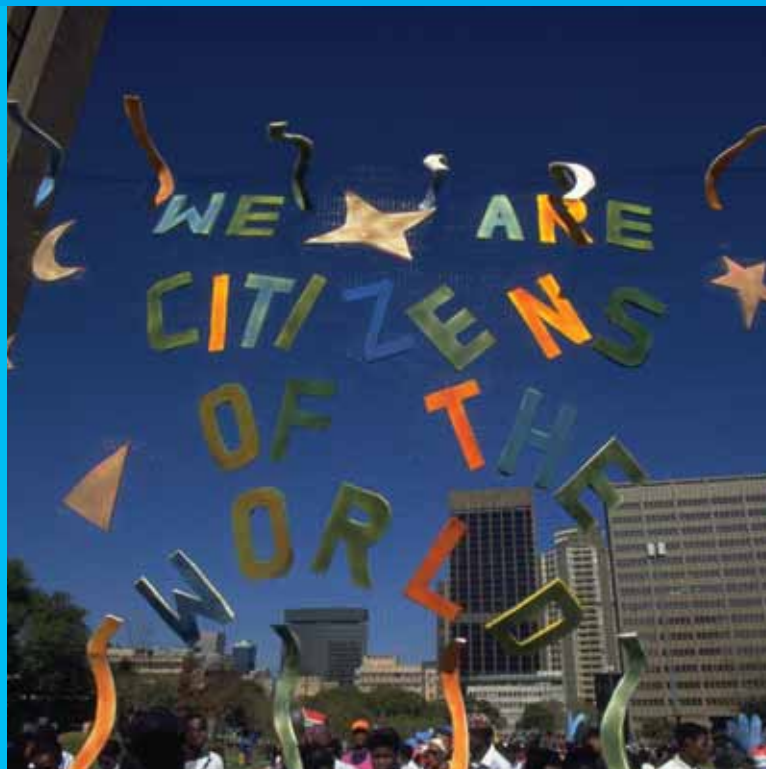


SUPPORTING THE REALIZATION OF CHILDREN'S RIGHTS THROUGH A RIGHTS-BASED APPROACH TO LEGISLATIVE REFORM

Programming Guidance Paper Series



DIVISION OF
POLICY AND PLANNING
JANUARY 2007

WORKING PAPER

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**Supporting the Realization of Children's Rights Through a Rights-Based Approach to
Legislative Reform
Programming Guidance Paper Series
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ABBREVIATIONS

AWP	Annual Work Plan
ARV	Anti-retrovirals
BFHI	Baby Friendly Hospital Initiative
CCA	Common Country Assessment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CPAP	Country Programme Action Plan
CPD	Country Programme Document
CRC	Convention on the Rights of the Child
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EPI	Expanded Programme of Immunization
HIV/AIDS	Human Immuno-Deficiency Virus/Acquired Immuno-Deficiency Syndrome
HRBA	Human rights-based approach
HRBAP	Human Rights-Based Approach to Programming
IBFAN	International Baby Food Action Network
ICCIDD	International Council for the Control of Iodine Deficiency Disorders
IDD	Iodine deficiency disorder
ILO	International Labour Organization
IYCF	Infant and young child feeding
LRI	Legislative Reform Initiative
MD	Millennium Declaration
MDGs	Millennium Development Goals
MTSP	Medium-Term Strategy Plan
MTR	Mid-Term Review
NAR	Net attendance ratios
NER	Net enrolment ratios
NGO	Non-governmental organization
FGM/C	Female genital mutilation/cutting
OHCHR	Office of the High Commissioner for Human Rights
PPPM	Programme Policy and Procedure Manual
PRSP	Poverty Reduction Strategy Paper
SITAN	Situational Analysis
SWAp	Sector-Wide Approach
UNCT	United Nations Country Team
UNDAF	United Nations Development Assistance Framework
UNDP	United Nations Development Programme
USI	Universal Salt Iodization
WASH	Water, Sanitation and Hygiene
WHO	World Health Organization

Executive Summary

Work on legislative reform ensures the sustainability of all of UNICEF's activities for the betterment of child survival, development, protection, and participation. This guidance document provides tools and information to facilitate the work of UNICEF regional and country offices in the area of legislative reform. Using the guide will help offices to programme for legislative reform, create the necessary human resource capacity, and direct adequate financial resources towards legislative reform. It will also help to raise awareness of the need to pursue a human rights-based approach (HRBA) to legislative reform such that the reform moves beyond technical processes and translates into a holistic strategy for positive changes in society for the betterment of children's and women's lives.

Legislative reform is a critical component of the rights-based approach and the standards that drive the HRBA are common to legislative reform itself. Part I outlines the core principles of a human rights-based approach to legislative reform and shows how they can be used to create an enabling environment for the realization of children's and women's rights. Part I also highlights the links between legislative reform and key documents that provide the foundation for UNICEF's work, including the Millennium Declaration, the Millennium Development Goals (MDGs), A World Fit for Children, UNICEF's Mission Statement and MTSP 2006-2009, the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Part II outlines the significance of the national context for legislative reform and shows how UNICEF can promote and contribute to the government's assessment and analysis of its national legislation and implementation. These tools can be used to examine the context in any legal system, which affects not only implementation of the CRC but also UNICEF's advocacy activities. No one-size-fits-all solution: different countries will have different needs and priorities. This section demonstrates the importance of including a situational analysis of the legislative framework into the UN Country Team planning process. It stresses that the any framework analysis (whether it be a Poverty Reduction Strategy Paper, SITAN, Common Country Assessment, or UN Development Assistance Framework) should provide a proper assessment of the existing legal system and its gaps and weaknesses relative to the CRC and (where applicable) CEDAW, as well as an analysis of how the existing legal framework supports (or fails to support) the realization of the rights of children and women.

National and local practice should be held up against international standards. While the government should take the lead on a legislative review study, other groups can and should be involved in the process. The UN Country Team may need to provide some technical assistance. Therefore, it is important for UNICEF to understand the local legislative context and process not only to effectively promote legislative reform but also to provide guidance to counterparts and partners locally. Part II is aimed at building UNICEF capacity in this area by providing tools for defining the legal tradition, understanding the legal system and context, identifying legal trends and conducting a national law review. Understanding of the local legal framework and context will help UNICEF regional and country offices improve decisions about how and when to participate in legislative reform advocacy and assistance.

Part III identifies cross-cutting issues, highlighting comprehensive approaches to legislative reforms for child's rights. It discusses the advantages and disadvantages of holistic incorporation versus piecemeal legislation or sector-by-sector changes to comply with the

CRC. The section also addresses legislative reform issues in UNICEF's Focus Areas, including the content of laws, distinguishing law from social policy, identifying partners, and using the Concluding Observations of the Committee on the Rights of the Child and Concluding Comments/General Recommendations of the Committee on the Elimination of Discrimination against Women.

Legislative reform is an ongoing process; it includes new and amended laws, annual budgets, accountability, and effective implementation, among other aspects. Part IV identifies entry points for incorporating legislative reform into UNICEF programming. It also outlines various types of UNICEF activity that can support legislative reform and implementation, including efforts to:

- Promote adoption or enactment of necessary supporting regulations;
- Promote institutional reform;
- Advocate for appropriate resource allocation;
- Raise awareness of laws and their implementation;
- Provide technical assistance and training; and
- Monitor national implementation.

Part V addresses the particular challenges in the assessment of legislative reform initiatives. The section includes practical tools to assist in monitoring and evaluating UNICEF's legislative reform programmes.

Resume Analytique

Les travaux effectués sur la réforme législative garantissent la viabilité de toutes les activités entreprises par l'UNICEF pour améliorer les chances de survie de l'enfant et son développement, sa protection et sa participation. Les consignes contenues dans ce document donnent les outils et les informations nécessaires pour faciliter le travail des bureaux régionaux et nationaux de l'UNICEF dans le secteur de la réforme législative. L'utilisation de ce guide aidera les bureaux à programmer leurs activités de réforme législative, créer la capacité nécessaire en ressources humaines et canaliser les ressources financières qui conviennent en direction de la réforme législative. Elle permettra également de sensibiliser l'organisation à la nécessité d'aborder la réforme législative en développant une approche fondée sur les droits de l'homme, de façon à ce que la réforme dépasse le stade des processus techniques et se traduise par une stratégie globale de changements positifs dans la société qui soient de nature à améliorer la vie des enfants et des femmes.

La réforme législative est un élément crucial de l'approche fondée sur les droits de l'homme et les normes qui régissent cette dernière participent également de la réforme législative elle-même. La première partie souligne les principes fondamentaux d'une approche de la réforme législative fondée sur les droits humains, et montre comment ces principes peuvent être utilisés pour créer un environnement qui facilitera la réalisation des droits des enfants et des femmes. C'est aussi dans la première partie que sont mis en évidence les liens entre la réforme législative et les documents fondamentaux qui constituent le socle du travail de l'UNICEF : la Déclaration du Millénaire, les Objectifs du Millénaire pour le développement (OMD), Un Monde digne des enfants, la Déclaration de mission de l'UNICEF et son Plan stratégique à moyen terme 2006-2009, la Convention relative aux droits de l'enfant (CDE) et la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes (CEDAW).

La deuxième partie souligne la portée du contexte national pour la réforme législative, et montre comment l'UNICEF peut promouvoir et contribuer à l'évaluation et à l'analyse par le gouvernement de sa législation nationale, et de la mise en œuvre de cette législation. Ces outils peuvent être utilisés pour examiner le contexte de n'importe quel système juridique, ce qui affecte non seulement l'application de la CDE, mais aussi les activités de plaidoyer de l'UNICEF. Il n'y a pas une solution unique adaptable à toutes les situations : chaque pays aura des besoins et des priorités différents de ceux des autres. Cette section démontre à quel point il importe de faire figurer une analyse de situation du cadre législatif dans le processus de planification de l'équipe de pays de l'ONU. Elle souligne que toute analyse cadre (qu'elle s'inscrive dans un cadre stratégique de lutte contre la pauvreté, une analyse de situation, un bilan commun de pays ou un plan-cadre des Nations Unies pour l'aide au développement) devrait déboucher sur une évaluation rigoureuse du système juridique existant et de ses lacunes et faiblesses en relation avec la CDE et (le cas échéant) la CEDAW, ainsi que sur une analyse de la manière dont le cadre juridique existant soutient (ou n'arrive pas à soutenir) la réalisation des droits des enfants et des femmes.

Les pratiques nationales et locales devraient être jugées à l'aune des normes internationales. Le gouvernement, il est vrai, devrait prendre la tête de la réflexion sur le contexte législatif, mais cela ne doit pas empêcher d'autres groupes, qui peuvent et doivent le faire, de s'engager dans ce processus. L'équipe de pays de l'ONU peut être amenée à fournir une aide technique. Il est donc très important que l'UNICEF comprenne le contexte et les processus

législatifs locaux, non seulement dans le but d'assurer une promotion efficace de la réforme législative, mais aussi d'éclairer localement ses homologues et partenaires. La deuxième partie a pour but de développer les capacités de l'UNICEF dans ce secteur en lui fournissant les outils lui permettant de définir la tradition juridique, de comprendre le système et le contexte juridiques, d'identifier les tendances du secteur et de se livrer à un examen des lois en vigueur dans le pays. Comprendre le cadre et le contexte juridiques locaux aidera les bureaux régionaux et nationaux de l'UNICEF à prendre de meilleures décisions sur la manière et le moment de participer à des actions de plaidoyer et d'assistance ayant trait à la réforme législative.

La troisième partie identifie les questions transversales, mettant en lumière les approches globales à adopter sur les réformes législatives intervenant pour la défense des droits de l'enfant. Elle évoque les avantages et inconvénients d'une intégration globale par rapport à une législation au coup par coup ou à des changements secteur par secteur pour se conformer à la CDE. Cette section aborde également les problèmes soulevés par la réforme législative dans les secteurs ciblés par l'UNICEF : le contenu des lois, la distinction entre la loi et la politique sociale, l'identification des partenaires et l'utilisation des observations de clôture du Comité des droits de l'enfant et des commentaires et recommandations générales de clôture du Comité pour l'élimination de la discrimination à l'égard des femmes.

La réforme législative est un processus continu; elle comprend l'adoption de nouvelles lois, ou l'amendement d'anciennes, des budgets annuels, des principes de reddition des comptes et une mise en œuvre efficace, entre autres éléments. La quatrième partie s'intéresse aux passages qui permettent d'incorporer la réforme législative dans la programmation de l'UNICEF. Elle présente également divers types d'activités de l'UNICEF qui peuvent étayer la réforme législative et sa mise en œuvre, y compris les efforts visant à :

- Promouvoir l'adoption ou la promulgation des règlements nécessaires pour appuyer cette réforme;
- Promouvoir la réforme des institutions;
- Réclamer une répartition appropriée des ressources;
- Mieux sensibiliser le public aux lois et à leur mise en œuvre
- Offrir une aide et une formation techniques; et
- Contrôler la mise en œuvre au niveau national.

La cinquième partie examine les problèmes à résoudre dans l'évaluation des initiatives de réforme législative. Cette section comprend des instruments pratiques qui aideront à contrôler et évaluer les programmes de réforme législative de l'UNICEF.

Resumen Ejecutivo

Trabajar en la reforma legislativa garantiza la sostenibilidad de todas las actividades de UNICEF en pro del mejoramiento de la supervivencia, el desarrollo, la protección y la participación de la infancia. Este documento de orientación ofrece instrumentos e información para facilitar la labor de las oficinas regionales y de país de UNICEF en la esfera de la reforma legislativa. La utilización de la guía ayudará a las oficinas a programar cuestiones relativas a la reforma legislativa, a establecer la capacidad de recursos humanos necesaria, y a dirigir los recursos financieros adecuados hacia la reforma legislativa. También contribuirá a aumentar la toma de conciencia acerca de la necesidad de seguir un enfoque basado en los derechos humanos con respecto a la reforma legislativa, de tal modo que la reforma vaya más allá de los procesos técnicos y se transforme en una estrategia holística destinada a impulsar cambios positivos en la sociedad para el mejoramiento de las vidas de los niños y las mujeres.

La reforma legislativa es un elemento fundamental del enfoque basado en los derechos humanos y las normas que rigen este enfoque son comunes a la propia reforma legislativa. La primera parte del documento presenta un panorama general sobre los principios básicos de un enfoque de la reforma legislativa basado en los derechos humanos y muestra cómo pueden utilizarse para crear un entorno que facilite la realización de los derechos de la infancia y la mujer. La Primera Parte subraya también los vínculos que existen entre la reforma legislativa y una serie de documentos clave que sirven de base a la labor de UNICEF, entre ellos la Declaración del Milenio, los Objetivos de Desarrollo del Milenio (ODM), Un mundo apropiado para los niños, la Declaración de la Misión de UNICEF y el Plan Estratégico de Mediano Plazo para 2006-2009, la Convención sobre los Derechos del Niño y la Convención sobre la eliminación de todas las formas de discriminación contra la mujer.

La Segunda Parte describe la importancia que tiene el contexto nacional en toda reforma legislativa y muestra cómo UNICEF puede promover y contribuir a la evaluación y el análisis que haga el gobierno de su legislación nacional y de su aplicación. Estos instrumentos pueden utilizarse para examinar el contexto de cualquier sistema jurídico, lo que afecta no solamente a la aplicación de la Convención sobre los Derechos del Niño, sino también a las actividades de promoción de UNICEF. No existe una solución que sirva para todos: los diferentes países tendrán distintas necesidades y prioridades. Esta sección demuestra la importancia que tiene incluir un análisis de la situación del marco legislativo en los procesos de planificación del Equipo de las Naciones Unidas en el País. Hace hincapié en que cualquier análisis del marco (ya sea un Documento de Estrategia para la Reducción de la Pobreza, un Análisis de la Situación, el Sistema de evaluación común para los países o el Marco de Asistencia de las Naciones Unidas para el Desarrollo) debe proporcionar una evaluación apropiada del sistema jurídico existente y de sus lagunas y deficiencias en relación a la Convención sobre los Derechos del Niño y (cuando sea pertinente) la Convención sobre la eliminación de todas las formas de discriminación contra la mujer, así como un análisis que refleje la forma en que el marco jurídico existente apoya (o no logra apoyar) la realización de los derechos de la infancia y la mujer.

La práctica nacional y local debe cumplir con las normas internacionales. Aunque el gobierno debe asumir la dirección de un estudio de análisis legislativo, otros grupos pueden y deben intervenir en el proceso. El Equipo de las Naciones Unidas en el país podría tener que

prestar determinada asistencia técnica. Por tanto, es importante que UNICEF comprenda el contexto y los procesos legislativos locales no solamente para promover eficazmente una reforma legislativa, sino también para proporcionar orientación a los contrapartes y a los asociados locales. La Segunda Parte está destinada a fomentar la capacidad de UNICEF en esta esfera proporcionando instrumentos para definir la tradición jurídica, comprender el sistema jurídico y su contexto, determinar las tendencias jurídicas y llevar a cabo un análisis nacional sobre la ley. Comprender el marco y el contexto jurídico local ayudará a las oficinas regionales y locales de UNICEF a mejorar la toma de decisiones sobre cómo y cuándo participar en la promoción y asistencia en materia de reforma legislativa.

La Tercera Parte determina las cuestiones intersectoriales, y subraya enfoques amplios a las reformas legislativas en favor de los derechos de la infancia. Debate las ventajas y desventajas de una incorporación holística en contraste con una legislación fragmentaria o cambios sector por sector para cumplir con la Convención sobre los Derechos del Niño. Esta sección aborda también cuestiones de reforma legislativa en las esferas principales de UNICEF, entre ellas el contenido de las leyes, distinguiendo entre la ley y la política social, identificando asociados, y utilizando las observaciones finales del Comité de Derechos del Niño y los comentarios finales y recomendaciones generales del Comité sobre la eliminación de la discriminación contra la mujer.

La reforma legislativa es un proceso permanente; incluye nuevas leyes y enmiendas, presupuestos anuales, rendición de cuentas, y una aplicación eficaz, entre otros aspectos. La Cuarta Parte define los puntos de entrada para incorporar la reforma legislativa a la programación de UNICEF. También describe varios tipos de actividades de UNICEF que pueden apoyar la reforma legislativa y su aplicación, entre ellas las actividades para:

- Promover la adopción o promulgación de regulaciones de apoyo necesarias;
- Promover la reforma institucional;
- Defender una asignación apropiada de recursos;
- Concienciar sobre la importancia de las leyes y su aplicación;
- Proporcionar asistencia técnica y capacitación; y
- Verificar la aplicación a nivel nacional.

La Quinta Parte aborda los desafíos concretos en la evaluación de las iniciativas de reforma legislativa. La sección incluye instrumentos prácticos para asistir al seguimiento y evaluación de los programas de reforma legislativa del UNICEF.

1 Introduction¹

1.1 Background

Implementing the Convention on the Rights of the Child (CRC) and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires developing a children's and women's rights perspective through law, policy, budgetary, and institutional reform at the national level. The legal framework can no longer be considered a secondary consideration to meeting immediate needs; it must be integral to the development process in order to realise the fulfilment of children's rights in a sustainable manner. Moreover, integrating the principle of gender equality is important throughout legislative reform stages, since laws and their implementation continue to affect women and men differently. This is mainly due to the existing gender discrimination faced by women and children, especially girls. It is critical to recognize that advancing the rights of children is naturally intertwined with the advancement of the rights of women, and that the articles of both the CRC and CEDAW are integral to the work of the organization.

The term 'legislative reform' can mean different things to different people. The terms 'legal reform', 'law reform' and 'legislative reform' are often used interchangeably, or with unclear or imprecise meaning. While there are no precise definitions of these terms and some publications treat them differently, the following meanings can be inferred in the context of this guidance document.

'Law reform' is the term for what usually comes to mind first—the changing of laws. Law review and reform is one of the most effective entry points and strategies to advance the concept of children's rights. It provides an opportunity for holistic incorporation of CRC standards into domestic law, and can help identify traditions and cultural practices that contradict universal standards and principles. Even so, law reform is complex and takes many forms. It may involve drafting of a new law or amending to existing law. In some cases, a new law may incorporate a rule, the policy, budget allocation, and new institutions necessary to implement the law. In most countries, the annual budget becomes a law, as set out in the national budget system laws that set the procedure for drafting, reviewing, and approving a budget.

'Legal reform' deals on the broader level with process as well as material substance. It involves not only changing laws, but reforming the legal and judicial system. The legal process in a country sets standards and enforces them, through the courts, law enforcement organizations, regulatory bodies, etc. Legal reform may involve, for example, the establishment of special juvenile courts and gender-based violence units within police departments.

'Legislative reform' involves reviewing and reforming not only laws but those things necessary to effectively implement them—legal and other governmental institutions, social and economic policies, budget allocations, and the process of reform in the country. From a rights perspective, legislative reform is a complex process that should be a catalyst for broad

¹ This Programming Resource is summarised in UNICEF's Programme, Policy and Procedure Manual, Fifth Edition 2007, Chapter 7, Section 21.

measures that transform the legal and administrative frameworks that define and direct relations amongst the government, individuals, and private actors. Practically seen, legislative reform includes law and legal reform as well as the complementary issues of budgets, social policies, and other necessary implementation mechanisms, such as institutions and bodies to implement the laws, budgets, and social policies.

A human rights-based approach (HRBA) to legislative reform takes into account the reality behind law reform. Effective reform must be participatory (with the inclusion of vulnerable and marginalized stakeholders, and particularly taking account of the views of children and women) and must take into account the budgetary, policy, and institutional requirements for effective implementation of the law.

Legislative reform is an ongoing, multifaceted, multi-sectoral process, involving complex issues and taking many forms. Sometimes it is initiated from the legislative sector, other times by politicians, civil society organizations, interest groups, or public debate. UNICEF must work with a broad range of partners to create an environment that enables the simultaneous fulfilment of children’s and women’s rights. UNICEF can support development of a rights-based legislative framework—through support to legislative reform and social mobilization—throughout the programming process, but to do so effectively, UNICEF staff in country and regional offices need to understand the relevant national processes, procedures, and practices for lawmaking and law implementation.

1.2 Objectives of the Programming Guidance

This Programming Guidance has been developed to facilitate UNICEF’s work relating to legislative reform by providing basic information on the HRBA to legislative reform and tools for integrating it into UNICEF programming. The document focuses on legislative reform for the realization of children’s rights and also references legislative reform for advancing women’s rights, both because of the interlinkages between women’s and children’s rights and the place of women’s rights in the UNICEF mandate. The Programming Guidance is principally intended for UNICEF programme, planning, and project officers in regional and country offices and aims to:

- Support the implementation of Article 4 of the CRC and of the Committee on the Rights of the Child General Comment No. 5, para.1 and 18;²

² Article 4 of the CRC states: “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.” Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989, entered into force 2 September 1990. General Comment No. 5 includes the views of the Committee on Article 4, making the following statements (among others): “Ensuring that all domestic legislation is fully compatible with the Convention and that the Convention’s principles and provisions can be directly applied and appropriately enforced is fundamental.” Fulfilling the obligations of Article 4 requires “a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance with the Convention” and suggesting that “the review needs to consider the Convention not only article by article, but also holistically, recognizing the interdependence and indivisibility of human rights. The review needs to

- Support the follow-up of the Concluding Observations and Concluding Comments/ Recommendations of the CRC and CEDAW Committees;
- Promote a HRBA to legislative reform, particularly highlighting support to the principle of gender equality within the approach;
- Strengthen UNICEF capacity to provide technical assistance to partners on legislative reform; and
- Provide mechanisms and tools for the integration of support to legislative reform into the country programming process.

This Programming Guidance serves as a mean to support the achievement of UNICEF's Medium-Term Strategy Plan (MTSP) 2006-2009, Focus Area 5: *Policy Advocacy, Partnership and Participation*, with its focus on policies, laws, and budgets, and to enhance the interface between this Focus Area and the other four Program Focus Areas. The Guidance addresses legislative reform issues during the main stages of a typical programming process: assessment of the situation (normally a review of the existing legal provisions; identification of gaps, strengths, and contradictions; etc.); analysis (how the legislative and legal system works, impact of the social context, why the gaps exist, how the system might work better); strategy development (creating an overall strategy for reform initiatives, identifying partners, obstacles, etc.); and implementation (determining what resources are needed, including legislative reform initiatives in programme documents, etc.).

1.3 Using the Guidance

The Programming Guidance aims to strengthen the capacity of UNICEF staff in the area of legislative reform, focusing on the process of legislative reform. It provides guidance on how to integrate support to legislative reform into country programmes and addresses the need to advocate for a rights-based approach to legislative reform.

This guide provides users with tools relevant to all stages of the programming process; practical information about how laws are drafted, enacted, and implemented; and concrete examples of lessons learned in supporting legislative reform in their daily work with national governments, UN Country Teams, civil society organizations, donors, and the private sector. Partners may also find the tools in this Programming Guidance useful as they plan and implement their programmes and activities.

This Programming Guidance aims to translate lessons learned and recommendations from UNICEF, the Committee on the Rights of the Child, and States parties into a user-friendly 'how-to' format for use as a working tool throughout UNICEF regional offices' and country offices' programme preparation, implementation, and monitoring & evaluation processes. It can be used to:

be continuous rather than one-off, reviewing proposed as well as existing legislation." General Comment 5: General measures of implementation for the Convention on the Rights of the Child, CRC/GC/2003/5 (3 October 2003), paras. 1 and 18.

- Enhance understanding of the legal background and context in the country;
- Make informed decisions about how to support legislative reform initiatives;
- Build a strategy for incorporating activities supporting legislative reform into the country programme; and
- Identify and effectively partner with other actors in promoting effective legislative reform.

This Programming Guidance is one of many tools available to assist UNICEF staff in the programming process, such as the Programme Policy and Procedure Manual (PPPM), the operationalized guidelines for UNICEF's MTSP 2006-2009 priorities, UNICEF core commitments to children in emergencies, and other available tools on HRBAs. The Programming Guidance should be used in conjunction with these tools and with the products of the Legislative Reform Initiative. These include the LRI Working Paper Series and cases studies on Legislative Reform as well as the forthcoming *Protecting the World's Children: Impact of the UN Convention on the Rights of the Child in Diverse Legal Systems* (Cambridge University Press, 2007) and *Handbook on Legislative Reform in Favour of Children*.

2 The Comparative Advantage of UNICEF in Promoting Legislative Reform

As shown below, UNICEF's knowledge in the areas of children's and women's rights, gender equality, and policy advocacy; unique position in the UN system; and commitment to the Human Rights-Based Approach to Programming (HRBAP) make UNICEF an exemplary partner for legislative reform activities.

2.1 UNICEF's Role in the Legislative Reform Context

In Article 45 of the CRC, UNICEF is referred to specifically as a key agency in the Convention's implementation. UNICEF documents, such as the Executive Directive 98/04 on Guidelines for Human Rights-Based Approach to Programming³ and the PPPM, require country offices to assess and analyze the legal framework that governs the relations between children, women, and the State, since this is an important determinant of the realization of their rights. The following documents, among others, provide foundations for UNICEF's work on legislative reform.

2.1.1 Millennium Declaration, Millennium Development Goals & A World Fit for Children

In the Millennium Declaration, States agreed to "spare no effort" to promote human rights, democracy, and the rule of law and resolved to strengthen their capacity to implement human rights principles.⁴ Thus, governments have recognized officially the positive efforts required to translate human rights into practice. The Millennium Development Goals (MDGs) form a part of this transformation and national development. Legislative reform in favour of children can foster achievement of the MDGs, and in many cases may be required. Meeting the MDGs will largely depend on both the adoption and the effective implementation of laws and policies to facilitate sustainable, equitable, and participatory development.

The UN Special Session on Children reiterated that "the needs and rights of children must be a priority in all development efforts." In A World Fit for Children, governments committed to adopting *effective* national legislation, policies and action plans and allocating resources for the promotion and protection of the rights of the child. States also recognized that national bodies (such as independent institutions or ombudspersons for children), national monitoring and evaluations systems, and greater public awareness of the children's rights are important to fulfilling children's rights.

2.1.2 UNICEF's Mission

The only inter-governmental agency devoted exclusively to children, UNICEF's receives its mandate to promote and protect children's rights and their well being from the world's

³ CF/EXD/1998-004. 21 April 1998

⁴ Millennium Declaration, G.A. Res. 55/2 (8 September 2000), ¶¶ 24-5.

governments. UNICEF's Mission includes striving to establish children's rights in universal "standards of behaviour towards children."⁵ Thus, the principles of the CRC and CEDAW guide UNICEF's work; promoting the empowerment of and equal rights for women and girls is part of the Mission. The human rights standards of these and other international treaties must be translated into national law and effectively implemented in order to create an enabling environment to realise children's and women's rights.

UNICEF country programmes should include legislative reform initiatives to integrate children's rights into the national legal framework and communal practice. The legislative review and reform obligations of States open areas for discussion between UNICEF (and other agencies) and governments and provide opportunities for UNICEF to influence laws, policies, and their implementation for children; develop programmes that prioritize children in public dialogue and action; promote a HRBA to legislative reform; and report on progress made within the country.

2.1.3 The CRC, CEDAW, and their Committees

States parties to the CRC must have a legal framework that is both effective and compatible with the CRC and ensures that the rights the Convention vests in children are fully enforceable under national laws. Creating this framework may entail new laws or institutions or the reform of existing ones, although legislation that goes beyond the requirements of the CRC should remain.⁶ The Committee on the Rights of the Child has consistently stressed the need for legislative reform and emphasized that, in reviewing their legal framework, States parties need "to consider the Convention not only article by article but also holistically, recognising the inter-dependence and indivisibility of human rights."⁷

The links between the CRC and CEDAW are important.⁸ Article 2 of CEDAW contains a similar obligation for legislative reform to include equality principles, prohibit discrimination, and take all efforts necessary to end customs or practices that discriminate against women, whether or not they are written into law. Significantly, CEDAW requires that these principles are not only enshrined in the law but also in practice. Article 3 of CEDAW also particularly highlights the need for appropriate laws to advance women's enjoyment of rights on an equal basis with men. CEDAW's focus on discrimination applies to women throughout their lifecycle. The anti-discrimination clause of Article 2 of the CRC and Articles 2 and 3 of CEDAW complement and mutually reinforce each other. CEDAW covers both formal and substantive equality and aims at achieving equality of result.

The CRC and CEDAW jointly provide the umbrella of rights and norms for gender-responsive programme goals and strategies. International human rights conferences have relied on these in advocating for the rights of women and girls: the 1993 Vienna World Conference on Human Rights declared the human rights of women and girls as "an inalienable, integral and indivisible part of the universal human rights." The 1995 Beijing

⁵ UNICEF Mission Statement

⁶ Translating Law into Reality, EPP Working Paper (2000), p. 2.

⁷ See "Objectives of the Programming Guidance," page 8 of this document for the relevant text of General Comment No. 5.

⁸ A guidance on the linkages between the CRC and CEDAW is forthcoming from the Global Policy Section.

Platform for Action of the Fourth World Conference on Women reaffirmed this statement and outlined specific objectives and strategies for the implementation of these rights.

Implementing the Conventions thus requires that States parties conduct a holistic review of domestic laws and practices, and follow up with necessary reforms to comply with the provisions and purposes of these Conventions.

Box 1: The complementarity of children's and women's rights

Although, historically, children's rights do not develop along gender lines, a strong link exists between women's and children's rights, especially for girls in a life-cycle perspective. Children's rights and women's rights are inextricably interwoven and often the discrimination girls suffer leads to subsequent violations of women's human rights. The mutually reinforcing nature of the two Conventions advances the rights of girls and women throughout the life cycle. For example, a large percentage of infant deaths are attributable to the poor health and nutrition of the mother during pregnancy and in the immediate post-partum period.

