pay or dismissal.

23) Does the law mandate equal remuneration for work of equal value?

- ❖ “Remuneration” refers to the ordinary, basic or minimum wage or salary and any additional emoluments payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising from the worker’s employment.
- ❖ “Work of equal value” refers not only to the same or similar jobs, but also to different jobs of the same value.

The answer is “Yes” if:

- employers are legally obliged to pay equal remuneration to male and female employees who perform work of equal value in accordance with these definitions.

The answer is “No” if:

- the law limits the principle of equal remuneration to equal work, the same work, similar work, or work of a similar nature; or
- the law limits the broad concept of “remuneration” to only basic wages or salary.

24) Can women work in jobs deemed hazardous, arduous or morally inappropriate in the same way as men?

The answer is “Yes” if:

- no laws prohibit or restrict nonpregnant and non-nursing women from working in a broad and subjective category of jobs deemed “hazardous,” “arduous,” or “morally inappropriate.”

The answer is “No” if:

- the law prohibits or restricts women from working in jobs deemed hazardous, arduous, or morally inappropriate; or
- the employer or relevant authority can determine whether particular jobs are too hazardous, arduous, or morally inappropriate for women but not for men, regardless of the content of any decisions issued by a relevant authority.

25) Are women able to work in the same industries as men?

The answer is “Yes” if:

- nonpregnant and non-nursing women can work in the mining, construction, manufacturing, energy, water, agriculture, and transportation industries in the same way as men.

The answer is “No” if:

- the law prohibits women from working in these industries; or
- women’s employment in the relevant industries is restricted in any way, such as by prohibiting women from working at night in “industrial undertakings,” or by giving the relevant authority the power to prohibit or restrict women from working in certain jobs or industries, regardless of the content of any decisions issued by that authority.

26) Are women able to perform the same tasks at work as men?

The answer is “Yes” if:

- there are no differences between the amount of weight men and nonpregnant and non-nursing women can lift; and
- there are no other restrictions on nonpregnant and non-nursing women’s employment not included in jobs/industries captured in questions 24 and 25 above.

The answer is “No” if:

- there are differences between the amount of weight men and nonpregnant and non-nursing women can lift; or
- there are any other restrictions on nonpregnant and non-nursing women’s employment not including relating to jobs captured in questions 24 and 25 above.
- the law gives the employer or relevant authority the power to determine whether particular tasks cannot be done by a woman, regardless of any decisions issued by that authority.

27) Does the law allow women to work the same night hours as men?

- ❖ If various sectors of the economy are regulated separately (i.e., there is no central labor law), it is assumed that the woman is employed in an occupation equivalent to a cashier in a grocery store or supermarket.

The answer is “Yes” if:

- nonpregnant and non-nursing women can work at night in the same way as men; or women’s consent to work at night is required, or an employer needs to comply with safety measures (such as providing transportation).

The answer is “No” if:

- the law broadly prohibits women, including those with children over the age of one, from working at night or limits the hours women can work at night; or
- the law gives the relevant authority the power to restrict or prohibit women’s night work, regardless of the content of any decisions issued by that authority.

28) Does the law provide for maternity or parental leave available to mothers in accordance with the ILO standards?

- ❖ The ILO standard is 14 weeks of maternity leave and at least 2/3 of her previous earnings.⁶
- ❖ This question covers the private sector only. Employees in the public sector may be entitled to different or additional benefits.

The answer is “Yes” if:

- mothers are legally entitled to at least 14 weeks (98 calendar days) of paid leave for the birth of a child through maternity leave, parental leave or a combination of both; and
- the percentage of wages paid during maternity or parental leave is equivalent to or greater than 2/3 of the mother’s previous earnings.

The answer is “No” if:

- the law does not establish paid leave for mothers;
- the length of paid leave for mothers is less than 14 weeks; or
- the percentage of wages paid during maternity or parental leave is less than the equivalent to 2/3 of the mother’s previous earnings.

29) Does the law provide for paid paternity or parental leave available to fathers or partners?

- ❖ This question covers the private sector only. Employees in the public sector may receive different or additional benefits.

The answer is “Yes” if:

- fathers are legally entitled to paid paternity leave; or
- the law explicitly mandates the right to paid parental leave either shared between mother and father or as an individual entitlement.

The answer is “No” if:

⁶ <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/maternity-protection/lang--en/index.htm>

- the law does not mandate the right to paid paternity leave; or
- the law does not explicitly mandate the right to paid parental leave either shared between mother and father or as an individual entitlement; or
- paternity leave is deducted from annual leave or sick leave.

ENFORCE AND MONITOR

30) Is there a public entity that can receive complaints on gender discrimination in employment?

- ❖ This question is designed to determine whether the law establishes a public entity with the mandate to receive and investigate complaints on gender discrimination in employment.

