**QUESTIONNAIRE**

**“NON - DISCRIMINATION AND EQUALITY IN FAMILY AND CULTURAL LIFE”**

In accordance with its mandate, the UN Working Group on the issue of Discrimination against Women in Law and Practice (hereinafter “the Working Group”) developed this questionnaire to gather information on how laws and practices discriminate against women within the family and cultural life. Additionally, this questionnaire has the objective of highlighting good practices and lessons learned in advancing equality between women and men within the family and in cultural life.

Regarding family life, the questionnaire focuses on issues of equality in marriage and rights and responsibilities within the family. In relation to cultural life, the questionnaire addresses issues linked with the right to have access, participate in and contribute to all aspects of cultural life, including arts, sports and cultural activities.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) clearly establishes the State obligation to “take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations”[[1]](#footnote-1). It also establishes the obligation to modify the socio-cultural patterns and gender stereotypes to eradicate all practices based on the inferiority or superiority of either of the sexes as well as to ensure that family education recognizes the common responsibility in the upbringing and development of children.[[2]](#footnote-2) Moreover, the Convention reaffirms the State obligation to eliminate discrimination and guarantee equality in the cultural sphere.[[3]](#footnote-3)

In addition, the International Covenant on Economic, Social and Cultural Rights recognizes the right of all people to enjoy their cultural rights in conditions of equality as well as the right to enjoy the benefits of scientific progress.[[4]](#footnote-4) Furthermore, the Human Rights Committee in its General Comment 28 on the *Equality of Rights Between Men and Women* also reaffirms that the right to equality before the law include equal status within the family and regardless of marital status.[[5]](#footnote-5)

The UN Working Group wishes to thank all stakeholders for responding to this questionnaire by **31 July 2014.**

**Questionnaire**

**General**

1. What status/hierarchy does your Constitution gives to international human rights treaties versus domestic law?

Please explain. The Indonesian Constitution does not mention about the status and hierarchy of International Human Rights Law versus Domestic law. However, in order international treaties to be applied as domestic law, it must be ratified by national parliament.

1. Has your State ratified international human rights treaties with reservations to provisions dealing with equality in family life?

Yes ( X ) No ( )

If yes, are there plans to withdraw these reservations?

Yes ( ) No ( X )

Please explain. On CEDAW: the reservation only on article 29

1. Are the principles of non-discrimination on the basis of sex/gender and equality between men and women established in the Constitution of your State?

Yes ( ) No ( X )

If yes, please provide references, describe how they are defined (name the specific articles) and whether they cover family and cultural life.

The principles of non discrimination is established in Indonesian Constitution in a very general term. Article 28 1 stated that : 2) Each person has the right to be free from acts of discrimination based on what grounds ever and shall be entitled to protection against such discriminative treatment.
(3) The cultural identities and rights of traditional communities are to be respected in conjunction with progressing times and civilization.

1. Are there any specific anti-discrimination or gender equality laws in your State?

Yes ( ) No ( X )

If yes, please provide references and briefly describe the content of this law(s), in particular whether it covers family and cultural life.

1. Have there been any recent legal reforms in your State to guarantee non-discrimination and equality between men and women in family and cultural life?

Yes ( X ) No ( )

If yes, please explain and provide examples.

For the last 10 years the Ministry of Women’s Empowerment was drafting a Bill on Gender Equity and Equality law and 3 years ago it was proposed to the parliament but up to now the Bill has not been passed yet. Many hardliner Muslim organization object that Bill by saying that it will abolish or replace the Islamic law on inheritance and polygamy with western concept as well as will allowing same sex marriage.

1. Are there any customary, religious law or common law principles/provisions that discriminate against women in family and cultural life?

Yes ( X ) No ( )

If yes, please explain and provide examples.