Situations in which the CRC and CEDAW complement each other and provide synergies include:

- Article 12 of the CRC states that children have the right to be consulted about their own perception of their situation and, depending on their understanding and their maturity. This article complements the accepted principle in CEDAW that women must be involved in the assessment of their own situation at all stages;
- When assessing the country situation of children and women, UNICEF offices should be guided by the List of Issues, Concluding Observations/Recommendations and Summary Records of the Committees on the Rights of the Child and on the Elimination of Discrimination against Women;
- Household and individual participation for improved decision-making requires introduction of the principles of the CRC and CEDAW as guiding frameworks for action;
- Girls' education and vocational training are linked to employment opportunities for women;
- Legislative reform for guaranteeing a child's right to a nationality and women's right to inherit property is linked to the care and development of children (support for family law, inheritance and property law reform, birth registration, compulsory education, migrant work and child labour reform, impact invariably to prevent exploitation of women and girls);
- Family support services provide protection for women and child victims of gender-based violence;
- The education and empowerment of women from when they are girls has a significant positive impact on their children's health and survival;
- Realization of the right to information on sexual and reproductive health issues is required to ensure equal access of both adolescent boys and girls to such information;
- Harmful cultural practices such as female genital mutilation are recognized as a violation of girls' rights and not only as a health hazard; and
- Childcare facilities protect the best interests of the child and provide support to women's economic participation.

Taken together, the CRC and CEDAW provide a strong foundation for creating an enabling environment for the full enjoyment by children and women of their civil, political, economic, social, and cultural rights. Creation of this environment requires clear attention to a country's laws, policies, and practices. Both the CRC and CEDAW dismantle the public/private dichotomy and recognize that certain situations demand state intervention into the private sphere. In several countries in South Asia and the Pacific, constitutional and legal changes which promote and protect children's and women's rights reinforce the rights of each group under the CRC and CEDAW. Such changes, by ensuring gender equality and strengthening women's status in the family and community, and their access to economic resources, ensure the rights of children. Empowered women contribute to the well being of their families and communities. Successful programming to realize women and children's rights therefore should adopt a broader approach to legislative reform identifying areas of gender equality and human rights.

UNICEF's work focuses on these complementarities, particularly recognizing that reinforcing the rights of both requires tackling stereotypes and the assumptions about the 'appropriate' roles and relations of women and men in society. The MTSP 2006-2009 specifically recognises women's empowerment as key to healthy families and societies, and to realization of children's rights.

Source: Adapted from S. Goonesekere and R. de Silva-de Alwis, *Women's and Children's Rights in a Human Rights Based Approach to Development* (DPP Working Paper, September 2005) pp 12, 16-18, 20; UNICEF MTSP 2006-2009, E/ICEF/2005/11, para. 32.

CRC and CEDAW Committees' Concluding Observations/Concluding Comments and Recommendations

The reporting process, including follow-up to the CRC and CEDAW Committees' recommendations, has been key in encouraging States parties to address the priority issues and generating a process of legislative reform to ensure the realization of children's and women's rights. The CRC Committee has emphasized the need for comprehensive, holistic reform and also has addressed a variety of individual issues, such as violence against children and the low status of girls within society and the legal framework. Moreover, the CRC Committee has identified legislative reform as one of the areas for which international cooperation is needed and is increasingly recommending that States seek support in this area, including the support of UNICEF. The Committee on the Elimination of Discrimination against Women has called for reform of laws, and emphasizes that equality under the law is often insufficient to produce actual equality—highlighting particular examples such as limited political participation and frequent confinement of women to low-paid insecure jobs. The Committee has also particularly highlighted the critical importance of eliminating discrimination in the private sphere and has recommended that the government organize awareness-raising campaigns for the general public and training to sensitize policy makers, the judiciary, and law enforcement officers. It also recommends programmes to educate rural women about their rights.

Box 2: Recommendations of the Committee on the Rights of the Child

In its General Comment No. 5 on 'General Measures for the Implementation of the CRC', the UN Committee on the Rights of the Child makes the following comments with respect to legislative measures to implement the CRC:

- The Committee believes a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance with the Convention is an obligation. The review needs to consider the CRC not only article by article, but also holistically, recognizing the interdependence and indivisibility of human rights. It should be continuous rather than one-off, reviewing proposed as well as existing legislation.
- States parties need to ensure, by all appropriate means, that the provisions of the CRC are given legal effect within their domestic legal systems.
- The Committee welcomes incorporation of the CRC into domestic law, so that its provisions can be directly invoked before the courts and applied by national authorities. The CRC should prevail where there is a conflict with domestic legislation or common practice.
- Incorporation by itself does not avoid the need to ensure that all relevant domestic law, including any local or customary law, is brought into compliance with the Convention.
- The Committee welcomes the inclusion of sections on the rights of the child in national constitutions, reflecting key principles in the CRC

- The Committee emphasizes the importance of ensuring that domestic law reflects the identified general principles in the CRC
- The Committee welcomes the development of consolidated children’s rights statutes, which can highlight and emphasize the Convention’s principles. But the Committee emphasizes that it is crucial in addition that all relevant ‘sectoral’ laws (on education, health, justice, and so on) reflect consistently the principles and standards of the Convention.

As a specific example, in response to Haiti’s initial report, the Committee on the Rights of the Child recommended that Haiti take the necessary measures to conform its domestic legal framework to the CRC and specifically:

- (a) Undertake all necessary steps to finalize the harmonization of existing legislation with the Convention;
- (b) Adopt, as a matter of urgency, a comprehensive code on children that will reflect the general principles and provisions of the Convention; and
- (c) Ensure the implementation of its legislation.

The Committee’s Concluding Observation further recommended that Haiti establish a single body to coordinate all Convention implementation activities, “with the necessary powers and human and other resources to fulfil its mandate in an effective manner at the national, regional and local levels.”

Additionally, the Committee’s Concluding Observations on country reports routinely recommend that States parties seek technical support from UNICEF to implement recommended legislative reform initiatives.

Sources: General Comment 5: ‘General measures of implementation for the Convention on the Rights of the Child’, CRC/GC/2003/5 (3 October 2003); Committee on the Rights of the Child, ‘Concluding Observations: Haiti’, U.N. Doc. CRC/C/15/Add.202 (18 March 2003).

Box 3: Recommendation of the Committee on the Elimination of Discrimination against Women

In its Concluding Comments on the United Republic of Tanzania’s report in 1998, the Committee on the Elimination of Discrimination against Women welcomed law reforms in the country, but highlighted the need for further reform and recommended:

- Explicit definition of discrimination that includes gender as a ground of discrimination in the Constitution;
- Re-examination of policies and programmes for the implementation of the Convention and the advancement of women;
- Modification of customary and religious laws to comply with the Constitution and Convention;
- Concrete action, including temporary special measures, to redress discrimination;
- Criminalization of violence against women and effective enforcement of these laws as well as the establishment and adequate resourcing of shelters for women subjected to violence;
- Formulation of inheritance and succession laws that guarantee all women (including rural women) their rights of inheritance and ownership of land and property; and
- Removal of all traditional practices harmful to the health of women.

Source: Committee on the Elimination of Discrimination against Women, ‘Report of the Committee on the Elimination of Discrimination against Women (Eighteenth and nineteenth sessions)’, U.N. Doc. A/53/38/Rev.1 (1998), paras. 227-236.

Supporting follow-up to CRC and CEDAW recommendations is a strategic entry point to work with governments and civil society for securing the rights of women and children. UNICEF-supported programmes can contribute to effective treaty implementation by working with the Committees; promoting holistic reform strategies; assisting in the process of drafting laws and raising awareness; providing trainings for law enforcement officers, judges, and others; and promoting child sensitive complaint mechanisms. Commitments under regional treaties, such as the African Charter on the Rights of Children, should also be monitored.

2.1.4 UNICEF MTSP 2006-2009

The documents mentioned in the above sections form the basis for UNICEF's MTSP. The five Focus Areas in the 2006-2009 Plan represent core strategies toward the realization of children's rights and achievement of the MDGs. Programming in support of legislative reform is highlighted in Focus Area 5, but also has cross-cutting application within all of the Focus Areas. As highlighted in the MTSP 2006-2009, these areas are all closely interlinked and must be pursued synergistically.⁹

Focus Area 5 calls for support to governments for "setting standards and undertaking policy, legislative, regulatory and administrative reforms to strengthen health, education, social welfare and other social service systems." Promoting legislative reform—particularly a HRBA to legislative reform—is a priority for UNICEF. The goal is strengthened national legal, planning, and poverty reduction frameworks that prioritize children.¹⁰ The HRBA emphasizes not only on actual, effective reform, but equally critically a process of reform that involves broad participation including civil society, children, and women. Focusing on women's participation and agency is critical because gender inequalities make their active participation in civil and political life especially difficult; their participation is also crucial because of their central role in children's life as primary caretakers.

UNICEF already works with development partners, governments, and civil society to support national capacity building and policy development and implementation, but the MTSP 2006-2009 recognises the need for greater policy advice and technical assistance in the area of legislative reform (e.g., to address gaps in the legal framework, institutional weaknesses, inadequate allocation of resources, etc). The plan places a greater strategic focus on sustained results through support to national policy, capacity and partnerships. For more information on legislative reform and the MTSP 2006-2009, see Part III of this guide.

⁹ UNICEF, The UNICEF medium-term strategic plan, 2006-2009—Investing in children: the UNICEF contribution to poverty reduction and the Millennium Summit agenda, U.N. Doc. E/ICEF/2005/11 (2005).

¹⁰ Ibid.

2.2 Promoting a Human Rights-based Approach to Legislative Reform

In 1998, UNICEF explicitly mandated its country offices to take a human rights-based approach to programming in Executive Directive 98/04. The core principles of a rights based approach are (a) accountability of all duty bearers for obligations to children and women, (b) universality of rights, (c) indivisibility and interdependence of rights, (holistic vision, but can prioritise actions—emphasis on priorities and strategies to secure rights in context of available resources) and (d) participation of all stakeholders as a right (ownership and sustainability).¹¹

Legislative reform is a critical component of the rights-based approach. The standards that drive HRBA are common to legislative reform itself and should be applied to legislative reform initiatives. A HRBA to legislative reform takes into account the reality behind enacting and reforming laws; in order for such reform to be effective, it must be conducted in a participatory manner (including vulnerable and marginalized stakeholders, and particularly taking account of the views of children and women) and must consider the budgetary, policy and institutional requirements for effective implementation of the law¹². All stages of legislative reform should incorporate a gender perspective, because widespread gender disparities exist and laws and their implementation continue to affect women and men differently.

Box 4: Benefits of a HRBA to legislative reform

- Promotes holistic reform
- Stimulates discussion of barriers to reform
- Addresses gender inequality and the discrimination against women and girls
- Promotes broad participation in political life
- Promotes broad dissemination of international human rights instruments and increased legal literacy
- Promotes effective implementation, in conformity with human rights principles
- Ensures special protection for vulnerable and marginalized children
- Undermines social practices negatively affecting children and women and promotes positive change
- Promotes an effective, reliable and predictable judicial system that is accessible to all
- Includes adequate and institutionalized monitoring
- Promotes adoption of redress mechanisms
- Ensures that the law contributes to the full extent possible to children's and women's well-being

¹¹ *Core principles of a rights-based approach to programming* (from Core Course: Human Rights Principles for Programming).

¹² Based on Nadine Perrault, *Human Rights-Based Approach to Legislative Reform*, Concept note, UNICEF DPP (2004).

UNICEF-supported programmes must balance activities meeting the immediate survival needs of children and those that aim to create an enabling environment. The value of legislative reform initiatives lies in long-term change of the legal, economic, and administrative frameworks and social conditions to provide sustainable realization of children's and women's rights. Gender equality is essential for the achievement both of women's rights and the rights of children; empowered women are agents for positive changes both in their families (impacting the nutrition, healthcare, and education of their children, especially for the girl child and themselves) and in their communities (actively participating in political, economic, and social life). Using the HRBA to legislative reform serves to heighten understanding of the interrelated barriers to children's rights—and how barriers to women's rights can impact on children's rights—and how laws, institutions, social conditions and traditional practices affect the situation of children and women.

Reading the text of national laws against the CRC and CEDAW is only a starting point for a HRBA to legislative reform. The gap analysis should look at whether children's and women's rights are being realized and identify the obstacles to rights realization. A gender analysis of the differences in the situation of girls and boys is also important and necessary. A HRBA to legislative reform requires the development of legal frameworks that effectively protect and fulfil rights with the participation of civil society actors and individual stakeholders, while providing a catalyst for social policies, institutional reform and the rule of law. This approach requires critical attention to ensuring a *process* of legislative reform that will enhance the quality and effectiveness of the reform. Legislation then needs to be translated into concrete programming and action in order to effect meaningful change. Following a HRBA means taking a close look at (and in most cases reforming) the laws and components of the judicial system as well as law enforcement measures, such as implementing institutions, and budget and other resource allocations.¹³

UNICEF's HRBAP tools, when used together with the gender analysis tools, are important planning tools, with which country offices can engage in a situational analysis together with counterparts, demonstrate the importance of legislative reform and promote a legal framework that is conducive to child rights' realization. Legislative reform is not to be seen as a discrete activity by itself, but can be a tool for the implementation of the entire Country Programme.

2.2.1 Law reform and social policies for children

Laws and social policies are both important to translate children's and women's rights into practice. The integration of law reform and social policy also facilitate a more interdisciplinary drafting of laws in a transparent and participatory environment. The end product is likely to be more enforceable, and capable of internalization, as a legitimate standard. A combination of law reform and social policies can also act as a basis for human resource development to achieve sustainable development (e.g., education and health, and

¹³ These principles are stated in the Quinto Consensus Outcome Paper – need full cite. For more information on the human rights-based approach to programming, see UNICEF, Human Rights Unit, GPS/DPP, 'Training Package on Human Rights Based Approach to Programming', (July 2005), Module 4.0: Human Rights-Based Approach to Legislative Reform.

particularly providing access to resources, participation, etc. for women, minorities, and other marginalized hard-to-reach groups.).

Here, it is important to distinguish between law and policy; although they are intertwined, they are also distinct. The law sets out standards, procedures and principles that must be followed. A policy outlines the goals of government and the strategies, methods, and principles intended to achieve them. Law and policy are often intimately linked. Social protection policies, for example, coexist with laws that either reinforce or negate this protection. Inheritance laws can support a policy of social protection for all, by granting women their rights, or create a barrier for women.

While laws may be amended or repealed, they provide a more solid foundation for policies in favour of children and women. Social policies may be unsustainable, in changing conditions, or short-lived, if aligned very strongly with the group in power. Social policies deriving from law can have more permanence and sustainability than those created by discretionary action within the executive branch of government. When a law is put in place, it will create an environment supportive of social policies. When social policies are integrated into and reinforced by law, it will be difficult to dislodge or backtrack on them. Therefore, social policy and law must work hand-in-hand, as interrelated and interdependent tools for the fulfilment of children's and women's rights.

Box 5: Laws for children are not limited to child protection laws

The CRC is itself a holistic document, incorporating civil and political rights and economic, social and cultural rights. There is a tendency to divide these two sets of rights, with the arena of legislative reform being no exception. Often, protection rights dominate the dialogue and reform. Civil and political rights are often seen as the domain of law, whereas economic, social and cultural rights are too often seen only as 'policy issues'. However, laws can and do cover all areas of rights—from penal codes to health care and education regulations. Furthermore, laws that appear to focus on women's economic, social and cultural rights often have a significant impact on children—both boys and particularly girls. Thus, what has been considered 'discretionary' social policy must be changed to create enforceable economic, social and cultural rights for children and women.

2.2.2 Law implementation and enforcement

Explicit textual consistency between national laws and provisions of the Conventions is a foundation for effective rights' realization. However, laws do not function in a vacuum; the challenge often comes with the implementation of laws.

Laws, if properly implemented, should benefit *all* members of society and pay special attention to those most marginalized. As laws are both adopted and implemented by the government, a HRBA is important to holding government bodies accountable for the effective implementation of laws in the best interests of children and women. Bearing in mind that laws directly targeting *children and women* are not the only ones affecting their rights, focusing on the interrelatedness and interdependence of rights is an important part of law review and reform.

Laws may require specific implementation measures or tools (such as regulations, codes of conduct or professional guidelines) or additional policies, budget, or institutions to be successful. For more information see Part IV(C)(2) and IV(C)(4)

2.2.3 Mainstreaming the principle of gender equality in legislative reform

Advancing gender equality requires examining female and male roles, responsibilities, relationships, opportunities and resources within the context of the distribution of power between women and men taking into account the experiences and concerns of women and men in designing, implementing and evaluating all policies and programmes. This requirement applies both to governments and to the United Nations itself. Focusing on gender equality is necessary in reviewing and reforming laws and policies to overcome social stereotypes and the socio-economic and political realities for women and girls, and is crucial to implementing the HRBA principle of universality by paying special attention to women and girls as a marginalised group.

Gender is a social construct and not determined by biological differences. The norms and values attached to gender determine the roles girls and boys/women and men are expected to play in the family, community, schools and public sphere. Understanding the role gender plays in ordering our social, political, and economic lives is important to understanding the role of gender in creating unequal and hierarchical relations in society. For example, the legal status of women and children has been linked historically to a ‘protective’ approach that disempowered both groups. Although gender roles and relations vary geographically, in many parts of the world women and girls are subject to the dominant role of men and boys at every level of society, in both the public and private sphere.

Patriarchy, the male domination of ownership and control at all levels in society, is an underlying factor in gender discrimination and can affect the passage of appropriate laws. The justification used for this domination generally stems from a belief in male superiority, often with claims that the gender role division is based on biology or religious texts. The imbalance of power in gender relations has negative consequences for women and girls in all areas of their lives. Addressing gender issues in the legal framework is critical for the simultaneous realization of both women’s and children’s rights.

Box 6: Substantive inequality in divorce practice

Women in China have the right to petition for divorce, although courts consider the woman’s access to housing in granting the petition. Because state housing policy gives the marital home to the husband after divorce, a woman must be able to demonstrate access to other housing in order to have the divorce petition granted. Therefore, access to divorce is discriminatory in practice, even though women have the right legally.

In another example of discriminatory practice in spite of equal status under the law, Macedonia’s Inheritance Law and Family Law grant equal rights to men and women in family relations. However, women’s limited familiarity with legal assistance and advice institutions results in discriminatory practice, for example, following divorce.

Sources: UNIFEM, Gender Issues Fact Sheet No. 3, www.unifem-eseasia.org/resources/factsheets/UNIFEMSheet3.PDF,

pp. 4-5; Press Release, United Nations, “Women’s Anti-Discrimination Committee Takes up Report of Former Yugoslav Republic of Macedonia: Experts Commend Rapid Progress, Urge Steps On Trafficking, Minority Rights, Women’s Political Participation” (25 January 2006).

In many countries, there are laws that still openly discriminate against women and girls, while some textually ‘neutral’ laws may have a disproportionate negative impact on women and girls. This discrimination is particularly inherent in the application and enforcement of laws, and often through policies and the allocation of national resources. Therefore, equality must be realized not just in terms of formal equality (lack of distinction between women and men in the text of laws and policies) but also in terms of substantive equality. Promoting substantive equality requires examining laws and policies to determine their *impact* on women, looking for disproportionately negative impacts on women or a lack of equality in practice. The Committee on Economic, Social and Cultural Rights refers to this as “equal enjoyment of rights” by women and men.¹⁴ This Committee has pointed out that States need to consider the role of “existing economic, social and cultural inequalities, particularly those experienced by women” play in perpetuating inequality, and address these issues in laws, policies, and practice.¹⁵ The Committee on the Elimination of Discrimination against Women also addresses this indirect discrimination¹⁶, calling for States parties to take measures to create and ‘enabling environment’ for women to achieve ‘equality of results’. This includes proactively addressing historic discrimination and gender-based stereotypes.

Thus, a focus on gender equality should be incorporated into all stages of legislative reform, and the participation of women, girls, men, and boys is important to the process. UNICEF promotes gender equality by addressing issues of discrimination against the girl child. UNICEF offices support the work of the Committee on the Elimination of Discrimination against Women. Additionally the UNICEF Global Policy Section is finalizing a guide for staff on the reporting process to this Committee.

2.2.4 Budget allocation and legislative reform

Laws and policies need financial resources to meet their obligations and fulfil rights. The Committee on the Rights of the Child includes the identification of the financial resources necessary to realize children’s rights as part of the process of incorporating the instrument

¹⁴ General comment No. 16: ‘The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights’, paras. 3-5, U.N. Doc. E/C.12/2005/4, 11 Aug. 2005.

¹⁵ *Ibid.*, para. 8.

¹⁶ “Indirect discrimination against women may occur when laws, policies and programmes are based on seemingly gender-neutral criteria which in their actual effect have a detrimental impact on women. Gender-neutral laws, policies and programmes unintentionally may perpetuate the consequences of past discrimination. They may be inadvertently modelled on male lifestyles and thus fail to take into account aspects of women’s life experiences which may differ from those of men. These differences may exist because of stereotypical expectations, attitudes and behaviour directed towards women which are based on the biological differences between women and men. They may also exist because of the generally existing subordination of women by men.” ‘General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures’, n.1, p. 9 (2004).

into the domestic legal system.¹⁷ The national budget is essentially the financial embodiment of a government's policy/law goals. Resources need to be allocated to meet policy objectives and implement laws to fulfil children's rights. The policy-making and budgetary process are intimately related, although often disconnected. See Part IV(C)(4) for potential budget advocacy activities.

Box 7: Budgetary reporting

In their reports to the Committee on the Rights of the Child, States must discuss:

- Coordination between economic and social policies;
- The proportion of the budget devoted to social expenditures for children (including health, welfare, and education);
- Budget trends;
- Arrangements for budgetary analysis enabling the amount and proportion spent on children to be clearly identified;
- The steps taken to ensure that all competent national, regional, and local authorities are guided by the best interests of the child in their budgetary decisions and evaluate the priority given to children in their policy-making;
- The measures taken to ensure that disparities between different regions and groups of children are bridged in relation to the provision of social services;
- The measures taken to ensure that children, particularly those belonging to the most disadvantaged groups, are protected against the adverse effects of economic policies, including the reduction of budgetary allocations in the social sector.

Although the Committee on the Elimination of Discrimination against Women has not specifically mentioned budgetary reporting in its guidelines for States parties reports, it has highlighted the importance of government budgets in achieving gender equality and implementing CEDAW. In General Recommendation 24, focused on eliminating discrimination in against women in the area of health care, the Committee stated that, "The duty to *fulfil rights* places an obligation on States parties to take appropriate legislative, judicial, administrative, budgetary, economic and other measures to the maximum extent of their available resources to ensure that women realize their rights to health care," and specifically notes, "States parties should allocate adequate budgetary, human and administrative resources to ensure that women's health receives a share of the overall health budget comparable with that for men's health, taking into account their different health needs."

Source: 'General Guidelines for periodic reports', U.N. Doc. CRC/C/58 (November 1996), para. 20; D. Elson, *Budgeting for Women's Rights: Monitoring Government Budgets for Compliance with CEDAW* (UNIFEM, 2006), p. 34; Committee on the Elimination of Discrimination against Women, 'General Recommendation 24 on Women and Health' (1999), paras. 17, 30.

¹⁷ 'General Guidelines for periodic reports', U.N. Doc. CRC/C/58 (November 1996). For further information on budgeting and rights, see R. Gore, *Influencing Budgets for Children's Rights* (June 2004).

2.2.5 Participation, partnerships, and collaboration

At the government level, the need for legislative review and reform should encourage a national debate on children's rights, with the full partnership of the NGO community and civil society, especially children and women's groups. Systematic involvement of all sectors of society and government is an important step to achieving the critical mass required to ensure that child-friendly laws are both adopted and implemented. Direct participation by civil society shifts the legislative reform from a traditional technocratic exercise (at best allowing input from designated 'experts') to a process that enables individuals and encourages the realization of their rights.

In a HRBA, individuals are central actors in their own growth and advancement. Legal illiteracy, or lack of knowledge of laws, the legislative process, and the legal process, has a substantial impact on access to rights—particularly for women. Thus, participation is both a means and an end. Creating the conditions and means for children and women to participate fully in the decisions that affect their lives, and society as a whole, can lead to better understanding of their rights and concerns—by all members of society.

Effective partnerships with national counterparts, key stakeholders in the UN system, donors, NGOs, women's and youth organizations, academia, and the media are critical. Civil society organizations, media, academic sectors, private sectors, youth associations, and independent institutions can promote legislative reform and be a catalyst for monitoring States' legislative reform responsibility. Although in some cases, private sector organizations may be appropriate partners, in other cases such a partnership may be a conflict of interest. For further guidance on fostering partnerships for legislative reform, see Part IV(B).

2.3 Additional Considerations

Attention to legislative reform issues is important, even when programming in emergencies and environments susceptible to conflict. Conflict prevention, resolution, and management should include a focus on promoting human rights and promoting a legal framework that supports women's and children's rights.

2.3.1 The rule of law and conflict prevention

The 'rule of law' means that individuals (including government leaders) do not have ultimate power, laws do, and these laws need to be evident and obvious.¹⁸ For the rule of law to exist in a country, it must have an autonomous legal order that contains regulation on government power, equality before law, and procedural and formal justice. Procedural justice is based on having a legal system with fixed, fair, published rules of procedures to be followed in the legal system that are consistently and transparently applied. The manner in which a case is

¹⁸ In the UN System, the rule of law is defined as "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards." S/2004/616, para. 6.

brought and decided is therefore as important as the result. However, the rule of law must be linked with good governance. Even if the appropriate legal framework is in place, poor governance practices can result in poor law implementation and enforcement.

With the rule of law in place, stability can be preserved and conflict prevented. Discrimination, unequal distribution of wealth and social services, social disharmony, and abuse of power indicate a breakdown in the rule of law and disregard for human rights standards, which often signals imminent conflict.

UNICEF and others have supported the implementation of programmes to strengthen the rule of law in countries at risk of or recovering from conflict. Programming activities have included advice on constitution and legislation drafting, judicial and law enforcement reforms, and support to civil society (especially women's organizations) and national human rights institutions. Effective legislative reform promotes opportunity, security, and empowerment for the most marginalized as it helps ensure availability of the means and resources to access the justice system, to mechanisms of redress and to social advantages recognized by law.

In post-conflict situations and in fragile States that are susceptible to or recovering from conflict, it is crucial to identify gaps in the rule of law and understand risks due to national vulnerabilities, unmet needs, weak capabilities, and legal systems. Specifically, strengthening the rule of law for conflict prevention should emphasize:

- Promoting transparency in the judicial system;
- Ensuring access to justice;
- Promoting law enforcement;
- Strengthening institutions;
- Establishing accessible independent redress mechanisms;
- Building the presence, and capacity, of civil society in promoting the rule of law; and
- Ensuring that attention is paid to the principle of gender equality at every stage and that women's rights are systematically addressed.¹⁹

2.3.2 Legislative reform and implementation in emergencies

Box 8: The CRC and emergencies

Particularly during emergencies, governments and other relevant groups must be reminded of their international obligations and held accountable to these standards. For example, in armed conflicts, all parties to the conflict may need to be reminded of the obligation not to use child soldiers.

During the 1989-1997 and 2000-2003 conflicts in Liberia, children were used as soldiers by all parties. During both of these conflicts, government and the armed groups forcibly conscripted and recruited both adults and children. Although it is difficult to precisely determine the number of children used during these conflicts, estimates for the period between 1989 and 1997 range 6,000-15,000, with an estimated 15,000 children involved in the fighting between 2000 and 2003.

¹⁹ Based on Justice for Children: Rule of Law and Transitional Justice Mapping Paper (UNICEF Rule of Law Project, Draft, March 2006), page 40.

In June 1993, Liberia ratified the CRC, which protects children under the age of 15 from forced or voluntary recruitment into armed conflict or the armed forces (Article 38). Under Article 39, child victims of armed conflict should receive special help to physically and psychologically recover and reintegrate into society. In September 2004, the country signed the Optional Protocol to the CRC on the involvement of children in armed conflict, which raises the age for direct participation in armed conflict to 18 and establishes a ban on compulsory recruitment for children under 18. The African Charter on the Rights and Welfare of the Child, which Liberia ratified in 1990, calls on all parties (both governmental and non-governmental armed groups) to refrain from recruiting children and ensure that they take no part in the hostilities.

These provisions of international law were ignored during the conflict. UN agencies and peace negotiators should keep the CRC and other human rights treaties at the forefront of discussions with all sides in order to protect vulnerable groups, particularly children.

Source: Human Rights Watch, How to Fight, How to Kill: Child Soldiers in Liberia (2004), pp. 1, 7-8, 33.

The provisions of the CRC and CEDAW must be implemented, even in times of armed conflict and other emergencies. Therefore, compliance with the CRC (and CEDAW in countries that are States parties) must be monitored and maintained during this period. While programming must be based on local realities, monitoring and reporting on human rights violations are fundamental to the HRBA during emergencies. Emergency situations can also stimulate changes that advance children's and women's rights.

Box 9: Addressing women's rights in emergencies

Gender impacts the effects of emergencies on individuals. For example, women and girls are more vulnerable as victims of violence, sexual abuse, and exploitation. They are also compelled to assume total responsibility for the survival of their families, and sometimes of their communities, in the absence of males.

The need for systematic responses to emergency situations that take gender into account is a priority for two major reasons. First, as the most affected group, women and children must be given opportunities to participate in decision-making and their special needs must be considered. Second, the incorporation of gender perspectives in the transition from relief assistance to development cooperation is crucial in the process of reconstruction, rehabilitation and development.

As one example of addressing women's rights in emergencies, the IASC Task Force on Gender and Humanitarian Assistance has developed 'Guidelines on Gender-Based Violence Interventions in Humanitarian Settings', establishing a set of minimum multi-sectoral interventions to prevent and respond to sexual violence during the early phase of an emergency. The Guidelines include action sheets on Coordination; Assessment and monitoring; Protection; Human Resources; Water and Sanitation; Food Security and Nutrition; Shelter, Site Planning and NFIs; Health; Education; and Information, Education and Communication.

Source: UNICEF Intranet, 'Gender Equality in Emergencies and Transition; IASC 'Guidelines on Gender-Based Violence Interventions in Humanitarian Settings', www.humanitarianinfo.org/iasc/content/subsidi/tf_gender/gbv.asp

During emergencies and periods of transition, many opportunities arise for legislative reform. Specifically, UNICEF can work to set legal standards and advocate for gender equality (and

positive measures to rectify historic inequity).²⁰ Children, especially girls, and women are particularly vulnerable to sexual violence, exploitation, and abuse during and following emergencies, so special care must be taken to protect them. The insecurity and limited opportunity for children in emergencies increases their risk of bringing them into conflict with the law. Protection systems and the capacity of law enforcement must be built during this period to support the fulfilment of children's and women's rights. UNICEF should work particularly closely with UNHCR, OCHA, the Save the Children Alliance, and other UN agencies that have vast knowledge and experience in human rights aspects of complex emergencies.

Box 10: Juvenile justice in Rwanda

In August 1994, the Rwandan government established a Unity and Reconciliation Commission to work for national reconciliation in parallel to International Criminal Tribunal for Rwanda (ICTR). Because of the limited capacity of the ICTR, the majority of war crimes and genocide cases fell to the national legal system.

Rwanda is the first country to try people for acts of genocide committed while they were children. Some 5,000 children between the ages of 14 and 18 were arrested and detained for participation in the 1994 genocide. As it became obvious that even the national courts could not expeditiously handle the volume of cases, the Rwandan government resorted to a modernized version of the traditional *Gacaca* system of participatory justice use at the village level.