The answer is “Yes” if:

- there is a public entity, such as a ministry of labor, labor inspector, labor prosecutor, equality commission or ombudsman office that has the power to receive and investigate complaints on gender discrimination in employment arising in the both public and private sectors.

The answer is “No” if:

- there is no public entity.

31) Is childcare publicly provided or subsidized?

- ❖ This question captures public childcare services that are completely funded by the government or government-funded with co-pay by parents. It also covers public childcare centers that are available universally to all families regardless of their income level.
- ❖ For the purposes of this question, it is assumed that the parents are employed in a private sector company.
- ❖ Nontax benefits may be granted directly to the parents or to the childcare provider.

Definitions:

- ❖ Employer: private sector limited liability company. This does not include public-private partnerships or cooperatives.
- ❖ Childcare: early childhood care and education services offered to children at any age between 1 and 5 years. Childcare may take different forms, such as kindergartens or preschools, crèches or day care centers. This question does not cover after-school programs, in-home care, nonprofit centers, community-based centers or informal child-minding arrangements. This question captures public childcare services that are completely funded by the government or government-funded with co-pay by parents. The staff are government employees and the services are provided on government facilities. This question covers public childcare centers that are available universally to all families regardless of their income level.
- ❖ Private childcare center: stand-alone, privately run childcare centers.
- ❖ Employee: an individual employed full-time for wages in the private sector who has a child between ages 1 and 5 years.
- ❖ Government support or nontax benefits include funding and/or nonmonetary support.

The answer is “Yes” if: there is a law, provision or other instrument legally binding for the government as provider of childcare services, requiring:

- the government to provide, establish or mandate childcare services; or
- childcare to be universally available but there are priority criteria for admission when there is not enough space for all children; or
- private, stand-alone childcare centers to receive nontax benefits from the government in the form of financial or nonmonetary support, such as providing building and school equipment as well as start-up grants; or
- private, stand-alone childcare centers to receive nontax benefits only if they meet certain ordinary requirements, such as the number of children enrolled in the childcare center or the location of the childcare center.

The answer is “No” if: there is a law, provision or other instrument legally binding for the public sector as provider of childcare services, requiring:

- government childcare services to be provided to a group of people qualified by something other than income level; or
- government childcare services 100% run by nonstate institutions; or
- private, stand-alone childcare centers that do not receive any nontax benefits; or
- private childcare centers that receive nontax benefits only if they meet certain extraordinary requirements, such as a budget deficit.

Area 4: Marriage and Family

PROMOTE

32) Is the minimum age of marriage at least 18 years, with no legal exceptions, for both women and men?

- ❖ For the purposes of this question it is assumed that the marriage is monogamous and registered with the authorities. It is also assumed that the girl or boy in question has never been married.
- ❖ The legal age of marriage is the age at which boy and girls may get married without any consent required.
- ❖ The minimum age of marriage is the youngest age at which girls/boys can be married based on the law. This includes:
 - the legal age of marriage, where no exceptions exist;
 - the minimum age of marriage with parental consent, i.e. the minimum age at which girls/boys can get married with the consent of their parents or guardians. This takes into account exceptions to the legal age of marriage, where parental consent is the element that triggers the exception for marriage under the legal age;
 - the minimum age of marriage with judicial authorization, i.e., the minimum age at which girls/boys can get married with authorization of the court or a judge. This takes into account exceptions to the legal age of marriage, where judicial authorization is the element that triggers the exception for marriage under the legal age. Judicial authorization includes that from a lower-level court or judge, but not from a higher-level court; and
 - the minimum age of marriage based on other circumstances, such as pregnancy, authorization from the President or the Supreme Court, to escape criminal charges or others.

The answer is “Yes” if:

- the minimum age of marriage for girls or boys is 18 or above, with no legal exceptions allowing marriage under the age of 18.

The answer is “No” if:

- the legal age of marriage for boys or girls is less than 18; or
- the minimum age of marriage is less than 18 due to exceptions to the legal age based on parental consent, judicial authorization or other circumstances.

33) Do women and men have equal rights to enter marriage (i.e. consent) and initiate divorce?

- ❖ For the purposes of this question marriage refers to legally or formally recognized union of partners that has been recognized and registered by a government official, a state, an organization, a religious authority, a tribal group, a local community or peers.

The answer is “Yes” if:

- the law provides a legal right to enter into marriage and to initiate divorce; and
- the law provides women and men on an equal basis with the rights to enter marriage; and
- the law provides women and men on an equal basis with the rights to initiate divorce; and
- the law applies to all groups of women.

The answer is “No” if:

- the law does not provide a legal right to enter into marriage or to initiate divorce; or
- the law does not provide women and men on an equal basis with the rights to enter marriage; and/or
- the law does not provide women and men on an equal basis with the rights to initiate divorce; and/or
- the law does not apply to all groups of women.

34) Do women and men have equal rights to be legal guardian of their children during and after marriage?

