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for Education

TOOL

5

National laws to support gender equality in education



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Objectives

This tool demonstrates the importance of national laws for gender equality in education at all levels. It will enable you to review the legal framework in your country and consider how it can support gender equality in your work.

The objectives of this tool are to:

- raise awareness of the importance of legislation to support gender equality;
- provide a framework for gender analysis of education legislation;
- provide examples from the region of legislation relevant to gender equality;
- promote thinking about how to improve the enabling environment for gender equality.

Key information



Setting the scene

A multi-sectoral legal framework can provide an enabling environment for gender equality in education by guaranteeing the rights of all learners and removing barriers that prevent learners engaging in education. This is an important area because countries demonstrate political will and their commitment to gender equality, including girls' education, through passing appropriate national legislation and then implementing it. The legal framework can also create barriers to gender equality if it is not responsive to the needs of girls, boys, women and men.

Education law provides the legal basis for the right to education. Specific additional laws prohibiting discrimination against any disadvantaged group, including girls and women, exist in many countries. Education laws may also set national standards for education delivery in schools.

The legislative context is an area of gender analysis that can be overlooked when developing a national approach to improving gender equality in education. However, education sector development specialists need to be able to map existing laws and their implementation so as to find enabling legislation and identify gaps and shortcomings that need to be addressed. Raising awareness of national laws on gender equality is a fundamental aspect of education sector development.

Ministries of education in the Asia-Pacific region would benefit from sharing and comparing their national legislation relevant to gender equality in education.

Gender, rights and the law

Laws are critical for upholding the fundamental rights, duties and freedoms of all human beings. They also provide guarantees of physical security; equality and non-discrimination; equal earning opportunities; inheritance and property rights; and fair play in family relations. Laws are vital to back up both women's and men's rights and interests in political, social and economic spheres. They are fundamental to ensuring equality of opportunity in education.

Constitutions

Constitutions make governments accountable to the people. The national constitution is a legal instrument that typically guarantees fundamental human rights equally to men and women, and equality before the law in a country. National constitutions may contain clauses on anti-discrimination on the grounds of gender or sexual orientation. They typically include national goals that help countries keep on the right track. National goals on gender equality are fundamental to a vision for, and commitment to, the development of society.



Box 1 Examples of national constitutions

Many countries in the Asia-Pacific region have a national constitution that is the supreme law of the country. Some constitutions have explicit articles concerning the right to education and/or gender equality in society.

Other national constitutions are strongly focused on explaining national governance, and so the legal framework for education is likely to be covered by separate specific education law. Two examples of constitutions include:

The Constitution of Mongolia (1992). Article 16:¹

"The right to education. The State shall provide basic general education free of charge; citizens may establish and operate private schools if these meet the requirements of the State."

The Constitution of the Socialist Republic of Viet Nam (2013). Article 26:²

- i) "Male and female citizens have equal rights in all fields. The State has a policy to guarantee equal gender rights and opportunities.
- ii) The State, society, and family create conditions for the comprehensive development of women and promotion of their role in society.
- iii) Sex discrimination is strictly prohibited."

1 The Constitution of Mongolia (1994): Available at: https://www.conscourt.gov.mn/?page_id=842&lang=en.

2 The Constitution of the Socialist Republic of Viet Nam (2013): Available at: http://www.constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf.

Conventions

International conventions are useful benchmarks of gender equality. Global instruments such as the Convention on the Rights of the Child (CRC), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and Convention on the Rights of Persons with Disabilities (CRPD) set international standards for gender equality, inclusion and equity that apply to education.

It is important to consider the extent to which national laws are aligned with the international conventions that countries have signed up to.



Self-study and/or group activity

Become familiar with key conventions

- **Handout 1** presents three education-related articles from the CRC, CEDAW and CRPD.
- Read each article and decide which convention it belongs to.
- You can find the answers on the last page of the handout.