The modernized *Gacaca* system was developed to expedite the backlog of genocide cases. *Gacaca* tribunals are headed by community leaders and involve the accuser's community in the trial. In the case of children this may include their family, their social workers (if available), their neighbours, teachers, accusers, and so on. All procedures are held in public.

Unfortunately, the *Gacaca* system does not entirely conform to recognized international standards for fair trials, including treaties to which Rwanda is committed. Concerns about the *Gacaca* system include, for example, the fact that the accused have no recourse to a defence lawyer and that community members with no legal training will act as the prosecutor, the judge, and the jury.

In 1996 an Organic Law on the Genocide was passed, which made a special provision for minors. This law called for the creation of a special 'Minor's Bench' for the prosecution of minor defendants aged between 14 and 18 years at the time of the offence and also stipulated that minors under the age of 14 years could not be held criminally responsible. UNICEF successfully advocated for and supported the release of children who were under the age of 14 at the time of the alleged crimes. Most have been released from prisons and reunified with their families. However, several thousand children still await trial.

The government has recognized its obligation to ensure the right of children to have access to fair and impartial justice. Since late 1999, the question of the creation of an administrative system for juvenile justice has come to the forefront of both government and civil society's agendas together with concerns about the protection of children from sexual abuse and violence. UNICEF is providing both technical and financial support to the Ministry of Justice for the creation of a juvenile justice system in Rwanda.

Sources: Human Rights Watch, *Lasting Wounds: Consequences of Genocide and War on Rwanda's Children* (2003), pages 18 and 77; UNICEF, "Rwanda Q & A on sensitive issues", *Online Magazine, Issue No. 167, 5-11 April 2004*

²⁰ For more information on specific opportunities, see 'UNICEF post-crisis transition strategy in support of the medium-term strategic plan', E/ICEF/2006/17 (10 April 2006).

3 The National Context for Legislative Reform

The legal context of a country can affect implementation of the CRC and CEDAW, and UNICEF's legislative reform activities. UNICEF and partners need to understand the legal and political context, as well as the social and cultural context, to be able to carry the momentum of legislative reform over time. The UN Country Team and donors should coordinate activities and share knowledge to better promote a legal framework that respects international human rights standards and advances the realization of children's rights. During the UNDAF process, efforts should be made to ensure that the country analysis brings out the need for legislative reform as a priority and to ensure that this is reflected as shared Country Programme Outputs in the UNDAF, which may be undertaken as joint programmes. For example, while UNICEF can lead legislative reform efforts where the reforms relate to women and children, UNDP may be involved in providing technical support to national initiatives under its good governance programme. UNICEF should then interact with UNDP within this context, as in Ghana where UNDP is providing support to government in its Penal Reform Programme, of which juvenile justice forms a part.

In order to make a clear statement on the status of the CRC in domestic law, States parties need to identify laws that need harmonization, undertake necessary constitutional reforms, identify existing official or unofficial discrimination and inequality, examine how laws are implemented and disseminated (including the functioning of legal institutions and the interpretation of laws by courts), and provide for participation of stakeholders. States parties should also examine any reservations they have made to the CRC or CEDAW. The distinctive characteristics of the legal tradition(s) of a country can determine the process for incorporating international rights as well as influencing actual implementation (or non-implementation) of the international instrument in question.

The review of national laws and their implementation should be conducted by the government, to ensure ownership of the process and outcomes. The role government officials, parliamentarians, judges, traditional leaders, lawyers, and civil society can or must play may differ by legal system, but collaboration between key actors is always necessary for an effective review and reform of laws, policies, and their implementation. UNICEF country offices may need to provide the tools for them to do so; see Appendix B for a sample law review questionnaire.

3.1 Understanding a Country's Legal Tradition and System

It is important for UNICEF staff and partners to understand the legal tradition in the country and the impact of the political and legal system as well as local customs on the implementation of human rights standards and ultimately the realization of children's and women's rights.

3.1.1 Defining the legal tradition and understanding the legal system²¹

In order to effectively analyse the process and structure of law-making and law implementation in a country, one must first understand the country's legal tradition and system. This section provides an introduction to the various legal traditions and is thus a tool to build understanding of the legal tradition(s) applicable in a given country and how this tradition translates into the legal system and realization of children's rights.

Definitions of the terms 'legal system' and 'legal tradition' may vary, however, these two interlinked concepts may be simply considered in the context of this document. The legal system of a country encompasses its rules and institutions, which are created based on the legal tradition. The legal tradition is the cultural perspective under which the legal system is created, providing the philosophy for how the system should be organized and how law should be formed and implemented. It is based on a historic perception about the role of law in society.²²

Below, each system's main characteristics are identified, with special reference to their effect on the drafting, adoption, and enforcement of laws relating to children. The legal tradition(s) in a country can have a profound impact on implementation of the CRC and CEDAW and efforts to advocate for legislative reform. Most countries have some mixture of these traditions, and there are exceptions to the traditions described below. Furthermore, the legal traditions are not static or completely distinct and the classifications below are simplified. However these traditions do represent the foundation for legal systems. Understanding them in a theoretical sense can increase understanding of the national system to better identify potential allies and entry points.

Homogeneous systems

Many countries have a legal system based on a single legal tradition—either the civil law tradition or the common law tradition. The tenets of the common law and civil law traditions apply whether the legal system in the country is homogeneous or includes the tradition as part of a pluralist system. While the descriptions below focus on the historic concepts of civil and common law systems, the contrast between them is decreasingly visible, particularly as common law countries increasingly codify laws and civil law judges look more to the decisions of colleagues.

Civil law tradition

The civil law tradition is derived mainly from Roman law, with its emphasis on writing laws into comprehensive national codes. However, some civil law systems remain uncodified,

²¹ For a more comprehensive introduction to legal traditions, see M.A. Glendon, et al, *Comparative Legal Traditions in a Nutshell* (2d. ed., 1999); I. Edge, ed., *Islamic Law and Legal Theory* (Dartmouth: Aldershot, 1996).

²² These definitions are taken from W. Tetley, 'Mixed jurisdictions: common law vs civil law (codified and uncodified)' *Uniform L. R.* (1993, vol. 4), p. 591, which cites J.H. Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America*, (2nd edn., 1995), p. 1. For further reading, this article is available at <http://www.unidroit.org/english/publications/review/articles/1999-3.htm>.

while common law jurisdictions may codify parts of their law (such as a criminal code). Thus, evidence of the systematic arrangement of related laws into a single written document does not automatically indicate a civil law system.

In civil law systems, the legislature and judiciary have different roles: the former creates the law and the latter applies that law. Judges are specially trained as such, in training schools or during the post law school practical work period. Judicial decisions are based on interpretation of the written law and legal scholarship (commentaries by experts, articles by law professors, etc.) may be used to aid this interpretation and make the code more workable. Ultimately, judges in lower courts have no legal obligation to follow the interpretations and decisions of other judges in previous cases (except those of the High Court or Court de Cassation), although they may do so in practice.

Most Civil law systems are ‘monist’ systems, meaning that national and international law are viewed as a single legal system, so no separate implementing legislation is needed to enforce the accepted international law²³. Therefore, once an international human rights instrument is ratified by a country, the instrument becomes part of domestic law and prevails over national legislation in the event of a conflict between the two. Usually, the constitution indicates that ratified treaties are to be automatically incorporated in this way, provided they have been published in the *Official Gazette*. In spite of this fact, the practice of directly applying international treaties in courts is limited. Following ratification of the CRC or CEDAW, some civil law countries have taken the additional step of enacting laws that reflect the treaty’s provisions.

In civil law systems, legislators and law professors are important determiners of the content of law (its text and its interpretation). Therefore, these two groups are important partners. Additionally, in this monist system, judges can be called upon to apply international human rights treaties to which the country is a party and they should be encouraged to do so.

Common law tradition

The common law tradition is derived from the English legal tradition. Historically, common law was law developed by custom (prior practice of justice officials), before there were written laws. This practice has continued to be applied by common law courts, even with the existence of written laws.

In the common law system, court decisions (case law) are an important source of law and expression of the legal rules. Courts’ interpretation of the constitution, legislation, and codes becomes law itself. Judges create and refine this law through interpretation of community standards and traditions. The decisions of courts thus establish precedent for future interpretation of the law by judges in same or lower courts within the same jurisdiction. Judges then refine this interpretation in future cases by applying it to different facts and circumstances.

²³ Please note that there are quite a few civil law countries that are dualist systems. Thus, a separate implementing legislation is needed to enforce the accepted international law.

Statutes, which are laws enacted by the legislature, are written and interpreted narrowly. Court cases fill the gaps in legislative texts. In many common law countries judges are seen as balancing the power of the other branches of government. Generally, judges do not receive specific training, but are chosen from among respected and experienced advocates/lawyers.

Common law systems are ‘dualist’ systems, meaning that international law is considered a separate system that governs conduct amongst States. In common law countries, even if an international instrument has been ratified, incorporation of its provisions requires specific legislative or administrative measures to make it part of domestic law. In these countries, the CRC and CEDAW cannot be enforced in domestic courts unless they are part of domestic law. However, in many States parties, legislation incorporating CRC and CEDAW principles and standards has been piecemeal and ad hoc.

The content of human rights (generally preserved in the national constitution) may be redefined or expanded through interpretation by the courts, as judicial decisions are law in common law countries. Thus, courts and judges are important partners in broadly defining children’s rights in common law systems. Judges must be seen as potential advocates for advancing the realization of children’s rights, although only a few common law judges currently use international human rights treaties and standards for interpreting domestic law. Legislators should also be encouraged to pass legislation holistically incorporating the CRC and CEDAW domestically. Doing so will make it easier for parties in court cases to invoke the CRC or CEDAW to support their case. In the absence of holistic incorporation, advocates/lawyers should encourage courts to use the CRC and CEDAW (where it has been ratified) as a persuasive authority—based on the State’s voluntary acceptance of obligations in ratifying the instrument.

Mixed/pluralist legal systems

Mixed or pluralist legal systems are the most complex to navigate and analyze in terms of how best to support legislative reform for children and women. They may involve combinations of any legal traditions and often include some form of customary or traditional law. Other pluralist countries combine civil or common law with Islamic law. The different traditions may interact or operate in independent spheres. Pluralist countries pose the distinct problem of trying to balance the different legal approaches of multiple systems operating at the same time.

Islamic law

Islam provides rules for both religious and secular life, setting an extensive code that directs how the faithful must behave as a community.

Islamic law is based upon the principles of *Shari'a*, which “refers to the general normative system of Islam as historically understood and developed by Muslim jurists.”²⁴ The *Shari'a* covers a wide range of issues, from diet, the use of public space, child custody to criminal punishment. Islamic law is based predominantly on the *Qur'an*, *Hadith* or *Sunna* (custom or conduct of the Prophet Mohammed), *Ijma* (consensus or opinion, agreement among Muslim jurists on a question of law), *Qiyas* (analogical deduction, in matters not covered by the other sources) and *Ijtihad* (exercising independent juristic reasoning). The *Shari'a* took somewhat different forms within these schools, and its content and methods vary across the Muslim world today depending on the school that prevails in each region and country, and the local customs which informed them²⁵.

Most Muslim countries have incorporated the *Shari'a* into their domestic law, to one degree or another. The constitutions of many States provide that the *Shari'a* shall be the principle source of legislation. However, in many States secular and religious laws co-exist with public law being conducted on the basis of secular principles. It is the *Shari'a* on personal status matters – such as marriage, polygamy, divorce, repudiation, custody and guardianship of children, sexual relations and inheritance – that is most frequently found in legislation. This is primarily because the *Qur'an* and *Sunna* give their most detailed prescriptions on these matters, because Islamic personal status laws were often left largely intact during periods of colonial rule, and because Islamic fundamentalist movements typically make this area of law a main focus in their reforms.²⁶ Furthermore, there are countries whose populations belong to different faiths²⁷ that have enacted personal status laws specific to each of the dominant religions.²⁸

Local variation also plays an important role in Islam. Not only were regional traditions influential in the development of the *Shari'a*, but religion as it is now explained and understood at the local level does not always conform to the letter of the *Qur'an*. Some customary practices may be falsely characterised as Islamic. Also, it should be noted that local custom informed the development of the different Islamic schools of law. As a result, the conflicts which may exist between children's human rights and what is understood to be a proper Islamic way of live are not all the same across the Muslim world.

Therefore, particularly in the area of family law, there is some belief that reformulation of practices relating to custody, guardianship, marriage age, inheritance rights, and others is possible and in keeping with Islamic law.²⁹ Working with governments, judges, and civil society to highlight the child-friendly provisions of Islamic law can advance implementing the CRC and CEDAW.

²⁴ A. An-Naim, ed., *Islamic Family Law in a Changing World: A Global Resource Book* (London: Zed Books, 2003), p. 1, as cited in S. S. Ali, 'A Comparative Perspective of the Convention on the Rights of the Child and the Principles of Islamic Law', in *Protecting the World's Children: Impact of the UN Convention on the Rights of the Child in Diverse Legal Systems* (New York: Cambridge University Press for UNICEF, forthcoming 2007).

²⁵ See: Dwyer at 2,12; Venkatraman at 1964-1970; Elahi at 368-369; An-Naim, "Religious Human Rights" at 342-343.

²⁶ Lee, Waldorf. *Children's Rights and Islam*, UNICEF unpublished Working Paper (2000)

²⁷ Countries such as India and Sri Lanka

²⁸ See: Syed at 372-374; Venkatraman at 1972-4; Goonesekere at 49-53; Lucas at 54:55.

²⁹ S. S. Ali, 'A Comparative Perspective of the Convention on the Rights of the Child and the Principles of Islamic Law', in *Protecting the World's Children: Impact of the UN Convention on the Rights of the Child in Diverse Legal Systems* (New York: Cambridge University Press for UNICEF, forthcoming 2007), citing various scholars of Islamic law.

Traditional or customary law

Traditions and customs play a significant role in the legal system of many countries. Customary law, in some cases administered by traditional chiefs and their councils, often deals with matters relating to children and ‘family’. Even if the written laws of a country protect and promote children’s and women’s rights, traditional practices may often hinder their effectiveness. For example, the law may grant women the right to inherit property (from a husband or father who dies), but if a woman is not aware of the law or if custom in her community excludes women from inheriting property, she may not be able to benefit from the law.³⁰ In the case of Ghana, the Constitution specifically protects women’s equal right to inheritance, but an overwhelming number of women are unaware of the law.³¹

Both traditional practices that promote children’s and women’s rights and those that are incompatible with them should be identified as part of a law review. If less favourable to children, customary principles must then be brought into line with the CRC. Whether or not CEDAW has been ratified in a given country, customary principles must be reviewed in light of CEDAW’s principles and be made compatible where applicable.

States in which traditional law has a significant impact often officially recognize certain customary provisions as a source of law and define its place in the hierarchy of laws. In Fiji for example, common law and customary law operate in the same system. State law is based on the common law tradition, while both indigenous Fijians and Indians have their own customary law traditions. Fiji has thus integrated the customary law into both the Constitution and statutory law.³²

Box 11: Main characteristics of key legal systems

Civil Law System

- This written law is the primary source of law and is organized into comprehensive codes, which lay out basic legal principles (rule oriented system); codes are written in general language
- Judges apply law and use legal scholarship as a source for interpretation of the law; interpretation looks at legislative history, doctrine, law’s purpose
- Judges have no legal obligation to follow the interpretations and decisions of other judges in previous cases (except those of the High Court or Cour de Cassation), although may do so in practice
- The judicial decision process begins with identifying the applicable principle and then applying it to case

³⁰ See UNICEF, Human rights for children and women: How UNICEF helps make them a reality, pp. 19-20; Centre on Housing Rights and Evictions, Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women (2004).

³¹ Centre on Housing Rights and Evictions, Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women (2004), p. 178.

³² Gwen Phillips, ‘Application of Customary Law Rules in Fiji and the Pacific Region: Dual Systems’, in Bringing International Human Rights Law Home: Judicial Colloquium on the Domestic Application of the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child (2000), p. 122.

- Focuses on social order and timely resolution of cases; consistency of interpretation is often considered less important
- Judges are specially trained as judges (in training schools or during the post law school practical work period)
- Laws are published in an Official Gazette; international treaties once ratified will become part of domestic law once they are published in the Official Gazette

Common Law System

- Court decisions (case law) are an important source of law
- Legislation is generally specific and narrowly interpreted
- The judiciary provides a check on the other branches; court decisions are laws in themselves
- Judges must look to previous cases in their jurisdiction to decide a case (law is based on what has been done before)
- Court decisions are very ‘fact specific’ (looking at the facts first to see what rule should be applied and how)
- Court decisions may create the impetus for legislative reform to fill gaps in legislation made evident by cases
- Judges are selected from among senior advocates/lawyers of high reputation and experience

Islamic Law

- Based on religious sources of law and juristic techniques: the Quran, *Hadith* or *Sunna* (custom or conduct of the Prophet Mohammed), *Ijma* (consensus or opinion, agreement among Muslim jurists on a question of law), *Qiyas* (analogical deduction, in matters not covered by the other sources) and *Ijtihad* (exercising independent juristic reasoning)
- Islamic law most often coexists with customary norms and/or ‘secular’ legal frameworks (in a pluralist system)
- Personal status law or family law is the area most commonly covered by Islamic law in pluralist systems

Traditional/Customary Law

- Oral law based on inherited custom and community tradition
- Often prevails in practice over formal contradictory written laws
- Sometimes adjudicated by traditional leaders or tribal councils

By understanding the national legal system, UNICEF staff are better positioned to identify partners and points of entry for legislative reform in the country. Parliamentarians, government ministry staff, judges, lawyers, religious leaders, traditional leaders, and many others, are all potential partners for various types of legislative reform activities. Identifying how the system works helps to pinpoint how change can be affected in a given scenario.

Box 12: Identifying a country’s legal system

Individual countries often develop variations on a system or incorporate other features into the system, even if the system is not considered pluralist. It is therefore difficult to create a single tool to provide information on the legal system in force in every country, because to do so requires defining classification criteria for the different legal systems that may not hold up in the reality of amorphous and mixed legal systems. Several sources do exist, however, to identify some details of a country’s legal system. Below are some electronic resources to find information on the legal system in place in a particular country.

- University of Ottawa, Faculty of Law, World Legal Systems, <http://www.droitcivil.uottawa.ca/world-legal-systems/eng-monde.php>;
- GlobaLex, Hauser Global Law School Program, New York University School of Law, <http://www.nyulawglobal.org/globalex/index.html#>; and

- (US) Central Intelligence Agency, World Factbook, <https://cia.gov/cia/publications/factbook/fields/2100.html>.

3.1.2 Understanding how international instruments are incorporated domestically

Incorporation of human rights instruments into domestic law is often necessary for individuals to hold duty-bearers accountable for violating their rights. Otherwise, individuals cannot invoke provisions of the international instrument in domestic courts.

As mentioned in the previous section, the status of international human rights instruments domestically depends greatly on the legal tradition. Civil law countries follow the monist tradition, so that an international legal instrument becomes part of domestic law upon ratification. However, even in monist systems, courts rarely apply international instrument without individuals proactively citing their provisions. Thus, automatic incorporation does not necessarily result in effective incorporation.

Common law countries follow the dualist approach, requiring legislative or administrative measures before the ratified instrument becomes part of domestic law. In both common law and civil law countries, when an instrument is incorporated into domestic legislation, it can be done with varying effect:

- pre-eminence of the international instrument (even over the national constitution);
- priority given to the international instrument over all laws except the constitution; or
- supremacy of the national constitution, but the international instrument prevails over previously enacted laws that conflict with it (conflicting laws enacted after the ratification will prevail over the international instrument).

Box 13: Example of effect of incorporation

For example, the regional human rights instrument in Europe, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), was ratified by the United Kingdom in March 1951. As the United Kingdom follows the dualist common law tradition, the ECHR did not automatically become part of domestic law; it was only incorporated into the United Kingdom's domestic law via the Human Rights Act of 1998.

This Act, which came into force in October 2000, requires all public authorities in the United Kingdom to comply with the provisions of the Convention and allows individuals to bring a case for enforcement of these rights in domestic courts. Additionally, courts must make every effort to interpret domestic legislation in line with the provisions of the ECHR whenever possible.

Source: United Kingdom, Human Rights Act of 1998 (1998), Preamble and Sections 3, 6 and 7.

In most civil law countries and some Islamic countries, an international legal instrument then prevails over domestic laws if there is a conflict (although many Islamic law countries have made reservations to the CRC and CEDAW stating that they will not be bound by provisions that are in conflict with Islamic law). In common law countries, international legal instruments do not generally prevail over domestic law in the event of a conflict.

In either case, the CRC's or CEDAW's status is important for its implementation. Implementation requires harmonising national laws with the international standards. However, each legal system creates different problems for harmonizing laws and in some cases there may be a conflict between constitutional and international rights guarantees. Therefore, assessing evolutions in the legal context of the country requires examining the status of human rights instruments (whether they are incorporated or not, what must be done to incorporate them, whether formal incorporation is effective), the level of harmonization of national laws with the instrument's provisions, and the nature of any reservations entered by the country to human rights instruments.

Box 14: The legislative process in Viet Nam

The Vietnamese legal system is based on communist legal theory and the French civil law system. The legal system is still evolving rapidly. There are laws on the promulgation of legal documents at both central and provincial levels in Vietnam.

In principle, laws are meant to contain enough detail to be implemented. However, in practice laws are usually drafted in general terms, creating a need for accompanying guidance documents. Thus in practice, taking a law to the stage where it is ready to be implemented requires issuing a set of guiding documents going right down to the lowest levels. This is a challenge for UNICEF and others concerned with legislative reform, as it is not enough only to look at a law, but also at the various levels of guiding documents, all of which together make up the legal basis for the reality of implementation. As an example of how complicated this can be, the typical law implementation process is:

1. Law enacted by the National Assembly.
2. Order issued by the President to publish the Law.
3. Decree drafted by the relevant Ministry and issued by the government to guide implementation.
4. Circular issued by the same Ministry to guide on the implementation of the Law and the Decree. If the scope of the Decree is cross-sectoral, two or more concerned Ministries will issue an inter-ministerial Circular.
5. In the process of the Law and Decree's implementation, the Prime Minister can issue accompanying Directives.
6. At local levels additional resolutions and directives can be issues for implementation of laws and decrees to implement the Law and the Decree.

Source: Vu Tuan Minh and Dan Seymour, UNICEF Viet Nam.

3.2 Identifying the Impact of the Political and Social Contexts on Legal Trends

The legal tradition is only one ingredient of legislative reform; the political context and dynamics can be equally important and will affect the reform process. Therefore, in addition to understanding the tradition upon which the legal system is based, effective legislative reform work also requires understanding the legal, political and cultural context in which the legal system functions, and particularly the impact of the legal system on realization of children's and women's rights.

The legal context of a country creates impetuses for and challenges to legislative reform. Impetuses may include ratification of the CRC, CEDAW or other instruments, the establishment of a human rights institution, regional enforcement mechanisms for human rights norms, international development, and the evolution of the interpretation of religious laws. Challenges to legislative reform include the absence of comprehensive review, law enforcement limited to civil rights affairs, lack of resources allocated, low rate of legal literacy (including lack of legal assistance or support), and lack of participation by NGOs and other civil society interest groups in the process (due to inadequate capacity or lack of forum).

3.2.1 The political context

A country's political context may provide a challenge and also opportunities for legislative reform. Laws are generally shaped through political processes, and so the political context becomes crucial to legislative reform in favour of children and women. Work in this area is therefore always political, and involves understanding the power dynamics and interest groups, confronting power structures at all levels, and promoting democratic and inclusive political structures.

Analyzing laws as well as the political and historical context of the legal system is critical to understanding the 'big picture' of potential legislative reform initiatives. Discriminatory, weak, corrupt, or dysfunctional systems undermine effective reform.³³

The impact of the judiciary is a further factor to consider in the political context. Judicial independence from political and external interference, essential for the integrity of the system, must be balanced with accountability. Appointment, promotion, discipline, and removal of judges can be significantly impacted by political considerations, which often results in little transparency or rules for the process. This not only leads to questionable standards but, as a result, can also discredit the judiciary entirely.

3.2.2 The impact of social practice

The social and cultural contexts in which laws are implemented are also important to effective implementation of human rights and gender equality standards. A large gap often exists between law and practice. To the extent that law reflects social and community values, effective implementation of legislative reform initiatives, and thus improved realization of rights, often requires emphasis on education and shaping cultural values.

In some cases, social norms can have an important influence on the development of legislation while, in others, laws may not be implemented because they do not correspond to social values and practice. Identifying social and cultural values that support legislative initiatives to realise children's and women's rights as well as highlighting social and cultural practices that compromise human rights-based legislative reform are critical to effective

³³ 'Capacity Building by Human Rights Organizations: Challenges and Strategies (Report of the Center for the Study of Human Rights at Columbia University/The Banyan Tree Foundation Roundtable, September 2002).

initiatives. Furthermore, social mobilization can play an important role in building movements and creating pressure for social change, particularly when the emphasis is placed on empowering marginalized groups in the dialogue.

3.3 Promoting Comprehensive and Holistic Reform

Holistic review and reform are important for the optimal realization of children’s rights. The CRC is itself a holistic document, incorporating civil and political rights and economic, social, and cultural rights. However, there is a tendency (including in the legislative reform process) to divide these rights into two sets: civil and political rights, and economic, social, and cultural rights. Often, protection rights (civil and political rights) dominate the dialogue and reform. The result is little advancement on basic social policies of health and education.

The Committee on the Rights of the Child has recommended a comprehensive rights-based approach to implementing the CRC, which includes:

- Comprehensive law review and any necessary reform (including constitutional changes);
- Development of a national plan of action for implementing the CRC, “through an open, consultative and participatory process”;
- Establishment of an independent national human rights institution to monitor and evaluate progress in implementing the CRC;
- Allocate available resources to ensure full implementation of the CRC and “systematically assess the impact of budgetary allocations on the implementation of child rights”; and
- Consideration of adopting a comprehensive children’s code to incorporate the CRC.³⁴

While the Committee on the Rights of the Child has suggested that a children’s code (or act)—a comprehensive single law that incorporates the principles and provisions of the CRC—may be an effective way for States parties to meet their obligations, the reality is that such codes have both advantages and disadvantages. An overarching code creates a focal point for children’s rights and highlights the guiding principles by which the government and courts must operate. However, such a code does not automatically repeal laws that run contrary to the provisions of the Convention. Furthermore, some countries have a unified children’s code or act, although many of these do not incorporate all of the provisions of the CRC and may predate the treaty. Drafting and adoption of a children’s code or children’s act can take substantial time and face opposition. In some cases, piecemeal reform can more quickly address key issues and change laws incompatible with international obligations (or address issues of implementation). Piecemeal reform, however is also a long and tedious process, and often stops before considering all legislation that has a bearing on the lives of children (if children are not the main focus of the law).

³⁴ See, e.g. ‘Concluding Observations of the Committee on the Rights of the Child: Oman’, para. 11(b), CRC/C/15/Add.161, 6 Nov. 2001; ‘Concluding Observations of the Committee on the Rights of the Child: Hungary’, para. 24, CRC/C/15/Add.87, 5 June 1998; ‘Concluding Observations of the Committee on the Rights of the Child: Bhutan’, para. 13(c), CRC/C/15/Add.157, 9 July 2001.

Box 15: General measures of implementation of the CRC

In 2003, the Committee on the Rights of the Child drafted a general comment to outline States parties' obligations to develop what it has termed 'general measures of implementation' for the CRC. These measures include:

- The process of reforming laws: calls on States parties to ensure compatibility of existing and new legislation and judicial practice with the CRC, in a number of ways, including: comprehensive reviews of legislation; the inclusion of children's rights in the Constitution; the development of specific laws to reflect the CRC principles and provisions; by responding to 'new' issues related to children's rights; and by the considering effective remedies for children and their representatives if children's rights are breached. In the review process, it is important to note that provisions of national law that go beyond the CRC (and are more conducive to children's rights) should remain as they are;
- Independent national institutions for children's rights need to be developed – such as children's ombudsman offices, child rights commissioners and focal points within national human rights institutions;
- Comprehensive national agendas or strategies for implementation of the CRC are needed; their relationship to the follow-up process to the World Summit for Children and UN General Assembly Special Session on Children is critical;
- Children's rights-focused permanent institutions and structures within government are required to ensure coordination and pursue implementation;
- Allocation of resources to children "to the maximum extent of their availability is key in States Parties' efforts to ensure the CRC implementation";
- Systematic monitoring of the implementation of the CRC, through effective child-related data collection, analysis, evaluation, and dissemination;
- Education, training, and awareness-raising on children's rights need to be steadily promoted; and
- The involvement of civil society, including children, is critical, if there is to be progress on implementation.

Source: UNICEF, Innocenti Research Centre, *Study on the impact of the implementation of the CRC*; Committee on the Rights of the Child, 'General Comment No. 5', CRC/GC/2003/5 (2003).

A national strategy should have many dimensions, including supportive social policies on health, nutrition, education, and water, sanitation, and hygiene (WASH); a plan for legislative reform; and development of regulatory systems and enforcement institutions. The planning process should also be synergistic with the CRC reporting process.

Box 16: Characteristics of a good national strategy

According to the Committee on the Rights of the Child, an effective national strategy for children must be:

- Built on the framework of the CRC, and be comprehensive (including all rights);
- Include elaboration of sectoral plans of action, which set out specific goals, targeted implementation measures, and resource allocation;
- Endorsed by the highest level of government;
- Developed through consultation with civil society, women, children, and youth;
- Identify and give priority to marginalized and disadvantaged groups;
- Linked to national development planning and included in national budgeting;
- Disseminated widely, in an accessible manner (throughout government and to the public, including children);
- Enumerated with real and achievable targets;
- Adequately resourced, in human and financial terms; and
- Include arrangements for monitoring and continuous review, regular updating and periodic reports to the legislative body.

Additionally, such a plan should identify a state or independent body to responsible for implementation of the plan; indicate national counterpart resource allocation and international cooperation; and be inspired by a deep analysis of the situation of children and women in the country.
Source: General Comment No. 5, *op. cit.*; Legislative Reform Initiative presentation.

A comprehensive review of the country's laws should be undertaken by the government to assess their compatibility with the CRC and CEDAW, where the latter has been ratified. This should be followed by systematic harmonization of laws with the Conventions (including repeal of old incompatible laws). If the government is opposed to adopting a children's code, reform can begin by modifying relevant existing laws.

The Committee on the Rights of the Child emphasizes the importance of fully incorporating the CRC into domestic legislation. In their reports to the Committee, governments should indicate whether a comprehensive review of legislation and its compliance with the CRC has been done, what measures have been taken to harmonize domestic law (and policies) with the CRC, and specifically cite any amendments or new laws that implement the Convention.³⁵ Committee recommendations often suggest the need to undertake comprehensive review and harmonize legislation (and customary law) with the CRC. The need to pay specific attention to the 'best interest of the child' is also highlighted by the Committee (e.g. in reviewing and adopting laws). Specific recommendations may reference such areas as the definition of the child (specifically, requests to review age limits), juvenile justice (recommending specific broad legislative measures to protect children in conflict with the law) and education (recommending legislation that requires free, compulsory education until a certain age). CRC reporting obligations can create the impetus for reviewing and reforming laws regarding children and women.

The Committee on the Elimination of Discrimination against Women has called for "sustainable change towards full equality of women with men in all aspects of public and private life is achieved through comprehensive legal reform." In this context, the Committee specifically called for the repeal or amendment of discriminatory legislation as well as enactment of positive laws to "bring the country's legal framework fully into compliance with the provisions of the Convention and to ensure equality between women and men." The Committee's comments call for reform timetables and awareness-raising efforts to promote the importance of legislative reform. The Committee has highlighted also the need for special measures for the advancement of women (e.g. quota systems) to address past discrimination and achieve actual equality for women.³⁶

Legal provisions for children and women may be spread throughout various codes or pieces of legislation, such as criminal codes and family or employment laws. Some countries have a unified children's code or act, although many of these do not incorporate all of the provisions of the CRC and may predate the instrument. A single law may prohibit discrimination against women, if such a prohibition exists, or discrimination may need to be addressed throughout the various types of legislation. For more information on how 'neutral' laws affect women, see Part I(B)(2).