- ❖ For the purposes of this question it is assumed that the marriage is monogamous and registered with the authorities.

The answer is “Yes” if:

- the law provides women with the same rights as men to be the legal guardians of their children during marriage; and
- the law provides women with the same rights as men to be the legal guardians of their children after marriage (divorce and/or widowhood); and
- the law applies to all groups of women.

The answer is “No” if:

- the law does not provide women with the same rights as men to be the legal guardians of their children during marriage; and/or
- the law does not provide women with the same rights as men to be the legal guardians of their children after marriage; and/or
- the law does not apply to all groups of women.

35) Do women and men have equal rights to be recognized as head of household or head of family?

- ❖ Gender restrictions under tax law are not measured by this question.

The answer is “Yes” if:

- there are no restrictions on a woman being head of household or head of family.

The answer is “No” if:

- there is a provision designating the husband as head of household or stipulating that the husband leads the family; or
- a male is designated as the default family member who receives the family book or equivalent document that is needed for access to services.

36) Do women and men have equal rights to choose where to live?

The answer is “Yes” if:

- there are no legal restrictions on a married woman choosing where her family may live.

The answer is “No” if:

- ❖ there are explicit restrictions on a woman choosing where to live;
- ❖ the husband chooses the family residence;
- ❖ a woman’s domicile automatically follows that of her husband; or
- ❖ the husband has more legal weight than the woman in determining where the family will live.

37) Do women and men have equal rights to choose a profession?

The answer is “Yes” if:

- there are no restrictions on a woman’s legal capacity and ability to get a job or pursue a trade or profession.

The answer is “No” if:

- a husband can prevent his wife from working; or
- permission or additional documentation is required for a woman to work but not a man; or
- it is considered a form of disobedience with legal consequences, such as loss of maintenance, for a woman to work contrary to her husband’s wishes or the interests of the family.

38) Do women and men have equal rights to obtain an identity card?

The answer is “Yes” if:

- there are no inequalities in the process for obtaining a national identity card; or
- if married men must provide a marriage certificate or birth certificate as proof of name, whereas married women must provide a marriage certificate; or
- if there is no national identity card that is universally accepted based on an implemented national registration system that issues national identity cards.

The answer is “No” if:

- a married woman must provide a marriage certificate, but a married man need not; or

- a woman requires additional signatures, such as those of her husband, father or other male relative or guardian, which are not required for a man; or
- a married woman must indicate the name of her spouse, but a married man is not so required; or
- the identity card of a married woman displays the name of her spouse, but the identity card of a married man does not; or
- identity cards are optional for women, but required for men.

39) Do women and men have equal rights to apply for passports?

The answer is “Yes” if:

- there are no gender differences in passport application procedures.

The answer is “No” if:

- an adult woman needs the permission or signature of her husband, father, or other relative or guardian to apply for a passport; or
- passport application procedures or forms require a woman to provide details about her husband, father, or other relative or guardian, or additional documents such as a marriage certificate, whereas the same is not required for a man.

40) Do women and men have equal rights to own, access and control marital property including upon divorce?

- ❖ For the purposes of this question it is assumed that the marriage is monogamous and registered with the authorities.
- ❖ The answer to this question is based on whether husbands and wives married under the default property regime have equal ownership rights over property.

The answer is “Yes” if:

- there is no specific restriction or difference in legal treatment applied to married women or men based on gender.

The answer is “No” if:

- there are gender differences in the legal treatment of spousal property (e.g., if husbands are granted administrative control over marital property).

ENFORCE AND MONITOR

41) Is marriage under the legal age void or voidable?

- ❖ For the purposes of this question, it is assumed that the marriage is monogamous and registered with the authorities.

The answer is “Yes” if:

- ❖ there are provisions in the law that allow for the annulment of marriages of girls and boys in violation of the age requirements or under the minimum age, or based on lack of consent of the girl or boy being married; or
- ❖ there are provisions stating that marriages in violation of the age requirements or under the minimum age are null and void, including where based on lack of consent of the girl or boy being married.

The answer is “No” if:

- there are no provisions in the law allowing for the annulment of marriages under the legal age or in violation of the age requirements, or providing that such marriages are null and void; or
- the marriage is invalid based only on the lack of consent of the parent or guardian, and would otherwise not be void or voidable if in violation of the age requirements; or
- the law establishes restrictive conditions on the girl’s right to request annulment, such as prohibiting annulment if the girl has become pregnant.

42) Are there dedicated and specialized family courts?

The answer is “Yes” if:

- there are dedicated and specialized courts of law handling cases involving domestic issues such as marriage, divorce and child custody; or
- there is a dedicated and specialized chamber of the court tasked with handling such cases.

The answer is “No” if:

- there are significant exceptions to the types of cases handled by a dedicated and specialized family court; or
- a dedicated and specialized family court is only available on appeal.

