

## Executive Summary

This reference manual offers guidelines for mainstreaming gender into the legal and constitutional affairs of states. Its main objective is to assist governments in advancing gender equality in their countries. Gender mainstreaming in the state's legal and constitutional structures is a corollary to mainstreaming gender in development and ensuring equal opportunities and outcomes for women and men. Many states have taken important steps in this direction through legislative and social programmes of gender mainstreaming. Such programmes are needed because in most societies women have long been discriminated against and have been the subject of stereotyping that presents them as inferior, passive or essentially as mothers. While gender mainstreaming focuses on women and men, in most instances its primary focus must be to enhance the position of women. Constitutional guarantees and legislative reform are insufficient, however, unless they translate into positive commitments to women's advancement, empowerment and enjoyment of equal choices and opportunities. Major factors for achieving real change include political will and commitment of resources, concrete and realistic targets, programmes grounded at the national level based on local contexts and evaluation.

Chapter 1 provides a gender framework and offers definitions of key concepts such as gender, gender analysis and gender mainstreaming. It notes that mainstreaming is required to implement the 1995 Commonwealth Plan of Action on Gender and Development and its Update (2000–2005) and is supported by arguments of efficiency, effectiveness and social justice. This chapter also suggests some of the obstacles that may be faced by a programme of gender mainstreaming and that need to be addressed. These may be found in existing laws, including legislation and customary laws, and in societal structures that have come to be seen as 'natural', 'the way things are done' and 'moral'. Other obstacles may be the attitude of key stakeholders (those responsible for determining and formulating legal policy, applying it and ensuring its enforcement); the representation of gender concerns as foreign or 'western' imports; and policies connected to economic globalisation.

Chapter 2 explains how the establishment of a Gender Management System (GMS) provides a means of mainstreaming gender across all government policies, plans, programmes and projects. Developed by the Commonwealth Secretariat, the GMS is an integrated network of structures, mechanisms and processes put in place in an existing organisational framework in order to guide, plan, monitor and evaluate this process. It is designed to promote the advancement of gender equity and equality in society.

The case for using a rights-based approach to gender mainstreaming is made by Chapter 3. An understanding of the international legal requirements for the guarantee of women's human rights is an important basis for gender mainstreaming in legal and constitutional affairs, and policies for gender mainstreaming must be developed in the context of respect for women's human rights. International human rights offer a central framework that citizens can use to hold their states accountable for the provision of basic needs. A rights-based approach affirms the legitimacy of women's claims, allows progress to be measured against objective standards and upholds the state's international obligations.

Respect for human rights lies at the heart of the United Nations Charter and the International Bill of Rights. Despite the fact that these instruments clearly state that there should be no discrimination on the basis of sex, women's rights have only

recently been explicitly articulated as an integral part of international human rights. An important milestone was the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). There are also a number of other international instruments that are relevant in determining states' responsibility for ensuring and protecting the rights of women.

Despite all these legal instruments, sex discrimination has persisted world-wide and women are still excluded from the universal vision of human rights. Also, the human rights discourse has tended to focus on the relationship between the state and the individual in the public arena, and there has been an unwillingness by states to assume responsibility for the elimination and punishment of violations against women in the private sphere, where many such abuses take place.

Chapter 4 looks at the specifics of gender mainstreaming in the legal and constitutional sector. The goal of contextuality in gender mainstreaming calls for a gender audit of law and legal institutions for each state. Gender mainstreaming must change people's lives, not just change the formal legal structures and law on the books. Legal, and consequently societal, changes must be owned by the people and must be located within the context of their religion and culture. Stakeholders need to be identified and consulted in the formulation of objectives, strategies, projects and evaluations. These include both government and legal personnel and members of civil society.

After the gender audit, there are a number of areas in which concrete changes need to be made. These may include constitutional reform and legislative and customary law reform. Areas where the substance of the law most needs examination include public life, nationality laws, labour laws, health and reproductive rights, violence against women and family law. Other important components in mainstreaming gender in legal and constitutional affairs are the relevant institutions and personnel. There is a need for gender-sensitive government structures, which can be either specific to women or general (mainstreamed). A number of examples are provided from the Commonwealth. The judiciary and law-enforcement agencies have a vital role to play in ensuring that women's rights are protected and promoted. Education and training programmes will be required for these stakeholders as well as others. Training should include gender sensitivity and human rights and should use both traditional and non-traditional methodologies.

Recommendations for actions by governments to further implement the Beijing Platform for Action (PFA) provide the basis for Chapter 5. These are taken mainly from the PFA and from the Report of the Ad Hoc Committee of the Whole of the twenty-third Special Session of the General Assembly entitled 'Women 2000: Gender equality, development and peace for the twenty-first century', held to review PFA implementation. The recommendations have been grouped under five general headings: international agreements; national legislation; taking a holistic approach to violence against women; gender mainstreaming; and working with and educating civil society.

Chapter 6 provides a model of how to apply the GMS principles to the issue of violence against women. These principles are: promoting political will; forging a partnership of stakeholders, including government departments and NGOs; building capacity; and sharing good practice. It is an operational cum intervention framework for planning and implementing an integrated strategy. An integrated approach to combating violence against women enables government to reconceptualise violence against women as a complex social problem to which it has an obligation to respond with appropriate policy, implementation plan and adequate resources. The model is based on a number of assumptions, including that the state has an obligation to eliminate violence against women and has the commitment and political will to do so,

and that multidisciplinary effort and interdepartmental collaboration and co-ordination are possible in government structures. It also assumes that it is possible to eliminate gender-specific violence against women and girls. The model identifies four key steps in the process of eliminating violence against women: conceptualisation, deeper understanding, action strategies and co-ordination.

Chapter 7 provides two practical tools: a checklist that can be used to assess a government's compliance with the CEDAW Convention; and a checklist for assessing progress towards gender mainstreaming. Appendices offer a list of Commonwealth States Parties to international treaties prohibiting discrimination on the basis of sex; and a selection of equality clauses in Commonwealth constitutions.