

TRAINING MODULES ON WOMEN'S HUMAN RIGHTS¹
For the Legal Training Centre (LTC) Curriculum, Timor-Leste

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PREFACE

This set of Modules was prepared for the purpose of providing the Legal Training Centre of the Democratic Republic of Timor-Leste with materials that may assist its trainers in the instruction of magistrates, prosecutors, public defenders and private lawyers on human rights, especially women's human rights. It is the hope of the UN Women that with these Modules, the justice actors in Timor-Leste will be better equipped to provide adequate and appropriate response to the gender issues in the administration of justice, and will become critical players in the protection and promotion of women's human rights.

While these Modules include specific content and training methodologies, what these Modules really provide is a guide for conducting training on women's human rights. In actual training, the trainer or facilitator may find the need to adjust or modify the methodology and actual content of a particular module, depending on the particular training circumstances and needs of the participants. Updating the content of each Module, taking account of the developments in the field, should always be considered.

MODULES

MODULE 1

Origins, foundations and development of human rights

- Session 1: Theories of Human Rights
- Session 2: The development of human rights in international law
- Session 3: The international human rights framework and system of human rights protection and enforcement
- Session 4: Key human rights concepts, principles, and standards
- Session 5: Nature and scope of state obligations on women's human rights

MODULE 2

Universality and particularities of human rights in Timorese society

- Session 1: Human rights and Timor-Leste
- Session 2: Timor-Leste's legal framework and mechanisms for human rights protection and enforcement
- Session 3: Human rights and Timorese culture and tradition

MODULE 3

Gender and constitutional rights, liberties and fundamental guarantees

MODULE 4

Gender problems in family law

MODULE 5

Special problems in crimes against women

MODULE 6

Handling gender-based crimes

- Session 1: Key considerations in Timor-Leste's justice chain
- Session 2: Investigating gender-based crimes and case preparation
- Session 3: Application of ethical principles and human rights standards in trials
- Session 4: Rendering judgment

STRUCTURE OF THE MODULES

The Modules follow a common structure. Each Module starts with a statement of the aims of the Module, and is divided into Sessions, except for Modules 3, 4, and 5. Each Module or Session defines the learning objectives and lists the session content. The session content generally includes presentations, workshops or exercises, and a list of references and recommended readings, as well as some links to websites where materials may be found. Some of the workshops or exercises involve case studies, some utilizing actual cases or studies in Timor-Leste.

It is recommended that at the end of a Module or after each or several sessions, a pop quiz be conducted, to assess the learning of the participants according to the objectives of the Module or session. Sample pop quizzes are annexed at the end of the Modules.

The Annexes include the readings or references that are used in the Modules. Where online materials are too voluminous to be included in the Annexes, their URL links are provided under the list of references and recommended readings.

Ideally, a training workshop should be preceded by a learning needs assessment of the participants. A sample learning needs assessment form is annexed at the end of the Modules. A sample evaluation form is also provided. It may be used either after running a module or all the Modules, depending on whether the Modules are used in one straight training, or over a period of time in a classroom setting.

GENERAL OBJECTIVES

At the end of the training, the participants shall have:

- (1) enhanced their knowledge of international human rights law as they relate to women and gender-specific concerns;
- (2) developed basic skills in the application of international human rights law on gender-related issues at the domestic level; and
- (3) identified ways to respect, protect, promote and fulfill human rights in their work as magistrates, prosecutors, public defenders and private lawyers.

MODULE 1

ORIGINS, FOUNDATIONS AND DEVELOPMENT OF HUMAN RIGHTS

This module aims to discuss human rights in general, their philosophical or ethical justifications, their concepts, principles and standards, the international human rights framework, the system of human rights protection and enforcement, and the nature and scope of state obligations on women's human rights.

SESSION 1

THEORIES OF HUMAN RIGHTS

Learning objectives:

By the end of the session, the participants will be able (1) to articulate the concept of human rights and their philosophical or ethical justifications, and (2) identify commensurable foundations of human rights in their own cultural and religious traditions.

Session content:

Exercise: *Introductory Exercises*
Presentation: *What are human rights?*
Workshop

Introductory Exercise 1

This exercise is intended to ascertain the participants' understanding of human rights.

Instructions to the facilitator:

Ask the participants to answer verbally *True* if they agree or *False* if they disagree with the following statements, and to quickly explain their answers. Follow-up discussion of these statements may be made in the presentation "*What are human rights?*" and other succeeding sessions.

1. *Human rights owe their existence to the law.*
2. *Human rights are equivalent to legal rights.*
3. *Human rights are only those recognized in human rights instruments.*

4. *There is a hierarchy of human rights. Civil and political rights take precedence over social, economic and cultural rights.*
5. *Human rights are dependent on culture and tradition for their validity and content.*

Introductory Exercise 2

Instructions to the facilitator:

As an alternative introductory exercise, ask the participants to write on meta cards their answers to the following question. Place a big manila paper on the wall where they will post their meta cards with their answers. Ask some of the participants to share their thoughts on the statements. These statements will need further discussion in the topic "What are human rights?" and other succeeding sessions.

When and from whom did you first hear the following statements, if at all?

1. *We need to have economic development first before we focus on issues of equality and non-discrimination.*
2. *Timor-Leste's religions, cultures and traditions are more important than human rights.*

1. "We need to have economic development first before we focus on issues of equality and non-discrimination."			
<i>Heard from</i>	<i>When</i>		
	Childhood	Teenager	Adult

2. "Timor-Leste's religions, cultures and traditions are more important than human rights."			
<i>Heard from</i>	<i>When</i>		
	Childhood	Adolescent	Adulthood

PRESENTATION

What are Human Rights? Why Human Rights?

Core Points

- A common statement to describe human rights is that they are rights that belong to human beings as a consequence of being human. Related to this is the common statement about the ethical justification of human rights: that human rights are grounded in the value of *human dignity*. Human rights “rest on, give voice to, and seek to realize the dignity and worth of the human person.” (Donnelly 2009, p. 4)
- International human rights documents, specifically the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1976), and the International Covenant on Economic, Social and Cultural Rights (1976) all refer to “the inherent dignity and...the equal and inalienable rights of all members of the human family.” The Universal Declaration of Human Rights further states that “All human beings are born free and equal in dignity and rights” (Art. 1), while both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights declare in their Preambles that the “equal and inalienable rights of all the members of the human family” “derive from the inherent dignity of the human person.” The 1993 World Conference on Human Rights called human rights “the birthright of all human beings.”
- Since human rights are rooted in the inherent dignity of the human person, they are considered *universal* and *inalienable* rights of all human beings. They apply to all human beings *equally* and *without discrimination*, regardless of sex, race, color, language, national origin, age, class, religious or political beliefs, and other status.
- The justification of human rights is not derived from law or religious beliefs, nor is their existence dependent on their recognition by governments or their adoption in state laws. Hence, human rights are not limited to what human rights law or legal texts say about human rights. Further, human rights are not dependent on their legal enforceability, although the legal enforcement of human rights is a major focus of human rights advocacy. In fact, human rights have been used against states and other institutions when they fail to recognize, respect, protect, or enforce the rights of individuals or of peoples.
- Some claim that the *notion of human rights* predate the establishment of the

United Nations in 1945 and the development of international human rights documents and treaties. According to this view, the notion or idea of human rights may be traced to various religious and philosophies of the world, and that “principles now associated with human rights can be found in ancient times in many cultures around the world” such as the rule of law in the Code of Hammurabi (c. 1792-50 BC), religious toleration during the reign of Cyrus the Great (d. 529 BC) in Persia and of King Ashoka (c. 264-38 BC) in India, and provisions for the people’s health and education by the latter (Freeman 2011, 15-16). Others dispute this, claiming that the concept of human rights originated in the West, and that “there is no expression in any ancient or medieval language correctly translated by our expression ‘a right’ before about 1400 (Freeman 2011, p. 16).

- The *theory of natural rights* is also credited for influencing the modern concept of human rights. The belief was that individuals, as rational beings, had certain inalienable rights that existed even prior to and independent of any political system. The modern concept of human rights, it is said, is a “reformulation of the idea” in John Locke’s (1632-1704) theory of natural rights. According to Locke, “every human being had certain rights that derived from their nature, and not from their government or its laws, and the legitimacy of government rested on the respect that it accorded to these rights.” (Freeman 2011, pp. 20-32).
- One theory of natural rights is premised on the belief that there exists “a *natural moral code* based on the identification of certain fundamental and objectively verifiable human goods.” The enjoyment by humans of these basic human goods “is to be secured by [their] possession of equally fundamental and objectively verifiable *natural rights*.” Historically, natural rights became the basis of claims of individual rights against governments. These notions of individual rights were at the core of the English Magna Carta (1215 & 1225), the French Declaration of the Rights of Man and the Citizen (1789) and the U.S. Bill of Rights (1783).
- Contemporary human rights draw on the theory of *moral universalism*. Moral universalism posits that there are rationally identifiable *moral truths* that exist across cultures and history. The philosophical claim of human rights is “that there exists a rationally identifiable moral order, an order whose legitimacy precedes contingent social and historical conditions and applies to all human beings everywhere and at all times. On this view, moral beliefs and concepts are capable of being objectively validated as fundamentally and universally true.” (IEP)
- Contemporary human rights are viewed to have established the “minimum standards of good government.”

References and recommended readings:

- MICHAEL FREEMAN, *HUMAN RIGHTS: AN INTERDISCIPLINARY APPROACH* (Polity Press, 2nd ed., 2011)
- Jerome J. Shestack, *Philosophic Foundations of Human Rights* (John Hopkins University Press, 1998)
- Internet Encyclopedia of Philosophy (IEP), *Human Rights*, <http://www.iep.utm.edu/hum-rts/>
- Jack Donnelly, *Human Dignity and Human Rights* (June 2009)

WORKSHOP

Learning objective:

By the end of the workshop, the participants will be able to analyze existing cultural and religious beliefs in their families or communities against the concept of human rights and their philosophical or ethical foundations.

Instructions to the Facilitator

- (1) Divide the participants into groups of four or five.
- (2) Instruct each group to choose a discussion facilitator and a rapporteur. The rapporteur's task is to take notes of the workshop discussion and report the core points of the discussion to the plenary.
- (3) Give each group thirty (30) minutes to discuss the questions below.
 - (a) Do you agree with the concept of human rights discussed in the presentation? If no, what is your own concept of human rights?
 - (b) Does the idea of human rights appear to be a foreign concept in Timorese culture? Why?
 - (c) Can you identify cultural and religious beliefs and practices in your family or community that are consistent with the philosophical or ethical foundations of human rights discussed in the presentation?
- (4) Give each group ten minutes to make a presentation of the core points of their workshop discussion.

- (5) Facilitate a plenary discussion of the core points of the workshop discussions, focusing on the insights and reactions of the participants to the group reports. Note the insights and reactions for further discussion in the succeeding sessions.

SESSION 2: THE DEVELOPMENT OF HUMAN RIGHTS IN INTERNATIONAL LAW

Learning objectives:

By the end of the session, the participants will be able to:

- (1) Discuss the history and development of human rights in international law;
- (2) Identify the sources of human rights law;
- (3) Explain the dynamic character of human rights.

Session content:

Presentation

Workshop

PRESENTATION:

How did human rights develop in international law?

Core Points

- (1) The protection of individual rights and freedoms *at the international level* began in the nineteenth century with the adoption by the Atlantic maritime powers and other nations of international treaties committing to abolish the transatlantic slave trade, and the adoption of the Geneva Convention of 1864 to improve the situation of the sick and wounded in times of war. After the First World War, the League of Nations and newly created States in Europe concluded several treaties to provide special protection for minorities within their territories. In 1919, the International Labour Organization was founded for the purpose of improving the conditions of workers.
- (2) After the atrocities committed during the Second World War, there was recognition of the need to maintain peace and justice for humankind through international cooperation. This led to the establishment of the United Nations in 1945, which has among its purposes the achievement of

“international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.” The United Nations Charter affirms in its Preamble “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.” The United Nations has since played a key role in the development of **international human rights law**.

- (3) The United Nations General Assembly adopted the **Universal Declaration of Human Rights (UDHR)** on December 10, 1948. In adopting the UDHR, the international community collectively agreed, for the first time in history, upon a body of fundamental rights and freedoms to which all human beings are entitled by virtue of their being human. By setting “a common standard of achievement for all peoples and all nations” toward securing the universal and effective recognition and observance of the human rights and freedoms set forth therein, the UDHR provided the foundations for the flourishing of human rights and the creation of the UN human rights system.
- (4) The first twenty-one articles of the UDHR declares civil and political rights, including the rights to equal protection and nondiscrimination, due process in legal proceedings, privacy and personal integrity, and political participation. From articles 22 through 27, it declares economic and social benefits such as social security, an adequate standard of living, and education. Its list of rights also sets the pattern for the international human rights treaties that were adopted after 1948.
- (5) In order to translate the UDHR’s principles into legally binding human rights obligations, two covenants were adopted in 1966. Those are the **International Covenant on Civil and Political Rights (ICCPR)**, and the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**. They took effect in 1976. Together with the UDHR, these covenants became known as the *International Bill of Human Rights*.
- (6) The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were originally contained in one document. However, after much debate, it was decided to separate them and draft two covenants to be adopted simultaneously. The decision to separate the two was due to the specific nature of economic, social and cultural rights which required language that makes possible progressive implementation, given the differing levels of development of States.

(7) A series of multilateral human rights treaties followed the International Bill of Human Rights. In all, there are nine core international human rights treaties. They are enumerated below, with the year that they entered into force.

- (a) International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1969)
- (b) International Covenant on Civil and Political Rights (ICCPR) (1976)
- (c) International Covenant on Economic, Social and Cultural Rights (ICESCR) (1976)
- (d) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1981)
- (e) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1987)
- (f) Convention on the Rights of the Child (CRC) (1990)
- (g) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) (2003)
- (h) Convention on the Rights of Persons with Disabilities (2008)
- (i) International Convention for the Protection of All Persons from Enforced Disappearance (2010)

(8) Some of the core international human rights treaties have optional protocols. Optional protocols are also treaties that supplement the main treaty, or provide for complaints mechanisms and their procedures. Below are the human rights treaties with Optional Protocols, together with the date that they entered into force:

- (a) International Covenant on Civil and Political Rights (ICCPR)
 - First Optional Protocol to the ICCPR (1976)
 - Second Optional Protocol to the ICCPR (1991)
- (b) International Covenant on Economic, Social and Cultural Rights (ICESCR)
 - Optional Protocol to the ICESCR (2013)
- (c) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
 - Optional Protocol to the CEDAW (2000)
- (d) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
 - Optional Protocol to the CAT (2006)
- (e) Convention on the Rights of the Child
 - Optional Protocol to the CRC on the involvement of children in armed

- conflict (2002)
 - Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (2002)
 - Optional Protocol to the Convention on the Rights of the Child on a communications procedure (14 April 2014)
 - (f) Convention on the Rights of Persons with Disabilities
 - Optional Protocol to the Convention on the Rights of Persons with Disabilities (2008)
- (9) The body of **human rights law** includes any law that protects and promotes human rights. It is primarily found in three forms:
- (a) in *treaties between states* (found in international and regional human rights conventions or covenants);
 - (b) in *international custom*, as evidence of a general practice accepted as law; and
 - (c) in *state constitutions* (usually their bill of rights) and *domestic legislation*;

The creation of international customary legal obligations that are binding upon States requires evidence of (a) acts amounting to a “settled practice” of States; and (b) a “belief that this practice is rendered obligatory by the existence of a rule of law requiring it” (*opinio juris*).

Sometimes, a treaty codifies, clarifies and supplements existing customary international law. Article 138 (1) of the Statute of the International Court of Justice also includes, as sources of international law, *the general principles of law recognized by civilized nations*, and *judicial decisions and the teachings of the most qualified publicists of the various nations, as subsidiary means for the determination of rules of law*. These sources also apply to human rights law.

- (10) A human rights treaty imposes binding obligations on states parties. States must perform in good faith obligations incurred under international treaties. The State responsibility in international human rights law is strict in that they are responsible for violations even where they were not intentional. Generally, states parties to an international human rights treaty have *obligations to respect, protect, ensure and fulfill human rights* towards the implementation of the treaty. The obligations of a state party to an international human rights treaty may be categorized into (a) *obligations of conduct* (or obligations of means), and (b) *obligations of effect* (or obligations of result). An *obligation of conduct* refers to the state’s legal obligation “requiring the state merely to act or not act in a certain way. The

state fulfills its duty by acting or refraining from acting in a certain way regardless of the results. It is not focused on the result but on the state's manner of acting. For example, not torturing people is an obligation of conduct. Obligation of conduct requires action reasonably calculated to realize the enjoyment of a right." (Conde 2004, pp. 182-183) On the other hand, *obligation of effect* refers to the state's legal obligation "requiring the state to achieve a particular result or effect in order to fulfill its duty under a treaty. It is not focused on conduct so much as on the result, the goal to be met, such as elimination of hunger... Eradicating illiteracy would be an obligation of effect." (Conde 2004, p. 183)

(11) Declarations or resolutions on human rights adopted by the United Nations General Assembly, such as the *Universal Declaration of Human Rights* and the *Declaration on the Elimination of Violence Against Women*, technically lack the binding force of law. Sometimes, however, they constitute evidence of customary international law, or they may set forth principles broadly accepted within the international community. They may also contribute to the understanding and development of human rights, and provide guidance for human rights implementation in domestic legal systems. Over time, through State reliance on them and other usage, they may come to acquire the status of *jus cogens* or peremptory norms of international law, i.e., norms that are binding and nonderogable even for those states that are not parties to any convention or other agreement ensuring their protection. For example, the principles contained in the *Universal Declaration of Human Rights*, are widely acknowledged to have attained the status either of customary international law, general principles of law, or fundamental principles of humanity, and are legally binding.

(12) The rights protected under international human rights treaties may be **categorized into five**, following the Rene Cassin's categories, with the fifth added by Beitz:

1. *Rights to liberty and personal security* – such as life, liberty, and security of the person; prohibition of slavery, torture, cruel or degrading punishment; right to recognition as a legal person; equality before the law; no arbitrary arrest; presumption of innocence;
2. *Rights in civil society* – protection of privacy in family, home, correspondence; freedom of movement and residence within the state; right of emigration; equal rights of men and women to marry, within marriage, and to divorce; right to consent to marriage;
3. *Rights in the polity* – freedom of thought, conscience, and religion; freedom of assembly and association; rights "to take part in the government of the country" and "to periodic and

- genuine elections...by universal and equal suffrage”;
4. *Economic, social, and cultural rights* - adequate standard of living including adequate food, clothing, housing, and medical care; free, compulsory elementary education; free choice of employment; just and favorable remuneration; equal pay for equal work; right to join trade unions; reasonable limitation of working hours; social security;
 5. *Rights of “peoples”* (conceived as collective entities) - most importantly, self-determination and communal control over “natural wealth and resources.” (Beitz 2009, pp. 27-28)

(13) **The concept of human rights is dynamic.** Nothing precludes existing rights from being more broadly interpreted or additional rights from being accepted at any time by the community of states. This dynamic characteristic is what makes human rights a powerful tool for promoting social justice:

- (a) If the right is not *recognized*, the struggle is to assure recognition
- (b) If the right is not *respected*, the struggle is to ensure enforcement.

The process of gaining recognition of a right leads to better enforcement and the process of enforcing leads to greater recognition of the rights.

(14) Effective protection and implementation of human rights depend largely on **domestic legal systems**. The obligations of States under international human rights law to respect, protect, ensure and fulfill human rights require not only the adoption of laws and programs, but also the establishment of structures and other mechanisms as well as the adoption of other appropriate means for the protection, promotion and implementation of human rights. Under the Vienna Convention on the Law of Treaties, a State “may not invoke the provisions of its internal law as justification for its failure to perform a treaty” (Article 27). However, states are free to choose the modalities by which it can effectively comply with its treaty obligations. The following are some of the ways by which States can bring its domestic legal system to conform with its international legal obligations on human rights:

- *Constitutionalization* of human rights norms: A State may incorporate in its constitution human rights provisions following the text or provisions in international human rights treaties and other human rights documents. With the incorporation of such human rights norms, domestic courts can draw on jurisprudence developed by international courts, treaty-monitoring bodies and other international

bodies in interpreting the meaning of the constitutional provisions.

- *Incorporation*: Some States incorporate international human rights treaties into their domestic legislation by enacting a national law for the purpose.
- *Automatic applicability*: In some States, treaties are automatically applicable in the domestic legal system as soon as they have been ratified, by virtue of a law or constitutional rule providing for such automatic applicability.
- *Enacting legislation on human rights*: A State may adopt specific legislation for the protection, promotion and implementation of specific human rights in order to comply with its international legal obligations or to make domestic law conform to international human rights standards. Again, this will allow domestic courts to use international jurisprudence on human rights in the interpretation and enforcement of human rights covered by the domestic legislation.

References and recommended readings:

- CHARLES R. BEITZ, *THE IDEA OF HUMAN RIGHTS* (Oxford University Press, 2009).
- H. VICTOR CONDE, *A HANDBOOK OF INTERNATIONAL HUMAN RIGHTS TERMINOLOGY* (University of Nebraska, 2nd ed., 2004).
- DAVID HARRIS, *Action Through the United Nations*, in *CASES AND MATERIALS ON INTERNATIONAL LAW* (Council of Europe Publishing, Sweet and Maxwell London, 7th ed., 2010).