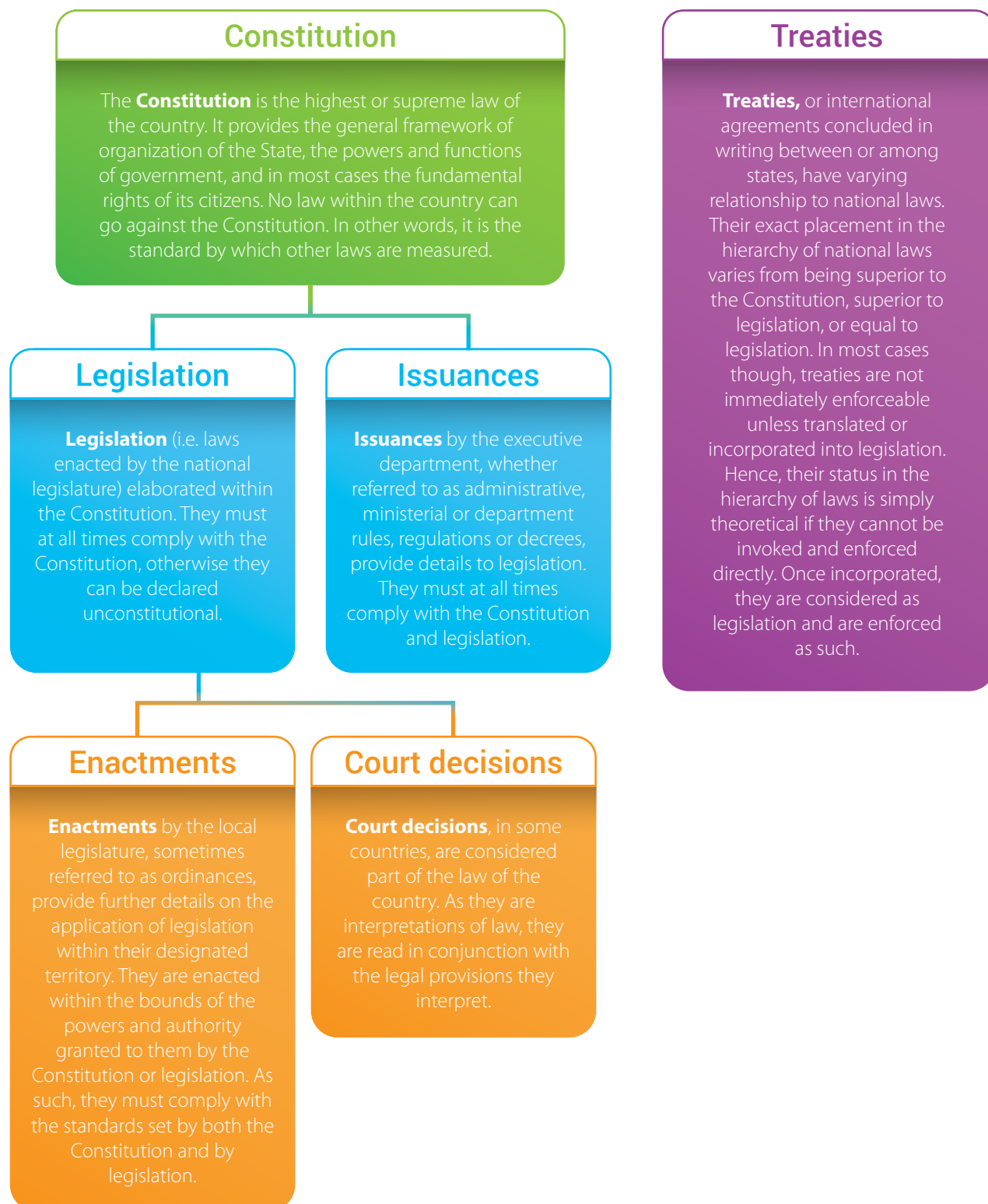
Optional extension activity

- If you have access to the internet or a library, do some research.
- Look up the three conventions: CRC, CEDAW, CRPD.
- Read the full text of these conventions.
- Make some notes to describe how these conventions are relevant to gender equality in education?
- Identify all articles within the conventions that you think relate in some way to education (even if they are not labelled as education articles)?

Hierarchy of laws

Generally speaking, there is a hierarchy of laws which most countries broadly adhere to. This is summarized in **Figure 1**.

Figure 1: Hierarchy of laws



Gender equality legislation



Self-study and/or group activity

Reflect on your national legislation

- On our own, or in groups, make a list of any national legislation you know about that:
 - a) promotes gender equality;
 - b) undermines gender equality.
- Make notes or discuss why you think the legislation promotes or undermines gender equality.
- What changes do you think need to be made to these laws?

Countries in the Asia-Pacific region have put in place gender equality laws. These may have specific education clauses. Some examples are given below:

- **Mongolia** has passed a law **on promotion of gender equality** (2011).³ This prohibits gender discrimination (Article 6), sets out special measures to ensure equality of men and women (Article 7), and guarantees equal rights in education and culture (Article 12). This provides for equal rights and equal opportunities at all levels of the education system. Learning environments must be free from gender discrimination. Education standards and curricula must incorporate mandatory content on gender.
- **Thailand** passed the **Gender Equality Act** in 2015.⁴ This defines *unfair gender discrimination* and established the Gender Equality Promotion Committee and the Committee on Consideration of Unfair Gender Discrimination.
- **Viet Nam** passed a law on **gender equality** in 2006.⁵ This sets out the law on gender equality in all fields of social and family life, including education and training (Article 14).

