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| This document has been prepared by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World), Outright International, The Swedish Federation for Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Person’s Rights (RFSL), COC Nederland, and the International Service for Human Rights as a response to the second revised text of the draft convention on the right to development ([A/HRC/WG.2/24/2/Add.1](https://www.ohchr.org/sites/default/files/documents/issues/development/session24/2022-12-08/A-HRC-WG.2-24-2-Add.1.docx)) published on January 12th, 2023. It analyses the use of the notion of gender during the drafting process of the Convention and highlights the importance of maintaining current language on gender equality and women in all their diversity as aligned with international human rights law and development standards, including CEDAW. In addition, the document proposes recommendations to the draft convention for this purpose.  |

# **1. Article 16. Equality between women and men**

**Issue:** The Expert Drafting Group (EDG) changed the previous “gender equality” reference on the title to “equality between women and men” and eliminated language referring to “all women and girls”. The EDG accepted suggestions from some States to frame the article with a binary approach of equality “between women and men” based on the reasoning that the objective of this draft article is addressing discrimination against women and girls specifically, and not gender inequality in a broader sense. The decision was also based on the EDG reasoning that the concept of “gender” implied the obligation of States not to discriminate on the basis of sexual orientation and gender identities, agreeing with the critique of some States that the previous title of this draft article which spoke to gender equality was not in sync with the intended limited focus on women and girls and that the concept of gender could in some cases reduce the rights of women and girls. In addition, the EDG justified the current language employed in the draft article 16 as fully in line with CEDAW and accepted to erase the word “all” before “women and girls” to ensure consensus.

**Our response:** Despite understanding that there are disparities in the interpretation of the concept of “gender,” the usage of **“gender equality”** shows the need to tackle the root causes of the inequalities and imbalance that affect us all in different levels and proportions. This notion is used by UN Women, CEDAW, and other relevant actors such as the UN Secretary and many Member States when talking, for instance, about combatting Gender-Based Violence. While the CEDAW Convention, adopted in 1979, does not contain the word ‘gender’ (which also reflects the level of legal and social scholarship at that time), later CEDAW documents do use the notion of ‘gender’, including through explicit references to it.

In its General recommendation No. 28 (2010), the CEDAW Committee drew a very clear distinction between the notion of sex (as based on biology) and gender (socially constructed):

*The term* ***“sex”*** *here refers to biological differences between men and women. The term* ***“gender”*** *refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these 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.*[[1]](#endnote-1)

Since then, this definition has been used by the Committee in its practice, for instance:

***Gender*** *refers to socially constructed identities, attributes and roles for women and men and the cultural meaning imposed by society on to biological differences, which are consistently reflected within the justice system and its institutions.[[2]](#endnote-2)*

Therefore, the argument on the purpose of Article 16 to address discrimination against women and girls specifically, and that the notion of gender would imply a broader sense that will deviate for this purpose is unsubstantiated. The notion of “gender,” from CEDAW’s perspective, covers discrimination against women and girls in a holistic way that, instead of lessening the focus, reinforces it and improves the comprehension of the social positioning of women and girls in several areas.

Moreover, the claim that the language used in the draft Convention is fully in line with CEDAW recommendations and jurisprudence is incorrect since recent developments of the Committee are fully inclusive of the usage of the term gender and have a focus on root causes of inequality. By excluding the word “gender” and the notion of “gender equality” from Article 16, the EDG would risk not following the current developments of International Human Rights Law of the last decade.

Overall, the CEDAW Committee’s practice is based on the **concept of gender and relevant notions**, such as:

* gender equality;
* gender-based structural inequality;
* gender bias; gender stereotypes;
* gender socialization; (patriarchal) gender roles;
* gendered ideologies, structures and systems; gender order of society; gender regime;
* gender gap; gender disparities; gender-differentiated impact;
* gender segregation; gender-segregated labour market;
* gender-based discrimination; gender-based violence; gender-related persecution
* gender analysis; gender perspective;
* gender-sensitive legislation; gender-sensitive / gender-responsive measures; gender-responsive action plans;
* gender-sensitive complaint and grievance mechanisms; gender-responsive judicial remedies; gender-sensitive court proceedings; gender-sensitive legal aid;
* gender-responsive educational programmes; gender-sensitive / gender-responsive training;
* gender-responsive social protection and essential services.

In particular, the CEDAW Committee formulated the definition of **‘gender perspective’** (in this case, for Indigenous women, but this approach can be extrapolated on many other areas):

*A* ***gender perspective*** *takes into consideration the discriminatory norms, harmful social practices, stereotypes and inferior treatment that have affected Indigenous women and girls historically and still affect them in the present.*[[3]](#endnote-3)

Another crucial concept developed by the CEDAW Committee is **‘gender-based violence’**. In 1992, in its *General recommendation No. 19: Violence against women*, the Committee has already introduced the concept of ‘gender based violence’, even though it has not been reflected in the title of the General recommendation. The Committee defined that ‘gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.’[[4]](#endnote-4)

In 2017, the CEDAW Committee issued its *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*. This time, the term ‘gender-based violence’ has been included into the title of the document, and the Committee additionally explained that:

*The concept of ‘violence against women’, as defined in general recommendation No. 19 and other international instruments and documents, has places an emphasis on the fact that such violence* ***is gender based****. Accordingly, in the present recommendation, the term ‘****gender-based violence*** *against women’ is used as a more precise term that makes explicit* ***the gendered causes and impacts*** *of the violence. The term further strengthens the understanding of the violence as a social rather than an individual problem, requiring comprehensive responses, beyond those to specific events, individual perpetrators and victims/survivors.*[[5]](#endnote-5)

*The Committee regards* ***gender-based violence*** *against women as being rooted in gender related factors, such as the ideology of men’s entitlement and privilege over women, social norms regarding masculinity, and the need to assert male control or power, enforce* ***gender roles*** *or prevent, discourage or punish what is considered to be unacceptable female behaviour.*[[6]](#endnote-6)

**CEDAW: Gender and Development**

The CEDAW Committee also consistently refers to gender in their approach to development, particularly when referring to the Sustainable Development Goals (SDGs).

***Examples from general recommendations:***

* *The Convention on the Elimination of All Forms of Discrimination against Women should also be interpreted in a manner that takes into consideration the 2030 Agenda for Sustainable Development, in which States agreed that the achievement of* ***gender equality*** *and the empowerment of women and girls is paramount to sustainable development and the end of poverty.*[[7]](#endnote-7)
* *Violations of all rights under the Convention may be found at the root of trafficking in women and girls and must be addressed as part of a transformative approach that empowers women and girls by* ***promoting gender equality*** *and their civil, political, economic, social and cultural rights, in line with Sustainable Development Goals 1, 3, 4–5, 8, 10–11, 13 and 16.*[[8]](#endnote-8)
* *Well-designed disaster risk reduction and climate change initiatives that provide for the full and effective participation of women can advance* ***substantive gender equality*** *and the empowerment of women, while ensuring that sustainable development, disaster risk reduction and climate change objectives are achieved. It should be underlined that* ***gender equality*** *is a precondition for the realization of the Sustainable Development Goals.[[9]](#endnote-9)*
* *States parties, separately and in cooperation with others, should (…) integrate a* ***gender equality perspective*** *into relevant international, regional, national, sectoral and local programmes and projects, including those financed with international climate and sustainable development funds.[[10]](#endnote-10)*

***Examples from country periodic reviews:***

* *The Committee welcomes the international support for the Sustainable Development Goals and calls for the realization of de jure (legal) and de facto (substantive)* ***gender equality****, in accordance with the provisions of the Convention, throughout the process of implementing the 2030 Agenda for Sustainable Development.*[[11]](#endnote-11)
* *The Committee calls for the realization of substantive* ***gender equality****, in accordance with the provisions of the Convention, throughout the process of implementation of the 2030 Agenda for Sustainable Development.[[12]](#endnote-12)*

**Intersectionality: CEDAW Contribution to the 2030 Sustainable Development Goals in response to a call for inputs by the High-Level Political Forum on Sustainable Development (HLPF) 27 April 2018**

In addition, CEDAW has employed language on intersectionality and women in all their diversity when contributing to the development framework.

In CEDAW’s assessment of the situation regarding the principle of “ensuring that no one is left behind” at the global level the Committee stated:

 “*CEDAW provides robust standards on equality and non-discrimination* ***for all women****. It also provides critical normative standards that are intrinsically linked to the Agenda 2030 for sustainable development, such as those related to food, education, health, housing, non-discrimination, political participation, and freedoms of expression and assembly. “*

Moreover, CEDAW emphasized the **intersection of gender with other forms of disadvantage, such as race, class, ethnicity and sexuality,** and how it is scarcely considered by nearly all countries and this causes an increase in inequalities among women, especially in countries where economic development has been more pronounced but insufficiently accompanied by democratic and social reforms.

# **2. Other instruments that use the notion of gender.**

* ***Convention on the Rights of Person with Disabilities (CRPD)***

Besides CEDAW, many Treaty Bodies and the text of one International Convention have used the notions of gender and/or gender equality in their work. The most illustrative example is the *Convention on the Rights of Person with Disabilities* adopted in 2006 and currently ratified by 186 States.

Additionally, in the Preamble to the CRPD Convention, it is stated that State parties ‘[emphasize] the need to incorporate a **gender perspective** in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities.’ Further, references to gender are also contained in articles on specific rights or freedoms:

***Article 16 - Freedom from exploitation, violence and abuse***

*1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their* ***gender-based aspects****.*

*2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of* ***gender-*** *and age****-sensitive assistance and support*** *for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that* ***protection services are*** *age-,* ***gender-*** *and disability-****sensitive****. (…)*

This example demonstrates that the notion of gender has been adopted by one of the most recent international human rights conventions. Thus, not including this understanding of gender, particularly in Article 16 of the draft convention of the right to development, would imply and step back in the established internationally agreed language.