SESSION 3: THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK AND SYSTEM OF HUMAN RIGHTS PROTECTION AND ENFORCEMENT

This session aims to discuss the international human rights framework, specifically the major human rights treaties and the system of human rights protection and enforcement.

Learning objective:

By the end of the session, the participants will be able to name and discuss the major international human rights instruments, their Optional Protocols and monitoring bodies, and other international mechanisms for human rights enforcement.

Session content:

Presentation: *The Implementing Mechanisms of International Human Rights Law*

PRESENTATION: **The Implementing Mechanisms of International Human Rights Law** Core Points

(Instructions to the Facilitator: After the presentation, engage the participants in a discussion about what they think of the implementing mechanisms of international human rights law.)

The **international system of human rights protection and enforcement** consists of the different human rights treaties, their mechanisms for enforcement, and other mechanisms for the enforcement of human rights.

The United Nations system

Within the UN system, the following are the organs or bodies that have jurisdiction with respect to human rights:

- The **General Assembly**, which adopts resolutions that declare human rights standards or condemn particular breaches of human rights. Examples of General Assembly resolutions that declare human rights standards are the Declaration on the Elimination of Violence Against Women (1993) and the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (1998).
- The **Security Council**, which is primarily responsible under the United Nations Charter for the maintenance of international peace and security (Article 24). It may take measures, including imposing sanctions or authorizing the use of force, against human rights violations that constitute a threat to the peace, a breach of the peace, or an act of aggression, to maintain or restore international peace and security. For example, it authorized a limited use of force by UN peacekeeping operations in the former Yugoslavia, Somalia, the Democratic Republic of Congo, Kosovo,

and East Timor. It also established international criminal tribunals for Rwanda and the former Yugoslavia to prosecute those responsible for atrocities during times of war and genocide.

- The **Economic and Social Council (ECOSOC)**, which, under Article 62 of the United Nations Charter, may (1) make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly to the Members of the United Nations, and to the specialized agencies concerned; (2) make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all; (3) prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence; and call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.
- The **Human Rights Council**, which replaced the former United Nations Commission on Human Rights, is an inter-governmental body within the United Nations system composed of 47 member states which are elected by the UN General Assembly. It is responsible for strengthening the protection and promotion of human rights, addressing situations of human rights violations, and providing recommendations on those violations. The human rights enforcement mechanisms under Human Rights Council are:
 - *Universal Periodic Review*

The Universal Periodic Review is a process established by the United Nations Assembly in 2006 through a resolution establishing the Human Rights Council. Through this process, the human rights records of all the UN member states are reviewed once every four years before the Human Rights Council. It provides an opportunity for each State to report the measures it has taken, the developments that have occurred, and the challenges it faces with respect to human rights, to enhance the State party's capacity to fulfill its human rights obligations, and to support cooperation in the promotion and protection of human rights. The ultimate aim of this new mechanism is to improve the human rights situation in all countries and address violations wherever they occur.

The review of each country's human rights record is based on three documents. The national report, prepared by the State concerned, sets out the achievements and best practices, the challenges and

constraints, as well as the key national priorities in addressing human rights shortcomings. The second document, prepared by the Office of the UN High Commissioner for Human Rights (OHCHR), consists of information on the State's human rights situation presented in various reports to the treaty bodies and special procedures. The third document, also prepared by the OHCHR, contains information from civil society organizations, national human rights institutions and other non-government stakeholders. The format of the outcome of the review will be a report consisting of a summary of the proceedings of the review process; conclusions and/or recommendations, and the voluntary commitments of the State concerned.

- *Special Procedures*

The Human Rights Council (formerly the Human Rights Commission) and the Economic and Social Council have established *special procedures* to monitor the enforcement of human rights standards. The special procedures are entrusted to *working groups of experts* acting in their individual capacity, or individuals designated as *special rapporteurs*, *special representatives* or *independent experts*. Generally, their mandate is to examine, monitor and publicly report on the human rights situation in a specific country or territory (*country mandates*), or on specific types of human rights violations worldwide (*the thematic mechanisms or mandates*). For example, there is a *Special Rapporteur* on trafficking in persons, especially women and children, an *Independent Expert* on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, and a *Working Group* on Enforced or Involuntary Disappearances.

- *Complaint procedure (Resolution 5/1)*

The UN General Assembly Resolution 5/1 sets out a confidential complaint procedure intended "to address consistent patterns of gross and reliably tested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances." Communications are received under this procedure, "submitted by a person or a group of persons claiming to be the victims of violations of human rights and fundamental freedoms, or by any person or group of persons, including non-governmental organizations, acting in good faith in accordance with the principles of human rights...and claiming to have direct and reliable knowledge of the violations concerned." The admissibility and merits of the communication are examined by

two Working Groups created by the Human Rights Council, which will submit recommendations on a course of action to the Council. The Council may decide to discontinue considering the situation when further consideration or action is not warranted, or keep the situation under review and request further information from the State concerned or appoint an expert to monitor the situation and report back to the Council, or to discontinue the confidential procedure and bring the case before the Council in public session. It may also recommend that the OHCHR provide technical cooperation, capacity-building assistance or advisory services to the State concerned.

(e) **The UN High Commissioner for Human Rights.** The High Commissioner for Human Rights heads the Office of the UN High Commissioner for Human Rights. The Office supports the work of the United Nations human rights mechanisms, such as the Human Rights Council, and the core treaty bodies, coordinates United Nations human rights education and public information activities, and strengthens human rights across the United Nations system. It ensures the enforcement of universally recognized human rights norms, including promoting both the universal ratification and implementation of the major human rights treaties and respect for the rule of law.

Treaty monitoring bodies

Each of the nine core human rights treaties has a committee of independent experts that monitors States parties' compliance with their obligations under the treaty. Those committees are known as treaty monitoring bodies (TMBs). They are the following:

- The **Human Rights Committee** promotes compliance by States with the International Covenant on Civil and Political Rights.
- The **Committee on Economic, Social and Cultural Rights** monitors compliance with the International Covenant on Economic, Social and Cultural Rights.
- The **Committee on the Elimination of Racial Discrimination** monitors compliance with the Convention on the Elimination of Racial Discrimination.
- The **Committee on the Elimination of Discrimination against Women** monitors compliance with the Convention on the Elimination of All Forms of Discrimination Against Women.
- The **Committee Against Torture** monitors compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- The **Committee on the Rights of the Child** monitors compliance

with the Convention on the Rights of the Child.

- The **Committee on Migrant Workers** monitors the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- The **Committee on the Rights of Persons with Disabilities** monitors implementation of the Convention on the Rights of Persons with Disabilities.
- The **Committee on Enforced Disappearances** monitors implementation of the International Convention for the Protection of All Persons from Enforced Disappearance.

The TMBs monitor compliance by States parties with their treaty obligations through a *reporting procedure*. States parties submit periodic reports, which are examined by the TMBs. A TMB holds a public hearing where a state delegation presents its report and answers questions. Sometimes, NGOs submit shadow reports on the State party's compliance, where they provide critical information and call attention to inconsistencies between state action and international commitments under the treaty. After the examination of the reports, the TMB then issues its comments on the State's compliance with its obligations, through "concluding observations," and provides non-binding recommendations. The State party is called upon to report on its implementation of the recommendations in its next periodic report.

In addition, all the treaty-monitoring bodies, with the exception of the Committee on Migrant Workers, are presently empowered to *receive complaints* from individuals or groups of individuals (called "communications") for violations of human rights protected under the human rights treaty, where domestic legal processes fail to respond to those violations or where domestic remedies are not available or are ineffective. The Committee on Migrant Workers will be able to consider individual complaints alleging violations of rights under the Convention once 10 States parties have accepted this procedure in accordance with article 77 of the Convention. These individual complaints mechanisms are intended to help ensure that international human rights standards are indeed respected, implemented, and enforced at the local level. The complaints mechanism granting treaty-monitoring bodies the competence to receive individual complaints are usually found in the Optional Protocols to the treaties, which States Parties to the main treaties have the option to ratify, except for the Migrants Convention and the Convention on the Rights of Persons with Disabilities. Some TMBs have the competence to receive inter-State communications (such as the Human Rights Committee and the Committee on the Elimination of Racial Discrimination).

Several human rights treaties also have an inquiry procedure whereby the TMB, upon a complaint filed for a grave and systematic violations of rights protected under the treaty, examines the information before it and may even conduct a field visit where necessary and where the State party involved consents.

The Committee on Torture *may visit and inspect countries* upon receipt of reliable and well-founded information that torture is being systematically practised in the territory of a State party, where that State party has recognized the Committee's competence to do so. The Committee on Enforced Disappearances has the competence to receive *a request for urgent action* for a disappeared person to be sought and found, as well as to receive and consider communications from and on behalf of individuals claiming to be victims of violations of the provisions of the Convention by States parties.

TMBs also adopt *General Comments* (such as the Human Rights Committee) or *General Recommendations* (such as the CEDAW Committee) on the meaning of the provisions of the treaty that it monitors. The work of the TMBs contribute to the understanding of the rights that the treaties guarantee and to the corpus of practice applying international human rights standards. For example, the CEDAW Committee, in General Recommendation No. 19, gives clear and explicit guidelines as to what laws and customs are proscribed by the Convention on the Elimination of All Forms of Violence Against Women in the area of gender-based violence.

International Criminal Court

The International Criminal Court, which was created by the Rome Treaty of 1998, is the first permanent, treaty-based international criminal court "established to investigate, prosecute and try individuals accused of committing the most serious crimes of concern to the international community as a whole, namely crime of genocide, crimes against humanity, war crimes, and the crime of aggression." It is an independent international organization with seat at The Hague, Netherlands. It is not part of the United Nations system.

Regional Systems

In addition to the international system of human rights protection and enforcement, there are also existing regional human rights systems in Europe, the Americas and Africa.

The Council of Europe has a European Convention on Human Rights (or Convention for the Protection of Human Rights and Fundamental Freedoms). Under the Convention, the member States of the Council of Europe commit to secure fundamental civil and political rights defined in the Convention to everyone within their jurisdiction. The European Convention on Human Rights created the European Court of Human Rights, which receives individual and inter-State complaints of violations of the Convention. The judgments of the Court are binding on the States concerned. The Committee of Ministers of the Council of Europe monitors the execution of judgments, including the payment of any amount awarded by the Court as compensation for the damage suffered by the applicant.

The Organization of American States has a human rights declaration (the American Declaration of the Rights and Duties of Man), a treaty (the American Convention on Human Rights), a commission (the Inter-American Commission on Human Rights), and a court (the Inter-American Court of Human Rights). The Commission's function is to promote the observance and protection of human rights and to serve as a consultative organ of the OAS in these matters. It investigates individual complaints and monitors the human rights situation in member states. The Inter-American Court of Human Rights is an autonomous judicial institution that applies and interprets the American Convention on Human Rights.

The African Union (formerly the Organization of African Unity) has a human rights treaty, a commission on human and people's rights, and a court on human and people's rights. The human rights treaty is the *African Charter on Human and Peoples' Rights*. The African Charter is distinct in that it protects not only individual rights but also rights of peoples, as well as emphasizes the duties of individuals towards certain groups and other individuals. The African Charter created the *African Commission on Human and Peoples' Rights*, whose function is to protect and promote human and people's rights and to interpret the African Charter upon a request by a state party, organs of the African Union or individuals. Countries are required to submit periodic reports to the Commission on the measures they have taken to give effect to the rights and freedoms recognized in the Charter. The Commission also receives communications from States, individuals, groups of individuals and NGOs for violations of rights or any of the provisions of the Charter. The *African Court on Human and Peoples' Rights* was established under the Optional Protocol to the African Charter on Human and Peoples' Rights, which came into force on January 25, 2004. The court complements and reinforces the functions of the African Commission on Human and Peoples' Rights. The Court has jurisdiction over all cases and disputes

submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights, the Protocol and any other relevant human rights instrument ratified by the States concerned.

There is no regional human rights enforcement mechanism in Asia. In the ASEAN (Association of Southeast Asian Nations), there is the ASEAN Intergovernmental Commission on Human Rights (AICHR), established in 2009 pursuant to the ASEAN Charter. The AICHR is an inter-governmental consultative body composed of representatives of the ASEAN member states. Its mandate and functions include, among others, promoting and protecting human rights and fundamental freedoms within the ASEAN; enhancing awareness of human rights among peoples of the ASEAN; building the capacity of ASEAN member states to effectively implement their international human rights treaty obligations; promoting the accession or ratification by ASEAN states of international human rights instruments; and conducting studies on human rights in the ASEAN. The AICHR is directed to uphold international human rights standards within the regional context, and to do this "bearing in mind national and regional peculiarities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities." The ASEAN also has an ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC), which is also an intergovernmental body. Its mandate is to promote the implementation of human rights instruments, develop policies, programs and strategies to protect and promote the rights of women and children, and promote public awareness about these rights in the ASEAN. In 2012, the ASEAN adopted the ASEAN Human Rights Declaration.

Promotion of human rights by States

Other than protecting and promoting human rights in their own jurisdictions, States sometimes also act to protect and promote human rights in other countries, either individually or together with other states. Among the measures they use are diplomacy, publishing reports and statements, conditioning access to trade or aid on human rights improvements, economic sanctions, and military intervention.

Nongovernmental organizations dealing with human rights

Non-governmental organizations play a critical role at the domestic and international levels in the protection and promotion of human rights. At the international level, they participate in the meetings of UN human rights bodies and other international agencies, and provide information about human rights situations through the reports they publish and the

testimonies they give. Through their participation and lobbying, they contribute to the shaping of the human rights agenda of governments and international bodies, and to the development of law and policy both at the domestic and international levels. Examples of NGOs engaged in human rights work are the Amnesty International, Human Rights Watch, the International Commission of Jurists, and Doctors without Borders.

References and recommended readings:

- DAVID HARRIS, *Action Through the United Nations*, in CASES AND MATERIALS ON INTERNATIONAL LAW (Council of Europe Publishing, Sweet and Maxwell London, 7th ed., 2010).
- General Assembly of the United Nations, <http://www.un.org/en/ga/>.
- United Nations Security Council, <http://www.un.org/en/sc/>.
- United Nations Human Rights Council, <http://www.ohchr.org/en/hrbodies/hrc/pages/hrcindex.aspx>.
- International Criminal Court, http://www.icc-cpi.int/en_menus/icc/Pages/default.aspx.
- European Court of Human Rights, <http://www.echr.coe.int/Pages/home.aspx?p=home&c=>.
- Inter-American Commission on Human Rights, <http://www.oas.org/en/iachr/mandate/what.asp>.
- Inter-American Court of Human Rights, <http://www.corteidh.or.cr/index.php/en>.
- African Commission on Human and People's Rights, <http://www.achpr.org/>.
- African Court on Human and People's Rights, <http://www.african-court.org/>.

SESSION 4: KEY HUMAN RIGHTS CONCEPTS, PRINCIPLES AND STANDARDS

This session aims to discuss key human rights concepts, principles and standards.

Learning objectives:

By the end of the session, the participants will be able to (1) identify and explain key human rights concepts, principles and standards, and (2) discuss how these principles and standards can be used in addressing issues and challenges related to human rights.

Session content:

Presentation: *Key human rights concepts and principles*
Workshop

PRESENTATION

Key human rights concepts and principles

Human rights provide a powerful language for naming violations against the rights of individuals and groups and for claiming entitlements. Understanding concepts related to human rights is critical to be able to use the language of human rights effectively.

Universality of human rights

The principle of universality posits that human rights apply to all human beings *equally* and *without discrimination*, regardless of sex, race, color, language, national origin, age, class, religious or political beliefs, and other status. All human beings are the holders or bearers of rights in all societies and cultures because human rights are the universal attributes of the human personality and are grounded in the inherent dignity of every human being. This principle is referred to in the first paragraphs of the Preambles of the Universal Declaration of Human Rights, the ICCPR and the ICESCR, which are almost identical in language: the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” Both the ICCPR and the ICESCR declare that “these rights derive from the inherent dignity of

the human person.” Since human rights are universal, they exist independently of the state or of the will of people. The principle of the universality of human rights is the cornerstone of international human rights law.

Inalienability of human rights

This refers to the idea that human rights cannot be surrendered, alienated, taken away, or forfeited because they are inherent in the human person.

Indivisibility of human rights

This is “a principle of international human rights law that says that all human rights together form a whole that cannot be divided into subsets” and must be respected and promoted with equal emphasis, on the recognition that the enjoyment of one right requires the enjoyment of other rights. The indivisibility of human rights is also related to the principles of *interrelatedness* and *interdependence* of human rights.

Interdependence of human rights

This is “a principle applicable to all human rights that states that whatever type of human rights is involved, each individual human rights is dependent upon every other human right, so that ever human right is potentially at risk if even one is.” “This principle is used to combat arguments of cultural relativism and attempts at hierarchical separation and differentiation between norms and generation of norms.” (Conde 2004, p. 129)

Interrelatedness of human rights

This principle says that “all human rights are closely related to each other” and that “there is a logical and conceptual legal relationship between all human rights, and this relationship must be factored into any application or interpretation of human rights.” (Conde 2004, p. 136)

Cultural relativism and human rights

Generally speaking, cultural relativism is a doctrine that holds that the moral values and social institutions in a particular culture are exempt from legitimate criticism by outsiders. The claim of cultural relativism with respect to human rights is that if there is a

conflict between an international human rights norm and a particular cultural standard, the latter must take precedence. Cultural relativism rests on notions of moral autonomy of a culture and communal self-determination. With respect to human rights, cultural relativism covers a spectrum of beliefs. Some cultural relativists hold that “culture is the *sole* source of the validity of a moral right or rule” (radical cultural relativism), and that rights, including human rights, rested solely on culturally determined social roles. Others hold that “culture is the *principal* source of the validity of a moral right or rule” (strong cultural relativism), and still others that “culture may be an *important* source of the validity of a moral right or rule.” Cultural relativism works in the substance of human rights, in the interpretation of individual rights, and in the form in which individual rights are implemented. Cultural relativism has been invoked to defend practices that are valid according to the internal standards of a culture but are deemed unacceptable according to universal standards of human rights. It has been frequently invoked in the context of women’s human rights. (Donnelly 1984)

State obligations on human rights

Generally, States have *obligations to respect, protect, ensure and fulfill human rights* found in treaties to which they are parties or in customary international law. States must perform in good faith obligations incurred under international treaties. Under the Vienna Convention on the Law of Treaties, a State “may not invoke the provisions of its internal law as justification for its failure to perform a treaty” (Article 27). This means that States should modify, when necessary, the domestic legal order in order to give effect to its obligations under international human rights law. The obligations of States under international human rights law are placed on *all* State organs, including the courts. States can be responsible for judicial decisions that breach their treaty obligations (*Karen Vertido v. the Philippines*, CEDAW Views 2010, para. 8.4)

The **obligation to respect** means that States must refrain from interfering with or curtailing the enjoyment of human rights. It requires States to refrain from making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment of human rights (CEDAW General Recommendation No. 28, para. 9).

The **obligation to protect** means that “states have an affirmative legal obligation to take steps necessary to prevent

violations of human dignity by acts of third parties, such as private individuals or groups. Failure of the state to take such steps and to protect the individual in relation to other members of society constitutes a violation of human rights by the state.” (Conde 2004, p. 210) It also requires states to “take steps aimed directly towards the elimination of prejudices, customary and all other practices that perpetuate the notion of inferiority or superiority of either of the sexes, and stereotyped roles for men and women.” (CESCR General Comment No. 16, para. 19; also CEDAW General Recommendation No. 28, para. 9)

The **obligation to fulfill** is an obligation of States “to take appropriate legislative, administrative, budgetary, judicial, and other measures toward the full realization of human rights. This obligation requires that states will take all necessary steps to ensure that individuals subject to their jurisdiction can fully enjoy their human rights substantively and procedurally in reality.” (Conde 2004, p. 94) Under the CEDAW, this entails obligations of means or conduct and obligations of results. States parties should consider that they have to fulfil their legal obligations to all women through designing public policies, programmes and institutional frameworks that are aimed at fulfilling the specific needs of women leading to the full development of their potential on an equal basis with men. (CEDAW General Recommendation No. 28, para. 9)

The **obligation to ensure** “requires that states do all they can to see that all other states, organizations, and individuals act in a way as to allow full enjoyment of human rights.” (Conde 2004, p. 79) The obligation to ensure rights without discrimination “requires that States parties take all necessary steps to enable every person to enjoy [the rights guaranteed under international law]. These steps include the *removal of obstacles* to the full enjoyment of such rights, the *education* of the population and of State officials to human rights, and *the adjustment of domestic legislation* so as to give effect to the [State’s] undertakings. The State party must not only adopt *measures of protection*, but also *positive measures* in all areas so as to achieve the effective and equal empowerment of women.” (CCPR General Comment No. 28, para. 3)

The obligations of a state party to an international human rights treaty may be categorized into (a) **obligations of conduct** (or *obligations of means*), and (b) **obligations of effect** (or *obligations of result*). An *obligation of conduct* refers to the state’s legal obligation “requiring the state merely to act or not act in a certain way. The state fulfills its duty by acting or refraining from acting in a certain

way regardless of the results. It is not focused on the result but on the state's manner of acting. For example, not torturing people is an obligation of conduct. Obligation of conduct requires action reasonably calculated to realize the enjoyment of a right." (Conde, pp. 182-183) On the other hand, *obligation of effect* refers to the state's legal obligation "requiring the state to achieve a particular result or effect in order to fulfill its duty under a treaty. It is not focused on conduct so much as on the result, the goal to be met, such as elimination of hunger.... Eradicating illiteracy would be an obligation of effect." (Conde 2004, p. 183)

State responsibility

Every intentionally wrongful act of a State entails the international responsibility of that State. There is an internationally wrongful act of a State when conduct consisting of *an act or omission* is attributable to the State under international law, and constitutes a breach of an international obligation of the State. (Articles 1 & 2, ILC Draft Rules on Responsibility of States for Internationally Wrongful Acts)

Conduct attributable to the State can consist of actions or omissions. Cases in which the international responsibility of a State has been invoked on the basis of the omission are at least as numerous as those based on positive acts, and no difference in principle exists between the two. Moreover, it may be difficult to isolate an "omission" from surrounding circumstances which are relevant to the determination of responsibility. For example, in the Corfu Channel case, the International Court of Justice held that it was a sufficient basis for Albanian responsibility that it knew, or must have known, of the presence of the mines in its territorial waters and did nothing to warn third States of their presence. In the Diplomatic and Consular Staff case, the Court concluded that the responsibility of Iran was entailed by the "inaction" of its authorities which "failed to take appropriate steps", in circumstances where such steps were evidently called for. In other cases it may be the combination of an action and an omission which is the basis for responsibility. (Commentary on Article 2, ILC ILC Draft Rules on Responsibility of States for Internationally Wrongful Acts)

Due diligence obligation

Due diligence is a standard applied to state responsibility for non-state acts, or acts committed by private individuals or non-state

actors. The due diligence obligation of states means that where a right is guaranteed by international law, the state so bound by it has the obligation to exercise *due diligence* to ensure the right's fulfillment. The due diligence obligation of states was first articulated in *Valasquez Rodriguez v. Honduras*, where the Inter-American Court of Human Rights said that an illegal act "which violates human rights and which is initially not directly imputable to a State...can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required" by the State's obligation under international law.