³⁵ See, e.g. 'General Guidelines for periodic reports', paras. 3, 5 and 18.

³⁶ 'Concluding Comments of the Committee on the Elimination of Discrimination against Women: Chile', Para. 10, U.N. Doc. CEDAW/C/CHI/CO/4, 25 Aug. 2006.

3.4 Nationally-owned Legislative Review

The legislative review process must be owned by the government if it is to take responsibility for the results. While a legal scholar or expert may undertake the law review on behalf of the government, this process may diminish the sense of ownership by the government and other stakeholders and the result may be more academic than practical. Alternatively, the government may establish a specialized legislative reform body with a preliminary mandate to concentrate on legislative reform relating to children or women. Such a body should include representation from various government ministries, the judiciary, legal practitioners, law enforcement, civil society, children, and women. Efforts should be made by UNICEF and other interested UN agencies to identify government capacity gaps and support the government in strengthening capacity for the legislative review.

The rationale for legislative review

There are numerous reasons for undertaking a review of national legislation relating to children. A State party must undertake a comprehensive law review in order to fulfil its CRC obligations, and undertake the reform necessary to ensure that all rights in the Convention are domestically protected and embraced. A law review will identify gaps (and successes) in both law content and practice and can be one of the most effective entry points for prioritizing children's rights. It will determine which laws must be amended as well as what new laws are required. This comprehensive review can help identify, for example, cultural practices and traditions that undermine the realization of children's rights.

Law review helps to identify negative trends, obstacles, provisions or other factors that have an impact on children's and women's rights. Law review also helps to stimulate a national debate on areas needing reform and, if carried out with the participation of the broadest spectrum of stakeholders, can articulate both the needs and perceptions of those affected by the laws.

Some of the main challenges to implementing the CRC and CEDAW domestically are gaps in legislation; lack of coordination among key state actors; poor or absent coordinating institutions and enforcement infrastructures; lack of mechanisms to ensure that an adequate portion of the budget is devoted to children's or women's issues; and poor cooperation between the government and non-governmental organizations. Comprehensive law review can be an important factor in eliminating these obstacles.

The process of legislative review

The process of legislative review and reform is as important as its products. Proper law review should analyse the level of realization of children's rights; the successes and failures of prior legislative reforms; how legal norms are enforced and implemented; the roles of the Parliament, the Executive and the judiciary in achieving legislative reform; and the existing

capacity to involve community in legislative reform process. The law review process should include an examination of possible obstacles in the law to rights realization, including indirect or de facto discrimination. Law review can also start a process of internalization of new laws, help process of dissemination of law, change social behaviour, and provide an opportunity to discuss rights and mechanisms of redress.

Box 17: Characteristics of a human rights-based legislative review

- Law review in light of children's rights requires more than mere examination of legal provisions related to children.
- Law review should be conducted in a participatory manner, involving broad consultation with a wide range of stakeholders (including children and women).
- The law review should be comprehensive; many pieces of legislation affect children, even if children are not the main objects of the law.
- The law review should consider the *effects* (and not just the text) of laws, as women/girls and men/boys may be affected in different ways by the same law.

Law review is more than a textual review of existing legislation and jurisprudence. A review may benefit from public forums and other opportunities to gauge public perceptions of the law and first-hand accounts of how specific laws (or a lack thereof) affect children's and women's everyday lives.

Children, women, traditional and religious leaders, NGOs, community groups, social services professionals, legal professionals, and law enforcement officers should be involved throughout the law review process. The government should also include a broad spectrum of ministries and parliamentary groups in the process. Some individuals may have expertise to offer in a specific area of law (e.g. teachers will have valuable input for review of education laws and policies as well as advice on health, sanitation, and protection laws that affect students), while others may have general influence and experience.

Law review must not be limited to a technical analysis by experts, but involve a process of consensus-building on the need for reform and strategies for carrying it out. It is important to remember that, like situational analyses, law review must be performed on a continuous basis.

A review of laws should take into account all legislation that affects women and children, even if children or women are not the main subject of the law. Human rights standards, particularly the CRC and CEDAW if the latter is binding on a country, should serve as the basis for assessing legislation. Different methods are proposed for broad law review and details can be explored in UNICEF's forthcoming *Handbook on Legislative Reform in Favour of Children*. The Conventions can be used as a checklist to analyze which laws implement each provision (and therefore identify rights that have no supporting legislation). The CRC and CEDAW can also be held up to each piece of legislation to measure its compliance with the Convention. (In order to complete such an analysis in an efficient and timely manner, there may need to be some boundaries set on which laws need to be reviewed. Such decisions should be made in consultation with all stakeholders.) Following both paths will provide a better understanding of how laws affect children and what

implications they hold for the realization of children's rights.³⁷ No matter how the law review is conducted, it is important to remember that looking at the text of laws is only one part of the process; an analysis of the level of practical rights realization and looking for the existence of programmes, policies, and supporting laws that guarantee these rights is also crucial.

Raising awareness of law review

Legislation is not effective in respecting, promoting, and fulfilling children's and women's rights by its mere existence; it requires successful implementation. In order for this to happen, stakeholders must be aware of and understand the law and have the capacity to do their part in implementation. For example, lawyers, judges, teachers, social workers, doctors, law enforcement officers, and others must be trained in children's rights and specific legislation affecting their work. Individuals must be aware of the laws to make sure they are respected.

³⁷ UNICEF, *Handbook on Legislative Reform in Favour of Children*, Chapter 3.3 (forthcoming 2007). (This chapter also includes detailed recommendations for a government-owned law review.

4 Holistic Reform for Children’s and Women’s Rights

Legislative reform activities can be incorporated to any area or sector of UNICEF programming. The applicability of any specific legislative reform activity is dependent on the situation in the given country and programme priorities. While legislative reform often involves ad hoc initiatives, UNICEF can assist governments to fulfil their obligations under the CRC and CEDAW, adopt laws and policies for children, and advance the realization of children’s and women’s rights.

Building national capacity to realize children’s rights—capacity on the part of the claim holders and duty bearers—requires developing and strengthening laws, policies, and institutions. UNICEF can help to overcome the challenges and constraints by cooperating with partners on legislative reform and raising awareness of child rights issues—both in a comprehensive manner and specifically in relation to UNICEF’s priority areas.

While the programmatic aspects of UN Reform require that the system works in support of common national objectives, each agency should bring its respective strengths and mandates to the process. In the case of UNICEF, the MTSP 2006-2009 Focus Areas sharpen the strategic focus of UNICEF and emphasize the use of knowledge and evidence-based advocacy to support informed decision-making in children’s and women’s best interests. One of the objects of the MTSP 2006-2009 is to build capacity in HRB legislative reform programme management.³⁸ UNICEF needs to support government capacity in human rights-based law and policy making, resource allocation, and law enforcement.

Legislative review and reform can and should be considered in all of the priority areas considered below, reflecting the Focus Areas of the MTSP 2006-2009. Legislative reform is not just an issue or approach for Focus Area 5; it is cross-cutting. Also, whilst legislative reform falls under Focus Area 5, this Focus Area should be seen more broadly as well.

Identifying short- and long-term goals and entry points for legislative reform can facilitate the harmonization of national development efforts and laws with the human rights norms of the CRC and CEDAW, as well as other international standards. Depending on what needs to be done and the processes involved, the structure and partners required for UNICEF legislative reform activities may vary.

4.1 Cross-cutting Issues and Partnerships for Holistic Reform

Legislative reform in favour of children and women can be done through a comprehensive approach or sector-by-sector changes to comply with international treaty obligations. For

³⁸ UNICEF, The UNICEF medium-term strategic plan, 2006-2009—Investing in children: the UNICEF contribution to poverty reduction and the Millennium Summit agenda, U.N. Doc. E/ICEF/2005/11 (2005), paras. 33 and 52.

more on these two approaches, see Part II(C). Regardless of the approach to legislative reform, many cross-cutting issues must be addressed. Some of these are outlined below.

4.1.1 Policy advocacy and partnerships for children’s rights

Focus Area 5 of the MTSP 2006-2009 is more than just a cross-cutting area for implementation of the other Focus Areas; it places a focus on advocacy for child rights through the building of new strategies and partnerships. Focus Area 5 stresses advocacy and collaboration with UN and other partners to open legislative reform dialogues aimed at creating national frameworks and advancing actions that realize children’s and women’s rights.³⁹ The HRBAP and the CRC are strong foundations from which to engage in collaborative advocacy.

Advocacy is often the core of UNICEF’s work in legislative reform. Workshops, trainings, technical assistance, and communications programmes help to raise awareness among community groups, government representatives, parliamentarians, and those involved in the legal system. Activities in this area will strengthen UNICEF’s knowledge-based contributions to advocacy and partnerships for legislative reform. Gender-disaggregated data and analysis can be used to advocate for legislative, institutional, budgetary, and policy reforms in the best interests of children and women. UNICEF’s strength in this area can then be leveraged with resources from other partners to impact PRSPs, UNDAFs, and the realization of children’s rights.

In addition to strengthening UNICEF’s capacity, work in this area can strengthen national capacity “to design and implement social and economic policies, legislative measures and budgetary allocations that enable them to meet their obligations under” the CRC and CEDAW.⁴⁰ Activities in this priority area should include generating and disseminating high-quality research and analysis addressing the implications of international policy frameworks, national legislation, and public policies for the rights of women and children.

Box 18: Advocacy and partnership building for legislative reform

- Advocacy efforts should be directed at the responsible ministry (which often takes the initiative to start the review process), Parliament, (to promote legislative review and reform) and judiciary (to encourage use of human rights treaties in judicial decisions—particularly in common law systems).
- Advocacy is needed to influence national budget allocations.
- Technical assistance and capacity building is required for parliamentarians, judges, and lawyers, as well as law enforcement officers, social workers, teachers, the media, etc.
- Raising public awareness through the media, civil society, schools, etc. is also important.

³⁹Ibid., para. 91.

⁴⁰Ibid., para. 89.

UNICEF country offices can enhance existing partnerships and develop new ones in national planning; reporting to the CRC and CEDAW Committees; related policy frameworks, research, and analysis; impact analyses of current and proposed policies, budgets, and legislative and administrative reforms; and capacity building. Partnerships should include promotion of age-appropriate participation by children and participation by women in the decision-making that affects their lives, and societies.

In addition to policy advocacy and partnerships for children's and women's rights, there are several cross-cutting issues that should be considered as part of programming in all of the priority areas. Specific discrimination based on gender, disability, and ethnicity overlaps with other challenges to advancing legislative reform and realizing children's rights. Combating discrimination in all of its forms must be considered as part of the legislative reform objectives in all priority areas. This applies not only to UNICEF but to the UN System as a whole, and should be reflected in the United Nations' contribution to the Country Analysis or the CCA and in the UNDAF.

4.1.2 Discrimination against women

Nationality laws that discriminate against women generally also discriminate against children and their right to a name and nationality. Denying children their right to a nationality can affect the realization of other rights, including the right to education, participation in political life, and access to health care, among others.

Box 19: Conferring nationality

Before the Botswana Citizenship Act was passed in 1984, the Constitution guaranteed that mothers could also pass their nationality on to children born into a marriage. The 1984 act repealed this provision and determined the nationality of a child born in Botswana exclusively by the father's nationality, intending to bring citizenship law into conformity with Tswana customary law, meaning that a child born in Botswana to a Botswanan mother and foreign father would not be considered Botswanan.

In 1990, Botswanan lawyer and activist Unity Dow, challenged the Act on the basis that it violated the Constitution's guarantees of liberty, equal protection of the law, immunity from expulsion, and the right to be free from degrading treatment. She also argued that the Act was discriminatory, in violation of the Constitution. Two of Dow's children were born in Botswana after the Act went into force and, as her husband was American, they required residence permits to stay in the country, could leave the country only on their father's passport, would not be allowed to vote, and would be denied the free university education available to citizens.

The High Court found that the Constitution should be interpreted as prohibiting sex discrimination, based on the country's international support for non-discrimination against women. (Although Botswana had yet to ratify CEDAW, it had participated in the adoption of the 1967 Declaration on the Elimination of Discrimination against Women. While the government appealed, arguing that the Constitution intended to discriminate against women, in order to preserve traditional Tswana values, the argument was rejected by the Court of Appeal, again citing international commitments: "Botswana is a member of the community of civilized states which has undertaken to abide by certain standards of conduct and, unless it is impossible to do otherwise, it would be

wrong for its Courts to interpret its legislation in a manner which conflicts with the international obligations Botswana has undertaken.” In 1995, when Botswana was preparing to ratify CEDAW, the Citizenship Act was finally amended and the Act is now gender-neutral, giving equal rights to men and women with respect to the citizenship of their children.

Source: UNIFEM, Bringing Equality Home: Implementing the Convention on the Elimination of All Forms of Discrimination against Women (1998), pp. 20-21.

4.1.3 Multiple forms of marginalization and discrimination

The principle of non-discrimination in human rights instruments applies to many forms of discrimination—based on age, gender, race, ethnicity, social standing, disability, etc. Efforts to promote legislative reform in favour of children and women must take into account the reality that members of these groups often face multiple levels of discrimination and increased marginalization.

Box 20: Protecting indigenous peoples’ rights

The first national law in Africa specifically on indigenous peoples’ rights is currently being drafted in the Republic of Congo. At the request of the Ministry of Justice, OHCHR, and the ILO began providing technical assistance to the process in February 2006. In their comments on the first draft of the law, OHCHR and ILO pointed out that a number of critical human rights concerns for indigenous peoples were not mentioned—including land and resource rights and participation rights.

As part of their assistance, OHCHR and the ILO held trainings both for staff of the ministries drafting and applying the law and for representatives from NGOs. The trainings focused on elaborating the law on indigenous peoples through an effective consultative process involving the participation of civil society, including indigenous representatives. These trainings were followed by an expert seminar in Brazzaville from 25-28 July 2006, organized by the Ministry of Justice and supported by OHCHR and the ILO. This seminar focused on a collaborative drafting of the law; OHCHR provided support and legal expertise on the latest international standards regarding indigenous peoples’ rights. The draft law is currently being reviewed by all the partners in the process and the Ministry of Justice will prepare a revised version based on their comments. The final draft is then to be sent to the Council of Ministers and Parliament.

See also Box 22, ‘Protecting the right of indigenous children to education’

Source: I. Kempf and S. Slimane, OHCHR, “Note to the file on an expert seminar organized by the Ministry with the support of OHCHR and ILO from 25-28 July 2006 in Brazzaville aimed at the joint drafting of a national law on the promotion and protection of the rights of indigenous peoples.”

4.2 Legislative Reform in UNICEF Sectors

Legislative reform can have a significant impact on the realization of children's and women's rights in all UNICEF sectors. Legislative reform activities can contribute to the success of other programme activities, and vice versa. The content of laws, social policies, partners' work, and observations and comments by treaty body committees are all frames of reference for advancing legislative reform.

4.2.1 Young child survival and development

UNICEF's priority for young child survival and development includes support for essential health, nutrition, and young child and maternal care. This support should be represented at the family, community, service-provider, and policy levels. The legislative framework to support young child survival and development must consider relevant obligations both for government and non-government actors. As shown below, employers, corporations, and health care providers all have important roles to play in children's survival and development. The obligations and rights of all stakeholders should be defined and supported with monitoring and accountability mechanisms (and adequate resources).

Examples of areas of action for legislative reform for young child survival and development include:

- Access to health care and immunizations: policy for prevention and control of diseases; legal framework for the administration, regulation, financing, and maintenance of health care facilities and personnel; training, certification, and code of ethics for medical personnel; establishment and regulation of Expanded Programme of Immunization (EPI) centres; and quality control of vaccines and other drugs;
- Protecting, promoting, and supporting breastfeeding, including maternity protection laws and policies, maternity leave for women in paid employment (and paternity leave, too), prohibition of workplace discrimination on the basis of pregnancy and maternity, etc. (see below);
- Alleviating micronutrient deficiencies, primarily through food fortification: legislating standards for fortification, labelling of products, quality assurance procedures, etc.; and
- Water, sanitation and hygiene, through adoption of policies that focus on equity and equality, and the development of effective decentralized planning, monitoring and evaluation mechanisms and allocation of resources for construction of low-cost water and sanitation facilities, etc.

Box 21: Universal Salt Iodization

Iodine deficiency disorder (IDD) is the primary cause of preventable mental retardation and brain damage, having the most devastating impact on the brain of the developing foetus and young children in the first few years of life. Iodine deficiency also increases the chance of infant mortality, miscarriage, and stillbirth.

UNICEF and a diverse group of public and private sector organizations are working to eliminate iodine deficiency through Universal Salt Iodization (USI). Partners include salt producers, governments, the International Council for the Control of Iodine Deficiency Disorders (ICCIDD), the World Health Organization (WHO), the Micronutrient Initiative, the World Bank, Kiwanis International, schoolteachers, consumer organizations, and children in classrooms around the world.

Government support, leadership, and commitment are essential to strategic planning and effective implementation of IDD elimination programmes. Public policy support and government leadership ensures that IDD elimination is a national public health and economic development priority. Establishing a regulatory mandate for USI, allocating necessary resources, and empowering multiple ministries to play their respective roles- including food control and enforcement, public health and nutrition monitoring, and public education - are the government's main roles and responsibilities.

A comprehensive USI law should apply to all salt production for human and animal use regardless of the producer size and whether salt is domestically produced or imported.⁴¹ Effective USI legislation and related regulations require the input and review of the salt industry, trade representatives, as well as all government authorities involved in the oversight of the salt market. In addition to adopted laws, the implementation of USI requires significant efforts to ensure that the laws are enforced. This requires a set of rules, instructions, and standards with clear definitions of roles and responsibilities for all institutions that have responsibility for, and routine contact with, the salt industry and market.

Legislation and regulatory documents provide a legal framework for the designated State agencies to enforce proper implementation of USI. However, the agencies also need human, technical, and institutional capacity to perform the functions specified by regulations.

Source: UNICEF, The Roadmap Towards Achievement of Sustainable Elimination of Iodine Deficiency: Operational Guidance 2005 and Beyond (2005), pp. 3-5.

As an example of the interconnection between law, policy, and other components of legislative reform in the area of young child survival and development, below is an example pertaining to protecting, promoting, and supporting breastfeeding. For further details on legislative reform in the area of young child survival and development, see Appendix C.

With a goal of increasing rates of exclusive and continued breastfeeding, legislative reform may require the development or amendment of laws, policies, decrees, and regulations, including:

- Adoption of a comprehensive infant and young child feeding (IYCF) policy, promoting exclusive breastfeeding for six months, followed by continued breastfeeding for two years with appropriate complementary feeding;
- Reform of policy within the health care system ensuring that all maternity facilities comply with Baby-friendly Hospital Initiative (BFHI) standards, in partnership with WHO;

⁴¹ See R. Nathan, *Food Fortification: Legislation & Regulations Manual* (PAMM, UNCEP, USAID, World Bank, 1995), www.micronutrient.org/idpas/pdf/315RegulationOfFortified.pdf.

- Enactment of effective legislation to implement the International Code of Marketing of breastmilk substitutes, and subsequent relevant resolutions of the World Health Assembly, in partnership with WHO and the International Baby Food Action Network (IBFAN); and
- Adoption of legislation providing for maternity leave, paid breaks for breast feeding, and flexible work schedules to facilitate breast feeding. This could be done in partnership with the ILO, which advocates for the ratification and implementation of the ILO Maternity Protection Convention No 183 (2000).

4.2.2 Basic education and gender equality

The MTSP 2006-2009 Focus Area 2 on basic education and gender equality aims at: (a) improving children's developmental readiness to start primary school on time; (b) increasing access to quality basic education; (c) improving educational quality and increasing school retention, completion and achievement rates; and (d) ensuring that education is restored in emergency and post-conflict situations and helping to safeguard education systems against threats such as HIV/AIDS. In particular, eliminating gender-based and other disparities and targeting the disadvantaged groups represents a key strategy for advancing the education rights of all children.

Education rights with respect to access and quality need to be embedded in the legislative framework in order to be clearly acknowledged as entitlements for which States are accountable and which individuals can claim. Legislation needs to address both the explicit obligation to fulfil education rights, as well as the removal of direct and indirect barriers that impede access to quality education. The required legislative measures and domestic legal framework will vary according to the different country context, but would include the following:

- Macro-legislation ensuring appropriate investment in education;
- Access to education, including a legislated period of free and compulsory education;
- Quality of education: adoption and implementation of child-friendly school standards and legislative measures for improved school management and effective teacher training and appraisal;
- Elimination of corporal punishment and all forms of violence against children in schools; and
- Non-discrimination and inclusion: measures to prohibit discrimination against and pro-actively promote equal access to education for girls, children with disabilities, ethnic minority and indigenous children, children affected by HIV/AIDS, and children in institutions.

As an example of the interconnection between law, policy, and other components of legislative reform in the area of basic education and gender equality, below is an example pertaining to access to education. For further details on legislative reform in this area, see Appendix C.

With a goal of increasing access to education, legislative reform may require, for example:

- Legislated definition of the period of free, compulsory education for all children (including through the abolition of school fees);
- Policies and plans on fee reduction and the provision of free primary education, accompanied by appropriate budgetary allocations;
- Legislated sanctions against parents or guardians refusing to allow their child to benefit from free education;
- Universal requirements to register every birth, supported by, for example, ending the legal requirement that parents present their own identity papers and, pending universal registration, removing any requirement to provide evidence of birth as a condition of enrolment at school. This can be done in collaboration with PLAN International, which promote birth registration reform globally;
- A life-cycle approach to legislative reform, encompassing measures beyond the basic provision of universal access to primary education to include pre-and post-primary provision (including the learning needs of all young people and adults);
- Reforms introduced to end child labour, in partnership with ILO, including synchronization of legislation to ensure consistency between the minimum age for full time work and the school leaving age (in line with the ILO Convention 138⁴²) and the introduction of a minimum wage, applicable equally to children, to discourage employers from using children as a cheap source of labour;
- A policy or strategy for promoting retention and preventing school drop-out; and
- Strategies (and their effective implementation) for providing education to children in situations of risk including extreme poverty, HIV/AIDS, gender discrimination, and emergencies.

⁴² A. Melchiorre, At What age are school children employed, married and taken to court. Right to Education Project. Stockholm, 2004.

Box 22: Protecting the right of indigenous children to education

In 2003, The General Law of Linguistic Rights of Indigenous Peoples and a federal law to prevent and eliminate discrimination were passed in Mexico. These laws have led to the All Children in School Initiative (ACS), carried out by the SEP (General Coordination of Intercultural Bilingual Education-CGEIB); the Organization of Ibero-American States for Education, Science and Culture (OEI); and UNICEF. This initiative also involves significant citizen participation that seeks to generate commitments in all sectors, both governmental and non-governmental, in an effort to ensure achievement of the goals pertaining to quality basic education for all children. New partners, such as private companies, public institutions not traditionally related to education, and media outlets have joined more recently in this effort of offering all children educational opportunities.

The policy approach of this project aims to foment greater respect among Mexican society as a whole for indigenous culture, and to ensure that children have access to quality education. UNICEF's role has been to support the education authorities in providing technical assistance regarding materials, videos, and teachers' manuals to inform students about customs, traditions, and daily realities for indigenous children throughout Mexico. The programme and the response from teachers and district supervisors have been extremely positive.

An evidence-based-policy approach has been key to identifying the main obstacles for accessing school for children. A study was completed and shared with the education policy makers specifically and society in general. Based on this newly available information, concrete activities have been undertaken to include those children currently out of school and to work on the reasons why children drop out. An important achievement has been the work started at the municipal level in Yucatan and Chiapas. These municipalities have taken a leadership role in improving access to education and strengthening incentives to prevent school drop-outs.

The Mayors of municipalities of Chemax, Tizimin and Merida in Yucatán and of Tuxtla, Tapachula, San Cristobal, Las Margaritas, Ocosingo and Oxchuc in Chiapas committed themselves to improve access to quality education for all children. This resulted in a number of remarkable outcomes, such as individually locating and identifying (house-to-house) children and youth out of school or at risk of leaving school and integrating these children in a scholarship system; construction of new school infrastructure; increasing the number of teachers; making school bus systems more inclusive; inscription campaigns; and birth registration campaigns.

The project reached 800 schools and approximately 240,000 children during 2005. This is the first project of its kind in mainstream public education and the results have been very promising in terms of combating discrimination and increasing awareness of indigenous cultures.

Source: A. Jenkins Acosta, UNICEF TACRO.

4.2.3 HIV/AIDS and children

Children are increasingly infected with and affected by HIV/AIDS. Priorities include care and services for children orphaned and made vulnerable by HIV/AIDS, promoting expanded access to treatment for children and women, and preventing infections among children, adolescents, and women. HIV/AIDS affects children in many ways that overlap with other priority areas. For example, children may be out of school to care for a family member with AIDS or to work to support the family. The loss of qualified teachers to HIV/AIDS also affects children. Children may be withdrawn from school if fees cannot be paid due loss of income and increased medical expenses. HIV/AIDS affects young girls disproportionately to boys, due to care responsibilities, early marriages, teenage pregnancies, 'sugar daddy' syndrome, sexual violence, etc.

The OHCHR/UNAIDS International Guidelines on HIV/AIDS and Human Rights, the UN Committee on the Rights of the Child General Comment No. 3, and the UNICEF/UNAIDS International Framework for the Protection, Care and Support of Orphans and Vulnerable Children Living in a World with HIV/AIDS highlight the following areas of action for legislative reform for HIV/AIDS and children:

- A national framework for a strategic and collaborative response to HIV/AIDS;
- Non-discrimination: legislated prohibition against discrimination in access to health care, education, employment, social security, welfare benefits, employment, etc., as well as mechanism for speedy and effective administrative and civil remedies for violations;
- Access to information and education related to HIV/AIDS prevention and care, inside and outside school;
- Access to voluntary counselling and testing, including pre- and post-test counselling and a prohibition on mandatory HIV-testing of targeted groups;
- Privacy and confidentiality: prohibitions on unauthorized collection, use, or disclosure in health care and other settings, and a requirement for informed consent for the use of HIV-related information;
- Comprehensive treatment, care, and support: empower and fund public health authorities to provide antiretroviral and other medicines; diagnostics and related technologies for the care of HIV/AIDS related opportunistic infections and other conditions; good nutrition; social, spiritual, and psychological support; and family, community; and home-based care;
- Child and adolescent-friendly health care, including confidential sexual and reproductive health services, and standards for determining when an adolescent can consent to treatment in his or her own right;
- Prevention of mother-to-child transmission;
- Promotion of family and community-based alternative care for children affected by HIV/AIDS;
- Review and reform of criminal laws and systems to avoid discriminatory use in the context of HIV/AIDS (for example, laws against prostitution, drug use, and homosexuality often hinder AIDS prevention policies⁴³);
- Review and reform of public health laws to ensure that they specifically address HIV/AIDS issues and do not lump them with casually transmitted diseases, and in particular to ensure that people are not subjected to coercive measures such as isolation, detention, or quarantine on the basis of their HIV status; and

⁴³ See J. Hamblin, *The role of the law in HIV and AIDS policy* (UNDP HIV and Development Programme Issues Paper No. 11, 1991), www.undp.org/hiv/publications/issues/english/issue11e.htm.

- Regulation of HIV-related goods, services, and information to ensure widespread access to prevention and care information, measures, and services, and affordable medicine (these regulations should be accompanied by efforts to strengthen government capacities to increase access to counselling, testing and treatment, and ensure that women and children receive an equitable share of ARV treatment).

Other legislative and policy reforms should be included to address the relation between gender-based violence (e.g., domestic or intra-familial violence, sexual violence, and rape) and HIV/AIDS, early marriage (that put young girls at a much higher risk), and female genital mutilation (FGM).

Box 23: Changing attitudes and social practices

The law can be used to proactively promote the changes in values and patterns of social interaction that lead to susceptibility to HIV infection. Legislative reform should include a review of school curricula and mandatory inclusion of age-appropriate information on HIV/AIDS in the curriculum. Legislation, institutional structures, and policies must also take into account the overwhelming number of children left without parental care or protection due to HIV/AIDS.

Land ownership, marital property, guardianship, and inheritance laws should be reviewed and reformed to protect those affected by HIV/AIDS. More than a million children were orphaned by AIDS in Kenya by the end of 2000. A Human Rights Watch Report suggested that loss of inherited property (usually at the hands of relatives) was a significant problem for these children. The report cited gaps in the judicial system, which limited consideration of children's property cases, and recommended establishment of child-friendly mechanism for hearings these cases.⁴⁴

Laws to protect women and children from violence, exploitation and abuse are equally important. They should take into account the risk of contracting HIV/AIDS in the social dynamics of sexual relationships—particularly the power dynamic between men and women or girls.

4.2.4 Child protection

The child protection sector is a traditional arena for legislative reform. Often, law review and reform are the domains of child protection professionals. While legislative reform should not be limited to this sector, child protection laws are important to realizing children's rights. However, protecting children requires more than having the laws in place. UNICEF-supported programmes also support capacity-building in such areas as setting standards and enforcing legislation.⁴⁵ Social mobilization, monitoring, and advocacy activities are also necessary to create a protective environment for children.

⁴⁴ Human Rights Watch, *World Report 2002* (2002), pp. 522-23.

⁴⁵ *MTSP 2006-2009*, op. cit., para. 86.

Child protection laws are often found in different legal codes or types of legislation, for example in criminal/penal codes, family law, children’s codes, or others. With a goal of protecting children, legislative reform may require the development or amendment of laws, policies, decrees, and regulations, including:

- Social protection services for children and their families: a legislative and regulatory framework for identifying and responding to children at risk, and for promoting the recovery and reintegration of children who have experienced violence and exploitation;
- Alternative care: promotion and regulation of family and community-based care options, regulation of adoption, and standards for government and NGO-run institutions;
- Violence and exploitation: criminalization of all forms of violence (including any form of domestic violence), physical punishment and sexual exploitation of children (child prostitution, child pornography, and the sale and trafficking of children), and provision of adequate punishment for offenders;
- Harmful traditional practices: prohibit early marriage, female genital mutilation/cutting (FGM/C) and honour killings, and provide adequate punishment for offenders;
- Child labour: establish a minimum age for employment in accordance with ILO Convention 138, prohibit the worst forms of child labour in accordance with ILO Convention 182, and establish adequate inspection and enforcement mechanisms;
- Children affected by armed conflict: prohibit the compulsory recruitment of children under 18 into the armed forces, restrict voluntary recruitment to children over the age of 16, ensure that children under the age of 18 do not take direct part in hostilities, and prevent recruitment and use of children by armed groups;
- Effective justice system to enforce the laws and protect children’s rights, including child- and gender-sensitive procedures for reporting, investigation, and prosecution of crimes against children; and
- Juvenile justice system in accordance with international standards, including stipulation of a minimum age of criminal responsibility, special procedures for children—both boys and girls—at all stages of the proceedings, guarantee of due process rights, and promotion of diversion and alternatives to detention.