* ***The Agenda 2030 on Sustainable Development***

Furthermore, the notion of gender equality which was previously proposed in the title of the draft Article 16, would be aligned with the wording used in the Agenda 2030, as well as the word “all” before “women and girls.” Indeed, the concept of gender equality shapes Goal 5 and all its targets[[13]](#endnote-13). Although not a legally binding instrument, the Agenda 2030 reflects a universally agreed document by United Nations Member States, and being part of the development framework, it is certainly an example that shows that reverting to “Equality between men and women” and excluding the word “all” before women and girls would be a step backguards on human rights and development language that does not reflect the current global priorities and agreements made by United Nations. Thus, by accepting these modifications, many women would not be represented in Article 16 of the draft Convention, and this would be a real cause to reduce their rights.

* ***The Commission on the Status of Women***

The Commission on the Status of Women (CSW) is the principal global intergovernmental body exclusively dedicated to the promotion of gender equality and the empowerment of women. While the final text of CSW, called “Agreed Conclusions,” are not a treaty, they do come in unanimous decisions creating agreed language in an ECOSOC process. The most recent Agreed Conclusions are on “Innovation and technological change, and education in the digital age for achieving gender equality and the empowerment of all women and girls”. In this text, all Member States have agreed on “build more inclusive innovation eco-systems to promote safe and gender-responsive innovation for gender equality and the empowerment of all women and girls”, amongst other actions to bridge inequalities and bring all women and girls, in all their diversity, to the center.

Past Agreed Conclusions use similar language on gender, showing that the multilateral conversation on gender equality uses the same terminology as CEDAW and this submission, addressing root causes like the patriarchy and calling Member States to act in order to include women in all of their diversity and who suffer multiple and intersecting forms of discrimination.

# **3. Recommendations**

1. We recommend the Expert Drafting Group consider the recent appliance and interpretation of the notions of “gender” and “gender equality” in international human rights law and other agreed language in documents produced by ECOSOC processes. We urge the EDG to revert to the initial proposal to use the concept of “gender equality” in the text of the draft convention instead of equality between women and men.
2. We highlight the emphasis made on the Agenda 2030 to promote gender equality for ALL women and girls to achieve sustainable development, and we suggest continuing this specific approach in the draft convention.
3. In order to fully transmit the aims of Article 16 and tackle the roots and causes of inequality for women and girls, it is crucial to address the multiple intersections that constitute the realities of all women and girls. Therefore, we encourage to add in the text of the draft Convention direct references of intersectionality and grounds of vulnerability such as race, class, ethnicity, sexual orientation, gender identity, disabilities, among others.
1. General recommendation No. 28 on the core obligations of States parties under article 2 of the CEDAW, CEDAW/C/GC/28 (2010), para. 5. [↑](#endnote-ref-1)
2. General recommendation No. 33 on women’s access to justice, CEDAW/C/GC/33 (2015), para 7. [↑](#endnote-ref-2)
3. General recommendation No. 39 on the rights of Indigenous women and girls, CEDAW/C/GC/39 (2022), para. 4. [↑](#endnote-ref-3)
4. Ibid, para. 1. [↑](#endnote-ref-4)
5. General recommendation No. 35 on gender based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35 (2017), para. 9. [↑](#endnote-ref-5)
6. General recommendation No. 35 on gender based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35 (2017), para. 19. [↑](#endnote-ref-6)
7. General recommendation No. 39 on the rights of Indigenous women and girls, CEDAW/C/GC/39 (2022), para. 15. [↑](#endnote-ref-7)
8. General recommendation No. 38 on trafficking in women and girls in the context of global migration, CEDAW/C/GC/38 (2020), para. 21. [↑](#endnote-ref-8)
9. General recommendation No. 37 on the gender-related dimensions of disaster risk reduction in the context of climate change, CEDAW/C/GC/37 (2018), para. 7. [↑](#endnote-ref-9)
10. General recommendation No. 37 on the gender-related dimensions of disaster risk reduction in the context of climate change, CEDAW/C/GC/37 (2018), para. 46(e). [↑](#endnote-ref-10)
11. Concluding observations: Bahrain, CEDAW/C/BHR/CO/4 (2023), para. 6; Concluding observations: Costa Rica, CEDAW/C/CRI/CO/8 (2023), para. 7; Concluding observations: Georgia, CEDAW/C/GEO/CO/6 (2023), para. 7; Concluding observations: Hungary, CEDAW/C/HUN/CO/9 (2023), para. 7; Concluding observations: Norway, CEDAW/C/NOR/CO/10 (2023), para. 8; Concluding observations: Slovenia, CEDAW/C/SVN/CO/7 (2023), para. 7; Concluding observations: Tunisia, CEDAW/C/TUN/CO/7 (2023), para. 7. [↑](#endnote-ref-11)
12. Concluding observations: Bahrain, CEDAW/C/BHR/CO/4 (2023), para. 51; Concluding observations: Costa Rica, CEDAW/C/CRI/CO/8 (2023), para. 51 [↑](#endnote-ref-12)
13. The 2030 Agenda for Sustainable Development. Goal 5.Achieve gender equality and empower all women and girls. [↑](#endnote-ref-13)