The due diligence obligation of States is included in the CEDAW General Recommendation No. 19, which states "that discrimination under the Convention is not restricted to action by or on behalf of Governments... For example, under Article 2 (e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and of providing compensation." (CEDAW General Recommendation No. 19, para. 9) The Declaration on the Elimination of Violence Against Women also adopts the due diligence standard when it provides that "States should pursue by all appropriate means and without delay, a policy of elimination violence against women and, to this end, should... exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons." (Article 4.c)

The due diligence standard has been applied by the CEDAW Committee in the case of *A.T. v. Hungary* (2005), and by the European Court of Human Rights in the cases of *Osman v. United Kingdom* (1998), *M.C. v. Bulgaria* (2004), *Bevacqua and S. v. Bulgaria* (2008), and *Opuz v. Turkey* (2009).

Progressive realization

This is a principle concerning the obligation of states over economic, social, and cultural human rights under the ICESCR, requiring that "there must be a continuous, gradual improvement in the realization of these rights by virtue of states taking concrete steps to the maximum of their available resources to implement

these rights.” (Conde 2004, p. 207) This principle is taken from article 2 of the ICESCR which provides that “[e]ach State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” According to the Committee on Economic, Social and Cultural Rights, “maximum available resources” refer to “both the resources existing within a State and those available from the international community through international cooperation and assistance” and “international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States.” (CESCR General Comment No. 3, para. 13 &14)

The principle of progressive realization is supported by the 1986 ‘Limburg Principles’... on the implementation of the ICESCR.” (Conde 2004, p. 207)

According to the Committee on Economic, Social and Cultural Rights, “while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant’s entry into force for the States concerned.” Also, “[t]he concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time.... Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the *raison d’être*, of the Covenant which is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal.” The Committee also explains that notwithstanding that the full realization of economic, social and cultural rights are to be achieved progressively, States parties to the ICESCR have a “minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights,” that “a State party in which any significant number of individuals is deprived of essential

foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant,” and that “[i]n order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.” (CESCR General Comment No. 3, para. 9 & 10)

Non-retrogression of human rights

This is a principle used with respect to economic, social and cultural rights and must be related to the principle of progressive realization of those rights. Under this principle, states are not allowed to take measures that intentionally or unintentionally *reduce* or are *intended to reduce* the level of enjoyment of economic, social and cultural rights. Where a regression becomes apparent under a measure not intended to reduce the level of enjoyment of those rights, “the State is obliged under its general obligations under the Covenant [on Economic, Social and Cultural Rights], to take immediate steps to correct the measure. The obligation of progressively realizing economic, social and cultural rights implies that there should be no regression by act or omission to a lower level of enjoyment of these rights.” (OHCHR, Economic, Social and Cultural Rights, Handbook for National Human Rights Institutions, 2005)

Examples of a deliberately retrogressive measures “a new law that makes primary education voluntary rather than compulsory, as required by the Covenant, or cuts public expenditure on maternal health care, resulting in considerable increases in maternal and child mortality.” (OHCHR)

According to the Committee on Economic and Cultural Rights, “even in times of severe resource constraints whether caused by a process of adjustment, of economic recession, or by other factors the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes,” and that “any deliberately retrogressive measures [with respect to economic, social and cultural rights] would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.” (CESCR General Comment No. 3, para. 12 &

9)

Sex and Gender

Sex refers to the biological state of being female or male, or to the biological differences between men and women.

Gender refers “to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for [their] biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can be changed by culture, society and community.” (CEDAW General Recommendation No. 28, para. 5)

“Gender affects the equal right of men and women to the enjoyment of their rights. Gender refers to cultural expectations and assumptions about the behavior, attitudes, personality traits, and physical and intellectual capacities of men and women, based solely on their identity as men or women. Gender-based assumptions and expectations generally place women at a disadvantage with respect to substantive enjoyment of rights, such as freedom to act and to be recognized as autonomous, fully capable adults, to participate fully in economic, social and political development, and to make decisions concerning their circumstances and conditions. Gender-based assumptions about economic, social and cultural roles preclude the sharing of responsibility between men and women in all spheres that is necessary to equality.” (CESCR General Comment No. 16, para. 14)

According to the Committee on Economic, Social and Cultural Rights, “the notion of the prohibited ground ‘sex’ [as a prohibited ground for discrimination in the ICESCR] has evolved considerably to cover not only physiological characteristics but also the social construction of gender stereotypes, prejudices and expected roles, which have created obstacles to the equal fulfilment of economic, social and cultural rights. Thus, the refusal to hire a woman, on the ground that she might become pregnant, or the allocation of low-level or part-time jobs to women based on the stereotypical assumption that, for example, they are unwilling to commit as much time to their work as men, constitutes discrimination. Refusal to grant paternity leave may also amount to discrimination against men.” (CESCR General Comment No. 20, para. 20)

Equality (of women and men)

“The equal right of men and women to the enjoyment of all human rights is one of the fundamental principles recognized under international law and enshrined in the main international human rights instruments.” (CESCR General Comment No. 16, para. 1)

“The enjoyment of human rights on the basis of equality between men and women must be understood comprehensively. Guarantees of non-discrimination and equality in international human rights treaties mandate both *de facto* and *de jure* equality. *De jure* (or formal) equality and *de facto* (or substantive) equality are different but interconnected concepts. Formal equality assumes that equality is achieved if a law or policy treats men and women in a neutral manner. Substantive equality is concerned, in addition, with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience.” (CESCR General Comment No. 16, para. 7)

“Substantive equality for men and women will not be achieved simply through the enactment of laws or the adoption of policies that are gender-neutral on their face... laws, policies and practice can fail to address or even perpetuate inequality between men and women, because they do not take account of existing economic, social and cultural inequalities, particularly those experienced by women.” (CESCR General Comment No. 16, para. 8)

The substantive equality standard refers to the *equality of opportunities, the equality in access, and the equality of results*. It means that there should be equal treatment of people to access the same opportunities and to benefit from laws, programs or other measures adopted by States. The use of temporary special measures by States is one means by which past and historic discrimination against women that has resulted in their being disadvantaged can be corrected, within the framework of substantive equality. Temporary special measures are measures aimed to accelerate the equal participation of women in the political, economic, social, cultural, civil or any other field.

Discrimination/Non-discrimination

“The principle of non-discrimination is the corollary of the principle of equality. Subject to... temporary special measures, it prohibits differential treatment of a person or group of persons based on his/her or their particular status or situation, such as race, colour, sex, language, religion, political and other opinion, national or social origin, property, birth, or other status, such as age, ethnicity, disability, marital, refugee or migrant status.” (CESCR General Comment No. 16, para. 10)

Discrimination against women means “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” (CEDAW, art. 1) Discrimination against women “includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately.” (CEDAW General Recommendation No. 19, para. 6)

Discrimination against women may be *direct* or *indirect*. *Direct discrimination* “occurs when a difference in treatment relies directly and explicitly on distinction based exclusively on sex and characteristics of men or of women, which cannot be justified objectively.” *Indirect discrimination* “occurs when a law, policy or programme does not appear to be discriminatory on its face, but has a discriminatory effect when implemented. This can occur, for example, when women are disadvantaged compared to men with respect to the enjoyment of a particular opportunity or benefit due to pre-existing inequalities. Applying a gender-neutral law may leave the existing inequality in place, or exacerbate it.” (CESCR General Comment No. 16, para. 12 & 13)

Temporary special measures

“The principles of equality and non-discrimination, by themselves, are not always sufficient to guarantee true equality. Temporary special measures may sometimes be needed in order to bring disadvantaged or marginalized persons or groups of persons to the same substantive level as others. Temporary special measures aim at realizing not only *de jure* or formal equality, but also *de facto* or substantive equality for men and women. However,

the application of the principle of equality will sometimes require that States parties take measures in favour of women in order to attenuate or suppress conditions that perpetuate discrimination. (CESCR General Comment No. 16, para. 15) “Such measures are legitimate to the extent that they represent reasonable, objective and proportional means to redress de facto discrimination and are discontinued when substantive equality has been sustainably achieved. Such positive measures may exceptionally, however, need to be of a permanent nature, such as interpretation services for linguistic minorities and reasonable accommodation of persons with sensory impairment in accessing health-care facilities.” (CESCR General Comment No. 20, para. 9)

Intersectional analytic approach to human rights (or intersectionality)

The concept of intersectional approach to human rights recognizes the multiple identities, status or conditions of individuals and how these can account for the advantages or disadvantages individuals face, or affect their enjoyment of human rights. Specifically for women, adopting an intersectional analysis of their human rights situation can show that women experience intersectional discrimination, that is, women experience multiple forms of discrimination through the intersection of gender, race, ethnic or religious identity, disability, age, class, caste and other status.

“Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2 [of the CEDAW]. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences, including, where appropriate, temporary special measures in accordance with article 4, paragraph 1, of the Convention and general recommendation No. 25.” (CEDAW General Recommendation No. 28, para. 18)

Gender stereotypes

Stereotyping “is the process of ascribing to an individual general attributes, characteristics, or roles by reason only of his or her apparent membership in a particular group. Stereotyping produces generalizations or preconceptions concerning attributes, characteristics, or roles of members of a particular social group, which renders unnecessary consideration of any particular individual member’s abilities, needs, wishes, and circumstances.” (Cook & Cusack, p. 1)

Gender stereotypes are stereotypes specific to gender relations. While gender stereotypes affect women and men, they often harm women more. Gender stereotypes devalue women and are used to justify their subservient status and roles in society as well as their legal subordination. These prevent women from fully exercising and enjoying their human rights. Gender stereotypes may be reflected in laws, regulations, policies, programs, social or institutional practices, and court decisions. Addressing the systemic discrimination against women requires the elimination of gender stereotypes. Towards this end, States should reform laws, regulations, and policies that perpetuate gender stereotypes, and adopt appropriate measures toward changing social or cultural practices and behavior that are based on gender stereotypes. Under Article 5 of the CEDAW, for example, States parties are obligated to take all appropriate measures to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

In *Karen Vertido v. the Philippines* (2010), the Committee on the Elimination of Discrimination against Women discussed gender stereotypes in relation to sexual violence. The Committee stressed that “stereotyping affects women’s right to a fair and just trial and that the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence, in general.”

It found that in the trial court judgment on the rape complaint of Karen Vertido “the assessment of the credibility of the [victim’s] version of events was influenced by a number of stereotypes, the author in this situation not having followed what was expected

from a rational and 'ideal victim' or what the judge considered to be the rational and ideal response of a woman in a rape situation." According to the Committee, the trial court decision "contains several references to stereotypes about male and female sexuality being more supportive for the credibility of the alleged perpetrator than for the credibility of the victim." It then declared that:

- "all legal procedures in cases involving crimes of rape and other sexual offenses must be impartial and fair, and not affected by prejudices or stereotypical gender notions."
- "there should be no assumption in law or in practice that a woman gives her consent because she has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence."

Monism (monist legal system) and dualism (dualist legal system)

Monism or a *monist legal system* means that municipal law and international law form one legal system. International law does not need to be translated into domestic law. Upon ratification by the state of a treaty, the treaty *automatically* becomes binding rules of domestic law. But in some States, direct incorporation occurs only with self-executing treaties. In a *dualist legal system*, municipal law and international law are two different legal systems; municipal law is supreme in the municipal system. Before judges can apply international treaty rules, the rules must first be *specifically adopted or transposed* into domestic legislation. However, monist-dualist theories have been criticized as not reflective of the conduct of international and domestic organs. It is said that domestic courts increasingly use international human rights law regardless of monist-dualist theories.

References and recommended readings:

- Jack Donnelly, "Cultural Relativism and Human Rights", *Human Rights Quarterly*, Vol. 6, No. 4 (Nov. 1984), pp. 400-419, at <http://www.jstor.org/stable/762182>.
- Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women: The Due Diligence Standard as a Tool for the Elimination of Violence Against Women (Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk), E/CN.4/2006/61, 20 January 2006.

- OHCHR, Economic, Social and Cultural Rights, Handbook for National Human Rights Institutions, 2005, available at <http://www.ohchr.org/Documents/Publications/training12en.pdf>.
- Rebecca Cook and Simone Cusack, GENDER STEREOTYPING: TRANSNATIONAL LEGAL PERSPECTIVES, University of Pennsylvania Press (2010).
- CCPR General Comment No. 4 (1981)
- CCPR General Comment No. 28 (2000)
- CCPR General Comment No. 31 (2004)
- CESCR General Comment No. 3 (1990)
- CESCR General Comment No. 16 (2005)
- CESCR General Comment No. 20 (2009)
- CEDAW General Recommendation No. 19 (1992)
- CEDAW General Recommendation No. 24 (1999)
- CEDAW General Recommendation No. 25 (2004)
- CEDAW General Recommendation No. 28 (2010)

Workshop: *Applying key human rights concepts and principles*

Instructions to the facilitator:

1. Divide the participants into small groups.
2. Give the participants copies of the (a) *Executive Summary of the World Bank 2014 Health Equity and Financial Protection Report – Timor-Leste*, and (b) the *Summary of Findings in the Timor-Leste Demographic and Health Survey 2009-10* (see Annexes).
3. Ask them to discuss in their groups the two documents by answering the following questions:
 - (a) Identify *five* human rights concepts, principles and standards that are *implicated* in the reports. Explain fully why those concepts, principles and standards are implicated.
 - (b) Identify *three changes* that you want to happen in the situations described in the reports and support each desired change by invoking human rights concepts, principles and standards.
4. Give each group about 15 minutes to report their discussion.
5. Engage the participants in a plenary discussion about the workshop results.

SESSION 5: NATURE AND SCOPE OF STATE OBLIGATIONS ON WOMEN'S HUMAN RIGHTS

Learning Objectives:

By the end of the session, the participants will be able to discuss the nature and scope of state obligations on women's human rights under the Convention on the Elimination of All Forms of Violence Against Women and other human rights instruments, and the significance of calling attention to women's human rights.

Session content:

Presentation: *State obligations on women's human rights*
Workshop

PRESENTATION:

State Obligations on Women's Human Rights Core Points

The entire body of international human rights law fully applies to women. According to the Vienna Declaration and Programme of Action, "the human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights" and 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."

However, across the world, women's human rights have not been given adequate or appropriate attention. Women and girl-children continue to suffer serious and multiple violations of their rights. Discriminatory practices against women and girl-children are widespread in many countries. Many women's human rights violations occur in situations of poverty or extreme poverty. Giving special focus to women's human rights is necessary to address the distinct problems of women, and the complex social, cultural, religious and political structures that keep them subordinated.

The Women's Convention and women's human rights

- The Convention on the Elimination of All Forms of Discrimination Against Women, also called the Women's Convention, is the most-

wide ranging of the international human rights treaties devoted to women. Its adoption in 1979 was a result of decades of international efforts to protect and promote women's human rights.

- As of 2014, the Convention has 187 States parties, among them Timor-Leste, which acceded to the Convention on April 16, 2003. The Convention has the highest number of reservations from States parties. Some reservations are so broad that they effectively undermine the State's commitment to the treaty.

The Content of the Women's Convention

- The Women's Convention prohibits *discrimination against women* and requires full equality between women and men. It defines 'discrimination against women' as:

"any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." (Article 1)
- The Convention's definition of discrimination covers *direct* and *indirect* discrimination, or intended and unintended discrimination. This is expressed in the use of the phrase "effect or purpose."
- States parties to the Women's Convention have the obligation to eliminate discrimination against women in all its forms, in both public and private life. The Women's Convention specifically covers discrimination in the following areas and forms:
 - the civil, political, social, economic and cultural fields (Article 3)
 - social and cultural patterns of conduct (Article 5)
 - all forms of traffic in women and exploitation of prostitution of women (Article 6)
 - political and public life (Article 7)
 - representation of government at the international level and participation in the work of international organizations (Article 8)
 - nationality (Article 9)

- education (Article 10)
 - employment (Article 11)
 - health care (Article 12)
 - family benefits, financial credit, recreational activities, sports and all aspects of cultural life (Article 13)
 - rural areas (Article 14)
 - law and legal capacity (Article 15)
 - marriage and family relations (Article 16)
- States parties to the Convention “agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.” To this end, they undertake:
 - (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
 - (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
 - (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
 - (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
 - (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
 - (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
 - (g) To repeal all national penal provisions which constitute discrimination against women. (Article 2)
 - The Women’s Convention introduces the concept of “**temporary special measures**” to correct historic or past discrimination against women that has placed them in a disadvantaged position vis-à-vis men (Article 4). By this, the Convention recognizes that

it is not enough to provide women opportunities equal to men for women to achieve equality. The “temporary special measures” (sometimes called affirmative action) are intended to accelerate the *de facto equality* of women with men. Their use does not constitute discrimination. (Article 4) An example of a temporary special measure is a law that requires that a certain percentage of women be appointed in positions of government, or included as candidates of political parties.

- The Convention targets **culture and tradition** as influential forces shaping gender roles and family relations. It obliges States parties to “take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.” (Article 5)
- The prohibition against discrimination based on sex includes **gender-based violence** (CEDAW General Recommendation No. 19).
- The Women’s Convention guarantees formal equality, equality of means, and equality of results.

General human rights treaties related to women's human rights

- Other than the Women’s Convention, other human rights treaties also prohibit discrimination on the basis of sex. The UN Charter refers in its Preamble to “the equal rights of men and women.” The Universal Declaration of Human Rights (1948) emphasizes that all rights and freedoms must be guaranteed “without distinction of any kind, such as race, colour, sex... or other status.” (Article 2) Both the ICCPR and the ICESCR protect against discrimination “on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The major human rights of women that are guaranteed under the Women’s Convention and other human rights treaties are listed below. All these rights are underpinned and framed by women’s right to equality and non-discrimination.