Box 24: Comprehensive reform to realise Universal Birth Registration Strategy in Bangladesh

In 2004, the Births and Deaths Registration Act was adopted, repealing a previous law dating 1873. Five corresponding rules for each administrative level were subsequently developed by the Local Government Division as guidelines to ensure its effective implementation. When the law came into force in July 2006, registration became: i) free for the initial two years, ii) compulsory (as birth certificates will be required as a document for proof of identity and age for administrative procedures), and iii) accessible because the requirements needed to register a child have been simplified. In addition, in order to facilitate access to

registration facilities, volunteers will be recruited to collect birth data from households, especially in the hard-to-reach areas. A specific provision prohibits the discrimination against, amongst others, refugee children, orphans, and children born out of wedlock.

This legislative reform gives priority to government ownership and thus the capacity building of national institutions. Task forces of key duty-bearers were created from the national to the lowest administrative level and the training on the new law, rules, and registration methods has been included into the regular curriculum of the local government and health training centres. Relevant texts and materials (registration books, birth application forms, and certificates) were printed and distributed, and the current birth registration information system was expanded into an electronic database. The government has committed 5 per cent of the national budget to realizing universal birth registration and a multi-sectoral approach was adopted based on best practice, linking birth registration to education system and immunization centres, thus building sustainability. A broad range of partnerships has been established through the consolidation of the NGO Forum on Birth Registration, as well as the cooperation with international aid organizations and development and private sector donors. A communication strategy was developed, involving the broadcasting of television and radio spots on government and private media channels, in order to generate behaviour change and raise awareness on the importance of birth registration. Furthermore, a legal study was conducted on the revision of birth registration related law, rules, and administrative procedures in order to assess compatibility to the new law and the CRC. The Local Government Division and the corresponding Health and Education Ministries, together with UNICEF and other stake-holders, will monitor the progress.

The Act, coupled with the government's Universal Birth Registration Strategy, acted as an impetus for the creation of a national birth registration system in a country where only an estimated 7-10 per cent are registered. With the technical assistance of UNICEF and other key partners, the strategy aims to register 90-95 per cent of children by 2008.

Source: G. Khalil, UNICEF Bangladesh.

As an example of the interconnection between law, policy, and other components of legislative reform to create a protective environment for children, the example below pertains to juvenile justice. For further details on legislative reform in this area, see Appendix C.

- Adopt a comprehensive juvenile justice code (or amendments to existing legislation) in accordance with international standards, with primacy placed on diversion and alternatives to detention;
- Develop an inter-agency strategy to implement juvenile justice reforms and promote collaboration between government agencies and between government and civil society;
- Develop a policy and guidelines on restorative justice and diversion, including guidelines for service delivery by local NGOs and civil society groups. This could be done in cooperation with other agencies promoting mediation, alternative dispute resolution and restorative justice, such as UNDP, Save the Children, Penal Reform International, and Terres Des Hommes.;
- Develop detailed guidelines on juvenile justice (protocols, directives, standing orders, judicial bench book, gender considerations, etc.) for police, prosecutors, social workers, judges, and prison staff. This could be done in cooperation with broader police, prison and judicial reform/capacity building initiatives undertaken by UNDP, OHCHR, World Bank,

and bi-lateral donors. It is important to consider the different needs of boy and girl juvenile offenders in all aspects of the juvenile justice process.;

- Incorporate juvenile justice training into existing induction and in-service training programmes conducted by justice sector agencies (e.g. police academies, legal and judicial training institutes), in cooperation with broader justice sector reform initiatives of UNDP, World Bank, and bi-lateral donors;
- Promote the establishment of specialized police units, specialized judges, and specialized courts and institutions for juveniles; and
- Advocacy and social mobilization to promote community acceptance of diversion and non-punitive responses to juvenile offending.

5 Legislative Reform Activities

Law implementation shortcomings are often due to weak institutional capacities; lack of financial resources; lack of coordination; relative inadequacy of some laws; poor dissemination of and access to information for the public in general; and weak participation of children, women, and civil society, among other factors. Language barriers, insufficient number of judges, and lack of independence in the judicial system also contribute to poor implementation of laws.

Initiatives to reform laws and draft new laws must be combined with other dimensions of rights awareness, capacity building, training, and monitoring that are known to be intrinsic to effective implementation. In addition to promoting broad participation in the legislative process, various activities can support legislative reform. These include:

- Promoting the adoption or enactment of supporting regulations necessary for effective implementation of the law;
- Promoting institutional reform;
- Developing partnerships for legislative reform;
- Advocating for legislative costing and appropriate resource allocation;
- Raising awareness of laws and their implementation;
- Strong partnerships with the media;
- Providing technical assistance and training (including on gender-related issues) to law enforcement, judges, parliamentarians and others; and
- Monitoring and reporting on national implementation of laws.

Reform initiatives must include the broad spectrum of work required to implement the law. Efforts at the country level have ranged from providing technical assistance for conducting national legislative reform studies to building governmental and civil society capacity for effective advocacy for implementation and monitoring of state obligations. Important efforts also include promoting broad participation in the legislative process and strengthening awareness of reform. These efforts have led to new legislation, reform of national institutions, improved partnerships, the accumulation of experiences and data. Legislative reform activities can and should be incorporated into the UN common country programming process, including joint programmes.

5.1 Including Legislative Reform in UN Country Teams' Work from the Earliest Stages

According to the MTSP 2006-2009, “UNICEF works with partners to put children at the centre of all relevant national policy and planning tools (including PRSPs, SWAp and national and sub-national and municipal plans of action for children) and promotes meaningful and appropriate participation by children and young people in decision-making processes that affect them at different levels of society.”⁴⁶ The MTSP 2006-2009 strategy must be considered by country offices and regional offices in light of the conditions in the country.

Activities supporting and implementing a legislative reform process should be built on the existing planning process. When conducting Child Rights Analyses or Situation Analyses of Children and Women, Common Country Assessments and in all major reporting, an analysis of the legislation on children should be incorporated. The United Nations contribution to the Country Analyses or CCAs should include a prominent role for legislative reform. SITANs (when conducted), and UN Country Analyses or CCAs offer a springboard to activities in the legislative reform area. The HRBA requires that the United Nations undertake a causal analysis for the non-realization of human rights, a role-pattern analysis of the relevant claim holders and duty bearers, and the capacity gaps which preclude duty bearers from meeting their obligations and claim holders from claiming their rights. These gaps, which are likely to include the country's legal and policy frameworks, should be explicitly identified. This situational analysis of laws and their implementation should be included in the UN Country Team's workplan and be conducted as part of the joint UN programming process. It should not be limited to review of legal texts or institutions. It should include an evidence-based review of the level of realization of children's rights. Data on the impact of laws and policies (or the lack of specific laws or policies) should be included to show how legislative reform would affect children, both boys and girls.

The nationally-led programming process should stress children's rights and broader human rights considerations in developing the UNDAF. That the programme process is nationally led in no way diminishes UNICEF's—or its sister agencies'—responsibility to advocate for children's and women's rights within the broader human rights spectrum. Rather, the MD and MDGs should inform the national priorities to which the UN system responds in its programming.

Support to legislative reform should be integrated into existing programmes and action to the extent possible rather than running as a parallel exercise. In this context, legislative reform should be included in the UNICEF-specific Situation Analysis, with an emphasis on an analysis on legislation and policies for children and women, and UNDAF.

⁴⁶MTSP 2006-2009, op. cit., para. 32.

Box 25: Legislative reform & country programming

The UNCT will use the principles of capacity development, gender equality, the human rights-based approach, and evidence-based advocacy in supporting legislative reform.

Programming steps	Integrate legislative reform through:
<i>UN Country Team organizes Programme Preparation Work with government(Comprehensive Work Plan)</i>	<ul style="list-style-type: none"> Legislative reform experts and representatives of relevant NGO/civil society groups participate in/convene Theme Groups or sub Theme Groups responsible for addressing policy and legislative reform issues. Include review of laws and their implementation as a step in the Workplan.
<i>Agree on root causes of key development priorities and identify critical capacity gaps</i>	<ul style="list-style-type: none"> Ensure that legislative reform is included in the preparation of UN-supported country analytic work. Conduct a review of laws affecting children and women and their implementation (See Appendix C). Include reference to the Concluding Observations of the Committee on the Rights of the Child and the Committee on the Elimination of all forms of Discrimination against Women. OHCHR can provide good support in this. Point out gaps in the legal framework. The assessment and analysis of the country's legislation should identify gaps, which should then be incorporated into the national frameworks such as Poverty Reduction Strategies.
<i>Agree on common expected results and division of labour(UNDAF)</i>	<ul style="list-style-type: none"> Using the priorities identified in above and informed by information available from the comparative analysis, advocate for the inclusion of legislative reform priorities in the UNDAF and Summary Results Matrix and identify strategic partners. Include legislative reform indicators in Monitoring & Evaluation Plan.
<i>Agree on main programme strategies (1st Joint Strategy Meeting)</i>	<ul style="list-style-type: none"> Discuss and agree with key partners on the strategy for legislative reform, including possible participation of other UN Agencies including Non Resident Agencies The Regional Legislative Reform Advisor, and if required the relevant HQ Focal Point, participates and comments on the strategy
<i>Secure Resources for the Proposed Country Programme (Draft CPD)</i>	<ul style="list-style-type: none"> Preparation of the draft CPD adequately reflects legislative reform. It refers to MTSP 2006-2009 Focus Area 5 on policy and legislative reform Include, where feasible, specific legislative reform goals as key results (even if goals are incremental)

<p><i>Organize UNICEF's own office, resources and management arrangements. Country (Country Programme Management Plan and the multi-year Integrated Budget (CPMP/IB))</i></p>	<ul style="list-style-type: none"> • Ensure the necessary human resources (internal and external) are integrated into the Plan.
<p><i>Country Programme Action Plan (CPAP) and Integrated Monitoring and Evaluation Plan (IMEP)</i></p>	<ul style="list-style-type: none"> • Elaborate on the strategy for legislative reform in the CPAP and indicate (in the IMEP) sources of data for the indicators agreed upon and any evaluations to be conducted
<p><i>Mid-term review of the UNDAF</i></p>	<ul style="list-style-type: none"> • Ensure that appropriate partners and experts form part of the MTR and that timely evaluations are done to inform the MTR process. Use CRC and CEDAW Country Reports and Concluding Observations and Recommendations to inform the MTR on the major issues on legislative reform

Additionally, where a situational analysis of children and women is conducted, child rights comparative assessment and analysis of the country's legislation should be conducted to inform the country analytic work, identifying gaps that should then be incorporated into the national frameworks such as national and sector plans and PRSPs. The United Nations, during its joint programming process should then indicate the areas of support in the legislative reforms.

Because several UN agencies are looking at the legislative reform process when assessing the strength of the country analytical work or when preparing the CCA, this process is an important way to get legislative reform in favour of children and women into the UNDAF. The support should be coordinated and evidence-based. UNICEF can support coordinated efforts by contributing results of its evaluations and reviews at the CCA stage.

The CCA and UNDAF should:

- Describe the rationale for UNICEF's involvement particularly (and the United Nations' generally) in supporting legislative reform in a given country;
- Provide a proper assessment of the existing legal system and its gaps and weaknesses relative to the CRC and other international child- and gender-related instruments and an analysis of how existing legal framework supports (or fails to support) the realization of the rights of children and women;
- Give criteria for identifying inconsistency and uncertainty in laws under review or being proposed;
- Analyze the socio-political context and openness in society and the government towards legislative reform;

- Address issues such as the limits of any legislative reform initiatives including constitutional reviews and also assess their main constraints; and
- Give examples on how to move reforms forward in areas related to children’s and women’s rights and advocate for compliance of domestic legislation with international standards, including using the reporting process to treaty bodies to activate progress.

Box 26: Creating entry points for legislative reform

There are a broad range of entry points for legislative reform, including those beyond the legislative process, including:

- Collecting and presenting evidence for legal change (e.g., gathering data on domestic violence for legislative reform);
- Parliamentary debate on Concluding Observations and Comments by the treaty body committees;
- Convoing working groups for harmonization of legislation to meet obligations under international instruments;
- Supporting NGOs and civil society in their efforts to propose legislative reform
- Mobilizing society and proposing legislative reforms;
- Parliamentary commissions of inquiry into specific human rights violations as a means of collecting evidence;
- Using the human rights-based approach to provide concrete guidelines; and
- Sharing experiences across borders and organizations to contribute to effective realization of children’s and women’s rights.

5.2 Creating an Environment for Effective Legislative Reform

5.2.1 Encouraging broad participation in legislative reform processes

A HRBA to legislative reform implies participation by all claim-holders and duty-bearers in the legislative reform process, including the executive and legislative branches, as well as judges, legislative reform commissions, NGOs, and civil society.

Participation by NGOs, while often controversial, can help to institutionalize community participation and are often the driving force behind grassroots efforts to promote legislative reform. NGOs are sometimes accused of only representing a portion of society or a particular interest. However, their cumulative voices and grass-roots advocacy can be very effective in establishing mechanisms for participation—for themselves and others. Women’s participation in the political process (both as elected representatives and through women’s organizations) is critical for realizing both the rights of women and the rights of children.

Box 27: The importance of women’s organizations in the legislative reform process

Women’s organizations are important forces for political change, often providing support to women elected to political office and conducting advocacy efforts on behalf of women, children and families.

For example, in Afghanistan, women’s groups have provided significant support in mobilizing women to participate in the presidential and parliamentary elections and in monitoring the electoral process. In Morocco, the advocacy and awareness-raising efforts of women’s rights activists associated with the organization Printemps de l’Égalité (Spring of Equality) helped persuade government leaders to support a landmark family law in 2004 that is meant to address women’s inequality, protect children’s rights, and safeguard men’s dignity. In Rwanda in 2002, women parliamentarians and community leaders collaborated during the drafting of a national convention to support women’s educational opportunities, small business loans provided by rural banks and the creation of a commission to lobby on behalf of vulnerable young people.

Source: UNICEF, The State of the World’s Children 2007 (2006), p. 59.

Religious and traditional leaders are also important participants in the legislative reform process, as they often command tremendous trust in their communities. They are ‘custodians’ of customary law, and therefore can be important advocates for advancing children’s rights. Because custom and tradition impact on children’s rights and implementation of the CRC, traditional and religious leaders should be involved in the process of reviewing and reforming laws, budgets, and policies. Their involvement can make the outcome more sustainable.

Box 28: Participation by religious and traditional leaders

For example, in Botswana, Chiefs advise the National Assembly Bills ‘likely to affect’, among other matters, the “organisation, powers or administration of customary law,” customary law generally, or “the ascertainment or recording of customary law.” UNICEF Botswana has particularly identified the potential of *kgotla* gatherings to discuss harmful traditional practices and is working with communities through these and other fora to “identify practices and customs that are antithetical to child rights.”

Source: ‘Customary Law, Legislative Reform and the Convention on the Rights of the Child: A Botswana Case Study’ (2005), pages 19-22, (citing Constitution of Botswana, L.N. 83 of 1966 (Chapter 1, *Laws of Botswana*), section 88(2)).

The existing process for law making in a given country presents different channels for participation by different groups. Understanding the potential and the limitations of this process helps to determine how and when to initiate reforms and which factors will influence actual reforms. Participation systems are important both to ensure the quality of the reform as well as to help build consensus and communicate within the country on the importance of legislative reforms for children and women.

Legislative reform processes must be transparent, participatory, respond to the needs of all children, and address the substantive equality of women and the complementarity of their needs with those of children. Efforts to support governments in the legislative reform process should be coordinated with NGOs and other civil society organizations, sister agencies, donors, and other actors—specifically including women’s and children’s organizations—and through public debates or consultation involving women and children.

Box 29: Action for the Rights of Children

Action for the Rights of Children (ARC) is a rights-based, participatory, gender sensitive, action oriented approach of programming. It is a powerful tool for increasing the voice of children in the design, implementation and monitoring of laws, policies and programmes. It provides flexible resources which may be used at national, sub national levels and has been extensively used in emergency situations. ARC recognizes that communicating with children is a core skill and personal qualities.

ARC contains resource packs for raising awareness of the issues that children face with a view to ensuring that laws, policies and programmes respond to these concerns. It generates dialogue and therefore the possibility of finding appropriate responses and solutions. It ensures sustainability in that local structures are empowered to respond to their own issues of concern.

ARC initiative has been developed jointly with UNICEF, UNHCR, and Save the Children Alliance. Through a memorandum of understanding, these organizations agreed to develop training modules on the Action of the Rights of Children (ARC).

The ARC training provides an opportunity for all organizations to improve skills in reaching children and young persons, being able to communicate to them more effectively on key issues that affect their survival, development, protection and participation. The ARC training provides project officers, community leaders, and workers with valuable skills that will enable them to increase the voice of children and their views in the planning, implementation, and monitoring of programmes in their best interest. It also enables stakeholders to give priority and increase investments in children.

Source: S. Momanyi, UNICEF DPP. For more information on ARC, see www.savethechildren.net/arc/files/main.html.

The legislative process and governmental structure

While the full process for enacting laws, budgets, and policies may differ, the structure, competencies, and procedures of legislative bodies will have a significant impact on the ability to influence legislative reform. The executive and judicial branches of the government can also impact legislative reform. The first step to influencing the legislative process is by understanding the structure of the different branches of the government, particularly the legislature.

Box 30: Understanding the legislative process

In order to determine entry points into the legislative process for a given country, the following questions should be asked:

- How is the national legislature structured? (Is it a uni-cameral or bi-cameral body? What are the components? What statutory committees exist within these components?)
- What are the steps in the legislative process? (see Appendix D for standard steps in a bi-cameral process)?
- Who can submit a draft law pursuant to the rules of procedure?
- How is the legislative process initiated?
- What form should the draft law take?
- What happens once the draft law is submitted? Can outside groups access the national legislature through public hearings or discussions? How do legislative committees function?
- When is a proposal considered adopted?
- When does an adopted proposal become law?

Adapted from Global Rights' Legislative Advocacy Resource Guide, Monrovia, Liberia (March 2006).

The competencies of the legislative, executive, and judicial branches of government are generally contained in the national constitution. Legislative procedures are likely established elsewhere, and should be scrutinized to determine how to maximize participation in the process.

Influencing reform throughout the legislative process

A consultative and participatory process can positively impact of both law implementation and the reality of change produced; the quality of the process used is firmly linked with the fate of the legislative reform initiative undertaken.

Non-governmental actors (UNICEF, partners, civil society, etc.) can become involved in the legislative process in various ways, including by:

- Promoting and influencing the reform process, including through evidence-based advocacy and experience sharing;
- Drafting legislative texts;
- Proposing a new law or amendment to an existing law;
- Attending legislative sessions;
- Participating in the review process;
- Remaining informed throughout the legislative process;
- Advocating for adoption of the law;
- Influencing budgets, policies, and institutional development; and
- Ensuring constant public debate on issues under review.

Box 31: Congressional caucuses for children's rights

UNICEF was a key actor in processes of mobilization for and elaboration of Brazil's Children and Adolescents Statute. The process started with a national mobilization gaining over one million signatures, resulting in the inclusion in the new national Constitution of 1988 of "the duty of families, society and the state to ensure for children and adolescents with absolute priority the right to life, health, food, education, leisure, culture, dignity, personal development, respect, freedom, a family environment, and to protect them from all forms of discrimination, exploitation violence, cruelty and oppression." This preceded the CRC.

The civil society groups and congressional members involved in this effort, subsequently organized to draft domestic legislation—the Children and Adolescents Statute—and accompany it through Congress. The drafting process was influenced by that of the Convention, ensuring that Brazil's children's code, whilst different, is a solid manifestation of the Convention in domestic law. After the law was passed unanimously in both chambers in July 1990, this congressional grouping continued its activities and in 1993, formalized a permanent Caucus for Children's Rights, *Frente Parlamentar para a Defesa dos Direitos da Criança e do Adolescente*. The Caucus has influenced Congressional legislative, budgetary, and oversight functions in favour of children, ever since.

The Caucus is a cross-party and cross-committee grouping of parliamentarians, currently with some 159 members from both chambers of Congress. UNICEF has provided technical support since its inception, particularly in facilitating a bridge between civil society child rights groups and parliamentarians, to agree a congressional agenda for children. Regular meetings of the Parliamentary Caucus allow members and civil society representatives to discuss relevant legislative or budget proposals under review in the different sectoral Commissions (Health, Education, Social Assistance) and in specific parliamentary inquiries (for instance into child killings in 1991, and sexual exploitation in 1993 and 2003). Through the Caucus, Parliamentary members are informed and can adopt common strategies, seeking rapporteurships on important legislative reviews or inquiries, convening special public hearings, proposing new legislation, and tabling amendments to the national budget to provide more resources for children.

The initiative has now been taken to sub-national level. Since 2005 Parliamentary Caucuses for Child Rights have been set up in 22 of the 27 state legislatures in Brazil, and in several municipal chambers.

Source: A. Sutton, UNICEF Brazil

Understanding the legislative process and procedures can help to channel or initiate appropriate participatory interventions. For example, legislators or legislative committees that are knowledgeable in a certain area or support a particular issue can be strong partners in proposing a new law. Knowing whether the procedural rules allow for public hearings, and how such hearings can be arranged when a draft law is being debated, is important to participation and advocacy. Similar principles apply when advocating for child-friendly budgets, policies, or institutions.

Participation mechanisms

In September 2006, the Committee on the Rights of the Child held a Day of General Discussion entitled 'To Speak, Participate and Decide – The Child's Right to be Heard'. In its recommendations following this discussion, the Committee highlighted the obligation of States parties to implement Article 12 of the CRC and encouraged States parties to formulate policies and programmes to promote the realization of child participation in the home, at school, at the community level, and in judicial and administrative proceedings.⁴⁷

In order to be effective, participation must be genuine and meaningfully contribute to law and policy formation and implementation. Participation is often championed on an ad hoc basis, and continued efforts in this area remain important. However, participation is most sustainable when it is institutionalized through permanent participatory mechanisms. On children's issues, mechanisms for children's and women's participation are especially important. Mechanisms for participation include:

- A Reference Group created to provide input to the drafting of a bill and that remains in place to lobby for its enactment;
- A cross-party parliamentarians' caucus for children's rights (as done in the Brazilian Congress);
- Action on the rights of children (UNICEF/Save the Children/UNHCR);
- Codified child participation (Mongolia);

⁴⁷ Committee on the Rights of the Child, Day of General Discussion, 'Final Recommendations' (unedited version), 29 Sept. 2006.

- Public consultation on draft legislation, ensuring access by stakeholders including children and women;
- Public hearing in national Congress and at a decentralized level; and
- Ministry-organized youth advisory group that provides information to the government on youth issues and opinions (developing communication channels between the government and young people).

Box 32: Mechanisms for child participation

In Botswana, children were part of the legislative reform process. When the Children’s Act was scheduled for review, a Children’s Reference Group was constituted to look at the same issues the “adult” Reference Group was working on. Discussions and focus groups enabled children to assess their own situation and recommend a plan of action for reform. The process was such a success that it was reiterated a year later when Botswana decided to look into its customary law and the extent to which it had been taken into consideration in legislative reform processes. A Reference Group of Children was once again constituted to inform the researcher on how customary law impacted on their rights and their relationship with the custodians of customary law: the traditional leaders *kgosi*. When the report was ready for discussion with the *kgosi*, the same children were invited to present their perception of customary law as it relates to child’s rights and the dialogue between children and traditional leaders was then initiated.

Brazil’s Statutes for the Child and Adolescent opens the way for Municipal Councils for the Rights of the Child to be composed evenly of governmental and non-governmental representatives. These Councils, which must be established locally by government and civil society, have decision-making capacity. As of 2004, Councils exist in nearly 5,000 of Brazil’s 6,500 municipalities. The Councils’ primary function is to identify the needs and available resources in the municipality, attempting to address the gaps created by the over-centralization in the country and disconnect between supply and demand in each area. The Councils therefore address gaps deficiencies in public policy and also institutionalize community participation in policy affecting children’s rights.

When tasked with the drafting of a new Child Justice Bill, the South African Law Commission (SALC) recognized that children are important constituents whose opinions could play a vital role in the development of the Bill. SALC therefore contracted a local NGO to conduct consultations with children. In total, 17 consultative workshops were held with children, ranging from those who had no contact with the criminal justice system (schools groups) to children already convicted and serving sentences (criminal justice system groups). The workshops were facilitated by NGO social workers who all received training in restorative justice, life skills facilitation, and the specific content of the Child Justice Bill.

Sources: E. Garcia Mendez, ‘Legislative Reform Initiative: A Comparative Study of the Impact of The Convention on the Rights of the Child on Law Review and Reform in Selected Civil Law Countries’, in *Protecting the World’s Children: Impact of the UN Convention on the Rights of the Child in Diverse Legal Systems* (New York: Cambridge University Press for UNICEF, forthcoming 2007); V. Sedletzki, ‘Review of UNICEF’s Experience in the Area of Legislative Reform’ (Draft—July 2006), p. 33; L. Elhers, Child Justice Alliance, *Children’s Perspectives on the Child Justice Bill* (2002).

5.2.2 Developing and fostering partnerships

Establishing a legal framework that enables realization of children's rights requires a great deal of effort by a variety of actors. Many actors have specific roles, but all must work together for effective reform. Country offices can strengthen their partnerships and consider broader alliances in the area of legislative reform with, for example, bilateral donors, sister UN agencies, and local communities. Specifically, UNICEF could improve expertise sharing with other agencies involved in legislative reform work. Collaboration with UN partners is particularly important for putting legislative reform on the national agenda from the beginning of the PRSP process, contributions to country analytic work, and the CCA and UNDAF processes.

Box 33: Partnering to abolish school fees

The School Fee Abolition Initiative (SFAI), launched by UNICEF and the World Bank in 2005, is a broad partnership with involvement of other key development partners and constituencies as well as research and academic institutions. It aims at making a breakthrough in access to quality basic education through support to policies of removing the education cost barriers to parents.

Source: School Fee Abolition Initiative, 'Status Report and Business Plan for 2006/2007' (October 2006).

Country offices must use creative thinking to determine the broadest spectrum of possible partners. For example traditional and religious leaders should be actively engaged in legislative reform processes and could be used as UNICEF advocates, as well as youth and children's organizations. UNICEF can promote wider partnerships with government ministries. These partnerships should include ministries without a specific focus on children, such as the Ministry of Finance.

UNICEF's partnerships with the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women are also important. UNICEF can provide significant input for Committee discussions. Committees' observations and recommendations should be used as guidance in country programming and as an advocacy tool to ensure that children's and women's issues are prominent on the political agenda. UNICEF can offer support to the government in their elaboration of State party reports to the Committees. UNICEF could also support the Committees' efforts in applying standards to national level socio-economic planning and policy-making⁴⁸ UNICEF can also build stronger alliances with other human rights mechanisms.

There are many opportunities for collaboration in the area of legislative reform. UNICEF's programming and partnerships necessarily vary based on the situation in a given country. Legislative reform initiatives would be different, for example, if the government is

⁴⁸D. Seymour, "The rights-based approach to Laws, Policies and Budgets for Children", *Something to think about...* (No. 30, June 2005).

undergoing constitutional reform or political and economic changes geared towards World Trade Organization or European Union accession or World Bank and IMF requirements. UNICEF can partner with UN agencies and NGOs working to implement CEDAW and the CRC. The organization may need to drive advocacy to keep children's and women's rights in the focus, piggybacking off of others' efforts. However, it is important to remain aware of attempts to thwart child-friendly legislation in the name of the WTO or European Union. For example, infant food companies have used both situations as excuses to make unfounded threats that adoption of Code legislation would precluded membership in these bodies, or would violate international trade agreements.

Box 34: UNICEF and treaty body reporting

Concluding Observations or Comments of treaty bodies, particularly those of the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women, are useful tools in the legislative reform process. They may point out gaps in the legal framework and make recommendations for future actions and opportunities for joint programming. The PPPM specifically requires country offices to take into account recommendations of these Committees in preparing the SITAN and CCA. When feasible, inter-country or regional initiatives can enhance the realization of children's and women's rights and country programme results.⁴⁹, for example by:

- Providing technical assistance to governments to support comprehensive reporting and ownership by the government
- Facilitating broad consultations within States to maximize the accuracy and impact of reports to the Committee
- Providing both the CRC and CEDAW Committees, as needed, with information relative to States' reports (CRC Committee relies on UNICEF to better understand the local situation of children).⁵⁰

For example, in 1997, UNICEF briefed the Committee on the importance of implementing the International Code on the Marketing of Breastmilk Substitutes in fulfilling obligations under Article 24 (e) of the CRC. UNICEF then encouraged NGO partner IBFAN to produce alternative reports to the Committee. These efforts have resulted in a jump in the number of Concluding Observations and Recommendations on this issue.

Source: IBFAN/GIFA, *Child Rights and Health: NGOs Making a Difference* (Jan. 2005).

Broader partnerships with different components of civil society, NGOs, the media, religious and traditional leaders, parliamentary groups, and communities themselves (specifically including adolescents, children, and women) can advance legislative reform. Country offices should also promote bringing together a broad range of actors in national coalitions working to realize children's rights. The media in particular has a crucial role to play in creating awareness on legislative reform initiatives and in promoting respect for women's and children's rights. UNICEF's successful experience promoting the role of

⁴⁹ MTSP 2006-2009, op. cit., para. 29.

⁵⁰ For more information, see UNICEF, *Human rights for children and women: How UNICEF helps make them a reality*, (2004), p. 22.

parliamentarians in legislative reform has led to new laws conforming to the CRC and budgets for law and social policy implementation that advance children's rights.⁵¹

5.2.3 Promoting legislative costing

Under Article 4 of the CRC, States have an obligation to allocate available resources in a way that meets the best interests of children. Unlike the CRC, CEDAW does not specifically mention resources as part of the 'appropriate measures' to achieve substantive equality between women and men. However these inevitably require resources to implement. Measures to implement the CRC and CEDAW both require sufficient resources to implement them. CEDAW does prohibit substantive discrimination in both the use of resources and their impact on women⁵²

Box 35: Legislative costing in South Africa

The draft Child Justice Bill introduced in 1998 in South Africa proposed changes to the juvenile justice system. It was the first bill to fully comply with the country's Public Finance Management Act No. 1, which requires estimation of the financial implications of any law that gives additional powers or obligations to the government. To meet this requirement, the costs of implementing the draft Bill were estimated by "(1) establishing a 'baseline' estimate of expenditure on the prevailing juvenile justice system, and setting up an analytical framework that would review five sectors (police, welfare, justice, correctional services and education) across national and provincial spheres of government, and (2) estimating the expected impact of the changes proposed by the draft Bill." The estimations considered the effects of changes that would save time for prosecutors in the Department of Justice but increase the demands on probation officers, while at the same time saving costs for the Department of Correctional Services and Department of Safety and Security, but raise costs for the Department of Welfare. These factors were then reconsidered when the draft Bill was revised in 2000.

Source: A. Sutton, UNICEF Brazil; R. Gore, 'Influencing Budgets for Children's Rights', (June 2004), pp. 18-21.

Costing of laws, determining what it will cost to implement specific legislation, is an important advocacy tool. Lack of resources is a frequent argument used by governments to oppose legislative reform. In some cases, UNICEF has effectively promoted costing of laws both to facilitate effective implementation and to show how legislative reform may be cost effective in the long term. UNICEF can promote costing of the PRSP (as advocated by the World Bank), to create a realistic road map for prioritizing and costing programmes, with a focus on children and women. Sectoral strategy plans outline key policy and institutional interventions to achieve established goals, as well as costs, indicators, and targets.

⁵¹ UNICEF's Experience on Promoting a Human Rights-based Approach to Programming 1996-2004, p. 15.

⁵² D. Elson, Budgeting for Women's Rights: Monitoring Government Budgets for Compliance with CEDAW, p. 32.

5.3 Supporting Legislative Reform Activities

5.3.1 Awareness raising and social mobilization

Social awareness and mobilization are often required to transform attitudes and practices, both within the community and amongst those charged with implementing laws. This process may be lengthy and should be done through multiple channels.