Indonesian 1974 Marriage law is very patriarchal law and legalized customary and religious law that allow polyginy, child marriage, paternity, gender stereotyping

1. Are there any good practices that you can share regarding the elimination of sex discrimination in family and cultural life in your State? Yes

If yes, please explain and provide examples. The Constitutional Courts rejected the demand of a man who would like to annul the term of condition for doing polyginy 9article 3.4,5 of 1974 Marriage law) by stating that polyginy is not the right of man but rather than protection of woman (Verdict number 12/PUU-V/2007)

1. What actions have been taken by your State to eradicate negative gender stereotypes, including in the media?

Nothing

Please provide examples.

1. Are tribunals upholding the principles of equality and non-discrimination in matters relating to family and cultural life?

Yes ( X ) No ( )

If yes, please provide any relevant case-law/jurisprudence. The Constitutional Court verdict on children born out of wedlock by stating that their biological father have to provide support to the children (Verdict number 46/PUU-VIII-2010.

1. Are there any other mechanisms to monitor draft legislation, specific provisions in draft legislation or reverse decisions discriminating against women in family or cultural life?

Yes ( X ) No ( )

If yes, please provide any relevant examples.

The Parliament have to discuss every bill with public (the parliament have to conduct public hearing and consultation ) and they also have to accept any kind of input or alternative bill/wording.

**Family Life ­- Equality within marriage**

1. Is there a legal designation of head of household?

Yes ( X ) No ( )

If yes, is the head of household the male member of the family? What rights or obligations are attributed to the head of household?

Article 31 of 1974 Marriage Law stated that husband is the head of the family and the wife is the household caretaker while article 34 stated that the husband has to provide economic support for his wife and the wife has to be a good household caretaker.

1. Do women have the same rights as men in your State in relation to:

( No ) The minimum age for marriage – if the age of marriage is different for men and women, please provide information .

( Yes ) The right to enter into marriage

( Yes ) The freedom to choose a spouse and to express consent

1. With permission or authorization from parents/guardians/courts, at what minimum age can men and women marry in your State? What enforcement measures are provided by law in this regard? 21 years old.
2. Is there a reference to dowry in the legislation of your State, for example, in marriage contracts or in traditional practice?

Yes ( ) No ( X )

If yes, please explain.

1. Are forced marriages prohibited in your formal and customary laws?

Yes ( X ) No ( )

If yes, please provide any relevant references. The prohibition of forced marriage is not explisitly stated in 1974 Marriage law. But article

1. Are forced marriages or arranged marriages practiced in your State?

Yes ( X ) No ( )

If yes, please explain. Article 6 (1) stated that marriage can only be conducted based on the consent of the spouse.

1. Is polygamy illegal in your State?

Yes ( ) No ( X )

 If no, is it legal for both men and women? No. Only man could have 4 wives.

1. Is the registration of marriage compulsory in the following cases?

( Yes ) civil marriage

( Yes ) religious marriage

1. Are same sex-marriages allowed in your State?

Yes ( ) No ( X )

If yes, please provide references.

1. Are same-sex relations criminalized in your State?

Yes ( X ) No ( )

If yes, please provide references. Article 292 of Indonesian Criminal Code criminalized same sex relation between adult and underaged (below 18 years old).

1. Is equality guaranteed between husband and wife in law and practice with respect to:

( YES ) The right to choose a family name

( YES ) The right to choose a profession and occupation

( YES ) The right to choose the place of residence

( YES ) The right to have and retain one’s nationality

( YES ) The freedom of movement (including the right to travel abroad)

Please provide references.

1. Do both spouses have the same rights in law and practice with respect to:

( YES ) ownership of property and land

( YES ) management and administration of property and land

( YES ) enjoyment and disposition of property and land

Please provide references.

1. Are women who get married subjected to any form of male guardianship?

Yes ( ) No ( NO )

If yes, what are the specific conditions of this guardianship and what kind of restrictions does it impose on women?

1. Do parents have same rights and responsibilities regarding to:

( YES ) Deciding the number and spacing of children

( YES ) Guardianship, wardship and trusteeship

( YES ) Adoption of children

( YES ) Care of children

( YES ) Education of children

( YES ) Alimony

Please provide references.