WOMEN'S RIGHTS	Details of the rights
(1) Women's right to legal personality	<p><i>Conventional basis/relevant human rights documents:</i></p> <ul style="list-style-type: none"> • UDHR, arts. 2, 6 • ICCPR, arts. 2 (1), 4 (1), 16 and 26 • ICESCR, art. 2 (2) <ul style="list-style-type: none"> • CCPR General Comment No. 28, para. 19: <p style="margin-left: 40px;">“This right implies that the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground. It also implies that women may not be treated as objects to be given, together with the property of the deceased husband, to his family.”</p> <p style="margin-left: 40px;">“The right of everyone under Article 16 <i>to be recognized everywhere as a person before the law</i> is particularly pertinent for women, who often see it curtailed by reason of sex or marital status.”</p>
(2) Women's right to equality before the law and equal protection of the law	<p>Women's right to equality with men before the law is independent of her legal status.</p> <p><i>Conventional basis/relevant human rights documents:</i></p> <ul style="list-style-type: none"> • UDHR, arts. 2, 7 • ICCPR, arts. 2 (1), 3, 26 • ICESCR, arts. 2 (2), 3 <ul style="list-style-type: none"> • CCPR General Comment No. 28, para. 31: <p style="margin-left: 40px;">“The right to equality before the law and freedom from discrimination, protected by article 26, requires States to act against discrimination by public and private agencies in</p>

	<p>all fields. Discrimination against women in areas such as social security laws (communications Nos. 172/84, Broeks v. Netherlands, Views of 9 April 1987; 182/84, Zwaan de Vries v. the Netherlands, Views of 9 April 1987; 218/1986, Vos v. the Netherlands, Views of 29 March 1989) as well as in the area of citizenship or rights of non-citizens in a country (communication No. 035/1978, Aumeeruddy-Cziffra et al. v. Mauritius, Views adopted 9 April 1981) violates article 26. The commission of so-called “honour crimes” which remain unpunished constitutes a serious violation of the Covenant and in particular of articles 6, 14 and 26. Laws which impose more severe penalties on women than on men for adultery or other offences also violate the requirement of equal treatment. The Committee has also often observed in reviewing States parties’ reports that a large proportion of women are employed in areas which are not protected by labour laws and that prevailing customs and traditions discriminate against women, particularly with regard to access to better paid employment and to equal pay for work of equal value. States parties should review their legislation and practices and take the lead in implementing all measures necessary to eliminate discrimination against women in all fields, for example by prohibiting discrimination by private actors in areas such as employment, education, political activities and the provision of accommodation, goods and services. States parties should report on all these measures and provide information on the remedies available to victims of such discrimination.”</p>
<p>(3) Women’s right to respect for their life and their physical and mental integrity</p>	<p><i>Specific rights:</i></p> <ul style="list-style-type: none"> • right to life • right to freedom from torture and other cruel, inhuman or degrading treatment or punishment • right to liberty and security of person

	<p><i>Examples of violations:</i></p> <ul style="list-style-type: none"> • gender-based violence (in both public and private spheres, including dowry-related violence against women and “honor” killings of women) • female genital mutilation • abduction, murder and extrajudicial killings • corporal punishment <p><i>Conventional basis/relevant human rights documents:</i></p> <ul style="list-style-type: none"> • ICCPR, arts. 6, 7, 9 • Convention Against Torture <p>Human Rights Committee Communication No. 759/1997, <i>G. Osbourne v. Jamaica</i> (Views adopted on 15 March 2000):</p> <p>Corporal punishment constitutes cruel, inhuman and degrading treatment or punishment. The prohibition of corporal punishment is important to women who may run the risk of flogging or stoning if they have not complied with a certain dress code or have committed adultery.</p> <ul style="list-style-type: none"> • Human Rights Committee: States parties have the duty under Article 6 (to protect life) of the Convention <i>to take positive steps to reduce infant mortality and increase life expectancy</i> by dealing with the root causes of the problems affecting the population’s life cycle, and by providing women with equal access to food and health care; this is particularly important to women and girl-children who often have to carry an undue burden in times of food scarcity and inadequate health care. • Declaration on the Elimination of Violence Against Women • CEDAW, arts. 2, 5, 11, 12 and 16 (which according to the CEDAW Committee requires States parties “to act to protect women against
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	<p>violence of any kind occurring within the family, at the workplace or in any area of social life.” (CEDAW General Recommendation No. 12)</p> <ul style="list-style-type: none"> • CEDAW 2 (f), 5 and 10 (c) (“traditional attitudes by which women are regarded as subordinate to women or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.” (CEDAW General Recommendation No. 19) • CEDAW General Recommendation No. 14 (female circumcision)
<p>(4) Women’s right to freedom from slavery, the slave trade, forced and compulsory labor, and trafficking</p>	<p><i>Conventional basis/relevant human rights documents:</i></p> <ul style="list-style-type: none"> • ICCPR, art. 8 • CEDAW, art. 6 • Convention on the Rights of the Child • Slavery Convention of 1926, as amended by its 1953 Protocol • Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956) • 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others • Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (2003)

	<p><i>Some violations:</i></p> <p>Overt or disguised forms of slavery (e.g., slavery disguised as domestic or other kinds of personal service), forced and compulsory labor, debt bondage, serfdom, forced marriage for money, forced prostitution, and trafficking in women and children</p>
<p>(5) Women's right to equality in respect of marriage</p>	<p><i>Specific rights:</i></p> <ul style="list-style-type: none"> • Right to marry freely and to found a family • Equality of rights in terms of nationality laws • The equal right to a name • Equal rights and responsibilities of spouses as to marriage, during marriage and at its dissolution • Equal right to decision-making • Equal parental rights and responsibilities • Equal rights to marital property • Equal right to a profession and an occupation • Equality of rights in de facto unions • Equality with respect to divorce • Equal right of succession between spouses <p><i>Examples of violations:</i></p> <ul style="list-style-type: none"> • forced marriages or remarriages on the basis of custom, religious beliefs or the ethnic origins of particular groups of people • a woman's marriage to be arranged for payment or preferment • poverty forcing women to marry foreign nationals for financial security • polygamy • marriage at an early age • restrictions on remarriage (e.g., ban on marriage for 10 months following the dissolution of a previous marriage) <p><i>Conventional basis/relevant human rights documents:</i></p> <ul style="list-style-type: none"> • ICCPR, art. 23 (2) • CEDAW, art. 16

	<ul style="list-style-type: none"> • Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1964) • CCPR General Comment No. 28, para. 23-27: <p>“23. States are required to treat men and women equally in regard to marriage in accordance with article 23, which has been elaborated further by general comment No. 19 (1990). Men and women have the right to enter into marriage only with their free and full consent, and States have an obligation to protect the enjoyment of this right on an equal basis. Many factors may prevent women from being able to make the decision to marry freely. One factor relates to the minimum age for marriage. That age should be set by the State on the basis of equal criteria for men and women. These criteria should ensure women’s capacity to make an informed and uncoerced decision. A second factor in some States may be that either by statutory or customary law a guardian, who is generally male, consents to the marriage instead of the woman herself, thereby preventing women from exercising a free choice.</p> <p>24. Another factor that may affect women’s right to marry only when they have given free and full consent is the existence of social attitudes which tend to marginalize women victims of rape and put pressure on them to agree to marriage. A woman’s free and full consent to marriage may also be undermined by laws which allow the rapist to have his criminal responsibility extinguished or mitigated if he marries the victim. States parties should indicate whether marrying the victim extinguishes or mitigates criminal responsibility and, in the case in which the victim is a minor, whether the rape reduces the marriageable age of the victim, particularly in societies where rape victims have to endure marginalization from society. A different aspect of the right to marry may be affected when States impose restrictions on remarriage by women that are not imposed on men. Also, the right to choose one’s spouse may be restricted by laws or practices that prevent the marriage of a woman of a particular religion to a man who professes no religion or a different religion. States should provide information on these laws and practices and on the measures</p>
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taken to abolish the laws and eradicate the practices which undermine the right of women to marry only when they have given free and full consent. It should also be noted that equality of treatment with regard to the right to marry implies that polygamy is incompatible with this principle. Polygamy violates the dignity of women. It is an inadmissible discrimination against women. Consequently, it should be definitely abolished wherever it continues to exist.

25. To fulfil their obligations under article 23, paragraph 4, States parties must ensure that the matrimonial regime contains equal rights and obligations for both spouses with regard to the custody and care of children, the children's religious and moral education, the capacity to transmit to children the parent's nationality, and the ownership or administration of property, whether common property or property in the sole ownership of either spouse. States parties should review their legislation to ensure that married women have equal rights in regard to the ownership and administration of such property, where necessary. Also, States parties should ensure that no sex-based discrimination occurs in respect of the acquisition or loss of nationality by reason of marriage, of residence rights, and of the right of each spouse to retain the use of his or her original family name or to participate on an equal basis in the choice of a new family name. Equality during marriage implies that husband and wife should participate equally in responsibility and authority within the family.

26. States parties must also ensure equality in regard to the dissolution of marriage, which excludes the possibility of repudiation. The grounds for divorce and annulment should be the same for men and women, as well as decisions with regard to property distribution, alimony and the custody of children. Determination of the need to maintain contact between children and the non-custodial parent should be based on equal considerations. Women should also have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses.

27. In giving effect to recognition of the family in the context of article 23, it is important to accept the

concept of the various forms of family, including unmarried couples and their children and single parents and their children, and to ensure the equal treatment of women in these contexts (see general comment No. 19, paragraph 2). Single-parent families frequently consist of a single woman caring for one or more children, and States parties should describe what measures of support are in place to enable her to discharge her parental functions on the basis of equality with a man in a similar position.”

- CCPR General Comment No. 19. Para. 18:

Article 23 of the ICCPR “does not establish a specific marriageable age either for men or for women, but that age should be such as to enable each of the intending spouses to give his or her free and full personal consent in a form and under conditions prescribed by law.” Marriage at such an early age does not appear to be compatible with Article 23 of the ICCPR, “which requires the free and full consent of the intending parties.”

- CEDAW General Recommendation No. 21:

A “polygamous marriage contravenes a woman’s right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited. The Committee notes with concern that some States parties, whose constitutions guarantee equal rights, permit polygamous marriage in accordance with personal or customary law. This violates the constitutional rights of women, and breaches the provisions of article 5 (a) of the Convention.”

“In the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, States are urged to repeal existing laws and regulations and to remove customs and practices which discriminate against and cause harm to the girl child. Article 16 (2) and the provisions of the Convention on the Rights of the Child preclude

	<p>States parties from permitting or giving validity to a marriage between persons who have not attained their majority. In the context of the Convention on the Rights of the Child, "a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier". Notwithstanding this definition, and bearing in mind the provisions of the Vienna Declaration, the Committee considers that the minimum age for marriage should be 18 years for both man and woman. When men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act. According to the World Health Organization, when minors, particularly girls, marry and have children, their health can be adversely affected and their education is impeded. As a result their economic autonomy is restricted...This not only affects women personally but also limits the development of their skills and independence and reduces access to employment, thereby detrimentally affecting their families and communities."</p>
(6) Women's equal right to legal capacity in civil matters	<p><i>Specific rights:</i></p> <ul style="list-style-type: none"> • equal rights to administer property and conclude contracts • equal right to succession in general
(7) The right to equal participation in public affairs, including elections	<p><i>Specific rights:</i></p> <ul style="list-style-type: none"> • the right to vote and to be elected on an equal footing with men • the equal right with men to hold public office and to perform governmental functions at all levels • the equal right to participate in the formulation and implementation of government policy • the equal right to participate in public debate

	<ul style="list-style-type: none"> • an equal opportunity to represent their government at the international level <p><i>Conventional basis/relevant human rights documents:</i></p> <p>ICCPR, art. 25 CEDAW, arts. 7, 8 Convention on the Political Rights of Women CCPR General Comment No. 25 CEDAW General Recommendation No. 23</p>
(8) Right to equal enjoyment of other rights	<p><i>Specific rights:</i></p> <ul style="list-style-type: none"> • the right to freedom of movement and residence • the right to privacy • freedom of thought, conscience, belief, religion, opinion, expression, association and assembly • right to education <p><i>Conventional basis/relevant human rights documents:</i></p> <p>ICCPR, arts. 12, 17, 18, 19, 22</p> <p>CCPR General Comment No. 28, para. 16:</p> <p>“As regards article 12, States parties should provide information on any legal provision or any practice which restricts women’s right to freedom of movement, for example the exercise of marital powers over the wife or of parental powers over adult daughters; legal or de facto requirements which prevent women from travelling, such as the requirement of consent of a third party to the issuance of a passport or other type of travel documents to an adult woman. States parties should also report on measures taken to eliminate such laws and practices and to protect women against them, including reference to available domestic remedies (see general comment No. 27, paragraphs 6 and 18).</p>

CCPR General Comment No. 28, para. 20:

“An example of ... interference arises where the sexual life of a woman is taken into consideration in deciding the extent of her legal rights and protections, including protection against rape. Another area where States may fail to respect women’s privacy relates to their reproductive functions, for example, where there is a requirement for the husband’s authorization to make a decision in regard to sterilization; where general requirements are imposed for the sterilization of women, such as having a certain number of children or being of a certain age, or where States impose a legal duty upon doctors and other health personnel to report cases of women who have undergone abortion. In these instances, other rights in the Covenant, such as those of articles 6 and 7, might also be at stake. Women’s privacy may also be interfered with by private actors, such as employers who request a pregnancy test before hiring a woman. States parties should report on any laws and public or private actions that interfere with the equal enjoyment by women of the rights under article 17, and on the measures taken to eliminate such interference and to afford women protection from any such interference.”

CCPR General Comment No. 28, para. 20:

“States parties must take measures to ensure that freedom of thought, conscience and religion, and the freedom to adopt the religion or belief of one’s choice - including the freedom to change religion or belief and to express one’s religion or belief - will be guaranteed and protected in law and in practice for both men and women, on the same terms and without discrimination. These freedoms, protected by article 18, must not be

	<p>subject to restrictions other than those authorized by the Covenant and must not be constrained by, inter alia, rules requiring permission from third parties, or by interference from fathers, husbands, brothers or others. Article 18 may not be relied upon to justify discrimination against women by reference to freedom of thought, conscience and religion.”</p>
<p>(9) Women’s right to an effective remedy, including the right of access to the courts and due process of law</p>	<p>The right to an effective remedy cuts across all human rights. International law guarantees not only abstract rights, but also the means to their implementation.</p> <p><i>Related rights:</i></p> <ul style="list-style-type: none"> • direct and autonomous access to the courts • giving evidence as witnesses on the same terms as men • enjoyment of the presumption of innocence <p><i>Related duties of the state:</i></p> <ul style="list-style-type: none"> • duty to provide domestic remedies • duty to investigate alleged human rights violations, to prosecute those suspected of having committed them, and to punish those found guilty • duty to provide restitution or compensation <p><i>Conventional basis/relevant human rights documents:</i></p> <ul style="list-style-type: none"> • ICCPR, Article 2 (3) & 14 • CEDAW, Article 2 (b) and (c): <p>States parties have the legal duty “to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women” and to “establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals</p>

and other public institutions the *effective* protection of women against any act of discrimination.”

- CCPR General Comment No. 28, para. 18:

“States parties should provide information to enable the Committee to ascertain whether access to justice and the right to a fair trial, provided for in article 14, are enjoyed by women on equal terms with men. In particular, States parties should inform the Committee whether there are legal provisions preventing women from direct and autonomous access to the courts (see communication No. 202/1986, *Ato del Avellanal v. Peru*, Views of 28 October 1988); whether women may give evidence as witnesses on the same terms as men; and whether measures are taken to ensure women equal access to legal aid, in particular in family matters. States parties should report on whether certain categories of women are denied the enjoyment of the presumption of innocence under article 14, paragraph 2, and on the measures which have been taken to put an end to this situation.

- CEDAW Committee:

“For the remedy to be effective, the adjudication of a case must be fair, impartial, timely and expeditious. Gender stereotyping, which often occurs in many prosecutions of gender violence and other gender-related cases, affects women’s right to a fair and just trial” (UN CEDAW Views adopted on 16 July 2010, para. 8.3, Communication No. 18/2008, *Karen Vertido v. Philippines*, CEDAW/C/46/D/18/2008)

- European Court of Human Rights:

“The Convention [European Convention of Human Rights] is intended to guarantee not

	<p>rights that are theoretical or illusory but rights that are practical and effective... This is particularly so of the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial...It must therefore be ascertained whether Mrs. Airey's appearance before the High Court without the assistance of a lawyer would be effective, in the sense whether she would be able to present her case properly and satisfactorily." (<i>Airey v. Ireland</i>, Judgment of 9 October 1979)</p>
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Readings:

- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of All Forms of Discrimination Against Women
- CCPR General Comment No. 4 (1981)
- CCPR General Comment No. 28 (2000)
- CCPR General Comment No. 31 (2004)
- CESCR General Comment No. 3 (1990)
- CESCR General Comment No. 16 (2005)
- CESCR General Comment No. 20 (2009)
- CEDAW General Recommendation No. 19 (1992)
- CEDAW General Recommendation No. 24 (1999)
- CEDAW General Recommendation No. 25 (2004)
- CEDAW General Recommendation No. 28 (2010)

Workshop: Case Studies

Instructions to the facilitator:

1. Divide the participants into three groups.
2. Give each group 30 minutes to discuss one of the case studies below. Instruct the participants to refer to the Convention on the Elimination of All Forms of Discrimination Against Women and the CEDAW General Recommendations discussed above, and other pertinent human rights instruments or documents.

3. After 30 minutes, ask the groups to report the results of their discussion.
4. After the reports, engage the participants in a discussion about the workshop answers.

Case Study 1

Merryland acceded to the CEDAW in 2000 and is a monist country. Happy Airlines operates an airline in Merryland. Male flight attendants retire when they turn 55 years old, but women retire when they are 45. Happy Airlines says this is necessary because women are the weaker sex physically, and after they turn 45 years old, they are not able to walk efficiently during flight. The company is also concerned that the women workers may injure themselves. There is no scientific evidence to support the claim that women are more likely than men to injure themselves as they grow older.

There is no law on retirement ages in Merryland. However, both male and female civil servants retire at 55 years old.

Female workers in Happy Co are also very unhappy that once they are pregnant, they must stop being flight attendants regardless of their health conditions. They do not receive any wages until they return to work, which is three months after they deliver their children. They must also fit into the uniforms they last wore to work, failing which they will be dismissed.

According to their survey, male passengers prefer to be served by slim, young female flight attendants.

1. Identify the forms and kinds of discrimination involved in the situation above.
2. Name three steps that Merryland may take to end those discriminatory practices.

Case Study 2

Caringland acceded to the CEDAW in 2000 and is a monist country. It is a poor country. Only one percent of the population has University degrees, and one five percent has completed secondary school. Most girls complete only primary school education.

Sunshine Rest is a government-run home for women with disabilities. There are five homes for men with disabilities in Caringland, but Sunshine Rest is the only home for women. All workers in the six homes for persons with

disabilities must have completed secondary school and be at least 170cm tall. Ninety five percent of the workers in Sunshine Rest is male.

Recently, the government discovered that a few of the residents in Sunshine Rest have been raped. The rapes were discovered because videos of the rapes were circulated online.

1. Name the forms and kinds of discrimination involved in the situation above.
2. Name three steps that Caringland may take to end those discriminatory practices.

Case Study 3

Bolehland acceded to the CEDAW in 2000 and is a monist country. As Bolehland is a rapidly developing country, it strongly encourages its female citizens to work. However, Bolehland is a very traditional society. The men do not do housework or take care of the children since that type of work is considered “women’s work.”

As a result, Bolehland enabled many female foreign domestic workers to work in the country. Indonesian female domestic workers are paid USD 100 per month, while Filipino domestic workers are paid USD 200 per month. In addition, the Filipinos are allowed Sundays off while the Indonesians do not have any day off in a week. Unlike other foreign workers such as construction workers and security guards, foreign domestic workers are not recognized as employees such that they do not receive pension plan contributions and insurance coverage.

Many Indonesian female domestic workers are beaten by their employers. However, when they file reports with the police, their employers pay them compensation and have them shipped home before their criminal cases start in court.

1. Name the forms and kinds of discrimination involved in the situation above.
2. Name three steps that Bolehland may take to end those discriminatory practices.

MODULE 2

UNIVERSALITY AND PARTICULARITIES OF HUMAN RIGHTS IN TIMORESE SOCIETY

This module aims to particularize the study of human rights and their application in the context of Timor-Leste.

SESSION 1: HUMAN RIGHTS AND TIMOR-LESTE

Learning objectives

By the end of the session, the participants will be able to (1) explain Timor-Leste's legal framework for the protection of human rights and mechanism in human rights protection and enforcement; (2) discuss the general human rights issues and problems in Timor Leste and those specific women and girl-children; (3) identify the weaknesses of the domestic human rights system and other challenges that hamper effective protection and promotion of human rights in Timor-Leste.

Session content

Exercise: *Human rights and the legal history of Timor-Leste*

Presentation: *Human rights situation in Timor-Leste*

Exercise: *Human rights and the legal history of Timor-Leste*

I. Ask the participants to identify:

- (1) Significant laws and policies that were passed during (a) the Portuguese colonial rule, (b) the Indonesian occupation, (c) post-independence that have impact on or continue to affect the current human rights situation in Timor-Leste;
- (2) Key human rights issues and problems in contemporary Timorese society.

II. Ask them to write their answers on meta cards and to post the meta cards on a huge manila paper or flip chart paper under the following headings:

Significant laws and policies affecting the human rights situation in Timor-Leste		
Portuguese colonial rule	Indonesian occupation	Post-independence
Key human rights issues and problems in contemporary Timorese society		

III. Ask the participants to explain their answers. Use the answers of the participants in the discussion of the human rights situation in Timor-Leste.

**PRESENTATION
HUMAN RIGHTS SITUATION IN TIMOR-LESTE**

Instructions to the facilitator:

Present the key points and data found in the following documents, and add the data found below:

- Secretary of State for the Promotion of Equality (SEPI), Combined Second and Third Periodic CEDAW Report, Republica Democratica de Timor-Leste
- Report of the Ombudsman for Human Rights and Justice of Timor-Leste for CEDAW Committee 2009/2010
- NGOs Working Group on CEDAW Alternative Report, NGOs Alternative Report, Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Timor-Leste (March 2009)
- Timor-Leste's National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 (Human Rights Council's Working Group on the Universal Periodic Review, Twelfth Session, Geneva, 3-14

October 2011)

POPULATION

Timor-Leste's population is roughly 1.2 million people. Ninety-eight percent (98%) of the population is Roman Catholic, with 1% Muslim, and 1% Protestant. As of 2011, one-third of its population lives in urban areas. The ratio of male to female population as of 2013 is estimated at 1.01:1. The age structure of its population is as follows:

0-14 years: 42.7% (male 257,340/female 243,174)
15-24 years: 19.7% (male 116,605/female 114,203)
25-54 years: 29.3% (male 166,048/female 177,024)
55-64 years: 4.8% (male 28,717/female 27,011)
65 years and over: 3.6% (male 20,428/female 21,840) (2013 est.)