Box 36: Social Mobilization for Domestic Violence Act

In 1996, Musasa Project, a local NGO in Zimbabwe, carried out a survey on the nature and scope of domestic violence in Zimbabwe. The survey revealed that 99 per cent of domestic violence victims were women. The study revealed among other things that one in every four women was suffering physical violence at the hands of an intimate partner. Women's death as a result of domestic violence was also on the increase.

A follow up study conducted in 1998 focused on the linkages between HIV/AIDS and domestic violence. The study confirmed that women in violent relationships were more vulnerable to HIV/AIDS and therefore needed protection.

The shocking findings of the study gave birth to a national campaign for the enactment of a law to curb domestic violence. It is against this background that Musasa Project spearheaded an advocacy campaign for the enactment of a domestic violence law. This gave birth to a strong coalition comprising women's groups, NGOs, and the media to raise awareness about the need for a Domestic Violence Act with supportive mechanisms to ensure its implementation. The campaign for the Domestic Violence Act has spanned more than nine years during which time a strong coalition has evolved.

The establishment of the Ministry of Women's Affairs and Community Development in 2005 helped to galvanise the coalition lobbying for the Domestic Violence Act. In 2006, nine years after the initial lobbying by Musasa Project and partners, the Domestic Violence Bill was finally tabled in Parliament. The Bill, if passed, will go down in Zimbabwe's history as one of the widely debated Bills in the country. Women's groups have played a key role in keeping the momentum for the passing of the Domestic Violence Act. Through the mobilization of women's groups, a strong coalition of Parliamentarians, Chiefs, NGOs, and the media has been born.

Source: Muriel Mafico, UNICEF Zimbabwe.

Raising awareness of the law, its implementation and shortcomings

Laws in favour of children will not bring about actual change unless the laws are widely known—by government bodies, those working with children (law enforcement officials, teachers, social workers, health care professionals), the public (adults and children), civil society, etc. UNICEF often supports translation and wide dissemination of laws and human rights decisions to government bodies, those working with children, the media, and the community at large. To disseminate them as widely as possible, laws should, for example, be translated into all local (including indigenous) languages. Where applicable, child-friendly versions should also be created.

Raising awareness of the law involves raising awareness of the process of entry into force of the law, the rights supported under it, means to advocate for implementation and awareness of legal assistance and redress mechanisms. Those responsible for implementing laws need to know what is required of them (the content of the law, what they must do to implement it, and general principles of human rights). Information campaigns geared at the general public can raise awareness of specific laws, and also the law's role in implementing the CRC and realizing children's rights are important steps to ensuring implementation of the law.

Raising awareness of gaps in implementation of treaties/realization of rights

The Committees' Concluding Observations/Comments/Recommendations often focus on law implementation rather than law reform. For example, the Committee on the Rights of the Child, in its Concluding Observations in response to the Second Periodic Report of the Syrian Arab Republic recommended that the State "actively promote the implementation of [the rights to freedoms of expression, thought, conscience and religion, association and assembly, the right to privacy, and the right of access to information] by, among other things, making children more aware of these rights and by facilitating their active use in daily practice."⁵³

Such recommendations can and should be a starting point for legislative reform. To foster attention to these recommendations, country offices can, and often do, promote wide dissemination of these conclusion and recommendations (including to the media). This information helps to open dialogue with civil society organizations and policymakers to act on the recommendations contained in the reports.

Mobilizing civil society for improved government accountability

Civil society organizations can be a catalyst for monitoring State responsibility in the area of legislative reform. Because social mobilization is important to internalizing international human rights and legal standards, advocacy activities are important components throughout the legislative reform process.

UNICEF can support civil society in legislative reform advocacy and implementation by, for example bringing together various stakeholders to develop consensus as the text of laws as they are being drafted or amended, as well as implementation mechanisms. However, civil society is more powerful and better organized in some countries than in others. Where NGOs (or any other group) is not prominent, other groups can become social mobilizers. The media, religious and traditional leaders, independent institutions, youth associations, private sectors, academic institutions and research centres, bar associations, women's organizations, families, and communities can play an important role in supporting legislative reform. Local political constraints must be understood, but continued advocacy can support

⁵³ Committee on the Rights of the Child, 'Concluding Observations: Syrian Arab Republic, U.N. Doc. CRC/C/15/Add.212 (2003), par. 35.

a growing participatory culture. UNICEF can help build the capacity of children, as human rights knowledge-bases and participants in decisions affecting their lives.⁵⁴

Box 37: Evidence-based advocacy in the Philippines

Until recently, the Philippines' minimum age of criminal responsibility was age 9, one of the lowest in the world. After much advocacy, part of a comprehensive draft juvenile justice bill aimed to raise the minimum age of criminal responsibility to 12. As in other contexts, raising the age of criminal responsibility had been a contentious issue.

In order to support the draft bill's proposed increase in the age of criminal responsibility, UNICEF supported a local NGO to conduct a Study on Age of Discernment of Out-of-School Children. Researchers interviewed 300 out-of-school children between the ages of 7 and 18, most of whom were street children. The study concluded that out-of-school youth have a lower ability to discern and make positive choices in life and were generally at a very low level of discernment. At the age of 18, the out-of-school children tested were at a level of discernment comparable to a seven year old.

The study has proven to be a useful advocacy tool to support the proposition that nine-year-olds lack the necessary level of maturity to be held fully responsible for their criminal actions, and in particular helped counter the common perception that street children are more mature due to their difficult living circumstances.

Source: OHCHR/UNICEF, 'Protecting the Rights of Children in Conflict with the Law Project Evaluation' (2003).

Also cited in 'Protecting the rights of children in conflict with the law: Programme and Advocacy Experiences from Member Organisations of the Inter-Agency Coordination Panel on Juvenile Justice' (2005).

5.3.2 Institutional mobilization and development

Institutional restructuring or establishment is often required to support the full implementation of laws. These may be legal, or semi-legal, or non-legal institutions, such as a committee to combat FGM, an ombudsperson or a human rights commission. Effective institutional reform also includes building capacities of judges, lawyers, ombudspersons, law enforcement officers, and others for better functioning of the institutions and effective enforcement of the law.

The implementation strategy for a law should be considered from the beginning of the law review process and detailed as part of the legislative reform process. Implementation measures may need to be created or overseen by Parliament or by an individual ministry charged with doing so.

⁵⁴ UNICEF's Experience on Promoting a Human Rights-based Approach to Programming 1996-2004, p. 14.

Box 38: Undertaking a capacity (gap) analysis

A HRBA to legislative reform requires understanding the political, socio-economic, and cultural contexts; the strength of institutions; and the rules and norms governing them. After conducting a participatory Role/Pattern Analysis the capacity gaps can be determined. There is often a very real gap between 'law in the books' and 'law in action', which can limit access and result in injustice. This gap may exist because claim holders lack the capacity to claim the rights, and/or duty bearers lack the capacity to meet their duties.

Capacity analysis focuses on the capacity to develop and sustain a policy and legal framework that is independent, impartial, and fair. Capacity entails responsibility, motivation, leadership, authority, resources, capability to communicate, and capacity for rational decision-making and learning.

Capacity analyses should be framed way in order to identify the capacity gaps among the institutions involved in the legislative reform process:

1. To what extent have institutions accepted/internalized their responsibility?
2. Are they clearly motivated to act according to their responsibilities?
3. Are there any interest groups likely to resist legislative reforms?
4. Do the institutions provide the leadership for adopting a more general acceptance of this responsibility?
5. Do the institutions have the capacity to develop policies and legal and regulatory frameworks and mechanisms that ensure multi-stakeholder participation?
6. What is the legal status of the institutions?
7. Is it socially, legally, politically, and culturally legitimate to act in accordance with the law?
8. What would it take to establish such authority?
9. If the institutions lack authority, what sanctions would they incur if they took action?
10. If they do have authority, to who are they accountable?
11. To what extent is the right mix of human resources available in the institutions to meet their obligations?
12. Are adequate budgets allocated to the institutions to carry out their obligations?

Programmes should seek the most effective ways to support the filling of the specific capacity gaps identified. Candidate actions are those actions that are likely to contribute to reduce or close the capacity gaps of the institutions. These include advocacy and social mobilization, information, training, education, and service delivery.

Sources: S. Momanyi, UNICEF DPP; U. Johnson, 'Human Rights Approach to Development Programming' (UNICEF, Nairobi 2003); UNDP, 'Capacity Assessment Framework: User Guide' (2006).

Laws are only as effective if they are properly implemented and enforced. Ideally, laws should incorporate the necessary budgetary allocations, institutional framework, and ancillary regulations into the text of the law. However, institutional reform or additional

supporting regulations (e.g. codes of conduct, professional guidelines, etc) are often needed to effectively implement a law.

Institutional reform could mean, among other things,

- Building institutional capacity (e.g., training for judges on the CRC and CEDAW and how the treaties can be used in courts);
- Establishing monitoring systems or supportive infrastructure (e.g., a committee to combat FGM, Ombudspersons, Independent Human Rights Commissions, Child Protection Authorities, Municipal Boards for Child Protection, etc.); and
- Facilitating the rule of law by ensuring accountability, transparency, and access to justice⁵⁵

5.3.2.1

Box 39: Keeping law officers informed of innovative approaches to implementing child rights

An electronic manual for child rights implementation was developed by UNICEF with Brazil's Association of Juvenile Judges and Prosecutors to provide easier access to theoretical texts, legislation, jurisprudences, petition formats, and practical examples of how communities were mobilized and the law was successfully applied to guarantee children's rights. The second phase of the project involves increasing the number of practical examples in the archive, and providing models of operational flows between child protection agents for child rights implementation to improve inter-institutional coordination. As the archive is updated with new texts and experiences, it should act as an accessible measure of the development of child rights thinking and implementation in Brazil, and incorporated in capacity building processes as a continuous learning tool.

Source: A. Sutton, UNICEF Brazil.

The government (executive)

While some institutions necessary in the legislative reform process may be formed by adopting laws in the legislature, others are decreed by the executive branch. Other laws are initiated by the responsible ministries. They may also be overseen by the executive branch of government, and so their functioning must be monitored and reformed from here. The Executive also has the power to create independent institutions such as a human rights institution or ombudsperson. These can improve monitoring of rights and expand opportunities for redress.

⁵⁵ UNICEF, 'Legislative Reform Initiative & Social Policy for Children' (unedited draft, Feb. 2004), p. 5.

Box 40: Independent human rights institutions

The Committee on the Rights of the Child recommends that States parties establish a child rights institution, separately or as part of a human rights institution, to monitor implementation of the CRC. Such an institution should be mandated, for example to:

- Continually review both the content and effect of laws and practices as they impact children's rights;
- Promote harmonization of national legislation and practices with the CRC and other relevant instruments;
- Ensure that the 'best interests of a child' are prioritized in developing and implementing laws and policies affecting children; and
- Receive complaints.

Source: K. Nundy, 'The Global Status of Legislative Reform Related to the Convention on the Rights of the Child' (August 2004), pp. 31-32.

National policies for children are also important to successful legislative reform. Governments must be encouraged (and assisted) to prioritize children in national policies and budget allocations. UNICEF can promote strategies for implementation, with time based goals and targets, to include resource allocation, capacity building, and institutional change. Giving priority to budget analysis, resource allocation for women and children, and strengthening institutions is central to rights-based programming.

Expertise in legislative reform, child rights, and gender issues is often lacking amongst counterparts in the government. This problem can be eased with awareness raising activities and technical trainings. However due to the frequent changes of government personnel, capacity building must be a constant ongoing process.

The legislature

While the structure and competencies of legislative bodies varies, they are generally responsible for legislating (adopting and amending laws), allocating financial resources (approving the national budget) and monitoring the activity of the government (executive branch).⁵⁶ Members of the legislature not only represent the interests of their constituents with the government, but are also able to raise awareness with the public of important issues and advocate for new perceptions and standards of rights. Collaboration with parliamentarians can not only advance legislative reform but also strengthen legal protection of children's rights.

⁵⁶ Inter-parliamentary Union/UNICEF, *Child Protection: A Handbook for Parliamentarians* pp. 22-25 (2004).

Box 41: Systematic analysis of draft legislation to set priorities

UNICEF, in partnership with Brazil's Congressional Caucus for Child Rights and the National Child Rights Council, promoted an analysis in 2006 of hundreds of legislative proposals, in order to be able to set an agenda of the most important legislative priorities. This will include a data-base of analysis of the merits of legislative proposals, their juridical coherence with the Child Rights Convention and Child Rights Statute, and possible budget impact, and a seminar in which these evaluations will be debated, and priorities and strategies agreed for advancing important legislative proposals, or preventing reverses in legislation that would be detrimental to child rights and protection.

Source: A. Sutton, UNICEF Brazil

The judiciary and other actors in the legal system

The judiciary and other actors in the legal system (such as lawyers and law enforcement officers) also have a critical role to play in effective legislative reform. Courts are responsible for applying the law, and in many cases can take an expansive approach to this task that will benefit children. In some cases, the law itself could comply with the CRC, if interpreted properly. Courts should be encouraged to use the CRC as national law (where possible), to fill gaps in legislation, or to advance child-friendly interpretation of the constitutions. Judicial activism can help fill the void if a legislature has not taken necessary steps to harmonize domestic laws with the Convention.⁵⁷ Lawyers can promote this process by putting forward arguments based on international human rights law.

Often times, however, the legal system and institutions are ill-equipped to address the needs of children. For the system to work effectively, actors in the legal system must understand the laws in place as well as international human rights principles. Judges, lawyers, police officers, and prison officials must all fully understand and fully implement the law—whether it is an existing, new, or amended law. The legal system in the country, be it civil law, common law, or pluralist, can also affect the implementation of laws. Common law judges create law through their decisions. Pluralist systems often have conflicts between legal traditions. Those applying Islamic law or traditional/customary law need to be well versed in legislated laws and apply them in the best interests of the child.

Box 42: Reform of the justice system in Mongolia

After 70 years of a socialist, centrally planned economy, Mongolia embarked on a peaceful transition to a democratic, capitalist State in 1991. As Mongolia struggles with the transition to a market economy, it is faced with the difficult combination of increased risk factors for youth (poverty, family dysfunction, and domestic violence), and a weakening in the protective factors (family, school, youth clubs) that promote the positive socialization of young people. As a result, juvenile crime rates have more than doubled in the last ten years.

Mongolia ratified the CRC in 1990 and has a civil law tradition. The articles on juvenile justice within the Criminal Code and Criminal Procedure Law are still not fully consistent with CRC and other UN guidelines on juveniles.

⁵⁷ K. Nundy, 'The Global Status of Legislative Reform Related to the Convention on the Rights of the Child' (Aug. 2004), p. 29.

A Situation Analysis in 2000 identified key concerns on the current practice with juvenile offenders as a major challenge. Further, the Concluding Observations of the Committee on the Rights of the Child to the Second Periodic State Party Report recommended developing a comprehensive national programme on juvenile justice, including establishment of juvenile courts and training of professional personnel on 'child-friendly' procedures based on the relevant UN Guidelines.

To further explore the justice systems, a juvenile justice assessment was carried out in December 2002 with technical assistance from UNICEF. The assessment recommended immediate and long-term legislative and policy reform aimed at improving the situation of children in conflict with the law. The key recommendations were: 1) inter-agency coordination; 2) development of juvenile justice policies, procedures and manuals; 3) training and specialization of law enforcement agencies; 4) piloting diversion and community-based alternative to detention; 5) improvement of the conditions of children deprived of their liberty; 6) data collection and analysis; and 7) legal reform and reform of crime prevention strategies.

Prior to the assessment, a Juvenile Justice Working Group was established at the Ministry of Justice and Home Affairs in November 2001. The working group headed by the State Secretary, included representatives from General Prosecutor's Office, General Police Department (Crime Prevention Division), National Authority for Children, National Human Rights Commission, NGOs, and INGOs. The terms of reference for the working group are to coordinate, implement, and monitor the reforms of the justice system in accordance with the CRC and UN protocols.

In order to promote the recommendations of the assessment, the following strategies were adopted:

- Advocacy with the government officials, especially the heads of legal organizations, including General Prosecutor's Office, General Investigation Office, General Police Department, Supreme Court for amendment to the existing Criminal Code and Criminal Procedure Law.
- Participation of children in the Parliament to highlight the existing situation of the justice system and the plight of children who are in conflict with the law.

The Criminal Code and Criminal Procedure Law of 2002 which in spite of being a comprehensive law having provisions for both adults and children, unfortunately falls short of the norms and standards recommended in the assessment. While the assessment recommended the adoption of a separate juvenile justice system, the government decided to amend the existing Criminal Code and Criminal Procedure Law, but did adopt several of the proposed recommendations, including raising the minimum age of criminal responsibility to 16 for certain types of crime and limiting the duration of imprisonment for children to one-third that of adults for similar types of crimes.

UNICEF's strategy is to continue high level advocacy for a child-friendly juvenile justice system compliant with international standards. Diversion programmes for children will be implemented through the formation of a Juvenile Justice Committee (JJC), establishment of a full-time coordinator and training the JJC on child-friendly procedures of children in the conflict with the law. The diversion programme in selected focus areas will further strengthen evidence based advocacy for Parliamentarians and the legal sector to move towards adopting a separate juvenile justice law.

Source: Y. Mazumder, UNICEF Mongolia.

5.3.3 Promoting public monitoring of national legislative reform efforts

As situations change, the need for legislative reform continues. New or proposed laws continue to affect children's rights and implementation of existing laws should be monitored regularly. Legislative reform is an on-going process and a monitoring system or institution can make this process more effective.

National monitoring mechanisms

The Committee on the Rights of the Child has encouraged States parties to establish a national mechanism, such as a national human rights institution, children's ombudsperson, children's commissioner, or other similar (independent) body for monitoring implementation of the CRC. A national human rights institution, if it exists, should have a special section or commissioner devoted to children's rights. The Committee further specifies that the body must be "legislatively mandated" at the very least, with a preference for constitutional entrenchment.⁵⁸ If this is not immediately possible an agency, child rights implementation committee, ministry's office, or coalition should be mandated to monitor and report on progress.

UNICEF country offices can advocate with the government to establish a monitoring post to: assess legislative reforms, track compliance with the letter and spirit of the CRC and CEDAW (and the actual realization of children's rights) and report on these issues both to the government and to the public. The Concluding Comments and Observations of the Committee on the Rights of the Child and the Committee on the Elimination of Forms of Discrimination against Women can help guide this process.

Box 43: Monitoring the child-friendly movement in the Philippines

In the Philippines, the Local Codes on Children (LCC) holistically address the rights and needs of children at the local government level. The LCCs are one of the four 'gifts' for children which are being promoted in all the 80 provinces, 117 cities, 1501 municipalities and close to 41,982 *barangays* (villages) in the country. The other gifts are the local development and investment plans for children and a local state of children report which also captures progress on the MDGs. The gifts are in fact an exercise of commitment by elected duty bearers who as political leaders are prone to providing assistance as gifts to their constituents.

LCCs are enacted by provincial, city and municipal *sanggunians* (legislative bodies) which were created by the 1991 Local Government Code in line with the local autonomy provision of the 1987 Philippine Constitution. Aside from consolidating existing ordinances on children, the legislative codes add value to national laws by identifying additional sources of local funds, local accountability, and implementing mechanisms. Moreover, they address gaps in national laws such as by regulating internet cafes that have access to pornographic sites, establishing children' participation processes in local governance, and implementing reproductive health measures. LCCs are complemented by other child friendly local legislation such as local revenue codes (as a source of local development funding), those creating local HIV prevention councils and those promoting gender equality.

⁵⁸ Committee on the Rights of the Child, General Comment No. 2: 'The role of independent national human rights institutions in the promotion and protection of the rights of the child', U.N. Doc. CRC/GC/2002/2 (15 Nov. 2002).

Monitoring the quality of the LCC is done by looking at their context; content; process, budget and financing, results or outcomes; and political accountability. For example, in reviewing the context, one looks at whether a situation analysis has been conducted to determine among other things, the magnitude and dimensions of the legislative gap. On process, attention is given to the conduct of public hearings to elicit views and reactions from children, duty bearers and other stakeholders. On content of the Code, one examines key provisions on child rights; if penal sanctions are within the limits defined by the Local Government Code; awards and incentives for good practices; definition of terms; implementing mechanisms, processes, and rules and regulation; funding; and monitoring, evaluation, and reporting. The local state of the children report which is delivered by the local governor or mayor addresses progress in implementing the other gifts for children including the enforcement of the LCC.

The conduct of legislative summits by the leagues of provincial, city, and municipal legislators who are members of *sanggunians* serve as a regular venue for sharing on the latest national laws, good local legislative practices, and judicial decisions affecting children's rights and orienting newly elected legislators. Moreover, local executives and legislators jointly prepare executive agendas every three years to guide and harmonize legislation, other policies, and programmes.

Source: UNICEF Philippines, 'Checklist for Local Children's Code'. Full document available from the Local Policy and Institutional Development (LPID) Section of UNICEF Philippines.

Promoting monitoring by stakeholders

To assess how governments are advancing legislative reform for children, stakeholders can look for:

- The number of individuals in government departments trained on: the HRBA, the CRC, CEDAW, children's rights, gender issues, women's rights, and the whole child approach;
- Existence of a comprehensive review of existing policies and legislation to ascertain their impact on children;
- A plan for analysis of new policies and legislation as they are being drafted; and
- Changes made to policies and legislation following these analyses.⁵⁹

The following questions are also relevant to monitoring the legislative reform process:

- Was the law review conducted with reference to/application of international human rights treaties: for example the ICCPR, ICESCR, CRC, CEDAW, ICERD, and regional instruments?
- Was the law review and reform conducted with participation of: Children, lawyers, judges, religious organizations, traditional leaders (if applicable), parliamentarians, civil society groups, and those working with children (teachers, health care professionals, etc.)?

⁵⁹ Save the Children/Children's Law Centre, What kind of indicators can best monitor the delivery of the Children's Strategy? (October 2005), p. 12.

- Are children’s rights being fulfilled? Areas to look at include access to social services (education, health and nutrition); protection from violence, abuse and neglect; juvenile justice administration; participation; and parental responsibility, among others.

Questions to ask regarding implementation of laws and policies that advance children’s rights include:

- Has the text of the law or policy been widely disseminated?
- Are sufficient budgets allocated?
- Are the institutions in place to implement the law or policy?
- Are the relevant groups trained on the law?—police, judges, healthcare professionals, teachers, etc.
- Do laws or policies need to be added in order to implement the law, have they been?
- Are rights holders aware of and able to claim and realise their rights under the law?

Box 44: NGO complementary reporting to the CRC Committee

One area for civil society advocacy is in creating complementary reports to treaty bodies. In Botswana, the recent NGO report preparation process was coordinated by the Botswana Council of Non-Government Organisations (BOCONGO) with technical and financial support provided by *Save the Children Sweden*. BOCONGO is made up of 75 local NGOs and community-based organizations in varying sectors affecting children’s rights—including child welfare, the environment, adolescents, women, and HIV/AIDS.

The consultative process for the report, which involved UNICEF, included questionnaires sent to NGOs, interviews with child welfare organizations, review of existing government and non-government reports, input from a group of 37 children (13 girls and 24 boys) as well as a focus group discussion with a group out-of-school children aged between 10-19 years old.

Source: NGO Complementary Report on the Status of the CRC Implementation in Botswana (March 2004), p. 7

5.3.4 Monitoring resource allocation for children and women

Public spending is a crucial factor in implementing poverty reduction strategies. Government accountability for resource allocation is an important principle of the HRBA, particularly as it relates to legislative reform. Analyzing and monitoring public spending is a good way for civil society to monitor and evaluate the poverty reduction strategy.

Public expenditure is also generally required to implement a new law. For example, a law making education free and compulsory until a certain age requires money for teachers,

schools, supplies and other measures to get children into school. Prioritizing children's rights in public budgets is thus important for the realization of children's rights. Government ministries generally play the largest role in defining budgets, but parliamentarians can support law implementation by critically reviewing and discussing budgets before adopting them.

In many countries the executive branch prepares the budget (based on input from the various ministries) and then sends it to the legislature for approval. Although parliamentarians often exert little or no influence on the content of the budget or the budgetary process, they share budgetary responsibility as they must approve the national budget before it becomes law. In order to ensure the real and effective implementation of law, all line ministries need to be involved in the process. Assessment of the budgetary processes and the effects of budget allocation are also indispensable. Laws outlining the national budget system and process may themselves need to be drafted or amended to ensure transparency, accountability, sound management, and control of the budgeting and budget management process. Governments should be encouraged to maintain a compendium of specific budgets and resources expended, disaggregated by gender, on issues affecting children. Budgets for law enforcement, health departments, education, and others should be included in this compendium.

Good public expenditure management provides a resource framework to guide the preparation and implementation of the PRSP or National Development Plan. These comprehensive development strategies should include comprehensive costing estimates for achieving them. The legislative reform process must include an analysis of the resources allocated (their adequacy and the cause of shortfalls) toward the realization of children's rights. This should include an analysis of women's situation in the role of key caregiver and other gender-specific aspects of budgeting for children.

Box 45: Promoting budgets in favour of children and women

New laws and institutions are not sufficient to guarantee that children's rights will be fulfilled and respected. An additional element is required, which is the commitment of adequate resources to finance the programmes and services developed to meet this goal. UNICEF has since 1996 been engaged in making budgets for children more transparent in Brazil, and developing civil society capacity to monitor and participate in budget formulation processes.

The 'Child Budget' was a methodology developed by two Brazilian think tanks in the mid 1990s to monitor direct and indirect spending in favour of children, identifying rubrics of direct spending on health, education, social assistance, as well as indirect spending on sanitation, vector control, and environmental improvements. The simpler direct spending model was used by the Institute of Socio-Economic Studies (INESC) to monitor federal budgets comparing amounts approved, allocated, and spent for over a decade, with UNICEF support. Regular bulletins on overall spending, with specific analyses of spending on pre-school education, or child labour eradication etc, were issued to over 2000 parliamentarians, policy makers, civil society groups, and media outlets, increasing capacity to monitor budgetary trends for advocacy. At key moments this information was used to mobilize to prevent cuts in spending for children and encourage parliamentarians to make supplementary amendments to the federal budget to cover identified gaps. In 2007 a new version linked to the MDGs being launched with the partner 'Open Accounts'.

UNICEF Brazil has also engaged in improving civil society capacity to participate in budget formulation processes at municipal level, through the development and dissemination of a Municipal Budget Kit of five booklets to demystify the budget process for local users. The kit is written clearly to permit maximum

accessibility, and designed in such a way as to encourage users to apply it to their own situation. The municipal budget kit, and a publication explaining the child budget methodology ('Keeping an eye on the budget') can both be found in Portuguese on the UNICEF Brazil country office site: www.unicef.org.br.

In another example, In Paraguay, the joint UNICEF-UNDP-UNFPA 'Social Expenditure in the Budget Project' monitors social expenditures. The Project is based on the following strategies: construction of a reliable and updated database on the structure and execution of the National Budget; permanent monitoring and follow-up on the budget allotments and execution in fulfillment of social areas including extreme poverty reduction, chronic malnutrition, basic education, provision of primary health care and drinking water; analysis of the social expenditure impact on the living conditions of people in the short-, medium-, and long-term; and dissemination of information on the structure and execution of the National Budget, social expenditure and their impact on the achievement of basic social goals. In 2005 and 2006, the project spent approximately \$300,000 in social investment advocacy. As a direct result of this advocacy, \$3 million were included in both the 2005 and 2006 national budgets for a National Nutritional Assistance Programme that benefits 35,000 children and pregnant women. UNICEF advocacy also contributed to a \$150 million increase in overall social expenditure from 2004 to 2005.

Sources: A. Sutton, UNICEF Brazil; E. Madinger, UNICEF TACRO (see UNDP/UNICEF, 'Investing in People: Social Expenditure and the Budget').

Most countries do not require a proportion of the budget be allocated to children either by law or regulation. Adequate allocation of resources is critical to the success of any law and its implementation, including the funding of social policies to support the law. Special attention must be paid in allocating budgets to those marginalized, such as orphans and child labourers. A holistic approach to budgeting is important to protecting and promoting the rights of all individuals within the available resources. UNICEF country offices can effectively advocate on budgetary issues—both to promote a participatory budgetary process and to promote inclusion of children's needs on the budgetary agenda. UNICEF should specifically partner with Ministries of Planning and of Finance, and other UN agencies, to promote legislative costing and child-friendly and gender budgets.

Box 46: The Women's Budget Initiative in South Africa

South Africa was one of the first countries to examine budgets for their impacts on different groups of women and men. Started in 1995, the Women's Budget Initiative (WBI) entailed the collaboration of women parliamentarians and NGOs. The NGO partners were responsible for analyzing the budget and the policies behind it for their gender impacts while the politicians would use the findings to influence the budget debate in parliament.

Five annual commentaries on the gender impacts of the budget were published which influenced a similar initiative to begin within the Finance Ministry on a pilot basis. The WBI also produced a simplified set of publications called *Money Matters* targeting a broader audience as well as training materials for legislators and civil society activists in the Southern African sub-region.

In 2000, the parliamentary Committee on Improvement of the Quality of Life and Status of Women (CIQLFW) commissioned two NGOs involved with the WBI to undertake research into the budgetary aspects of violence against women, poverty, and HIV/AIDS. Some of the findings have been used in the Committee's reports and can be used in future budget debates. The surveys conducted can be used as baseline studies against which to monitor government progress on these issues.

Source: D. Elson, *Budgeting for Women's Rights: Monitoring Government Budgets for Compliance with CEDAW* (UNIFEM, 2006), p. 28. (citing Budlender and Hewitt (2002)).

Advocacy is needed to influence national budget allocations. Mobilizing national resources is critical. Good policies and progressive laws have little impact if they are not implemented due to lack of resources. State budgetary policy should be continually monitored and critiqued on a yearly basis to make sure resources are directed towards children's programmes. Civil society can analyze and influence the quantity of resources dedicated to children as well as total social spending by tracking budget projections and actual spending over time. They can also draw attention to aspects of transparency and public expenditure management. The major difficulty for civil society trying to advocate for child-friendly budgets is the lack of information publicly available.⁶⁰ Some countries have constituted monitoring groups in charge of checking the budget every year.

5.3.5 Providing technical assistance and training

Effective legislative reform requires effective law implementation. UNICEF can provide technical assistance to law enforcement officials, judges, parliamentarians, and others who must implement the law and also to governments for conducting studies of national legislation for compliance with the CRC and CEDAW and identifying areas for legislative reform. Because training can be a costly undertaking, UNICEF can promote the integration of legal issues into the curriculum of various professional agencies including, for example, bar associations, police academies, universities, and schools for social work. UNICEF can also provide technical assistance to NGOs and sister agencies for working with legislative and bodies or other relevant institutions on revising or drafting legislation.

UNICEF's work in this area combines the expertise of regional offices, country offices and HQ staff as well as international and national consultants. Sharing experiences and resources amongst offices can strengthen UNICEF's capacity in this area. Examples of technical assistance and training activities include, among others:

- Comprehensive training programme for police officers on juvenile justice;
- Support for a training for police officers on laws applicable to the women and children protection unit, effective case management, monitoring and evaluation;
- Support to the police to review and revise the investigation procedures for crimes against women and children with special reference to trafficking and sexual violence;
- Advocacy for inclusion of child rights courses in magistrates' schools and universities, or as part of judges' regular training; and⁶¹
- Training workshops on implementation of the international instruments at the international, regional, and national levels and providing legislative drafting assistance.

⁶⁰ For more information on supporting child-friendly budgets, see, R. Gore, 'Influencing Budgets for Children's Rights' (June 2004).

⁶¹ See V. Sedletzki, 'Review of UNICEF's Experience in the Area of Legislative Reform' (Draft, July 2006), p. 35.