Gender equality and education law

Education law is important for guaranteeing the right to education. It also ensures those responsible for service delivery know their responsibilities. Education laws may include law on equal opportunity, anti-discrimination including gender discrimination, education standards, and affirmative action.

Below are examples of education law from the Asia-Pacific region:

- **Cambodia.** The **Education Law** of 2007⁶ provides a legal framework for the education system. The law aims to determine national measures and criteria for establishing a completely comprehensive and uniform education system ensuring the principles of freedom of studies in compliance with the Constitution of the Kingdom of Cambodia.

3 Swiss Agency for Development and Cooperation and IRIM. *Gender Overview Mongolia: A Desk Study*. Geneva: IRIM. <https://www.eda.admin.ch/dam/countries/countries-content/mongolia/en/SDC-Gender-%20Overview-Mongolia-%202014-EN.pdf>. (Accessed 25 July 2019).

4 Human Rights Watch. 2015. *Thailand Gender Equality Act*. New York: HRW. <https://www.hrw.org/news/2015/09/21/thailand-gender-equality-act>.

5 World Trade Organization. *Education Law (No.38/2005/QH11 of June 14, 2005)*. Geneva: WTO. (Accessed 10 April 2019).

6 Council for the Development of Cambodia. 2017. *Law on Education_071208*. Phnom Penh: CDC. http://www.cambodiainvestment.gov.kh/law-on-education_071208.html. (Accessed 9 April 2019).

- **Indonesia.** The **Act of the Republic of Indonesia No. 20, 2003**⁷, on the National Educational System, Article 5 (1), states “every citizen has equal rights to receive a good quality education”. Article 6 (1) of the Act on National Educational System 2003 stipulates that every citizen of aged 7–15 years is obliged to undertake basic education. Article 7 stipulates that every child is entitled to free primary education.
 - **Lao PDR.** The **Education Law** of 2000⁸ promulgated inclusive education and education for children with special needs.
 - **The Maldives.** There is no special provision which constitutes an education law in the Maldives. The Ministry of Education was established under the **Parliamentary Act No. 3/68**⁹ issued on 11 November 1968. According to this Act, the management of education in the Maldives is a function of the Ministry of Education.
 - **The Philippines.** The **Science and Technology Scholarship Act** (1997)¹⁰ aimed to expand and upgrade educational opportunities for women to pursue careers in science and technology.
 - **Tuvalu.** The **Education Act** (2008)¹¹ makes education for all children of school age compulsory.
 - **Viet Nam.** Article 10 of the **Education Law** (2005)¹² states “every citizen, regardless of ethnic origins, religions, beliefs, gender, family background, social status or economic conditions, has equal rights of access to learning opportunities”.
- Education laws vary in the way they are applied. Education sector stakeholders need to identify provisions which are helpful for promoting gender equality in laws that govern the sector, and advocate for any changes required.

7 ILO. 2003. *Law on the National Education System (No. 20/2003)*. Paris: ILO. https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&_isn=84435. (Accessed 25 July 2019).

8 Noonan, R. and Noonan, V. 2019. *Historical Glossary of Education Development in Lao PDR*. Vientiane: R. and V. Noonan. https://www.academia.edu/6350653/Historical_Glossary_of_Education_Development_in_Lao_PDR_March_24_2019_Edition_. (Accessed 9 April 2019).

9 UNESCO-IBE. 2011. *World Data on Education*. Geneva: UNESCO-ICE. <http://www.ibe.unesco.org/sites/default/files/Maldives.pdf>. (Accessed 10 April 2019).

10 Philippine Laws and Jurisprudence Databank (2019). *Republic Act No. 8248*. Manila: The LawPhil Project. https://www.lawphil.net/statutes/repacts/ra1997/ra_8248_1997.html. (Accessed 10 April 2019).

11 Tuvalu Legislation Online. *Tuvalu Education Act 2008 Revised Edition CAP.30.05*. Vaiaku: WWT4. http://tuvalu-legislation.tv/cms/images/LEGISLATION/PRINCIPAL/1976/1976-0003/EducationAct_1.pdf. (Accessed 10 April 2019).