An estimated 58.3% of its population age 15 and above can read and write (63.6% of men and 53% of women).

POVERTY

As of 2009, it is estimated that 41% of the population lives below poverty line.

EDUCATION

Girls' dropouts from schools have been found to be related to unplanned pregnancy, academic failures, sickness, traditional beliefs about girls' education, and sexual violence

HEALTH

The average life expectancy at birth is 62 years. TL has one of the highest fertility rates in the world, with 5.7 children per women. It also has one of the highest maternal mortality rates in the world at 557/100,000. Only 42% of the family planning needs for spacing or limiting children is being met.

MARRIAGE AND THE FAMILY

Two percent (2%) of currently married women are in a polygynous union. Dowry and traditional marriage obligations continue. The

new Civil Code of 2011 provides for equality between the spouses, sets the legal age for both women and men at 17, and establishes the same rules on legal capacity for women and men.

LABOR PARTICIPATION

In 2010, the number of men employed (54%) was twice the number of employed women (26%). Seventy-eight percent (78%) of the women employed are in vulnerable employment, without formal arrangements, benefits or social protection. In the same year, the majority of women (72%) do not at all participate in the formal labor force, compared to 43% men. Thirty-five percent (35%) of the women gave family duties as the major reason for this economic inactivity. However, the labour participation rate of women with no children is still below men. Of the women who are classified as homemakers, 42% make some economic contribution through agriculture or handicrafts. In February 2012, a new Labour Code was passed which guarantees equality of opportunities and treatment for women and men in employment, vocational training, professional development, working conditions and remuneration, and prohibits sexual harassment.

ECONOMIC RIGHTS

Despite the provisions of the new Civil Code, the traditional inheritance system, following matrilineal and patrilineal lines, is still dominant, especially in rural areas.

JUSTICE, PEACE AND SECURITY

Culture and tradition play a major role in the enforcement of rights and exercise of power within families and communities in Timorese society. The use of physical force by a man in an intimate relationship is considered an ordinary domestic occurrence that is not generally viewed as an offense by both men and women. Traditional settlement of crimes, such as rape, is preferred over formal complaints procedures. There is reluctance to report gender-based violence cases to the police.

According to the CEDAW Report, “the high prevalence rate of gender-based violence (GBV) is a key challenge for the rebuilding and development of the country. Domestic violence (DV) is the most common form of GBV in Timor-Leste and has largely prevented women in participating actively in all aspects of development as it is both a symptom and a cause of gender

inequality and discrimination.”

Domestic violence cases constituted about 60% of all crimes reported to the police from September 2009 to January 2010. (Note that the Penal Code entered into force in June 2009.)

Thirty-eight (38%) of women have experienced physical violence in their lifetime. Among ever-married women who have ever experienced physical violence, 74% reported that a current husband or partner committed the physical violence against them. Almost one-third (29%) of Timorese women have experienced physical violence in the past 12 months (1% often and 28% sometimes)

POLITICAL PARTICIPATION

As of 2011, 38% of the elected parliamentarians are women. This was made possible by the amendment of the Parliamentary Electoral Law in June 2011 requiring at least one woman for every three candidates. However, women’s participation in politics at the local level is very low. Only 2% of the village chiefs are female. Among the cited barriers for women’s participation in politics are: women’s general lower education and literacy than men’s, discrimination in recruitment, negative stereotypes and attitudes towards women’s political participation in public life; women’s traditional role in the home; little support from families and political parties for women; general low civil awareness; and low confidence to put themselves forward as candidates.

POLICY DEVELOPMENTS

- The Constitution of Timor-Leste provides for the equality between women and men, and states that “Women and men shall have the same rights and duties in all areas of family, political, economic, social and cultural life.”
- The principle of equality is also found in the Civil Code (art. 1559), the Labour Code (art. 6), the Election Law for National Parliament (art. 8), and the Law against Domestic Violence (art. 4).
- Law Against DV, considers any form of DV a public crime that must go through the formal justice system
- Marital rape is a crime under the LADV.
- There is a National Action Plan on Gender-Based Violence 2012-2014
- There is also Strategic Development Plan (SDP) 2011-20130, which is “an integrated package of strategic policies aligned with the MDGs.”

References/recommended readings:

- Secretary of State for the Promotion of Equality (SEPI), Combined Second and Third Periodic CEDAW Report, Republica Democratica de Timor-Leste
- Report of the Ombudsman for Human Rights and Justice of Timor-Leste for CEDAW Committee 2009/2010
- NGOs Working Group on CEDAW Alternative Report, NGOs Alternative Report, Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Timor-Leste (March 2009)
- Timor-Leste's National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 (Human Rights Council's Working Group on the Universal Periodic Review, Twelfth Session, Geneva, 3-14 October 2011)
- World Bank Data on Timor-Leste, at <http://documents.worldbank.org/curated/en/2012/01/15789717/2009-update-poverty-incidence-timor-leste-using-survey-to-survey-imputation-method>

SESSION 2: TIMOR-LESTE'S LEGAL FRAMEWORK AND MECHANISMS FOR HUMAN RIGHTS PROTECTION AND ENFORCEMENT

Learning Objectives:

By the end of the session, the participants will be able to (1) discuss Timor-Leste's legal framework for the protection of human rights and the domestic mechanisms involved in human rights protection and enforcement, (2) identify the *issues, problems or challenges* in Timor-Leste that affect or prevent the effective protection, promotion and implementation of human rights, and the measures or interventions that can be undertaken to address them.

Session Content

Presentation
Workshop

PRESENTATION

Core Points

(1) An international human rights norm is binding on Timor-Leste if:

- (a) it has become a party to a treaty containing that norm, or
- (b) the norm has attained the status of customary international law.

(2) Timor-Leste follows the **monistic system in the application of international law**. Timor-Leste's Law N°6/2010 on International Treaties provides that "For solemn treaties, the binding of the Timorese society occurs with its ratification." It also provides that international norms have primacy over domestic norms, and that any domestic law contrary to the provisions of international conventions, treaties or agreements is invalid.

For example, the definition of discrimination against women under Article 1 of the Women's Convention is part of Timor-Leste's domestic legal framework, even though none of its domestic laws including its Constitution defines discrimination against women.

(3) The human rights treaties to which Timor-Leste is a party (with Timor-Leste's date of accession) are:

(a) International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (16 April 2003)

(b) International Covenant on Civil and Political Rights (ICCPR) (18 September 2003)

* Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (18 September 2003)

(c) International Covenant on Economic, Social and Cultural Rights (ICESCR) (1976)

* Optional Protocol to the ICESCR (signatory only, 28 September 2009)

(d) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (16 April 2003)

* Optional Protocol to the CEDAW (16 April 2003)

(e) Convention against Torture and Other Cruel, Inhuman or

Degrading Treatment or Punishment (CAT) (16 April 2003)
Optional Protocol to the CAT (signatory only, 16 September 2005)

(f) Convention on the Rights of the Child (CRC) (16 April 2003)
* Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (16 April 2003)
* Optional Protocol to the Convention on the Rights of the Child on the involvement of children in Armed Conflict (2 August 2004)

(g) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (30 January 2004)

Timor-Leste is also party to the Rome Statute of the International Criminal Court.

(4) Agencies and mechanisms involved in human rights protection in Timor Leste

(a) The police

(b) The Office of the Public Defender

(c) Tribunals and mobile courts

(d) Office of the Ombudsman for Human Rights and Justice (*Provedoria dos Direitos Humanos e Justicia*, or PDHJ) – an independent national body for the defense of human rights

(e) National Directorate of Human Rights and Citizenship (*Diresaun Nasional DH no Cidadania – MJ*) – “the body responsible for disseminating information to the population about their rights and duties and assessing new statutes in the light of human rights, in addition to their dissemination and socialization”*

(f) Ministry of Social Solidarity – “responsible for the protection and promotion of the rights of risk groups, including children, persons with disabilities, the elderly and widows and widowers”*

(g) Secretary of State for the Promotion of Equality (SEPI) – created by Decree-Law 16/2008; the primary government body responsible for the creation, coordination, and assessment of gender equality promotion policies. One of its functions is to advocate for the incorporation of gender in all policies, programmes and budgets of government

institutions (CEDAW Report, 3). SEPI set up a Gender Focal Point in each ministry and in the districts, approved through Government Resolution No. 11/2008. The Gender Focal Point (GFP) supported ministries in conducting gender assessments, elaborating gender strategies or policies and running internal gender trainings (CEDAW Report, 6). In 2011, the GFP was converted into a Gender Working Group (GWG), through Government Resolution No27/2011. The GWG is established in every ministry and Secretary of State as well as in every district. It intended to improve coordination, monitoring and gender mainstreaming by providing for members who are in high level positions and have greater influence in their ministries. There is, however, a gender imbalance in the composition of the GWGs. At the national level, out of a total of 116 GWG members, 45.7% are women and 54.3% are men. At the district level, out of 197 DGWG members, 45.7% are women and 54.3% are men. Out of 17 chairpersons at the national level, 35.3% are women and 64.7% are men. At the district level, there is only one female chairperson (7.7%) out of 13 total, or 92.3% men (CEDAW Report, p. 7).

- (h) National Commission for the Rights of the Child (CNDC), situated within the Ministry of Justice - “dedicated to implementing children’s rights”*
- (i) Anti-Corruption Commission - specializes in fighting corruption and “seeks to respond to the aspirations for transparency and accountability which are demanded by most of the civil society, which regards this crime as an attack on human rights.”*

Reference:

- National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Timor-Leste (Human Rights Council Working Group on the Universal Periodic Review, Twelfth Session, 2-14 October 2011)

WORKSHOP

Instructions to the facilitator:

1. Divide the participants into small groups.
2. Give the groups 30 minutes to discuss and answer the questions

below.

3. After one hour, give each group 10 minutes to report their workshop results.
4. Synthesize the workshop results.

Workshop questions:

1. Can you think of *three issues, problems or challenges* in Timor-Leste that affect or prevent the effective protection, promotion and implementation of human rights?
2. What measures or interventions can be undertaken, either by the government or by civil society, to improve human rights protection, promotion and implementation in Timor-Leste?

SESSION 3: HUMAN RIGHTS AND TIMORESE CULTURE AND TRADITION

Learning objectives:

By the end of this session, the participants will be able to (1) identify the cultural beliefs, norms and practices in Timor-Leste that are positive and those that are discriminatory particularly against women, (2) identify the challenges that existing cultural practices pose to the protection and enforcement of women's human rights, and (3) discuss the relationship of culture, law and women's human rights.

Session content:

Workshops 1 & 2

Presentation: *The relationship of culture, human rights and the law*

Workshop

Instructions to the facilitator:

Divide the participants into small groups. Assign some groups to discuss Workshop 1 and other groups to discuss Workshop 2. Instruct each group to assign a rapporteur who will report to the plenary session the results of the group discussion. After the reporting, process the workshop results by directing the discussion toward the relationship of law and culture.

Workshop 1

- (a) Name three cultural values, beliefs, norms or practices in Timorese society that can inform and facilitate efforts in protecting and promoting human rights.
- (b) Name three cultural beliefs, norms or practices that are inconsistent with human rights, or are used to justify human rights violations against women.
- (c) Can you think of a *cultural* argument *against* the perpetration of each of the 3 cultural beliefs, norms and practices in (b)? (This requires arguing that the cultural belief, norm or practice is contrary to or inconsistent with more fundamental cultural beliefs or norms in Timorese society and therefore must be abandoned.)

Workshop 2

Read the material titled, *Customary Law and DV in Timor-Leste* (Justice System Programme, UNDP Timor-Leste, January 2011) (see Annex). Discuss the situation below and answer the questions based on the reading.

The Situation

Maria and Gregorio are husband and wife. Gregorio works as a farmer in one district of Timor-Leste. Maria spends most of her hours taking care of the family home and the six children, but sometimes she helps Gregorio in the farm.

Gregorio is also a drunkard. When drunk, he beats up Maria, often in front of the children. He also forces her to have sex with him whenever she refuses to. The community knows that Gregorio beats up Maria.

In this situation, discuss what will most likely happen in the following scenarios:

1. Maria decides to take action on Gregorio's violence. However, she does not want to go to the police or the courts. *Where would she most likely go for help and what would most likely happen?*
2. Maria decides to go to the police. Gregorio tells Maria that he will not be able to feed the family should she decide to pursue her complaint. *What would the police most likely do? What would most likely happen?*
3. Maria's complaint finally reaches the court. When Maria finally testifies in court, she tells the judge that she has already forgiven Gregorio and wants the case dismissed. She told the judge that the family wants to

move on, and that jailing Gregorio will deprive the family of its breadwinner. *What would most likely happen?*

3. Given your answers above regarding the most likely outcome, identify:

(a) the human rights issues involved; and

(b) the possible violations of state obligations on women's human rights.

Please explain your answer.

PRESENTATION

The relationship of culture and the law

Core Points

(1) Culture is not separate from the law. Culture informs or shapes the substance of the law, influences its processes and how it is applied, and provides the context of the law's application. Legal institutions, such as the police, the prosecution agencies and the courts, have their own legal culture, which conjoins with the general culture of the community.

(2) Thus, to understand discrimination against women, and how the law can be used to address such discrimination, it is critical to look at the relationship of the law, its substance and structures, with culture. For this purpose, one must look at the substance, structures and context of the law.

(a) *The substance of the law.* The text of the law constitutes its substance. One can look at the text of the law to determine any facial or formal discrimination against women. If the text does not contain a single standard rule, or treats women differently from men by reason of sex alone, it can be said that there is discrimination against women.

It is also important to look at what the law has omitted to include. For example, the experiences of women may not have been taken into account in the making of law, and so are excluded from its coverage. Further, the law may have some assumptions or prejudices against women that form the basis of its rules. For example, a law giving men the final say in decisions involving the family assumes that *men* are the natural

or better decision-makers than women.

However, the substance of the law is not limited to its text. It also includes how it is applied in concrete cases, through decisions of the courts. The law may be interpreted in ways that go beyond their text. For example, some courts require women to prove that they resisted or struggled to their utmost in order to prove that indeed there was rape, even though resistance is not found in the text of the law on rape. With respect to family matters, women's socially-defined roles may result in a gendered interpretation of their rights, resulting in discrimination against them.

(b) *The structures of the law.* The structures of the law include institutions or bodies that are involved in making, interpreting, enforcing and implementing the law. These include the parliament, the courts and law enforcement agencies.

(c) *The context of the law.* The context of the law refers to the cultural, social, economic and political systems where the law operates. The systems may be of the national or local community, or of a village. The same systems shape women's conditions as well as provide the context for the law's operation.

(3) Examples of how the relationship of substance-structures-context of the law works are the following:

(a) In Timor-Leste, customs and traditions affect the exercise of legal rights. Men are culturally given the right to protect and control their wives and children. Thus, men's physical violence against women in an intimate relationship is generally not viewed as an offense by both men and women. It is considered an ordinary domestic occurrence. For this reason, women usually do not report domestic violence cases. If they do, they do not pursue the case to the end. Sometimes, even if the case gets to court, the case gets dismissed, or the woman desists from the case, or the court renders a suspended judgment. Similarly, rape often goes unreported.

(b) Marital rape is a new concept for many Timorese. The 2009-2010 TLDHS found that 29% women believed that marital rape was allowable, giving the husband authority over a woman's sexuality. The proportion holding this belief was lowest among women with a tertiary education (11%) and highest among those with no education (34.5%). No case of marital rape has been

registered to date despite that it is now a crime.

- (c) Despite the provisions of the new Civil Code, the traditional inheritance system, following matrilineal and patrilineal lines, is still dominant, especially in rural areas.

(4) How do we respond to these realities?

(a) Timor-Leste's Constitution provides that "The State shall recognise and value the norms and customs of East Timor that are not contrary to the Constitution and to any legislation dealing specifically with customary law." (Sec. 2[4]) Timor-Leste's National Policy on Culture affirms that "culture and traditions are dynamic processes that evolve over time." Timor-Leste's vision for the Timorese society is stated in its Strategic Development Plan (SDP) 2011-2030 thus: "Our vision is that in 2030, Timor-Leste will be a gender-fair society where human dignity and women's rights are valued, protected and promoted by our laws and culture. To achieve this vision, we will promote gender mainstreaming across government policies, programmes, processes and budgets."

(b) The 1993 Vienna Declaration reaffirms the solemn commitment of all States to realize their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all. It is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

(c) In its General Comment No. 28, the Human Rights Committee said:

"Inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes. The subordinate role of women in some countries is illustrated in the high incidence of prenatal sex selection and abortion of female fetuses. States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's rights to equality before the law and to equal enjoyment of all Covenant's rights."

(d) Finally, Timor-Leste has the obligation under the Women's Convention to take all appropriate measures "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the

superiority of either of the sexes or on stereotyped roles for men and women.” (Article 5)

References and recommended readings:

- Nasrin Khan and Selma Hyati, *Bride-Price and Domestic Violence in Timor-Leste: A Comparative Study of Married-In and Married-Out Cultures in Four Districts* (September 2012)
- Elizabeth M. Zechenter, *In the Name of Culture: Cultural Relativism and the Abuse of the Individual*, *Journal of Anthropological Research*, Vol. 53 No 3 (August 1997), pp. 319-347
- Carol Nagengast, *Women, Individual Rights and Cultural Relativity: Power and Difference in Human Rights Debates*, Working Paper #266, Women and International Development, Michigan State University, 1998
- Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy: *Cultural practices in the family that are violent towards women*, 31 January 2002, E/CN.4/2002/83, available at: <http://www.refworld.org/docid/3d6ce3cc0.html>
- *Cultural Relativism and Universal Human Rights*, Jack Donnelly, *Human Rights Quarterly* Vol 6 No. 4, (November 1984) pp. 400-419, John Hopkins University Press.

MODULE 3

GENDER AND CONSTITUTIONAL RIGHTS, LIBERTIES AND FUNDAMENTAL GUARANTEES

This module aims to illustrate the application of human rights standards in the interpretation and enforcement of constitutional rights and liberties.

Learning Objectives

By the end of the session, the participants will be able to use international human rights standards in the interpretation and enforcement of constitutional rights and liberties in a given situation.

Session Content:

Workshop: *Case Study*

Workshop

Instructions to the facilitator:

1. Divide the participants in groups of five or six.
2. Give the groups one hour to discuss the cases below and answer the questions.
3. After one hour, give each group 15 minutes to discuss their workshop results.
4. Engage the group in a discussion about the international human rights norms that should apply in the case.

Case Study 1

Martha is a worker in a semi-conductor company inside a special economic zone. It is a subsidiary of a multinational corporation with headquarters in another country.

To attract local and foreign corporations to invest in the economic zone, the government provides an incentives package for corporations that includes tax exemptions, low import tariff duties, and suspension of labor laws.

The company employs a thousand workers who are mostly women from areas near the economic zone. The company pays its workers below the legally set minimum wage. Working conditions in the factory are poor, causing Martha's co-workers to resign due to illness.

Martha needs a job to support her unemployed husband and five children. Having finished only primary education, Martha knows her options are nil to get work elsewhere.

1. Identify the issues of women's human rights involved in this case.
2. Drawing on constitutional and international human rights standards, identify specific measures that government should undertake to comply with its human rights obligations.

Case Study 2

Martha is a social worker in a Catholic Center dedicated to training girls for employment. Under the rules of the Catholic Center, no unmarried woman who has a child may be employed. Any current female employee who becomes pregnant without being married shall be considered resigned. Martha knew about these rules when she applied

to work in the Center.

Martha became pregnant with her boyfriend. The Executive Director of the Center informed her that she is considered resigned.

Martha wants to sue the Center for violation of her constitutional rights.

Craft the arguments in support of Martha's case against the Center. In crafting the argument, consider the human rights norms discussed in the previous sessions and the following constitutional provisions:

Section 6
(Objectives of the State)

The fundamental objectives of the State shall be:

x x x;

1. To guarantee and promote fundamental rights and freedoms of the citizens and the respect for the principles of the democratic State based on the rule of law;

x x x;

2. To promote the building of a society based on social justice, by establishing material and spiritual welfare of the citizens;

x x x;

3. To assert and value the personality and the cultural heritage of the East Timorese people;

x x x;

(j) To create, promote and guarantee the effective equality of opportunities between women and men.

Section 9
(International law)

1. The legal system of East Timor shall adopt the general or customary principles of international law.

2. Rules provided for in international conventions, treaties and agreements shall apply in the internal legal system of East Timor following their approval, ratification or accession by the respective competent organs and after publication in the official gazette.

9. All rules that are contrary to the provisions of international conventions, treaties and agreements applied in the internal legal system of East Timor shall be invalid.

Section 16
(Universality and Equality)

1. All citizens are equal before the law, shall exercise the same rights and shall be subject to the same duties.

2. No one shall be discriminated against on grounds of colour, race, marital status, gender, ethnical origin, language, social or economic status, political or ideological convictions, religion, education and physical or mental condition.

Section 17
(Equality between women and men)

Women and men shall have the same rights and duties in all areas of family, political, economic, social and cultural life.

Section 23
(Interpretation of fundamental rights)

Fundamental rights enshrined in the Constitution shall not exclude any other rights provided for by the law and shall be interpreted in accordance with the Universal Declaration of Human Rights.

Section 39
(Family, marriage and maternity)

1. The State shall protect the family as the society's basic unit and a condition for the harmonious development of the individual.