Cooperation in the area of technical assistance and training could include engagement in gathering evidence (and other research), analysis of good practice on children's and women's rights and gender equality and involvement in national planning, implementation, and monitoring processes (including PRSPs, SWAps and post-conflict transition plans).

Box 47: The process of drafting the Child Protection Bill in Pakistan

In 2005 UNICEF agreed with the National Commission for Child Welfare & Development (NCCWD) Social Welfare Ministry Government of Pakistan to provide technical support for the drafting of a new Child Protection Bill. This was in response to the Observations by the CRC Committee, which had recommended changes in laws contradicting the provisions of the CRC.

A technical team—an international staff person and a local consultant—started work on the Child Protection Bill. One helped with bringing the internationally recognized standards, and the other brought the reality check to the international ideals.

A consultative process was adopted. Initially a consultation workshop was organized with a wide range of stakeholders (government, NGOs, the law enforcement agencies as well as parents and other civil society members) to consult on what should be the contents of the law. When the first draft was prepared, it was again shared in a workshop with the stakeholders, and suggestions received for bringing further improvements in the bill. The second draft of the bill was officially sent by the NCCWD to all the relevant federal ministries, and to the Provincial Governments for their comments. The draft was also shared internationally with experts on child rights.

A Memorandum of Understanding was signed with the Ministry of Parliamentary Affairs for advocacy with the Parliamentarians, through which four advocacy meetings were organized with them for raising their awareness on child protection.

The draft Child Protection Law addresses the following areas:

- Prohibits child sexual abuse and sexual exploitation and child physical abuse;
- Raises the minimum age of criminal responsibility from 7 to 12 years;
- Prohibits corporal punishment;
- Prohibits traditional harmful practices (such as early marriage); and
- Establishes institutions for protection and rehabilitation of children in need of care.

The final draft Child Protection Bill was sent by NCCWD to the Prime Minister in September 2006 for approval by the Cabinet and for vetting by the Law Ministry. It will then be sent back to the Social Welfare Ministry, which will forward it to the Ministry of Parliamentary Affairs. In Parliament, it will be reviewed by the Standing Committee on Social Welfare, debated, and discussed before finally being enacted as law.

Source: S. Pasti and R. Sardar, UNICEF Pakistan

6 Results-based Planning, Monitoring, and Evaluation

6.1 Introduction

Results-based programme planning and management, as outlined in the January 2007 PPPM, will help ensure that legislative reform activities contribute (and are adequate) to achieve the expected results. The results chain therefore requires agreement amongst stakeholders on “the problem to be addressed, the causes of the problem, the specific results to be obtained through programme cooperation, and the sequence of steps needed to achieve it.”⁶² Monitoring and evaluation activities should be ideally incorporated in the programme design from the inception of the legislative reform programme.

6.2 Incorporating Legislative Reform into the Results Framework

6.2.1 Defining the problem and causes (situation analysis)

Defining of the problem to be tackled through a programme needs to be based on a thorough analysis of the existing situation. According to the January 2007 PPPM, “The first step of any situation analysis is a broad-based identification of the status of the realization of the rights of children and women, i.e. an *assessment*. . . . UNICEF adds value to this assessment by relating the situation and national goals to international standards.”⁶³ This assessment can consider questions of equality before the law and in practice, the interrelatedness of rights, and can highlight the situation of marginalized groups—including women and children generally and other specific marginalizing characteristics. Further to this, the assessment should consider the existing capacity in government (including institutional and human resource capacity) for undertaking legislative reform.

In identifying the contributing factors to a problem and their causal relationship, the problem tree should include reference to the legal and policy framework and its affect on the realization of children’s and women’s rights.

6.2.2 Developing the legislative reform results framework

Legislative reform components within a country programme need to be incorporated into results frameworks. This includes the results frameworks of the UNDAF, Country Programme Documents, Country Programme Action Plans and Project Plans of Action and Annual Work Plans.

Different contexts and country programme structures can suggest different approaches to articulation of legislative reform results. In some contexts, particularly where a country programme includes a specific legislative reform programme or project, a single results framework may be most appropriate. In others, for example where the process of legislative

⁶² UNICEF, PPPM (Jan. 2007), Section 4.

⁶³ Ibid.

reform has distinct and separate phases, a number of component results frameworks may be more practical. In country programmes with strong sectoral components it will often be most appropriate to spread legislative reform results among these sectoral results frameworks, showing legislative reform results in health, education or WASH.

Legislative reform will be part of the results framework, whether a component of other results frameworks or as a separate one. For the majority if not all components of a UNICEF-supported country programme, the results sought will in some way depend on progress in the area of legislative reform. Where a results framework for a component programme of the country programme does not include legislative reform, it is necessary to check that this does not arise from a failure to take the legislative context into account in the situation analysis underlying programme development. For example, if the UNICEF-supported Country Programme aims to achieve a reduction in morbidity for under-fives the results framework should include changes in law, institutions that would provide a necessary condition for the achievement of that result (implementing institutions), and childcare practices. This might include results involving legislation controlling user fees.

Results in the area of legislative reform, as in other areas, need to be expressed in terms of measurable changes that will occur within a clear timeframe. Appendix E contains sample incremental objectives. These may include changes with regard to: the formulation or adoption of a law; the implementation or enforcement of laws; or the impact that changes in law and its implementation and enforcement have contributed to. Within logic framework, results need to be formulated at the output, outcome, and impact levels, clearly suggesting their hierarchy, i.e. which results build on what other results that must be achieved prior to them.

With regard to formulation or adoption of a law, changes might involve whether a law is in place or not. However, it also needs to specify content: a bad law can be worse than no law at all. For any proposed addition or amendment to legislation, results should clearly articulate what has been agreed to during the planning process. This might include an age provision, specifying which children are covered, or the allocation of appropriate resources. For example, while there might be a result around adoption of a new law on juvenile justice, such result should explicitly state, for example, that children must be detained separately from adults. The overall collection of results needs to reflect not just the existence of legislation and related structures; it needs to address their quality.

With regard to implementation and enforcement, typical results involve access to the benefits accorded by the law, particularly by disadvantaged groups, or results relating to levels of enforcement by police. For example, a law providing free education up to a particular age might have the corresponding result in a UNICEF-supported results framework that no children (including ethnic minority children for example) are required to pay for education. The results framework must also refer to the availability of free education.

With regard to impact, typical results will involve changes in indicators relating to the situation of children. To continue with the example of a law relating to free education, a result might be improved access to education, retention, and attainment for children.

6.3 Indicators, Targets and Means of Verification

6.3.1 Indicators

All results will be expressed in the results framework with corresponding indicators, targets, and means of verification. Indicators are normally derived directly from results formulation. To use the examples above, indicators might be: adoption of the new law on juvenile justice (yes/no); the inclusion within the new law on juvenile justice of a provision requiring the separation of children in detention from adults (yes/no); detention centres with separate sections/departments for children (number), proportion of ethnic minority households reporting that their school expenditure for children of the appropriate age is zero (percentage); and net enrolment ratios (NER), net attendance ratios (NAR), and exam scores for ethnic minority children.

6.3.2 Targets⁶⁴

Measuring outcomes and impact of legislative reform requires measuring the following core outcome areas:

- Improved legislative and/or policy framework;
- Strengthened institutional capacity;
- Strengthened partnerships and alliances;
- Strengthened capacity of civil society;
- Shift in societal norms; and
- Improved realization of children's and women's rights.

In addition to identifying the core outcome areas for measurement, UNICEF country offices should set targets for measuring of strategic progress and programme/project outputs.

6.3.3 Means of verification (MOVs)

Means of verification (MOVs) for indicators relating to the formulation and adoption of laws will tend to be trivial: the status of adoption of a law or policy sought by UNICEF is clear. It is important, however, to look at the *content* of the law or policy and analyze whether individual components meet international standards, the potential negative impact of what has been included (or not included), what more should have been done, and so on.

MOVs for indicators of implementation and enforcement of laws or policies may be more difficult. Some may require access to police records of arrests and prosecutions which may not be readily available. Others may need to be derived from routine reporting or administrative data systems which may be unreliable. Yet others may require a separate survey to determine, which may be impractically expensive. In such cases offices will need

⁶⁴ Information gathered from an early draft of 'A Practical Guide to Measuring Advocacy and Policy' prepared by Organizational Research Services (2006).

to ascertain the most practical indicators for their legislative reform results, based on assessment of available information and the resources, both of UNICEF and partners, that could reasonably be employed for their measurement.

Finally, means of verification for indicators of impact will often be existing data systems, including household surveys such as the MICS or DHS, or routine or administrative reporting systems for example for hospitals or schools. In general, the former will be more expensive and the latter less reliable, but since impact of legislative reform activities is often contributing to higher level sectoral or cross-sectoral results that are already measured by other parts of the programme (such as health, education, or child protection) these issues are not particular to the legislative reform component.

6.4 Evaluation

Monitoring and evaluation of both the process and outcome of legislative reform is a critical dimension to ensuring a HRBA to legislative reform. A HRBA to legislative reform by its very definition involves collaboration and thus a wide range of partners affecting the result. It is therefore difficult to determine the specific impact of UNICEF's efforts on actual reform in a country, the focus of objectives could more effectively be framed in terms of a) did the reform occur and b) did UNICEF participate in the reform process (through direct advocacy or technical assistance to government, public awareness and capacity building campaigns, dialogue surrounding treaty body reports or follow up measures, etc.)—with less focus on attribution of the outcome to specific UNICEF-supported activities.

Evaluation of both the process and outcome of legislative reform is a critical component of Results-Based Management. Evaluation questions should address various aspects of legislation reform programmes that fall under the UNICEF-adopted evaluation criteria. Whether a law has actually been adopted is only one criterion for assessment of legislative reform as successful. It is equally important to analyze the implementation and the impact of the legislative reform, and the spill over effects of this reform. Sustainability and the level of empowerment it creates are of importance as well.

Appendix F contains a suggested matrix with examples of questions that may be feasible to answer through an evaluation. UNICEF offices can develop similar matrices with further elaborated evaluation questions depending on their specific circumstances and focus of legislative reform programmes.

APPENDICES

Appendix A: Sample UNICEF Programme Matrix

Note: it is not expected that UNICEF cooperation will encompass all focus areas in every country.

UNICEF Programmes and key components	CCA/ UNDAF	PRSP Target	MDG	UNICEF MTSP 2006-2009
<p>Child Health and Nutrition</p> <ul style="list-style-type: none"> - Immunization - Paediatric AIDS - Nutrition <p><i>(legislative reform should be considered as key components of these programmes)</i></p>	<p>Human Capital, HIV/AIDS, <i>Legislative Reform</i></p>	<ul style="list-style-type: none"> -reduce under-five mortality rate from 170 to 129 per 1,000 live births - Reduce Iodine deficiency from 53% to 29% - 22% of HIV positive pregnant women and neonates receive prophylaxis for the prevention of vertical transmission of HIV - Increased number of HIV positive children eligible for ARV therapy receive treatment 	<ul style="list-style-type: none"> 1: Eradicate extreme poverty and hunger 4: Reduce child mortality 5: Improved maternal health 6: Combat HIV/AIDS, malaria and other diseases 	<p>Focus Area 1: Young child survival and development</p> <hr/> <p>Focus Area 3: HIV/AIDS and children</p> <hr/> <p><i>Focus Area 5: Policy advocacy & partnerships for children's rights</i></p>
<p>Basic Education</p> <ul style="list-style-type: none"> - Child-friendly schools multi-sectoral initiative <p><i>(legislative reform should be considered as key components of these programmes)</i></p>	<p>Human Capital, <i>Legislative Reform</i></p>	<p>Increase attendance in primary education (grade 1-7) from 75% to 91% for boys and from 71% to 91% for girls</p>	<ul style="list-style-type: none"> 2. Achieve universal primary education 3. Promote gender equality and empower women 	<p>Focus Area 2: Basic Education and Gender Equality</p> <hr/> <p><i>Focus Area 5: Policy advocacy & partnerships for children's rights</i></p>

<p>Child Protection</p> <ul style="list-style-type: none"> - Protection of vulnerable children - Prevention of sexual exploitation and abuse <p><i>(legislative reform should be considered as key components of these programmes)</i></p>	<p>Human Capital, HIV/AIDS, Governance, <i>Legislative Reform</i></p>	<ul style="list-style-type: none"> -Develop and consolidate social safety nets to support the most disadvantaged citizens, orphaned children, the elderly, people with disabilities and the chronically ill - Increase the number of OCV living in households that receive free external support in caring for the child -Decrease the number of sexually-exploited children 	<p>3: Promote gender equality/empower women</p> <hr/> <p>Mill Dec., Section VI: Protecting the Vulnerable</p>	<p>Focus Area 3: HIV/AIDS and Children</p> <hr/> <p>Focus Area 4: Child Protection from violence, exploitation and abuse</p> <hr/> <p><i>Focus Area 5: Policy advocacy & partnerships for children's rights</i></p>
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Appendix B: Guidelines for Assessing National Legislative Reform Advancements: Template for Terms of Reference⁶⁵

These guidelines are based on the Terms of Reference (TORs) for fifteen national studies commissioned by the Global Policy Section, Division of Policy and Planning at UNICEF (in 2004) and conducted by consultants engaged by the respective Country Offices. The questions are a model for assessing what a country has done in the area of legislative reform to implement the CRC. The results of an assessment carried out using these guidelines can be followed up using tools in the *Handbook on Legislative Reform in Favour of Children* also being produced as part of the UNICEF Legislative Reform Initiative.

Objectives:

- Review or stimulate/propose legislative reform initiatives, institutional development and policy changes in favour of children, related to the CRC
- Understand the place occupied by the type of law within the context of the legal system used in the country and legal tradition applicable, if any
- Highlight challenges with regard to legislative reform.

PART I: OVERVIEW OF THE STATE

1) Legal system and political organization

- a) What is/are the State's legal system(s)? (see Section II of the Programming Guidance)
 - Civil law, common law, Islamic law, customary law, a combination of these?
 - What ingredients exist within the legal system to make the identification process possible?
 - If it is a Common Law system, how is common law developed?
- b) How are governmental branches structured and power shared?
- c) If the country is run through a Federal system, how does this affect law reform and implementation?
 - To what extent is power decentralized?
 - How does decentralization impact on legislative reforms
 - Legislative branch
 - What powers does the legislature have?
 - What is the legislative process?

⁶⁵ Source: N. Perrault, National case studies on legislative advances related to the CRC – UNICEF DPP (2004)

- What is the process for ratification of/accession to international treaties?
- Judicial branch
 - What powers does the judiciary have? How does the work of the Judiciary help in the process of implementation of the CRC (or how could it help)?
 - How is the judiciary organized?
- Executive branch
 - What are the powers of the Executive? What role does the Executive play in legislative reform initiatives? (e.g., instigating initiatives, issuing decrees on social policy, national plans of action, or the creation of institutions, etc.)
 - In case of constitutional monarchies, the role of the crown?
- d) The legal system, national law and international law
 - If applicable, how does the common law interface with national legislation and international law?
 - If applicable, what is the status of customary law in the country?
 - In what areas is it prevalent? How is the implementation systems set up? Who are the actors?
 - How does it interface with national legislation? International law?
 - How are conflicts between customary law and national legislation resolved?
 - Are there dispute resolutions mechanisms in customary forums?
 - If applicable, how does Islamic law interface with national legislation? International law?
- e) To what child-related treaties is the State party?
 - CRC?
 - Optional Protocols to the CRC?
 - CEDAW and Optional Protocol?
 - ILO Conventions 138 and 182,
 - Other conventions?
 - Regional treaties?

2) Status of the CRC in domestic law

- a) Have reservations to the CRC and/or CEDAW have made?
 - nature of reservations entered, practical impact of reservations, etc.

- b) Have reservations been withdrawn
 - process leading to the withdrawal
- c) Status of the CRC/CEDAW in domestic law
 - See Section II of the Programming Guidance
 - Which takes priority in the event of a conflict between the international instrument and national legislation?
 - Include Islamic law and/or customary law, if applicable
 - Cite examples if available
- d) Are there institutional mechanisms in charge of ensuring the implementation of the CRC, coordinating policies relevant to children and monitoring progress achieved?
 - Outline their functions, place in governmental structure, effectiveness, gaps, etc.
 - What role does civil society play in CRC implementation?

3) Constitution

- a) Is there a written constitution?
 - If so, does the constitution contain specific provisions on children's rights?
 - If there are not specific provisions on children's rights, does the constitution contain principles and provisions of human rights instruments
- b) Does the constitution have a supremacy clause?
- c) If applicable, how are conflict between the constitution and customary law treated?
- d) Have there been constitutional amendments related to CRC?

4) Budget

- a) What is the process for the adoption of the national budget?
 - What actors are involved?
 - What are the steps of the process—from the initial surveying of ministries for budgetary requirements through adoption and publication of the budget, for example?
 - How is civil society involved, if at all? Are there organized means of participation?
 - How are local budgets adopted?
- b) How are budgets monitored and analyzed?
 - Internal auditing by the government

- Monitoring and evaluation by outside stakeholders

PART II: ANALYSIS OF LEGISLATIVE REVIEW AND REFORM

1) Law review

- a) Has a debate taken place about reservations entered to CRC and/or CEDAW, if any?
- If yes, who was involved?
- b) Was an analytical review of domestic law undertaken to determine compliance with the CRC? Did the review include a review of national legislation and, where applicable, of Islamic law and/or customary law? What was the strategy adopted for the review?
- Who was involved?
- c) If yes, what were the main findings of the review (e.g. discriminatory legislation/customs if any; possible contradictions or conflicts in the law; provisions of the national legislation which are more conducive to the realization of the rights of the child than the CRC, how law related to women's rights affect children's rights, etc.)?
- d) If no review was conducted, why not? What are the constraints and obstacles, if any, for such assessment?
- e) Is there a gap between the texts (laws and the CRC/CEDAW) and the practice (including social behaviour)?
- Where applicable, provide a brief overview of customary law and/or provisions of Islamic law and/or common law that affect children, directly or indirectly, and explain how customary laws and/or Islamic law and or common law are reconciled with other existing legislation.
- f) Are some laws discriminatory or capable of having a discriminatory effect on any of the grounds mentioned in Article 2 of the CRC or Article 1 of CEDAW?

2) Types of legislative reform undertaken if any

- a) In general, what is the scope of reform undertaken, if any? (i.e., Has the reform been holistic or has it targeted to a few areas or a few provisions/practices/social behaviours in delimited areas)?
- b) What was the focus and purpose of the reform (e.g., changing principles in the legislation such as non-discrimination and/or the best interests of the child, changing discriminatory aspects such as mechanisms to ensure child participation and to guarantee that the best interests of the child is a primary consideration)
- c) Has a children's code being drafted/adopted or being discussed?
- If yes, is the children's code comprehensive, i.e. include different areas of the life of children (health, education, labour, social insurance, civil, penal, etc.)? If not, why not?
- d) Do contradictions or disparities remain (despite the law reform)?

e) If legislative reform initiatives have not been undertaken or completed, why did they not take place? What are the constraints and obstacles, if any?

f) If applicable, what are the difficulties posed by mixed or plural legal systems in relation to legislative

3) Institutional changes put in place to support laws

a) Review the creation of institutions aimed at supporting the implementation of the CRC and/or accompanying law reforms.

- Mention whether pre-existing mechanisms were modified and if so why and to what extent.
- Assess whether institutional reforms were adequate to reflect the changes brought about by the law.

b) Provide an overview of the type of institutions set up, including:

- Their role (coordination, monitoring, technical assistance, etc.);
- Status (independence, link to an existing institution, etc.);
- Functioning (members, power, administrative rules etc.);
- Competence of human resources; and
- Funding.

c) Examine whether effective remedies are in place to ensure that children are able to claim their rights or file complaints if their rights are violated.

- Provide information on the accessibility to Courts (or religious institutions/customary forums, where applicable)
- Determine factors affecting access: cost, legal aid, distance, availability and time allocated to cases, language barriers etc..

d) Indicate whether institutional changes, if any, can reasonably be attributed to the CRC or to other related factors.

e) If no institutional changes took place, explain why.

4) Adequacy of resources allocated for implementation of new laws / sources of funding for legislative reform activities

a) Where financial implications exist, have additional resources been committed? What process exists to ensure that corresponding resources are indeed allocated? Are their specific resource constraints?

III- PROCESS OF LEGISLATIVE REFORM

1) Strategy and actors

a) What actors are involved in the legislative reform process? What is the extent of their involvement? To what extent does civil society participate? Are mechanisms in place to ensure child participation?

o Note: the process should be outlined for drafting and passing laws, resource allocation and accompanying policies.

b) What are the interrelationships among the various public institutions responsible of legislative reform and their relative roles in the process?

c) What strategy was adopted for the legislative reform process? What different activities were planned?

d) What difficulties were encountered during the process (e.g., political instability, traditional beliefs, lack of political will, financial and/or human resources constraints, etc.)?

2) Implementation of law and follow-up actions

a) Review whether the reform had financial implications for its implementation and whether implementation measures have been specified by law and/or put in place.

b) Present the different strategies for the dissemination of laws, such as translation, inclusion of relevant information in the school curriculum, awareness raising campaigns, institutions that provide information, etc.

c) It will indicate whether law enforcement officials including judges, and other relevant actors such as lawyers and social workers received training on the new law.

d) What are the specific obstacles for implementation of laws?

3) The use of the CRC in court disputes and by judges in court decisions

a) What role is played by the Courts in relation to the CRC?

o Is the CRC and domestic laws related to children used in the legal system? How?

o How are Courts interpreting the law? Has significant case law developed involving the CRC and domestic laws related to children? (in Common Law countries)

o Have the laws and the CRC contributed to significant dispute resolutions in customary forums?

o If possible, give examples of relevant cases/judicial decisions.

4) Social policies accompanying new and amended laws

a) Have any social policies been drafted and implemented to accompany reform of laws and make it more effective?

b) Can social changes, if any, reasonably be attributed to the CRC or to other related factors?

Appendix C: Legislative Reform in UNICEF Priority Areas

1. Young child survival and development

CRC IMPLEMENTATION CHECKLIST	
YOUNG CHILD SURVIVAL AND DEVELOPMENT	
Does the law guarantee the right of all children to enjoyment of the highest attainable standard of health?	
Does the law explicitly guarantee all children the right to have access to necessary medical assistance and health care?	
Do laws/policies include a definition of necessary medical assistance and health care for the child?	
Do all children have access to necessary medical assistance and health care in practice, free of charge and without discrimination?	
Do health laws/policies adopt the development of primary health care as a priority?	
Is there a policy on the prevention and control of disease?	
Do laws/policies promote the development of child and adolescent-friendly health services?	
Are there laws/policies in place to promote universal immunization, including regulations on supply and disbursement, and guarantees of free access to immunization?	
Does the law include a guarantee of children's right to privacy and confidentiality in health matters?	
Do children have a right to receive confidential counselling on medical matters without the consent of their parents? At what age?	
Do all adolescents have access to confidential reproductive health services, including information on family planning and contraceptives, the dangers of early pregnancy, safe abortions services, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases?	
Are adolescents directly engaged in the design of health services for their use?	
Has the government set appropriate targets (as per MDGs) for the progressive realization of every child's right to the highest attainable standard of health and to access to health	

care services?	
Has there been a consistent and continuing reduction in the infant and child mortality rates? Has the government established a target of reducing infant and under-5 mortality rates by two-thirds by 2015? (MDGs).	
Are there adequate regulations in place for quality control of vaccines and other drugs?	
Is the use of abortion adequately regulated? Are there measures to ensure that there is no discrimination in the use of abortion (e.g. sex selection)	
Have appropriate measures been taken to reduce the number of adolescent pregnancies?	
Does the law require the reporting and investigation of all child deaths?	
Has the government ensured adequate access to health education, health promotion and support to the public and in particular to parents and children?	
Are there laws/policies for the protection and promotion of breastfeeding?	
Does the law provide for paid maternity and paternity leave, and for flexible working schedules and/or breaks for breast-feeding mothers?	
Is there legislation in place regulating the marketing of breast milk substitutes, in accordance with the international Code?	
Are there standards for food fortification, including salt iodization, and for product labelling?	
Is there a system to provide social security to all children in potential need?	
Do the criteria to qualify for social security benefits ensure equal access to all children in need, without discrimination?	
Are measures taken to ensure that access to benefits is made as easy as possible (for example simple application forms, accessible offices and officers)	
Has the State identified the minimum standard of living necessary to secure a child's development?	
Are resources allocated for low-cost water and sanitation facilities?	
Do water and sanitation policies focus on equity of access?	
Does the State have effective decentralized planning, monitoring and evaluation mechanisms for water, sanitation and hygiene?	

2. Basic education and gender equality

CRC IMPLEMENTATION CHECKLIST	
EDUCATION	
Is there macro-economic legislation reflecting a commitment to the right to education, including allocation of an appropriate level of resources? (Does law/policy include a statement of the aims of education consistent with the CRC?)	
Is primary education free? Have appropriate measures (policy, budgetary, etc) been taken to implement guarantees of free primary education?	
Does the law stipulate a period of compulsory primary education?	
Does legislative provide for sanctions against parents or guardians refusing to allow their children to benefit from free education?	
Are the legal ages for completion of compulsory education and admission to employment the same? Are these in line with ILO Convention 138?	
Does legislation/policy promote a child-centred and child-friendly learning environment?	
Reflects and realises the rights and best interests of every child? – cooperates with other partners to promote and monitor the well-being and rights of all children; defends and protects all children from abuse and harm - as a sanctuary - both inside and outside the school	
Applies ‘child-friendly school’ standards – appropriate location of schools, school construction and equipment that is healthy and conducive to learning, playgrounds, appropriate facilities for girls, etc.	
Sees and understands the whole child, in a broad context -- is concerned with what happens to children before they enter the system (e.g., their readiness for school in terms of health and nutritional status, social and linguistic skills), and once they have left the classroom -- back in their homes, the community, and the workplace	
Is child-centred -- encourages participation, creativity, self-esteem, and psycho-social well-being; promotes a structured, child-centred curriculum and teaching-learning methods appropriate to the child’s developmental level, abilities, and learning style; and considers the needs of children over the needs of the other actors in the system	
Is gender-sensitive and girl-friendly – promotes parity in the enrolment and achievement of girls and boys; reduces constraints to constraints to gender equity and eliminates gender stereotypes; provides facilities, curricula, and learning processes welcoming to girls	
Promotes quality learning outcomes -- encourages children to think critically, ask questions, express their opinions -- and learn how to learn; helps children master the essential enabling skills of writing, reading, speaking, listening, and mathematics and the general knowledge and skills required for living in the new century -- including useful traditional knowledge and the values of peace, democracy, and the acceptance of diversity	

Provides education based on the reality of children's lives -- ensures that curricular content responds to the learning needs of individual children as well as to the general objectives of the education system and the local context and traditional knowledge of families and the community	
Is flexible and responds to diversity -- meets differing circumstances and needs of children (e.g., as determined by gender, culture, social class, ability level)	
Acts to ensure inclusion, respect, and equality of opportunity for all children -- does not stereotype, exclude, or discriminate on the basis of difference	
Promotes mental and physical health – provides emotional support , encourages healthy behaviours and practices, and guarantees a hygienic, safe, secure, and joyful environment	
Provides education that is affordable and accessible -- especially to children and families most at-risk	
Enhances teacher capacity, morale, commitment, and status -- ensures that its teachers have sufficient pre-service training, in-service support and professional development, status, and income	
Is family focused -- attempts to work with and strengthen families and helps children, parents and teachers establish harmonious, collaborative partnerships	
Is community-based -- strengthens school governance through a decentralized, community-based approach; encourages parents, local government, community organizations, and other institutions of civil society to participate in the management as well as the financing of education; promotes community partnerships and networks focused on the rights and well-being of children	
Do laws/policy guarantee all children equal educational opportunities, including no direct or indirect discrimination against:	
girls?	
children from rural areas?	
children from minority cultures and indigenous groups?	
children with disabilities?	
sick, including hospitalized, children?	
immigrant and refugee children?	
children in all types of institutions (penal, residential, long-term care, etc.)?	
Does the law/policy contain a positive obligation to promote inclusive educational environments? – requirements that education authorities must take all necessary measures to ensure that no groups of children are excluded and that accommodations are made to remove the barriers which may impede access by certain groups of children; create incentives to promote socially inclusive school environments; and design and implement affirmative actions or positive discrimination programs.	
Is there a policy of inclusive education for children with disabilities?	

Is there a national policy or strategy for increasing access to education for girls, children from minority groups or other marginalized groups?	
Are measures taken to combat racial and sex discrimination in the curriculum, educational materials, teaching attitudes and school ethos?	
Are children entitled to education in their own language?	
Is there a code of conduct governing teachers and teaching methods that ensures respect for the rights of the child and the aims of education?	
Does the code of conduct protect children from sexual harassment, abuse, violence, bullying, stigma and discrimination? Is corporal punishment prohibited by law in all schools?	
Does the law prohibit all expressions of violence, whether by pupils or teachers?	
Is there a system to monitor the use of discipline in schools, including appropriate inspection mechanisms and a child-friendly reporting and complaints system?	
Is there recognition of the rights of teachers -- legislative measures for improved management, higher pay, effective appraisal systems, forums through which teachers can influence policy, acknowledgement of their concerns and opportunities for them to identify their training and other needs	
Is there a policy to support and train teachers to understand, appreciate and implement human rights principles	
Are there nationwide standards for monitoring school readiness and standardized tests for measuring learning achievement?	
Is the CRC incorporated in school curricula? Are children taught about other human rights principles?	
Does law/policy provide for different forms of secondary education, including vocational and general education?	
Is secondary education accessible to all children without discrimination?	
Is higher education (college/university) accessible to all children on the basis of capacity?	
Is there a national policy or strategy to encourage school attendance and prevent school drop-out? Does it address issues of learning environment, relevance of the curriculum and gender/minority disparities in drop-out rates?	
Is there a system of non-formal education or other alternatives for children who have been excluded from school?	
Does legislation establish a participatory and democratic system for governing schools that promotes child and parental involvement and participation in decision-making (e.g. school boards, student councils, peer education and peer counselling)?	
Do law/policies ensure that education is provided in a way that respects the inherent dignity of the child and enables the child to express his or her views and to participate in school life?	

Are early childhood development programmes available to all children, without discrimination?	
Have standards been established for early childhood development programs and child care centres?	
Are child care centres or facilities regularly monitored and inspected?	

3. HIV/AIDS and children

CRC IMPLEMENTATION CHECKLIST	
CHILDREN AND HIV/AIDS	
Is there a national HIV/AIDS strategy?	
Do laws guarantee all children access to voluntary counselling, testing and treatment, including children in institutions and detention facilities?	
Does public health legislation fund and empower public health authorities to provide a comprehensive range of services for the prevention and treatment of HIV/AIDS, including relevant information and education, access to voluntary testing and counseling, STD and sexual and reproductive health services for men and women, condoms and drug treatment, services and clean injection materials, as well as adequate treatment for HIV/AIDS-related illnesses.	
Do laws guarantee all children access to HIV/AIDS prevention information and education, including peer education and youth-specific HIV education?	
Have policies been developed to promote the wide and ongoing distribution of creative education, training and media programmes explicitly designed to change attitudes of discrimination and stigmatization associated with HIV/AIDS to understanding and acceptance?	
Are children involved in the design and delivery of HIV/AIDS information and education?	
Do laws/policies promote family and community-based care strategies for children affected by HIV/AIDS, including children orphaned by HIV/AIDS?	
Have measures been taken to support and strengthen the capacity of families and communities of children orphaned by AIDS to provide them with a standard of living adequate for their physical, mental, spiritual, moral, economic and social development, including access to psychosocial care, as needed?	