12 Vietnam. Education Law (No.38/2005/QH11 of June 14, 2005). Available at https://www.wto.org/english/thewto_e/acc_e/vnm_e/WTACCVNM43_LEG_14.pdf. (Accessed 10 April 2019).



Self-study and/or group activity

Analyse legislation in your context

- On your own or in groups, use the framework below as a guide for analysing education legislation in your country. How gender-responsive is the legislation?

Name of country		
Indicator	Compliance: yes / no	Relevant legislation
Does legislation guarantee women and girls equal access to education?		
Is there legislation that creates special measures for the advancement of women and girls in education?		
Is there any legal provision for early childhood care and education and gender equality?		
Is there compulsory primary education for girls and boys?		
Is there compulsory secondary education for girls and boys?		
Is there legislation to protect vulnerable boys and girls in education from gender-based violence?		
Is family life (reproductive and sexual health) education compulsory in schools?		
Is there a legislative prohibition of expulsion from school because of pregnancy?		

See [Handout 2](#) for a worked example from Indonesia, based on analysis from Cheema, 2011.¹³

13 Cheema H. 2011. *Benchmarking National Legislation for Gender Equality. Findings from Five Asian Countries*. Bangkok: UNDP.



Optional extension activity

Further analysis of laws

To extend your learning, carry out a more detailed analysis of national laws. Some additional questions to consider include:

- How many laws are relevant to achieving gender equality in education?
- What areas do they cover?
- Who is responsible for the implementation of these laws?
- Which laws are specific on equality of opportunity and non-discrimination in education?
- What are the specific legal provisions for achieving gender equality in education?
- How are these laws communicated to education sector stakeholders (e.g. school principals, teachers and parents)?



Further reading

- ADB. 2014. *Legislating Gender Equality: Support for Law and Policy Reforms*. Manila: ADB.
- de Silva de Alwis, R. 2010. "Opportunities and Challenges for Gender-Based Legal Reform in China." Faculty Scholarship Paper 1708. http://scholarship.law.upenn.edu/faculty_scholarship/1708. (Accessed 10 April 2019).
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- UN Women. 2012. *Do Our Laws Promote Gender Equality? A Handbook for CEDAW-Based Legal Reviews*. Bangkok: UN Women.



Handout 1

Articles relating to education from three key conventions

Article 24 – Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life-long learning directed to:
 - a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms, and human diversity;
 - b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
 - c) Enabling persons with disabilities to participate effectively in a free society.
2. In realizing this right, States Parties shall ensure that:
 - a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
 - b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
 - c) Reasonable accommodation of the individual's requirements is provided;
 - d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
 - e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.
3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:
 - a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
 - b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
 - c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.
4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- d) The same opportunities to benefit from scholarships and other study grants;
- e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- g) The same opportunities to participate actively in sports and physical education;

- h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - a) Make primary education compulsory and available free to all;
 - b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - d) Make educational and vocational information and guidance available and accessible to all children;
 - e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Answers from Handout 1

Article 24 is from the CRPD.

Article 10 is from the CEDAW.

Article 28 is from the CRC.



Handout 2

Worked example of national legislation analysis

Country	Indicator	Compliance	Relevant legislation
Indonesia	10.1 Does the legislation guarantee women and girls equal access to education? Do women and girls have equal access to education?	Yes	The Act of the Republic of Indonesia No. 20, 2003 on the National Educational System, Article 5 (1) states 'every citizen has equal rights to receive a good quality education'. Article 6 (1) of the Act on National Educational System 2003 stipulates that every citizen of the age of 7–15 years is obliged to undertake basic education. Article 7 stipulates that every child is entitled to free primary education.
	10.2 Is there legislation that creates special measures for the advancement of women in education?	Yes	The constitution provision stipulates 'every person is entitled to special treatment to achieve equality and fairness'.
	10.3 Is there compulsory primary education for girls and boys?	Yes	The Act of the Republic of Indonesia No. 20, 2003 on National Educational System, Article 6 (1) stipulates that that every citizen of the age of 7–15 years is obliged to undertake basic education.
	10.4 Is there compulsory secondary education for girls and boys?	No	
	10.5 Is family life (reproductive and sexual health) education compulsory in schools?	No	
	10.6 Is there a legislative prohibition of expulsion from school because of pregnancy?	No	

Source: Worked example based on Cheema, H. 2011.



References

- Cheema H. 2010. *Benchmarking National Legislation for Gender Equality. Findings from Five Asian Countries*. Bangkok: UNDP.
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