2. Every one has the right to establish and live in a family.

3. Marriage shall be based upon free consent by the parties and on terms of full equality of rights between spouses, in accordance with the law.

4. Maternity shall be dignified and protected, and special protection shall be guaranteed to all women during pregnancy and after delivery and working women shall have the right to be exempted from the workplace for an adequate period before and after delivery, without loss of remuneration or any other benefits, in accordance with the law.

MODULE 4
GENDER PROBLEMS IN FAMILY LAW

This module aims to apply international human rights standards in the interpretation and application of pertinent provisions of the law on the family and minors in gender-specific issues in marriage and the family.

Learning Objectives:

By the end of this module, the participants will be able to critically examine cultural practices and legal rules concerning marriage and the family in Timor-Leste against international human rights standards.

Session Content:

Presentation
Workshop

PRESENTATION

Core Points

1. Traditional marriages

In traditional customary practices, marriage is celebrated through either patrilineal or matrilineal lineage clan systems. The customary practice that seals relations between the families of the bride and the groom consists of a gift-exchange between the couple's family, which is called *barlake*. Sometimes, the parties to the marriage are not involved in the discussions of the gift-exchange, which is determined by representatives of their families. Marriage following the traditional rules (known as *lisan* – beliefs and values held by each clan) regulates most of aspects of family life, including ownership of property, funeral burials, burial locations, and the roles of sons and daughters. Although young people in the present are generally allowed to choose their partners and practices around traditional marriages are becoming more participative, they still cannot avoid *barlake* or *lisan* obligations.

Traditional marriages are recognized under the Civil Code, in addition to civil and catholic marriages. The Civil Code requires that traditional marriages to follow the civil law rules. The Code also requires the registration of traditional marriages in order for them to be officially recognized. Through registration, child and polygynous marriages can be disallowed.

2. Polygyny/polygamy

The Civil Code recognizes only monogamous marriages (Art. 1475 [1]). However, polygyny, or where a man takes more than one wife, is still being practiced. The 2009-10 TLDHS found that 2% of currently married women are in polygynous unions. Women in the youngest age group (15-19) and older women (40-49) are more likely to be in polygynous unions than women age 20-39. Almost

3% of women age 45-49 are in a polygynous union compared with 1% of women age 20-24.

3. Child marriage

The legal age under the Civil Code is 17 for both men and women. It is also the minimum age for contracting a marriage. However, individuals under 17 but over 16 may validly marry provided the parents give consent. Individuals under 16 are not allowed to marry.

One of the factors identified that promote child or underage marriage is the system of dowry practiced in some communities of Timor-Leste. Under the system of dowry, the man pays dowry to the prospective bride's family for a marriage to be celebrated. However, a man who marries a woman who is already pregnant is not obliged to give a dowry to her family prior to the marriage.

4. Property rights and inheritance

In traditional custom, marriage is viewed not only as a union of two individuals but also a set of relationships and obligations between the extended families of the parties - referred to as *umane* for the bride's family and *fetosan* for the groom's family

This extended concept of family in traditional culture is reflected in the definition of family in the LADV (Article 3), which extends beyond the nuclear family. Under Article 1466 of the Civil Code, family juridical relationship sources include marriage, kindred, affinity and adoption.

As a result, and despite the provisions of the Civil Code providing for equality in the right of succession between women and men (Arts. 1896, 1897 and 1903), the inheritance system continues to follow matrilineal and patrilineal lines, especially in rural areas.

5. De facto partners without marriage

In Timorese culture, men and women who live together as husband and wife without a valid marriage are considered to have "taken" one another. It is recognized as analogous to marriage. However, it does not have any binding character, and so does not bring with it rights and obligations that bind both parties' families, as marriage does.

De facto partners are not included in the Civil Code definition of family (Art. 3 (b)), although their relationship is included in the definition of family in the LADV with respect to domestic violence.

6. Marital rights and duties

The Civil Code provides for equal rights and duties of husband and wife. The Code provides that they shall agree on the direction of their common life (Art. 1559), that they are “mutually bound by duties of respect, fidelity, cohabitation, cooperation and assistance,” that they both have the “obligation to provide help and mutual support and joint responsibilities related to family life” (Art. 1562), that approval of both spouses is required to dispose of or encumber immovable properties of the marriage (Art. 1575), and that they both have freedom to practice any profession or activity without the consent of the other spouse (Art. 1569).

Yet, the husband is still the head of the family in Timorese traditional culture, both among patrilocal and matrilineal communities. As head of the family, the husband is responsible for earning money. The wife takes care of the house, looks after the children, and helps the husband in the field. The wife may also earn money through a secondary activity, but this does not diminish her primary role in the home.

7. Remarriage

The Civil Code requires men to wait for 180 days and women for 300 days before marrying again after the divorce or death of their spouse. The law allows women to marry after 180 days only if she has obtained a “judicial declaration ascertaining that she is not pregnant or if she does not have a child after dissolution, declaration of nullity or annulment of previous marriage.” (Arts. 1494-2)

However, under Timor-Leste’s customary practices, the usual waiting period before remarriage after the death of one spouse is at least one year. Another customary practice after the death of a spouse is forced remarriage of the widow/widower with either the brother or sister of the deceased spouse.

References and recommended readings:

- Timor-Leste’s Combined Second and Third Periodic CEDAW Report
- National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Timor-Leste (Human Rights Council Working Group on the Universal Periodic Review, Twelfth Session, 2-14 October 2011)
- Nasrin Khan and Selma Hyati, *Bride-Price and Domestic Violence in Timor-Leste: A Comparative Study of Married-In and Married-Out Cultures in Four Districts* (September 2012)

WORKSHOP 1

Instructions to the facilitator:

1. Divide the participants into small groups.
2. Assign to each group one of the following questions to answer:
 - (a) Having learned women's human rights in the previous sessions, what, if any, are the obligations of Timor-Leste as a state party to the Women's Convention and other human rights treaties over traditional marriages and polygamy in Timor-Leste?
 - (b) Consider the views of the Human Rights Committee and the CEDAW Committee on early marriage (refer to Session 5 of Module 1). Can Timor-Leste be charged with discrimination against women for allowing the marriage of individuals below 17 years of age (but over) 16 to validly marry provided there is parental consent?
 - (c) Suppose that a woman wants to marry soon after her husband died. She does not want to wait for 300 days. She decides to go to court to challenge the law imposing a 300-day ban on remarriage. If you were the judge, would you declare the law unconstitutional and in violation of Timor-Leste's treaty obligations on women's human rights?
3. Give the groups 45 minutes to discuss the workshop situation and question. After 45 minutes, give each group 10 minutes to present their workshop results.
4. Engage the participants in a discussion about the workshop questions and their answers in relation to human rights standards.

WORKSHOP 2:

Instructions to the facilitator

1. Divide the participants into small groups.
2. Give the groups 45 minutes to study the case below and answer the questions.
3. After 45 minutes, give each group 10 minutes to present their workshop results.
4. Engage the participants in a discussion about the workshop

questions and their answers in relation to human rights standards.

Case Study

Selma and Claudio are husband and wife. Selma is Claudio's third wife. They were married under traditional rites, after the Civil Code took effect. Selma has never been employed. She has no money of her own, completely depending on Claudio for support.

Claudio is a wife beater. After months of all kinds of abuse, Selma decided to separate from Claudio and return to her mother's house in another village.

Claudio filed a petition with the court to compel Selma to return to the conjugal home. He asserts that it is Selma's duty to live with him and perform his wifely duties.

Selma opposed Claudio's petition and counterclaimed for support. She also demands that she be given a share in the properties that Claudio acquired during the marriage.

- (1) What are the human rights issues in this case?
- (2) If you were the judge in this case, how would you rule on Selma's and Claudio's conflicting claims? Explain fully.

MODULE 5 SPECIAL PROBLEMS IN CRIMES AGAINST WOMEN

This module aims to apply international human rights standards and constitutional rights in the interpretation and application of specific criminal laws in crimes against women.

Learning Objectives:

By the end of this session, the participants will be able to analyze and evaluate the laws of Timor-Leste on sexual violence and domestic violence against

international human rights standards, and critically examine their views and beliefs about victims of gender-based violence.

Learning Content:

Workshop: *Case Studies*
Exercise

Case Studies

Instructions to the facilitator:

1. Divide the participants into small groups.
2. Assign to each group one of the four case studies below.
3. Give the groups 45 minutes to discuss and answer the workshop questions.
4. After 45 minutes, give each group 15 minutes to present the results of their workshop discussion.
5. Engage the participants in a discussion about the workshop results, to surface their agreement or disagreement with the points raised. Synthesize the discussion by referring to the pertinent human rights norms, concepts, principles and standards discussed in the previous sessions.

Case Study 1

In a remote rural area in Timor-Leste, women who get raped do not at all report to the police. They suffer in silence because they are ashamed to come out as rape victims. Also, in the history of the community, no rape victim has ever been treated kindly, and the few who were raped and reported were blamed for the crimes and ostracized, and eventually left the community.

Emilia, a 16-year-old daughter of a farmer, decides to report the rape that she experienced from Lucas, a son of a well-to-do family. Lucas is 18 years of age. He and Emilia go to the same school. Emilia alleges that Lucas invited her to an outing with several other schoolmates. On the way home, while they were alone, Lucas brought her to a farm shed where he raped her. Emilia narrates that Lucas did not use any knife or weapon. He used his brute strength in pulling Emilia from the vehicle they were riding into the farm shed. Inside the shed, he overpowered her attempts to struggle by pinning her down with his weight. Feeling

weak from her initial struggle, she lay crying and saying no to Lucas, while he undressed her fully and had vaginal coitus with her. He did not tie her hands or cover her mouth. He allowed her to cry throughout the coitus until he was done with her.

In the investigation that followed, the prosecutor found that no rape was committed. According to the prosecutor, Emilia was not subjected to any violence or serious threat, nor was she unconscious or placed in a situation where resistance was impossible.

- A. Do you agree with the decision of the prosecutor, given Timor-Leste's law against rape? Could the prosecutor have charged Lucas with any other crime?
- B. Can Emilia file a complaint for discrimination using international human rights law and the Timorese Constitution given the way the public prosecutor decided the case, and given the definition of rape under the Penal Code of 2009?

In answering the above questions, consider the case of *Karen Vertido v. the Philippines* (2010), decided by the CEDAW Committee (CEDAW) and *M.C. v. Bulgaria* (2004), decided by the European Court of Human Rights.

Also consider the following provisions of the Penal Code of 2009:

- **Sexual coercion** (Article 171, penalizes any person who, by means of violence, serious threat, or after having made, for the purpose of compelling another person to endure or to practice with the same or a third person any act of sexual relief, such a person unconscious or placed the same in a condition where resistance is impossible, is punishable with 2 to 8 years imprisonment)
- **Rape** (Article 172, penalizes any person who, by the means referred to in the previous article, practices vaginal, anal, or oral coitus with another person or forces the person to endure introduction of objects into the anus or vagina; punishable with 5 to 15 years imprisonment)
- **Sexual abuse of a minor** (Article 177, penalizes the act of practicing vaginal, anal or oral coitus with a minor aged less than 14 years; or practicing any act of sexual relief with a minor aged less than 14 years)
- **Sexual acts with an adolescent** (Article 178, penalizes an adult who practices any relevant sexual act with a minor aged between 14

and 16 years, taking advantage of the inexperience of the minor, provided the acts are not covered by other provisions)

- *Sexual abuse of a person incapable of resistance* (Article 179, penalizes the act of practicing any relevant sexual act with an unconscious or incapable person particularly vulnerable by virtue of illness, physical or mental deficiency, taking advantage of said situation of incapacity)

The CEDAW Views on the case of *Karen Vertido v. the Philippines* can be found at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2f46%2fD%2f18%2f2008&Lang=en,

while the judgment in *M.C. v. Bulgaria* can found at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61521#%22itemid%22:%22001-61521%22>].

Case Study 2

Read the JSMP study, *An Analysis of a Sexual Assault Decision from Dili District Court* (see Annexes). Analyze the study and answer the following questions:

- (1) What women's human rights have been violated in the decision? Please explain fully.
- (2) What flaws in the existing laws and legal procedures of Timor-Leste facilitated or made possible the violations? Please explain fully. In answering this question, consider not only the definition of the crimes involved in the Penal Code, but also the *rules* or the *absence of rules* on how trials should be conducted and recorded, and how magistrates should render their judgments.
- (3) What are your own recommendations to avoid a repeat of such a decision? Do you consider your recommendations consistent with the human rights of women? Please explain fully.

Case Study 3

Read the JSMP and Fokupers' study titled, *Article 125 of the Criminal Procedure Code; Creating a Dilemma for Victims of Domestic Violence* (see Annexes). Analyze the study and answer the following questions:

- (1) What women's human rights are violated or implicated in Article 125 of the Criminal Procedure Code and its application? Please explain fully.
- (2) Can you identify state obligations of Timor-Leste under international human rights law that are violated by the existence of Article 125 of the Criminal Procedure Code and its continuing application? Please explain fully.
- (3) What are your own recommendations to address the problems discussed in the study? Do you consider your recommendations consistent with the human rights of women? Please explain fully.

Case Study 4

Read Case Study No. 3 about Lia and her father on pages 16 and 17 of the JSMP study, *Incest in Timor-Leste: An Unrecognised Crime*. Discuss and analyze the case and answer the following questions:

- (1) Do you agree with the Dili District Court and the Court of Appeal that no rape was committed because there was "lack of evidence that the sex was non-consensual" and that there was "insufficient evidence of use of violence or threat of violence by Lia's father?" Please explain your answer fully.
- (2) What human rights of Lia were violated, if any? Please explain fully.
- (3) Can you hold the state of Timor-Leste responsible under international human rights law for the decisions of the Dili District Court and the Court of Appeal? Please explain fully. In answering this question, consider the concept of state obligation on human rights, the principle of due diligence, and the Views of the CEDAW Committee in the case of *Karen Vertido v. the Philippines*.
- (4) What are your own recommendations to avoid a repetition of what happened in Lia's case?

EXERCISE

Gender Stereotypes

Instructions to the facilitator:

This exercise is intended to surface the views and opinions of the participants about rape and sexual violence, as a take off point for the next presentation.

Ask the participants to consider the following statements and write on a piece of paper *True* if they agree or *False* if they disagree with the statements.

- (1) Rape happens only to young, pretty or desirable women.
- (2) Rape is a crime of lust or passion.
- (3) Rape involves the loss of a woman's most prized possession, her "chastity."
- (4) Women of loose morals cannot be raped.
- (5) Rape is committed by sex maniacs or perverts who are usually strangers to the victims
- (6) Rape happens only in poorly lit or secluded places.
- (7) Sexy clothes invite rape, so to avert rape it is a woman's responsibility to avoid provocative or revealing attire.
- (8) When a woman's chastity is threatened she will exert every effort to protect it, whether by violent resistance, escape attempts, or screams for help. If she did not scream, fight back or get physically hurt, it means she gave her consent and there was no rape.
- (9) When violated, a woman's first reaction is to tell the authorities or her family, particularly her menfolk who must be informed of the assault upon the woman's, and thus the family's, honor.
- (10) Many rape charges are fabricated in order to avenge a slight or to extort money.

After the participants have finished answering, go through each statement and ask who answered *True* and who answered *False*. Ask for explanation from those who gave their answers. Engage the participants in a discussion about their answers in relation the concept of *gender stereotypes* and how these can violate women's human rights.

The facilitator should carefully direct the discussion in order to surface the following realities about rape and debunk gender stereotypes:

1. Violence against women is not limited to any age, class, ethnic or social group. Every woman, regardless of age, personality or background, could be raped.
2. Rape is a crime involving power targeted against the victim's very personhood. It is not simply a release of men's lust or passion
3. Rape is not about chastity lost, but is about violation of personhood, dignity and bodily and psychological integrity
4. Every woman, regardless of personality, background or sexual history, could be raped. Women in prostitution also get raped. The moral character of the victim should be immaterial in rape.
5. Rape can be committed by "perverts" and by "normal men."
6. Rape can happen to any woman at any time and any place.
7. Rape has nothing to do with the clothes that women wear. Men rape women regardless of their clothes. If rape were about clothes or how the victim behaves, there would be no rape of children or the elderly.
8. Rape is a life-threatening situation. A woman may be frozen by fear and shock and unable to move or fight back. Some women submit to their rapist in order to survive. Resistance is expressed in many forms, e.g. just by saying NO. The victim's failure to shout or offer tenacious resistance cannot be construed as consent to the sexual act. *Different people react differently to a given situation or type of situation. There is no standard form of behavioral response when one is confronted with a strange or frightful experience.*
9. There are many reasons why women do not report immediately or at all.
10. Fabrication of rape is not impossible. However, the rate of false rape charges is not higher than other crimes, which is at 2%.

Source: *Making Sense of Rape* (Women's Legal Bureau, Inc., Quezon City, Philippines, 1995)

MODULE 6

HANDLING GENDER-BASED CRIMES

This module aims to provide a critical gender framework and develop gender-responsive practical skills in handling gender-based crimes by judges, prosecutors and lawyers. This module consists of four parts.

SESSION 1: KEY CONSIDERATIONS IN TIMOR-LESTE'S JUSTICE CHAIN

Learning Objectives:

By the end of this session, the participants will be able to (1) analyze how the justice chain of Timor-Leste works in gender-based crimes and the human rights issues involved, (2) explain the elements of a gender-responsive justice chain, (3) identify interventions that can be done to make the justice chain in Timor-Leste gender-responsive, and (4) explain the rights of victims.

Learning Content

Interactive Presentation
Workshop

INTERACTIVE PRESENTATION (See below)

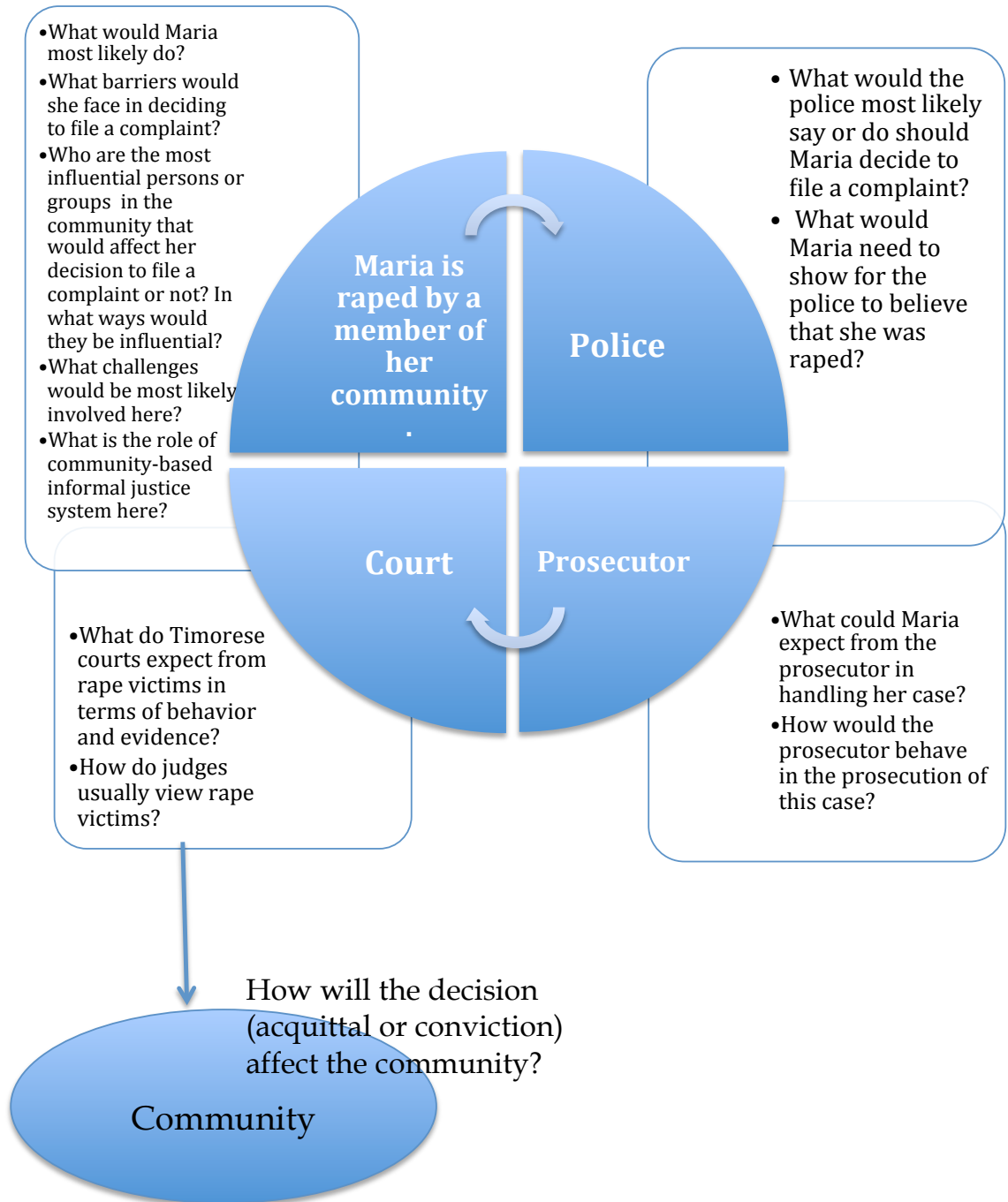
Instructions to the Presenter:

1. The participants should be given, *at least one day before this session*, copies of the following studies, to give them a background about the realities in Timor-Leste's justice chain and so that they can participate in the interactive presentation.
 - JSMP, *Legal Protection for Victims of Gender-Based Violence: Laws Do Not Yet Deliver Justice* (March 2011)
 - JSMP, *Police Treatment of Women in Timor-Leste* (January 2005)
 - JSMP, *Women in the Formal Justice Sector: Report on the Dili District Court* (7 April 2004)
2. Start the following presentation by asking the participants to write in meta cards their answers to the questions shown in the diagram.
3. Ask the participants to post on the board beside the diagram the meta cards with their answers to the questions. (Ensure that there is enough space for the meta cards.)
4. After all the meta cards have been posted, go through the answers of the participants. Ask them to explain their answers if necessary. Solicit the agreement of the other participants to the answers, or ask others to add or supplement the answers.