Does legislation prohibit discrimination on the basis of HIV/AIDS status, including in terms of access to education, health care, social services, employment, recreation, etc? Is there a mechanism for those who have suffered discrimination to seek redress?	
Does public health legislation ensure that information related to the HIV status of an individual is protected from unauthorized collection, use or disclosure in the health-care and other settings, and that the use of HIV-related information requires informed consent? Does the law protect privacy and confidentiality of a child's HIV/AIDS status, including within health and social welfare settings, and guarantee that information on the HIV status of children may not be disclosed to third parties, including parents, without the child's consent?	
Does the law prohibit mandatory HIV testing of children?	
Has public health legislation been reviewed to ensure that people are not subjected to coercive measures such as isolation, detention or quarantine on the basis of their HIV status?	
Have policies been developed on prevention of mother-to-child transmission in accordance with international standards for counseling, testing, care and treatment?	
Are there regulations governing HIV-related goods, services and information?	
Have criminal laws been reviewed to ensure that they not impede provision of HIV/AIDS prevention and care services (e.g. to sex workers, drug users).	

4. Child protection

CRC IMPLEMENTATION CHECKLIST	
CHILD PROTECTION	
Are there effective laws, policies or procedures for the identification of children at risk of maltreatment or exploitation, and for the provision of necessary support or intervention?	
Is there an effective legislative framework for the provision of child and family protection services?	
Does the law establish effective systems and procedures for reporting, assessment, and investigation of instances of child maltreatment?	
Is the complaints system child-friendly and accessible (eg telephone help lines, etc)?	
Is there a system of mandatory reporting for professionals working with children (doctors, teachers, etc)?	
Does the law specify procedures for assessment and intervention by authorities in cases	

where a child requires protection from maltreatment or neglect?	
Does the legislation specify the authority's powers and duties, including emergency power to take a child into care where necessary for his or her protection?	
Do laws/policies promote a coordinated and multidisciplinary response to children in need of protection?	
Does the law define and specify standards for the types and quality of support services to be provided to children in need of protection and their families?	
Does it ensure that separating a child from his/her family occurs only when necessary in the best interest of the child?	
Does the law require that the views of the child be sought and respected in any decision about intervention or support services?	
Recovery and Reintegration	
Does the law provide for a range of services to support the protection and psychological recovery and reintegration of child victims of abuse and exploitation? Does this include:	
Short-term care, where necessary, by foster families, shelters, etc	
Medical care	
Psychological counselling	
Advice about their legal rights	
Education, employment and training opportunities	
Protection for the victim and his/her family from intimidation and retaliation	
Are there standards or guidelines for these programs and services?	
Does the law require that preference be given to promoting recovery and reintegration in families and communities (rather than institutional care)	
Are children's views sought in planning and implementing programmes for recovery and reintegration, including in individual cases?	
Child-Friendly Investigative and Adjudication Procedures	
Does the law include measures to facilitate access to the courts by child victims of abuse and exploitation, and to protect their rights and interests at all stages of the justice process, including adapted procedures to recognize the special needs of child victims/witnesses:	
Are there special procedures (police, prosecutors, judges and social workers) for interviewing children? Do they emphasise the need for a child-friendly environment and to reduce the number and length of interviews?	
Are children entitled to have a support person present with them at all stages of the investigation and trial proceedings?	

Is there a victim/witness support program to familiarize children with the court process and provide support at all stages of the process?	
Does the law permit the use of testimonial aids such as screens, video-taped evidence, closed circuit television?	
Does the law require that investigations and trials of cases involving child witnesses be expedited?	
Does the law require or permit exclusion of the public from the courtroom while children are testifying?	
Does the law guarantee children the right to participate in any judicial proceedings that affect them, to express their views, and to have those views given due weight?	
Are there legal provisions to protect the safety of child victims and their family members, in particular protection from intimidation and retaliation?	
Do police, prosecutors, lawyers and judges receive specialized training in dealing with cases where children are victims?	
Are children involved in the design of appropriate child-sensitive mechanisms?	
Is there provision in law guaranteeing children's right to privacy? In particular, are there provisions to limit the publication of any information that may lead to the identification of a child abuse victim?	
Are child victims of abuse or exploitation entitled to compensation?	
Parental Separation and Alternative Care	
Does the law enable fathers of children born outside marriage to assume parental rights and responsibilities?	
When parents separate, does legislation ensure that the grounds for allocating parental responsibility are based on the individual child's best interests?	
Is there a presumption in law that children's best interests, unless proved to the contrary, are in maintaining contact with both parents?	
Does the law state that parents and children may be separated against their will by authorities only when it is the best interests necessary to protect of the child?	
Are there legal limitations on the ability of parents to voluntarily give up their parental responsibilities?	
Are there standards or criteria for determining when a child should be separated from his or her parents by the authorities?	
Are all laws specifying the grounds justifying the authorities in separating children from parents free from discrimination?	
Are decisions to separate children from their parents made by a competent authority?	
Do these authorities have access to all relevant information in this determination?	

Are these decisions subject to judicial review?	
Are these cases dealt with speedily?	
Are children's rights to privacy safeguarded in such cases?	
Are all relevant people, including the child and his/her parents, able to participate and be heard by those determining these cases?	
Are measures taken by the government (for example through public education campaigns) to combat traditional customs that separate parents and children unnecessarily?	
Does the government provide practical or psychological assistance to families in order to prevent unnecessary separation of parents and children?	
Do prison laws/regs have regard to the need for mothers not to be separated from their babies? Are prisoners permitted visits from family, including their children?	
Do laws and procedures governing the deporting of parents under immigration law require consideration of the child's right not to be separated from his or her parents unless necessary for his or her best interests?	
Does the law have provisions allowing parents or children to request to enter the country for the purposes of family reunification?	
Do provisions for the family reunification of immigrants and refugees require consideration of the child's rights not to be separated from parents unless necessary for his or her best interests?	
Is there a legal obligation on the State to provide appropriate care for children deprived of their family environment?	
Does the law specify what forms of alternative care should be available? Does it allow for: care by a family member, foster care, adoption, or if necessary placement in suitable institutions?	
When children cannot be cared for by parents, does the law require that priority be given to placement with members of their wider family, with appropriate support where necessary?	
Does the law require that placement in an institution be used only as a measure of last resort?	
Does the law require that the best interest of the child be the primary consideration in making decisions about alternative care, and that due regard must be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background?	
Does the law require that the child's views be taken into consideration in any decision made about alternative care, and that those views be given due weight in accordance with the child's age and maturity?	
Are there legal provisions to regulate and monitor foster care?	
Are foster parents fully investigated and authorized as appropriate before placement?	

Are there mechanisms in place to regularly monitor children who are in foster or institutional care?	
Are there standards established for all institutions caring for children, particularly in the areas of safety, health, protection from abuse, and the number and suitability of their staff?	
Are all children placed in alternative care (foster care, adoption, institutions, etc) subject, by law, to a regular review of that placement?	
Does the law give children separated from their parents the right to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests?	
Does the law require that in all adoptions (domestic, "customary" and inter-country) be authorized only by a competent authority, and that the best interest of the child is the paramount consideration?	
Are authorities required to consider the views of the child, and give those views due weight having regard to the child's age and capacity?	
Does the law require that, before agreeing to an adoption, authorities must be satisfied that the adoption is permissible in view of the child's status and that all consents required by law have been given ?	
Where consent is required, does the law require that counselling be provided?	
Does the law require that, in all decisions about adoption, due regard must be paid to preservation of the child's identity and the desirability of continuity in the child's background and to the child's ethnic, religious, cultural and linguistic background?	
Do children have a right to consent to an adoption at any age, or at a particular age?	
Are all adoption placements centrally monitored and periodically reviewed by the authorities?	
Does the law limit the use of inter-country adoptions to cases where the child cannot be placed in a foster or an adoptive family or cannot be cared for in any other suitable manner within the jurisdiction?	
Is improper financial gain from inter-country adoption prohibited by law?	
Violence and Maltreatment	
Does the law (family and/or criminal) define and strictly prohibit all the different forms of child abuse (physical, sexual, emotional, neglect)?	
Are there any legal exceptions or defenses available to parents or others in relation to assaults on children?	
Does legislation protect all children from any form of violence or corporal punishment in home, school, institutions, and community?	
Is there a national policy or strategy on countering spousal violence, and its impact on children?	

Does the law prohibit all traditional practices that are harmful to children, including female genital mutilation, early marriage, and honour killings? Are appropriate penalties prescribed for those who violate these prohibitions?	
Sexual Abuse and Exploitation	
Does the law define unlawful sexual activity involving children?	
Does the law establish an age below which the child is deemed to be unable to consent to sexual activities? Is it the same for boys and girls?	
Is there a specific criminal offence(s) prohibiting child prostitution? Is it defined in accordance with the Optional Protocol?	
Are children engaged in prostitution exempt from any sanction?	
Is there a specific criminal offence(s) relating to child pornography? Is it defined broadly in accordance with the Optional Protocol?	
Does the law permit the prosecution of nationals for unlawful sexual exploitation of children committed in other countries?	
Are there extradition laws or extradition arrangements with other countries to ensure that perpetrators are prosecuted either in their country of origin, or in the country in which the offence was committed?	
Has the government acceded to and promoted bilateral and multilateral measures to protect the child from sexual abuse and sexual exploitation?	
Has the government carried out and/or promoted education and information strategies against sexual exploitation of children?	
Is there sufficient recording and reporting of disaggregated data, and other information concerning sexual exploitation of children, to provide an accurate situation analysis?	
Abduction, Sale and Trafficking	
Does the law include provisions to secure the prompt return of children wrongfully removed to or retained in the country and to ensure that rights of custody and access under the law of other countries are effectively respected?	
Has a central authority been designated to deal issues of international child abductions?	
Does the law prohibit the removal or the retention of a child in violation of the rights of custody of another person under the law of the country in which the child was resident immediately before the removal or retention?	
Are there laws or procedures for locating and securing the return of children wrongfully removed or retained in the country?	
Is there a national strategy on combating sale and trafficking in humans, particularly children? Does it include measures for general prevention, protection of child victims, and effective prosecution of perpetrators?	
Is there a specific crime relating to sale of children? Is it defined broadly in accordance with	

the Optional Protocol to the CRC?	
Is there a crime of trafficking in humans? Does it define trafficking in children in accordance with the Trafficking Protocol?	
Does the law also criminalize activities related to trafficking, including forced or compulsory labor, debt bondage, forced marriage, force prostitution, unlawful confinement, labor exploitation, and illegally withholding identity papers?	
Do the penalties for trafficking offences adequately reflect the gravity of the crime? Does the law provide for additional penalties in aggravating circumstances, including where the trafficking involves children?	
Does the law impose civil or criminal liability on legal entities (travel agencies, marriage brokers, sex shops, bars, brothels or employment agencies) for trafficking offences?	
Does the law provide for the seizure and confiscation of goods, assets and other instrumentalities used to commit or facilitate trafficking?	
Are legal provisions/policies in place to promote cooperation between relevant agencies, in particular the police and welfare services, in identifying child victims of trafficking?	
Are there guidelines for the identification of child victims of trafficking (including age determination) for police and border officials?	
Are there procedures/guidelines for providing immediate and safe emergency care for children who have been rescued from trafficking?	
Are there procedures to ensure the physical safety and protection of child victims and their family members from potential retaliation or intimidation? Do these measures include safe shelter (emergency and longer-term); relocation; prohibition on the disclosure of information concerning the victim's identity and whereabouts; and evidentiary rules to permit witness testimony to be given in a manner that ensures his or her safety, such as the use of communications technologies like video links?	
Do criminal trial procedures permit use of testimony of foreign trafficked victims which was taken before repatriation, for example through the use of video and audio tapes of the trafficked victims' testimony as evidence?	
Are there guidelines/protocols requiring police to inform trafficked victims of their right to protection, of the services that are available to them, and of the procedures for obtaining this assistance?	
Are protection, rehabilitation and support services available to all child victims of trafficking, regardless whether criminal proceedings are initiated, or whether they agree to be witnesses?	
Is there a fund established to support trafficking victims? Does the law require that proceeds or assets confiscated from traffickers be used to support trafficking victims?	
Are child victims of trafficking protected against prosecution for violations of immigration laws or for any illegal activities that they are involved in as a direct consequence of their situation as trafficked persons?	
Are they protected against involuntary detention or other forms of custody?	

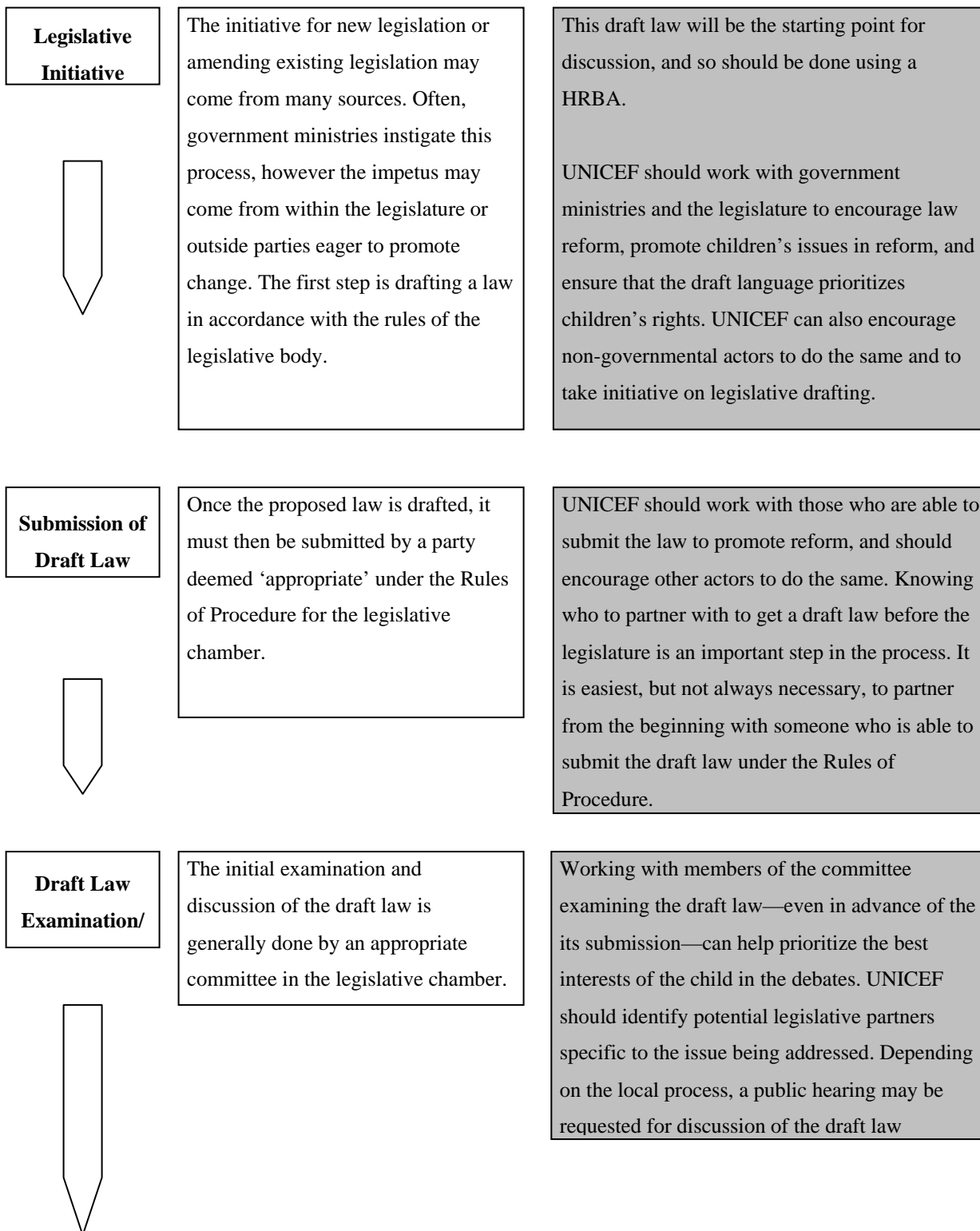
Does the law permit foreign trafficked persons to remain in the country, temporarily or permanently, in appropriate cases?	
Are there provisions for the safe and timely return and repatriation of child victims of cross-border trafficking?	
Are procedures in place to issue the necessary travel or other documents to enable the person to travel and to re-enter the country in a timely and efficient manner?	
Are there provisions for the appropriate accompaniment and support for returning child victims to protect them from being re-trafficked in transit?	
Are measures adopted to assist the prosecution of those engaged in child trafficking outside the jurisdiction?	
Child Labour	
Has the State defined in legislation a minimum age for employment that is equal to the age of completion of compulsory education and not less than 15?	
Does the law include provisions regulating permissible work by children 15-18, including regulations defining the hours and conditions of work for children?	
Does the law prohibit anyone under the age of 18 from engaging in any type of employment or work that by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons?	
Does legislation prohibit children from performing any work which is:	
Hazardous	
interferes with the child's education	
involves activities in which the child is used for criminal acts, such as trafficking in drugs or prohibited goods?	
Involves cruel, inhuman or degrading treatment, the sale of children or servitude?	
is harmful to the child's health or physical, mental, spiritual, moral or social development?	
Does the law clearly define and delineate the types of prohibited work which are considered hazardous or are harmful to a child's health, safety and morals?	
Does the law provide for appropriate penalties for those who violate child labour laws?	
Are labour inspectors sufficiently empowered to enforce child labour laws? Do they have the authority to immediately remove a child from a work environment that is hazardous or harmful to the child's health or physical, mental, spiritual, moral or social development?	
Are appropriate measures taken to reintegrate and rehabilitate victims of harmful or exploitative child?	
Is there a national strategy for the elimination of the worst forms of child labour?	
Refugees and internally displaced children	

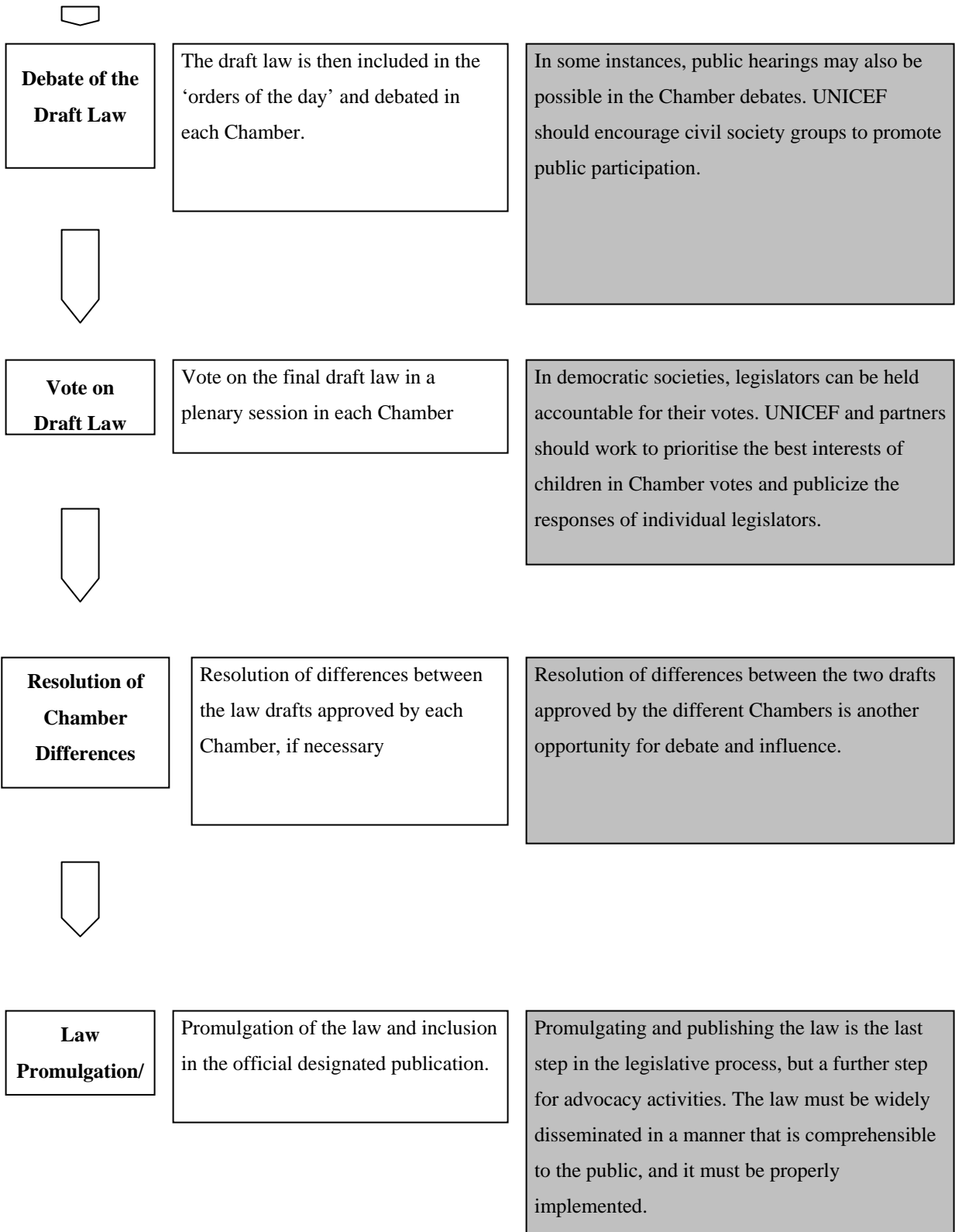
Are there laws/policies defining the special protection, care and treatment to be provided to:	
Unaccompanied and separated children seeking asylum or refugee status;	
internally displaced unaccompanied and separated children?	
Does the law prohibit and protect everyone from being arbitrarily displaced from their home? Are there standards and procedures for any displacement?	
Are there mechanisms or procedures in place for identifying displaced children who are in need of assistance?	
Are there laws, policies and mechanisms in place to trace family members of unaccompanied or displaced children?	
Do laws/policies relating to refugees and asylum seekers include special provisions on the treatment children, particularly children who are unaccompanied or separated from their parents? Are there guidelines or standards for the identification of children, including age determination?	
Are unaccompanied children and refugee and asylum seeking children accommodated in safe environments, wherever possible with their family	
Are they guaranteed access to education, health care and appropriate support and rehabilitative care?	
Does the law prohibit children under the age of 18 from being recruited into the armed forces or used by armed groups?	
Children in Conflict with the Law	
Does the law include special procedures and protections specifically applicable to children in conflict with the law? Do these protections apply to all children under the age of 18?	
Has the minimum age for criminal responsibility been established by law?	
Does legislation guarantee the right to be presumed innocent until proved guilty according to the law?	
Do children have the right to legal representation at all stages of the proceedings?	
Do children have the right to have the free assistance of an interpreter if the child cannot understand or speak the language used?	
Is the child's right to privacy respected at all stages of the proceedings?	
Does the law limit the publication of the name or identity of a juvenile?	
Does legislation require that arrest of children is used only as a measure of last resort, for the shortest appropriate period of time?	
Are police obligated to have parents, legal guardians, defence lawyer present whenever questioning a juvenile?	
Do children have the right to remain silent and not to be compelled to give evidence or	

confess guilt?	
Does the law restrict police use of force or restraints against children?	
Where children are arrested and detained in police custody, do they have the right to challenge their detention before a competent authority?	
Is there a defined maximum period for detention of a child in police custody without a court hearing at which the detention can be challenged?	
Does the law state that children may only be held in detention pending trial as a measure of last resort and for the shortest possible period?	
Does the law require that juvenile cases be expedited where the juvenile is detained pending trial?	
Is there a maximum period for pre-trial detention?	
Does the law give police, prosecutors and judges discretion to resolve cases through diversion?	
Does diversion require the consent of the juvenile and/or his/her parents?	
Have community programmes, such as temporary supervision and guidance, restitution, and compensation of victims been made available in order to facilitate diversion?	
Does the law guarantee juveniles the right to have the matter determined without delay? Is there a maximum time limit for the completion of juvenile trials?	
Do the juvenile's parents have the right to be present at all stages of the proceedings? Can the court compel their attendance where it is deemed to be in the child's best interest?	
Does the law guarantee juveniles the right to be heard and to participate fully in the proceedings?	
Are hearings involving juveniles closed to the public?	
Are there special rules or procedures for conducting juvenile trials to ensure that they are conducted in an atmosphere of understanding, which allows the juvenile to participate fully? Are there provisions to reduce the formality and intimidation of court proceedings?	
Do children have the right to have the court decision reviewed by a higher independent and impartial authority?	
Does the law require that the sentence imposed on a juvenile be appropriate to their well-being, and proportionate not only to the gravity of the offence, but also the circumstances and needs of the juvenile?	
Does the law require that pre-sentence or social inquiry reports be prepared and considered prior to imposing sentence on a juvenile?	
Does the law state that deprivation of liberty shall be used only as a measure of last resort, for the shortest possible period?	
Is deprivation of liberty used only against juveniles who have committed a serious act involving violence against another person or are persistent in committing other serious	

offences?	
Is life imprisonment without the possibility of release prohibited?	
Are indefinite or indeterminate sentences prohibited?	
Is capital punishment prohibited?	
Are a variety of dispositions available, such as care orders; guidance and supervision orders; diversion to mental health treatment; victim reparation/restitution; counseling; probation; education or vocational training; community service orders; orders to participate in group counselling and similar activities; and orders concerning foster care, living communities or other educational settings?	
Does the law require that juveniles be separated from adults in all places of detention, including police custody, pre-trial detention centres, and prisons	
Does the law require that juveniles deprived of liberty are treated with humanity and respect for their inherent dignity, and in a manner which takes into account the needs of persons of their age?	
Are there regulations setting special standards for all juveniles deprived of their liberty in conformity with the JDL's?	
Is the right of all juveniles of compulsory school age to education guaranteed? Do juveniles have access to further education and vocational training?	
Is the right of the child deprived of liberty to maintain contact with his or her family through correspondence and visits set out in legislation? Are juveniles permitted visits not less than once per month?	
Does the law strictly prohibit all disciplinary measures constituting cruel, inhuman and degrading treatment, including corporal punishment, placement in a dark cell, solitary confinement, use of handcuffs or restraints, reduction of diet and restriction on family contact?	
Do all children deprived of liberty have access to effective complaints procedures concerning all aspects of their treatment?	
Does the law require that juveniles deprived of liberty be subject to a periodic review of their situation?	
Is there effective inspection and monitoring of all institutions in which children may be deprived of their liberty?	
Does the law require that juveniles released from detention be provided with support for their reintegration into the community?	

Appendix D: Sample Legislative Process Flowchart





Appendix E: Sample Incremental Objectives

The objectives identified below and timeframe classifications are representative only; country-specific objectives, their classification within a timeframe, and the period covered in each timeframe will vary based on the content of the programme and the local situation.

Short term	Intermediate	Long term
<ul style="list-style-type: none"> • Increased communication and collaboration with Ministry of [Finance, Foreign Affairs, Health, Education, Justice, etc.] 	<ul style="list-style-type: none"> • Increased or maintained communication and collaboration with Ministry of [Finance, Foreign Affairs, Health, Education, Justice, etc.] 	<ul style="list-style-type: none"> • Increased donor support for legislative reform initiatives
<ul style="list-style-type: none"> • Increased communication and collaboration with [UNHCR, WHO, WFP, OHCHR, etc. (UNCT members)] 	<ul style="list-style-type: none"> • Increased or maintained communication and collaboration with [UNHCR, WHO, WFP, OHCHR, etc. (UNCT members)] 	<ul style="list-style-type: none"> • More effective functioning of institutions, agencies and ministries implementing the CRC
<ul style="list-style-type: none"> • Increased presence of [juvenile justice, laws for children, education policy, social protection budgets] in the media 	<ul style="list-style-type: none"> • Public debate of [implementing the CRC, legislative reform, need for law on X] 	<ul style="list-style-type: none"> • Atmosphere conducive to justiciable rights for children
<ul style="list-style-type: none"> • Increased knowledge of and participation in the legislative reform process 	<ul style="list-style-type: none"> • Strategic participation in the legislative reform process 	<ul style="list-style-type: none"> • Law or code goes into effect
<ul style="list-style-type: none"> • Increased knowledge and promotion of [the policy/law sought, law review, legislative reform] among target groups 	<ul style="list-style-type: none"> • Increased knowledge and promotion of [the policy/law sought, law review, legislative reform] among target groups 	<ul style="list-style-type: none"> • Law is disseminated widely in an accessible manner
<ul style="list-style-type: none"> • Increased advocacy actions by [NGOs, community groups, law association] among target groups 	<ul style="list-style-type: none"> • Increased public momentum (broader, deeper support) for legislation that reflects the specific needs being addressed/broad reform in favour of children) 	<ul style="list-style-type: none"> • Existence of institutions required to effectively implement the law/policy
<ul style="list-style-type: none"> • Enhanced capacity of UNICEF staff in [legislative review and analysis, lobbying, etc.] 		<ul style="list-style-type: none"> • Increased funding and resources for the law/policy/institutions (at the national, regional and local levels)
		<ul style="list-style-type: none"> • Improved condition and increased political voice of target population (children generally, or particularly vulnerable group)

Source: Loosely based on “Campaign X Intended Outcomes,” a handout created by Innovation Network, Inc. for the 2005 Joint CES/AEA Conference, Toronto (2005), http://www.innonet.org/client_docs/File/aep_outcomes_chain.pdf.

Appendix F: Legislative Reform Evaluation Matrix

	Phases of the legislative process		
Evaluation criteria	Formulation and adoption	Implementation or enforcement	Impact
<i>Relevance</i>	Was the (revision of) law needed in order to reflect properly children's rights (based on situation analysis)?		
<i>Effectiveness</i>	<p>Is there a new (revised) law/decreed in place? Does the new (revised) law address the issue under consideration from child rights perspective? Are there groups of children whose specific needs are not properly reflected by the law?</p> <p>Are there loopholes in the law, which may compromise its overall effect?</p>	<p>Are there institutions/mechanisms in place to apply the law in appropriate manner? Are they sufficient? Is there a need to establish new/more mechanisms? Of what type?</p>	
<i>Efficiency</i>	<p>How did UNICEF participate in the process - advocacy with parliamentarians, government officials or ministries, technical assistance to draft the law, public awareness, etc? Which approach was most successful, and which was the least? Why?</p>	<p>Do existing institutions have the capacity to implement properly the adopted/revised law? What are the populations they can serve? Do they need further capacity building? In which aspects of the implementation?</p>	
<i>Impact</i>	What side effects resulted from the work on the particular law (i.e.,		How many people benefit from the new law? Are there

	<p>increased partnerships with government ministries or UN agencies, greater awareness among the population of laws, greater participation of all stakeholders, greater demand for rights, changes to one law promoting discussion of another, changed attitudes, etc.)</p>		<p>missing groups of potential beneficiaries?</p> <p>(Concrete questions re. types of beneficiaries and measurement of magnitude of impact would depend on the specific subject)</p>
<i>Sustainability</i>		<p>Do implementing institutions have the needed resources for continuous implementation (human capacity, planned budgets, etc.)</p>	<p>How many more people are expected to benefit from the new law in the future (e.g. on yearly basis)?</p>
<i>Coherence</i>	<p>Was the work on formulation/ review of the current law in accordance w work on related legislative issues? Does the new law conflict with other existing legislation on related issue? Would this require changes in other laws/decrees, etc?</p>		
<i>Coordination</i>	<p>What other institutions/partners were involved in the work and to what extent? Did they work in a coordinated manner? Was feedback from all partners properly considered? Why? Did UNICEF assure child participation?</p>	<p>Do implementing institutions work in a coordinated manner? Are there constraints in this regard, e.g. conflicting rules and regulations, different subordinations, etc.? How can these be overcome?</p>	

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