5. After all the answers have been discussed, synthesize what the answers say about Timor-Leste's justice chain and its responsiveness to gender-based violations. Present the key elements of a gender-responsive justice chain.
6. Give a brief input on **attrition** as a problem in gender-based violations. Ask the participants what they know about the reasons why women desist from or do not pursue their complaints.

INTERACTIVE PRESENTATION:

Considerations in Timor-Leste's Justice Chain



What is a gender-responsive justice chain?

A *gender-responsive justice chain* is one that effectively and adequately implements gender-responsive laws. It requires the following:

- (1) Justice institutions and support agencies with clear gender-responsive mandates and procedures, including standardized protocols and rules on coordination, and adequate and sustained funding;
- (2) Agencies with properly trained personnel and adequate resources that provide specialized services for women to address the social and institutional barriers they face, such as one-stop shops with women service providers, legal aid agencies, specialized courts (including mobile, domestic violence and family courts), women's police stations, and gender-responsive prisons;
- (3) Clear accountability procedures and sustained monitoring of implementation of laws and protocols by agencies, including data collection, towards better implementation; and
- (4) Gender-responsive policing and judicial decision-making.

(Source: *UN Women, 2011-2012 Progress of the World's Women: In Pursuit of Justice*)

The role of judges, prosecutors and lawyers in the gender-responsive chain

Judges, prosecutors and lawyers play an essential role in the gender-responsiveness of the justice system. They play a crucial role in ensuring that women's human rights violations are not tolerated, that such violations are investigated and punished, and that victims have effective remedies. In doing this, judges, prosecutors and lawyers may turn to international human rights law that binds the State, which, in Timor-Leste's case, forms part of the domestic legal system.

The *independence of lawyers* and the *independence and impartiality* of the judiciary and prosecutors are considered fundamental pillars of a democratic society that is respectful of the rule of law and for the effective implementation of human rights.

In addition to independence and impartiality, judges, prosecutors

and lawyers must also develop their *professional competence*, and with respect to women's human rights, this should include the *competence to be gender-responsive* in cases of women's human rights violations.

If judges, prosecutors and lawyers do not perform their roles effectively, a culture of impunity might take root in society and lead to lawlessness and violence. With respect to women, the failure of judges, prosecutors and lawyers to be gender-responsive perpetuates discrimination against them, and in actual cases lead to attrition.

Attrition

The Webster's Dictionary defines attrition as, among others, "the act of rubbing together or wearing down: the condition of being worn down or ground down by friction;" "the act of weakening to the point of exhaustion by constant harassment."

As used in relation to gender-based violence cases, attrition refers to the dropping out of women from the process of claiming rights or pursuing cases for redress of rights violations.

Some of the reasons for attrition are:

- The culture of settlement
- Financial pressures on the woman
- Pressure from the children or extended family
- Psychological inability to separate from the abuser
- Insensitivity/cruelty of the legal process.

WORKSHOP

Instructions to the facilitator:

- (1) Divide the participants into small groups
- (2) Give each group copies of the first person narrative, "My Experience."
- (3) Give each group 45 minutes to read the narrative and discuss the following questions:
 - (a) What of her experiences are similar to what happens in Timor-Leste in the prosecution of rape cases?

- (b) What of the experiences do you consider human rights violations? Please explain every human rights violation you have identified.
 - (c) What possible interventions can be done or measures can be put in place to prevent the occurrence of those acts or violations in Timor-Leste?
- (4) After 45 minutes, the groups will share with the plenary their answers to the above questions.
 - (5) Engage the participants in a discussion about the workshop outputs, focusing on the similarities in Timor-Leste that they have identified. Get the participants to agree on the interventions that can be done.

*My Experience**

About 4 years back when I was 24 years old, I was brutally raped by a man. I was held hostage inside his house and while he raped me, all I could do was beg but he showed no mercy. I tried to resist as much as I could but he was so much stronger than me and he was easily able to overpower me. This incident shook my world. Four years later, I have learnt to move on, not because I got justice but because I have realized that he cannot hold me to ransom forever.

Initially I was scared and traumatized to lodge a complaint with the police, thinking how it would affect my family, how society would now view me and what kind of protection I would get from the system if I came out and reported the incident. The perpetrator was very very powerful, you see. But I did not want this incident to define my life and so I reported the matter to the Police. Contrary to my initial reservations, the Police was very sympathetic and promptly registered an FIR.** I began to tell myself that the system was working and I would be taken care off. But I comforted myself too soon, it seems, because all the stages after the registration of the FIR were so horribly painful, I now wonder why I even bothered to report the crime.

My experience at the hospital where I was taken for medical examination was inexplicably brutal and insensitive. The duty doctor kept screaming “woh rape victim kahan hai” (“Where is the rape victim”) in front of a packed ward. And then when she proceeded to examine me, I heard her tell the nurse that it was well past her duty time and these stupid cases were keeping her in hospital when she should have been home. She took out her anger on me. Asked me to open up, unmindful, of the very real and visible injuries I had suffered. She put me through what I later learnt was the Two Finger test, to determine whether my hymen was torn. I screamed. She stopped and told me I could make this as difficult as possible, but she would proceed with it

regardless.

After a few months the trial began. I had truly truly believed that this was the one place where I would be protected and treated with respect. But no, that never happened. I was humiliated, scorned at and aggressively handled for months, in the witness box, by a system that views women as playthings and was incapable of understanding why rapes are so horrible.

The Courtroom was like a crowded bus station. I was given to understand that the proceedings would be conducted in camera.

Far from it. It was scary. So many people in the court, so many stares, so many comments. And then the accused was brought from custody, and all of a sudden there was so much activity in the room. He was like royalty, he had to be made comfortable, mineral water bottles were brought in, a sympathetic court staff was heard saying, "bhai saab aap theek ho nah?" ("Brother, are you doing well?"). And then came the battery of Defence Lawyers, 7 of them. I asked the prosecutor why there were so many people in the room. He said, "BADA ADMI HAI, AB LAWYERS TO LAYAGE, NA" ("He is a big man, he will bring his lawyers"). I had lost the case before it even began. I was shaken to the core, scared and vulnerable. No one, just no one bothered to tell me, that I could testify without fear. When they began recording my statement, one or the other lawyer would come close to where I was standing on the pretext of reading what was being typed on the computer screen and then he would whisper an abuse and leave. This would happen again and again and again.

I endured a harrowing cross-examination that lasted for months, during which time I was repeatedly **accused of being a liar, sexually perverse and a gold digger**. Did I have long nails when the incident took place, was I wearing tight jeans - as tight jeans take some time to be taken off. Consent was his defence you see, and so they kept suggesting that I had initiated the sexual encounter and enjoyed it.

Inside the courtroom and in front of the judge, the accused and the **defence lawyers kept exchanging high fives to each other, every time they thought they had got a good answer**. There was nothing anyone did to stop them. The accused kept staring at me when I was answering questions. There was so much shouting in the room, basically to wear me down, to intimidate me, and truth be told, I was intimidated.

I broke down in tears, the Public Prosecutor murmured that it would be over soon, the judge told me sternly, be strong. We have to go

through this process to arrive at the truth.

My experience with the criminal justice system has left me exhausted. It was almost like I was being punished for putting the accused behind bars. It should come as no surprise that I lost the case. What truth was unraveled? Certainly not my truth. I understand now why a lot of women don't come out in the open to lodge their complaints against their attackers and pursue their cases. Treated with suspicion and scorn rather than compassion and care during the trial, survivors end up feeling as if they have been "raped all over again". That's a huge price to pay and in the end there is no justice, just drama and lip service to the law.

*(*This is an actual case. The victim wrote this narrative herself. It is published here with her permission, given through her counsel.)*

*(**Under Indian law, FIR stands for first information report. It provides basic information about an offense that is alleged to have been committed. The registration of the first information report is the starting point of the investigation of the offense.)*

PRESENTATION

Core Points

On November 29, 1985, the UN General Assembly adopted the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, "which is designed to assist Governments and the international community in their efforts to secure justice and assistance for victims of crime and victims of abuse of power."

The following are the relevant provisions of the Declaration with respect to women:

(1) Definition of victims of crime

- "Victims" means "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power."
- A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or

convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

(2) *Non-discrimination*

- The Declaration applies to all, "without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability."

(3) *Access to justice and fair treatment*

- Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.
- Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
- The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:
 - (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
 - (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
 - (c) Providing proper assistance to victims throughout the legal process;
 - (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
 - (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.
- Informal mechanisms for the resolution of disputes, including mediation,

arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

(4) *Restitution*

- Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependents. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.
- Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.
- Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted.

(5) *Compensation*

- When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:
 - (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
 - (b) The family, in particular dependents of persons who have died or become physically or mentally incapacitated as a result of such victimization.
- The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

(6) *Assistance*

- Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.

- Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.
- Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.
- In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above.

SESSION 2: INVESTIGATING GENDER-BASED CRIMES AND CASE PREPARATION

Learning Objectives

By the end of this session, the participants will be able to explain the essentials of a good investigation in gender-based crimes and the guidelines in interviewing victims, as well as construct an interview plan that applies knowledge about the law and evidence and gender-based crimes.

Session Content:

Presentation: *Essentials of a Good Investigation*

Presentation: *The Psycho-Social Aspects of Rape*

Workshop

PRESENTATION Essentials of a Good Investigation

Core Points

- Solid understanding of the gender-based violation.
- Adequate knowledge of the law and the evidence required, including human rights standards
- Clearly defined and fair process.

- Respect for rights.
- Sound analysis.

Problems in Investigation

- Ignorance of the law, of human rights, of the evidence required
- Lack of understanding of the nature and causes of gender-based violence and its effects
- Assumptions and prejudices: myths and misconceptions; attitude of disbelief; assumption of false accusation
- Failure to utilize other disciplines.
- Insensitivity

Guidelines in interviewing a survivor of a gender-based violence

- Avoid making comments and non-verbal signs (e.g., facial expressions or gestures) that may come across to the person as disbelief, disgust or mockery.
- Ask the questions gently. Be sensitive.
- Minor discrepancies in the narration of events are normal particularly in a traumatic experience, not signs that the person is “fabricating a story.” Ask the witness to elaborate or clarify the problematic details in a non-judgmental manner.
- Refrain from asking questions that may sound accusatory or suggest some fault on the complainant’s part. Instead, ask open-ended questions that are non-judgmental and non-threatening.
- Make sure that the tone of your voice is such that the person will not feel that she is disrespected, blamed or disbelieved. Be culturally-sensitive in asking questions. Pay attention to the nuances of the tone and the words used.
- Listen attentively and encourage the person to talk and express her emotions.
- The kind of questions and how these are asked could make a difference in the outcome of the investigation. It should be remembered that the purpose of the investigation is to determine the truth. Thus, every witness should be encouraged not intimidated, accused, embarrassed or shamed.
- Generally, questions can be categorized as leading questions, closed-

ended questions and open-ended questions. Of the three, the open-ended questions are the most empowering as they allow the person to say what he/she wants to say. Open-ended questions are facilitative and encourage the witness to tell more of her experience, which is primary to establishing the case.

- Gender-sensitivity should always be exercised. In some instances, asking “why” questions, although open-ended, may sound accusatory or suggestive of some fault on the person’s part. For example, questions like “Why did he beat you up?” may imply that the victim gave reason for the violence or somehow provoked it, while asking “Why did you not struggle?” may sound like blaming the victim.
- On the other hand, leading questions and closed-ended questions should be used minimally during the investigation because they suggest to the person the desired answers or reveal the biases of the investigator. Close-ended questions are necessary to obtain standard data on the person’s profile (e.g., name, address, age), while leading questions are used as prompts for the complainant to disclose details of her experience.
- It has been said that it is not so much the question itself but the manner by which it was asked that is important. But it is also important that the investigator does not reinforce myths and gender stereotypes by asking questions that constitute victim-blaming.

Recommended readings/references:

- USAID, JSMP & The Asia Foundation, *Addressing Gender-Based Violence in Timor-Leste: A Manual for Legal Aid Lawyers* (Volumes 1 & 2)

After the presentation above, and to prepare the participants for the workshop, the following presentation should be made, on the psycho-social aspects of rape.

The Psycho-Social Aspects of Rape

(From *The Psychosocial Aspects of Rape*, in *Addressing Rape in the Legal System: A Multidisciplinary Training Manual*. Women's Legal Bureau, Inc., Quezon City, Philippines, 2005) (See Annex)

Core Points

Motives for Rape

1. To demonstrate power and validate strength through conquest.
2. To get even as a form of revenge.
3. An assertion of one's "right" as is in marital and date rapes.
4. Poor impulse control with sex; it is a means of overcoming distress and frustration with the demands of life.

Circumstances and Types of Rape

- committed by strangers or acquaintances, or persons close to the victim
- blitz rape
- confidence-style rapist
- acquaintance or date rape
- marital rape

Coping Strategies in Rape

See *The Psychosocial Aspects of Rape*, in *Addressing Rape in the Legal System: A Multidisciplinary Training Manual*.

Range of Coping Strategies of the Rape Victim

See *The Psychosocial Aspects of Rape*, in *Addressing Rape in the Legal System: A Multidisciplinary Training Manual*.

The Post-Traumatic Stress Response

See *The Psychosocial Aspects of Rape*, in *Addressing Rape in the Legal System: A Multidisciplinary Training Manual*.

Workshop

Instructions to the facilitator:

1. Divide the participants into groups of five or six.
2. Give each group an hour to discuss the situation and answer the workshop questions below. Tell them to be prepared to explain fully the relevance of the factors and considerations they have identified (under the third column).
3. After one hour, each group will present the workshop results for 15 minutes.
4. Synthesize the workshop results and relate them to the previous discussions on rape and the psycho-social sequelae of rape.

Situation

Assume that you will investigate a rape survivor. You do not know anything about the circumstances of the crime. You have been told that the survivor suffers from severe trauma and that you have to maximize the time available when she is well enough to answer questions. Having learned human rights and the psycho-social aspects of rape in the previous sessions, and knowing what you know about the rules of evidence, prepare an interview plan for the purpose of building a case of rape. Since you have no idea about how the crime was committed, you will need to consider *all possibilities* in building your case. The following matrix has been prepared for the purpose of your planning. For every point that needs to be proved, you can list as many possible evidence, factors, and considerations, and questions to be asked. Formulate the questions as you would ask actually them to the survivor. Be as detailed as possible.

What needs to be proved	Possible evidence to prove the elements	Relevant factors and considerations (context of the commission, psychological processes, social factors, etc.)	Questions to be asked of the rape survivor
<p>Example:</p> <p>Coitus</p>	<p>Medical findings</p>	<p>Length of time between the</p>	<p>Did you go through any</p>

		commission of the crime and the reporting/ medical examination	medical examination?

SESSION 3: APPLICATION OF ETHICAL PRINCIPLES AND HUMAN RIGHTS STANDARDS IN TRIALS

Learning Objectives:

By the end of the session, the participants will be able to demonstrate the application of ethical principles and human rights standards discussed in the previous sessions through a mock trial.

Session Content:

Mock Trial

MOCK TRIAL

Instructions to the Facilitator:

- (1) Ask for volunteers from the participants to play the different roles (judge, prosecutor, defense counsel, and victim-survivor) in the mock trial using the script provided (see Annex).
- (2) Give the volunteers 15 minutes to read the script and to plan the mock trial.
- (3) Ensure that the room is appropriately set up as a courtroom.
- (4) After the mock trial, ask the participants to discuss what happened in the mock trial by answering the following questions:
 - (a) What should the Defence Attorney have said to object to the Magistrate's line of questioning?

- What laws, conventions and principles may be used to support his objections?

(b) What legal provisions can be used by the Watching Brief lawyer to persuade the Magistrate to allow him to:

- address the court; and
- read the report from University of Portugal?

(c) What rights of Rita were violated, if any?

(d) Will you convict Bobby of the crime under Section 171 (sexual coercion)? Please give your reasons for conviction or acquittal.

(e) Will you convict Bobby of the crime under Section 179 (Sexual abuse of a person incapable of resistance)? Please give your reasons for conviction or acquittal.

(f) What gender stereotypes were evident in this case?

(5) Give a recap of the ethical principles and human rights standards that are pertinent to conducting trials in gender-related cases.

SESSION 4: RENDERING JUDGMENT

Learning Objectives

By the end of the session, the participants will be able to explain the duties of judges in the adjudicatory process under international human rights law and the general principles for gender-responsive adjudication, and apply the principles in fictional and actual cases.

Session Content

- Presentation
- Group and Individual Exercises

PRESENTATION

Core Points

What are the duties of judges in the adjudicatory process under international human rights law?

Under the *Basic Principles on the Independence of the Judiciary* adopted by the United Nations General Assembly on November 29, 1985, the judiciary has the duty:

- (1) to ensure fair court proceedings and give reasoned decisions
- (2) to decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason

As basis for these duties, the Basic Principles refer to the Universal Declaration of Human Rights which enshrines the *principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law*, and to the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights *which both guarantee the exercise of those rights*.

To perform these duties, judges have to develop their *competence* to render fair judgments. In addition to being competent to apply domestic law, judges must familiarize themselves with the growing body of international human rights law, and particularly on the protection and promotion of the human rights of women. The interpretation of domestic law should consider progressive developments in law and medical science, and be in accord with human rights law.

For example, the CEDAW Committee declared in the case of *Karen Vertido v. the Philippines* that states parties to the Women's Convention have the *due diligence obligation to banish gender stereotypes*. It declared that "stereotyping affects women's right to a fair and just trial and that the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence, in general."

Similar statements of principles as the UN Basic Principles on the Independence of the Judiciary are:

- Beijing Statement of Principles on the Independence of the Judiciary in the LAWASIA Region
- Victoria Falls Declaration of Principles for the Promotion of the Human Rights of Women, 1994

What are the problematic areas in deciding cases of gender-based violence?

- *Appreciation of human behavior in relation to the issues involved*, e.g., the erroneous belief that women who did not resist gave consent to the sexual act
- *Appreciation of the economic, social, cultural and other circumstances of the victim as forming part of the critical context of the violations of her rights*, e.g., a poor woman who never had any kind of education and comes from an ethnic community where women are not allowed to express their opinions or views is most likely so disempowered such that she is unable to assert herself in an abusive situation
- *Appreciation of medical evidence*, e.g., the ignorance of women's sexual anatomy, particularly about the distensibility of the hymen and the significance of the so-called "intact hymen" in rape cases
- *Interpretation of legal rules consistent with human rights standards*, e.g., the interpretation of consent in sexual assault cases vis-à-vis the standards set by international human rights tribunals

General Principles for Gender-Responsive Adjudication

- Judges should look at the totality of evidence. Interpretation of medical findings or physical evidence should be related to other evidence (e.g., testimony of the victim). In gender-based crimes, the lack of physical injuries does not by itself disprove a violation.
- The objective is to be multidisciplinary in the search for the truth in the legal process. The help of other disciplines must be sought where it is necessary in the effectiveness of the administration of justice.
- It is important to be conscious of how cultural values inform the judicial or adjudicatory process, particularly those involving gender-based cases. Judges should continuously educate themselves about the gender issues through the utilization of various disciplines in order to render sound and fair judgments consistent with human rights standards.
- Judges should not employ gender-stereotypes in judicial decision-

making.

- Judges should bear in mind the international human rights norms, principles and standards that apply to the case at hand.
- It is critical that judges render a context-based assessment of evidence. Contextual judging means that judges consider the various political, social, cultural and economic factors that shape, inform and affect the behavior and acts of parties. In gender-related cases, understanding the nature of gender-based discrimination and the structural barriers that women face in society is key to a gender-sensitive appreciation of the circumstances of each case and rendering a gender-responsive judgment. For example, in sexual violence cases, judges have to understand the discriminatory context in which sexual abuse of women occurs, the disempowerment it brings and perpetuates, the realities debunking the myths and misconceptions about rape and victims, and the many reasons why women usually do not report the violation to the authorities. In domestic violence, judges have to understand the cycle of violence, and the serious risk it poses to the lives of women and children. In matters involving economic issues, judges should have an understanding of the cycle of poverty for women as evidence of systemic sex discrimination. *This is what it means to apply a gender perspective to adjudication.*

Applying a Gender Perspective to Adjudication

“Judicial decision-making with a gender perspective enables courts to make the right to equality into a reality. Constitutional and international law requires states to eradicate discrimination, and the judiciary is one key mechanism through which states must discharge this duty. Thus, judges must be capable of guaranteeing access to justice and of remedying asymmetrical distributions of power in the cases brought before them. A gender perspective is an essential component of this mandate. Through this analytic approach, the law and its institutions can become emancipatory tools, and can empower human beings to design and undertake their life projects in conditions of dignity, autonomy and equality.

A democratic society depends on judges being committed to this principle of equality.”

-- Suprema Corte de Justicia de la Nacion, Mexico. *Judicial Decision-Making with a Gender Perspective (2013)*, available at <http://www.sitios.scjn.gob.mx/codhap/ProtocolGenderPerspective>

- Applying a general perspective in adjudication requires asking a series of questions that will help in arriving at a gender-responsive resolution of the case.

How to use a gender perspective in judicial analysis

(from Suprema Corte de Justicia de la Nacion, Mexico. *Judicial Decision-Making with a Gender Perspective* (2013), available at <http://www.sitios.scjn.gob.mx/codhap/ProtocolGenderPerspective>)

Initial procedural issues

1. Does the case require a protection order?
2. Does deciding whether or not to admit a claim require a gender analysis?

Fact determinations and interpretation of evidence

1. What was the context in which the facts took place?
2. Is any party poor, marginalized, vulnerable or facing discrimination on the basis of sex, gender, or sexual orientation or preference?
3. Is there any asymmetrical power relationship between any of the parties? How might this influence the evidence or testimony requested, and the weight given to it?
4. Is any member of a traditionally-subordinated “suspect class” involved?
5. Does any party belong to a historically disadvantaged group?
6. Does any party have characteristics evincing possible overlapping discrimination? For example, an indigenous woman in a divorce case, or a pregnant lesbian woman in an employment case.
7. Does the behavior that we expect of the parties or of the victims conform to stereotypes or to one of the manifestations of sexism?
8. Would our expectations of the victim’s response be different if we imagine her being replaced with a man or, e.g., a heterosexual? What would change in our expectations of behavior if we assigned a stereotypically “feminine” role to a party? For example, if it were a man who were seeking paternity leave.

Determining the applicable law

1. What domestic and international legal framework applies to

the case?

2. Are there any cases or opinions from international bodies which address the question at issue?

3. Are there any international cases decided against [Timor-Leste] that must be followed?

4. Do any General Observations [or analyses] from U.N. treaty-monitoring bodies... contain relevant legal analysis to the issue(s) in the case?

5. What conception of the person underlies the applicable legal framework?

6. Does that norm reflect a stereotyped or sexist view of the person?

7. Does the norm impose a different impact on the person or the context at issue?

8. What law best guarantees the right of equality for the victims or parties in the case?

9. What legal strategies can counteract a norm that is discriminatory on purpose or in effect?

10. Does the case require us to deconstruct a paradigm, or legal construct? How could our analysis do that?

11. What tools does the applicable legal framework provide to resolve power asymmetries and structural inequalities in the case? Does the case merit differentiated treatment?

Reasoning

1. Apply the constitutional principles of equality, universality, interdependence, indivisibility, and progressivity.

2. Apply, and explain your reasons for applying, the law or rule that provides the best protection to persons who face power asymmetry or structural inequality. This means not just citing to, e.g., international treaties, but explaining the reasons for applying those principles to the case and explaining why they control the outcome.

3. Interpret the law and the case in accordance with the more recent constitutional paradigms, which have replaced older hermeneutic approaches such as literalism, hierarchy, and specialization.

4. Understand the problems that can arise from the use of interpretive legal approaches such as analogy, when formal, material and structural inequality are not taken into account.

5. Incorporate persuasive gender-related analyses from comparative law and from legal scholarship.

6. Explain why applying a given norm in the case would cause a different or discriminatory impact.

7. Elucidate the stereotypes and sexism detected in the facts, in the way the evidence was interpreted, in the allegations and claims of the parties, or in the forms that could have been applied.

8. If we must undertake any balancing test, be sure to

adequately account for power asymmetries.

9. Explain why an unequal power relationship, or structural inequality, underlies the case.

10. Determine the appropriate legal strategy to minimize the impact of the structural inequality in the case.

11. Recognize and describe any gender biases encountered at any stage in the process.

12. Make sure that neither the reasoning nor the ultimate outcome of the opinion revictimizes or stereotypes the victim in any way.

Remedies

1. Did any party suffer disproportionate harm on the basis of sex, gender, or sexual preference/orientation?

2. What type of remedies could best provide redress for this kind of different impact?

3. If we identified power asymmetries and structural inequality, what remedies would be most useful in undoing the asymmetries and inequalities?

4. Does the remedy we selected reflect stereotyped or sexist notions?

5. Given the sex, gender, and sexual preference/orientation of the victim – and the type of harm suffered – what remedy would be the most appropriate way to make the victim whole?

6. When deciding on the form of redress, are we taking the victim's desires into account?

7. How did the problem affect the familial, workplace, and community roles and responsibilities of the victim? How could the remedy selected address those impacts?

8. Is there any kind of collective damage in the case? Is it possible to redress it?

9. Did anyone suffer a harm based on any kind of group membership?

10. Will the remedies we selected provide redress for all of the different types of harm that we identified?

Exercises

Group Exercise 1

Instructions to the facilitator:

1. Divide the participants into small groups.
2. Ask the groups to analyze the case narrated in the script for the mock trial in the previous session by answering the questions under “**Fact determinations and interpretation of evidence**” provided above. Give the groups one hour for their discussion.
3. Give the groups 15 minutes to report their workshop answers. After the reports, process the answers using the principles provided above.

Group Exercise 2

Instructions to the facilitator:

1. Divide the participants into small groups.
2. Ask the groups to analyze Case Study No. 3 about Lia and her father on pages 16 and 17 of the JSMP study, *Incest in Timor-Leste: An Unrecognised Crime* (refer to Case Study 4 under Module 5) by by answering the questions under “**Fact determinations and interpretation of evidence**” provided above. Give the groups one hour for their discussion.
3. Give the groups 15 minutes to report their workshop answers. After the reports, process the answers using the principles provided above.

Individual Exercise: Rendering Judgment

Instructions to the facilitator:

1. This is an individual exercise that ideally should be an overnight assignment. Each participant will write a judgment on the factual situation given (see below) by using the following as guide:
 - (a) Identify the issues in the case.
 - (b) Identify from the case narrative the factual claims that are relevant to the issues for a just resolution of the complaint. Explain fully why the identified factual claims are relevant.
 - (c) Identify the factors that relate to the credibility of the witness

and the veracity of her claims. Assess the veracity of the claims and the credibility of the witness.

(d) Decide on the case by interpreting the facts in the context of their occurrence and by applying the pertinent laws. Identify the remedy that should be given in the case.

(e) In answering the above, use the questions on “How to use a gender perspective in judicial analysis” as guide.

2. In the session where the participants will submit their judgments, ask three participants to share with the group their judgments. Engage the participants in a critical examination of the judgments shared, using the standards discussed in the previous sessions.

The Case

Bernardo and Catalina live together without the benefit of marriage. They have one child, Justino, five years old.

Catalina is a full time homemaker who is completely dependent on Bernardo for financial support. Bernardo is an engineer in a construction company. He is well-respected in the company and in his community.

Catalina claims that Bernardo beats her up for trivial matters, such as when she is late in preparing dinner, or when she fails to wipe dust off the furniture, or when her cooking is not to his liking. After each beating, Bernardo says sorry. Other than the physical violence, Catalina also complained of verbal abuse consisting of Bernardo telling her, “you are worthless,” or “you are good for nothing!,” “you are a whore!”, “you are stupid!”

Catalina has no bruises to show or any medical certificate to prove that she suffered injuries from those beatings, although she claims that she was physically injured each time. Also, she never reported any of the previous incidents to the police. She claims that she is scared of Bernardo, which is why she never reported the beatings to the authorities. She also claims that she did not previously report the incidents of violence because she was worried about how to support herself and her child should she separate from Bernardo. The first time she complained to the authorities was when Bernardo repeatedly banged her head against the wall that she fainted, but the report was made one week after the incident. Also, she never went through any medical examination. The only evidence she has to support her claims is her testimony. In her testimony, she was able to narrate in a consistent and straightforward manner the details of the incidents, except that she was

not able to give the specific dates, only the months, when the abuses happened. She was also able to describe the physical injuries she suffered from each incident of physical abuse, which consisted of bruises on the arms, legs and face. For the last incident of physical abuse, she testified that a part of her head was swollen for about two weeks, and that she suffered a deep cut on the right side of her head, which she bandaged on her own. She also testified that since the last incident, she has been constantly suffering from dizziness and disorientation.

For his part, Bernardo denies ever beating Catalina. He claims that she tells a fabricated story because she wants to leave him for another man. However, except for this general claim, he was not able to identify who that man was in his testimony. His denial of what happened focused solely on (1) the lack of injuries, (2) the lack of any previous report of violence, (3) the lack of any witness to corroborate her story.

After the evidence presentation was closed and while the magistrate was already writing the judgment, Catalina wrote a letter to the magistrate, asking that the case be dismissed, and claiming that everything was just a “misunderstanding.”

You will now write a full judgment on the case. In rendering a judgment, consider the provisions of the Law against Domestic Violence (LADV) and the Penal Code.

Recommended references for this exercise:

- JSMP & Fokupers, *Facing the Challenge of Domestic Violence in Timor-Leste: Can the New Law Deliver?* (July 2011)
- Suprema Corte de Justicia de la Nacion, Mexico. *Judicial Decision-Making with a Gender Perspective (2013)*, available at <http://www.sitios.scjn.gob.mx/codhap/ProtocolGenderPerspective>.

#

ANNEXES

Learning Needs Assessment Form
Pop Quizzes
Evaluation Form

MODULE 1

Session 1

- Jerome J. Shestack, *Philosophic Foundations of Human Rights* (John Hopkins University Press, 1998)
- Jack Donnelly, *Human Dignity and Human Rights* (2009)

Session 4

- Jack Donnelly, "Cultural Relativism and Human Rights", *Human Rights Quarterly*, Vol. 6, No. 4 (Nov. 1984), pp. 400-419, at <http://www.jstor.org/stable/762182>.
- Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women: The Due Diligence Standard as a Tool for the Elimination of Violence Against Women (Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk), E/CN.4/2006/61, 20 January 2006.
- OHCHR, Economic, Social and Cultural Rights, Handbook for National Human Rights Institutions, 2005, available at <http://www.ohchr.org/Documents/Publications/training12en.pdf>.
- CCPR General Comment No. 4 (1981)
- CCPR General Comment No. 28 (2000)
- CCPR General Comment No. 31 (2004)
- CESCR General Comment No. 3 (1990)
- CESCR General Comment No. 16 (2005)
- CESCR General Comment No. 20 (2009)
- CESCR General Comment No. 21 (2009)
- CEDAW General Recommendation No. 19 (1992)
- CEDAW General Recommendation No. 24 (1999)
- CEDAW General Recommendation No. 25 (2004)

- CEDAW General Recommendation No. 28 (2010)
- Executive Summary of the World Bank 2014 Health Equity and Financial Protection Report – Timor-Leste
- Summary of Findings in the Timor-Leste Demographic and Health Survey 2009-10

MODULE 2

Session 1

- Secretary of State for the Promotion of Equality (SEPI), Combined Second and Third Periodic CEDAW Report, Republica Democratica de Timor-Leste
- Report of the Ombudsman for Human Rights and Justice of Timor-Leste for CEDAW Committee 2009/2010
- NGOs Working Group on CEDAW Alternative Report, NGOs Alternative Report, Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Timor-Leste (March 2009)
- Timor-Leste's National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 (Human Rights Council's Working Group on the Universal Periodic Review, Twelfth Session, Geneva, 3-14 October 2011)

Session 3

- Justice System Programme, UNDP Timor-Leste. Customary Law and Domestic Violence in Timor-Leste (Jan. 2011)
- Nasrin Khan and Selma Hyati, *Bride-Price and Domestic Violence in Timor-Leste: A Comparative Study of Married-In and Married-Out Cultures in Four Districts* (September 2012)
- Elizabeth M. Zechenter, *In the Name of Culture: Cultural Relativism and the Abuse of the Individual*, Journal of Anthropological Research, Vol. 53 No 3 (August 1997), pp. 319-347
- Carol Nagengast, *Women, Individual Rights and Cultural Relativity: Power and Difference in Human Rights Debates*, Working Paper #266, Women and International Development, Michigan State University, 1998
- Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy: *Cultural practices in the family that are violent towards women*, 31 January

2002, E/CN.4/2002/83, available at:
<http://www.refworld.org/docid/3d6ce3cc0.html>

- Jack Donnelly, Cultural Relativism and Universal Human Rights, *Human Rights Quarterly* Vol 6 No. 4, (November 1984) pp. 400-419, John Hopkins University Press.

MODULE 4

- Timor-Leste's Combined Second and Third Periodic CEDAW Report
- National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Timor-Leste (Human Rights Council Working Group on the Universal Periodic Review, Twelfth Session, 2-14 October 2011)
- Nasrin Khan and Selma Hyati, *Bride-Price and Domestic Violence in Timor-Leste: A Comparative Study of Married-In and Married-Out Cultures in Four Districts* (September 2012)

MODULE 5

- JSMP, *An Analysis of a Sexual Assault Decision from Dili District Court*
- JSMP and Fokupers, *Article 125 of the Criminal Procedure Code; Creating a Dilemma for Victims of Domestic Violence*
- JSMP, *Incest in Timor-Leste: An Unrecognised Crime.*

MODULE 6

Session 1

- JSMP, *Legal Protection for Victims of Gender-Based Violence: Laws Do Not Yet Deliver Justice* (March 2011)
- JSMP, *Police Treatment of Women in Timor-Leste* (January 2005)
- JSMP, *Women in the Formal Justice Sector: Report on the Dili District Court* (7 April 2004)
- *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*

Session 2

- USAID, JSMP & The Asia Foundation, *Addressing Gender-Based Violence in Timor-Leste: A Manual for Legal Aid Lawyers* (Volumes 1 & 2)
- *The Psychosocial Aspects of Rape*, in *Addressing Rape in the Legal System: A Multidisciplinary Training Manual*. Women's Legal Bureau, Inc., Quezon City, Philippines, 2005)

Session 3

- Mock Trial Script

Session 4

- UN Basic Principles on the Independence of the Judiciary
- Beijing Statement of Principles on the Independence of the Judiciary in the LAWASIA Region
- Victoria Falls Declaration of Principles for the Promotion of the Human Rights of Women, 1994
- JSMP & Fokupers, *Facing the Challenge of Domestic Violence in Timor-Leste: Can the New Law Deliver?* (July 2011)

LEARNING NEEDS ASSESSMENT*
(Sample)

Please accomplish the following questionnaire to help us develop meaningful and appropriate sessions for this learning event. We will also use the information you share to draw on existing knowledge and expertise within the group.

We request that you return the accomplished questionnaire not later than _____.

Thank you for your time.

1. Name: _____
2. Name of department and position held: _____
- 2.1. How many years have you been working in your current job or with the same department? Please tick your answer.
 - A. Less than 1 year.
 - B. 1-3 years.
 - C. 4-6 years.
 - D. More than 6 years.
3. How would you rate your knowledge and skills in the following areas. Please tick your answer. 1 indicates 'very low' and 5 indicates 'very high'.

Area	1	2	3	4	5
a. General understanding of human rights					
b. General understanding of women's human rights					
c. Law and the Timor-Leste legal systems					
d. International human rights treaties and procedures					
e. Understanding of CEDAW and its framework					
f. Ability to apply the CEDAW framework					
g. Gender mainstreaming in programming, and law and policy making					
h. Feminist theories and perspectives					
i. Feminist legal theories and perspectives					
j. Beijing Platform for Action (BPFA) and outcome documents					
k. Law of Evidence					
l. Court rules and procedures					
m. Legal drafting					
n. Oral advocacy					
o. Handling gender-specific cases					
m. Others e.g., violence against women, HIV/AIDS, women and					

work. Please specify below. Name a maximum of 3 areas.					
i.					
ii.					
iii.					

4. If you have attended any workshops / seminars in the areas above, please list the latest 3 workshops / seminars:

4.1. i. Name / type of workshop or seminar: _____

ii. Year : _____

4.2. i. Name / type of workshop or seminar: _____

ii. Year : _____

4.3. i. Name / type of workshop or seminar: _____

ii. Year : _____

5. From your experience or observation, what are the 3 key challenges in the implementation of women's human rights in Timor-Leste? These challenges can be general or specific, and can relate to those relevant to rights holders and duty bearers. (Please circle 3 answers only)

No	Key Challenges
A	Inadequate knowledge of women's human rights.
B	Inconsistent implementation of women's human rights.
C	Lack of skills in applying women's human rights.
D	Lack of coordination among institutions concerned with the law and human rights.
E	Resistance or antagonism to women's human rights.
F	Religion-based and culture-based justifications for violations of women's human rights.
G	Non-recognition of diversities among different groups of peoples.

H	Others (Please specify)
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6. Please indicate the area/s of specialisation or focus of your formal education where applicable:

6.1. Diploma studies: _____

Year of completion: _____

6.2. Undergraduate studies: _____

Year of completion: _____

6.3. Graduate studies: _____

Year of completion: _____

6.4. Post-graduate studies: _____

Year of completion: _____

6.5. Others, please specify: _____

7. What are your expectations and learnings you hope to gain from the workshop?

a. _____

b. _____

c. _____

Pop Quiz 1

Name: _____

Please circle your answers.

1. Human dignity is the fundamental ethical basis of human rights.

A. True

B. False

2. Human rights are not dependent on laws made by governments.

A. True

B. False

3. "The interpretation and understanding of human rights may change or may be expanded, and over time additional rights may be recognised by peoples and States."

This statement refers to the:

A. Cultural relativity of human rights

B. The indefinite character of human rights

C. The dynamism of human rights

4. Human rights law includes only international human rights treaties.

A. True

B. False

5. What UN body is responsible for the conduct of the universal periodic review (UPR)?

A. General Assembly

B. Security Council

C. Office of the High Commission for Human Rights

D. Human Rights Council

6. Which regional human rights system has no human rights court or tribunal?

A. American

B. European

C. African

D. ASEAN

Pop Quiz 3

Name: _____

Circle the correct answer.

1. Under the Timor-Leste's Constitution, Timorese cultural norms prevail over legislation in case of conflict.

A. True

B. False

2. The following describes the relationship of law and culture:

A. Culture informs or shapes the substance of the law;

B. Culture influences the legal processes;

C. Culture affects the application of the law.

D. A and B.

E. B and C

F. A, B and C

G. None of the above

3. International human rights standards are used in the interpretation and enforcement of a constitutional right.

A. True

B. False

4. Compliance with state obligations includes establishing implementing structures at the national level such as a national human rights institution.

A. True

B. False

Pop Quiz 4

Name: _____

Please circle your answer

1. Which of the following is an example of a non-discriminatory provision in the Civil Code?

A. Article 1467: Marriage is a contract entered into by two persons of different gender.

B. Article 1755 (1): The child shall use the last names of his or her father and mother or just one of them.

2. Article 1475 (1) of the Civil Code only recognises civil, catholic and monogamous customary marriage. This provision is discriminatory because it does not recognise marriages performed under Hindu, Buddhist, Islamic or other religious rites.

A. True B. False

3. The state obligation of due diligence does not apply to the courts of a state.

A. True **B. False**

4. A state is responsible for private acts if it fails to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.

A. True B. False

5. The following is not a reason for the high rate of attrition in gender-based crimes:

A. the culture of settlement
B. economic disempowerment of victims
C. women do not get along with their in-laws
D. family pressure

6. The failure of judges, prosecutors and lawyers to be gender-responsive perpetuates discrimination against women and can lead to women dropping their claims against their aggressors.

A. True

B. False.

TRAINING WORKSHOP ON WOMEN'S HUMAN RIGHTS

EVALUATION (Sample Form)

Please rate the following by marking the appropriate boxes:

1. Did we meet the training objectives?				
Objectives	Strongly Disagree	Disagree	Agree	Strongly Agree
My knowledge of international human rights law in relation to gender-specific concerns has been enhanced.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				
I have acquired basic skills in applying international human rights law to gender-related issues at the domestic level.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				
I am better able to identify ways to respect, protect, promote and fulfil women's human rights through my work.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

2. Workshop Activities			
	Yes	No	Partially
Were the activities effective in promoting the sharing of experience among the participants?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:			
Were the activities effective in integrating practice and theory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:			
	Yes	No	Partially
Was the amount of time allocated for activities throughout the program adequate?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:			
Was the combination of presentations and group work appropriate?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

3. Workshop Materials				
	Very Poor	Poor	Good	Very Good
General quality of the workshop materials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Potential usefulness in my work	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clarity of instructions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

4. Facilitators				
4.1. (Name)				
	Very Poor	Poor	Good	Very Good
Ability to explain clearly and summarize discussions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to encourage participation of group members during activities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to show connections among different program activities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

4.2. (Name)				
	Very Poor	Poor	Good	Very Good
Ability to explain clearly and summarize discussions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to encourage participation of group members during activities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ability to show connections among different program activities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

4.3. (Name) (Interpreter)				
	Very Poor	Poor	Good	Very Good
Ability to interpret with clarity the statements of the speaker	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Accuracy of the interpretation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

5. Logistics				
	Very Poor	Poor	Good	Very Good
Meeting room	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Food quality and service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Communication facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comments:				

6. Overall Evaluation			
	Yes	No	Partially
Was this training what you expected	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Please explain:			
What aspects of the training did you find most useful?			

What aspects of the training did you find less useful?
What content areas would you recommend for future training?

Name (optional):
Job Title (optional):