1. Are de facto unions recognized in law in your state?

Yes ( ) No ( NO )

If yes, please explain in which law(s) and how this is defined.

1. Do men and women have the same legal rights with respect to dissolution of marriage?

Yes ( YES ) No ( )

If yes, please explain in which law(s) and how this is defined.

1. Do men and women have the same rights in law and practice when a marriage or union ends in terms of:

( YES ) Equal share of the marital property and land

( YES ) Custody of children

( YES ) Remarriage

Please provide any references.

1. Is it contemplated in the legislation of your State that, in the event of a divorce, women should remain in the family or common household?

Yes ( ) No ( X )

If yes, please explain in which law(s) and how this is defined.

1. Are legal provisions guaranteeing non-financial contributions, including care of children, the sick and elderly in the family, taken into account in the division of marital property upon divorce?

Yes ( ) No ( X )

If yes, please provide references.

1. Are rights of widow(er)s the same for women and men in terms of:

( YES ) Custody of children

( YES ) Property and land distribution

( YES ) Remarriage

( YES ) Freedom to choose residence

Please provide references.

1. Do women have access to legal aid in relation to family matters?

Yes ( X ) No ( )

If yes, please explain.

**Equality within the family**

1. What is the legal definition/concept of “family” in your State?
2. In law (including customary law) are men and women equal in the family in your State?

Yes ( YES ) No ( )

If yes, please provide any references.

1. Do men and women have the same social status within the family in your State?

Yes ( X ) No ( )

If yes, please provide any references.

1. Does your State have data on the number of hours spent by women and by men on functions in the home or in care for family members, including children and the elderly?

If yes, please explain.

1. Do men and women in the family have the same rights, in law and practice, with regards to inheritance (including equal rank in the succession)?

Yes ( ) No ( X )

If yes, please explain. In addition, is there evidence of waiver of inheritance rights by women?

1. Does family education in your State include a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of the children?

Yes ( ) No ( X )

If yes, please provide any references.

1. If equality is guaranteed in law and practice, does this apply in all different types of families?

Yes ( ) No ( X )

If yes, please provide any references.

**Violence within the family and marriage**

1. Are there any of the following traditional practices in your State ?

( YES ) Female Genital Mutilation

( NO ) Honour Killings

 ( YES ) Son Preference

( NO ) Dowry Deaths

( YES ) Polygamy

( YES ) Prohibition of work or travel without the permission of a guardian

( ) Other

If yes, is there legislation prohibiting such practices in your State? NON

Please provide any information on other actions taken to eradicate these practices.

1. Is/are there any anti-domestic violence legislation/regulations in your State?

Yes ( X ) No ( )

If yes, please provide any references.

LAW NUMBER 23/2004 ON THE ELIMINATION OF DOMESTIC VIOLENCE, BUT ITS IMPLEMENTATION IS STILL VERY WEAK

1. Does your State have a legal definition of discrimination which covers gender-based violence or violence against women, which includes domestic violence?

Yes ( ) No ( X )

1. Does your State have a national policy to eliminate gender-based violence or violence against women, including domestic violence?

Yes ( X ) No ( )

1. Is marital rape considered a crime in the legislation of your State?

Yes ( X ) No ( )

1. Is adultery considered a crime in the legislation of your State?

Yes ( X ) No ( )

If yes, is it equally punished for men and women? Yes

Please provide any references and further explanation. Article 284 of Indonesia Criminal Code criminalise who those committed adultery, both man and woman, however the complainant have to file a divorce case within 3 month after they report to the police. If they do not file a divorce, the Court will dismiss the case.

45. Are there any public campaigns in your State to raise awareness that violence against women and girls is a human rights violation?

Yes ( X ) No ( )

 If yes, do they attempt to change the attitudes of men? No. Program to change the attitude of man only run by NGO

46. What measures have been taken in your State to raise awareness among law enforcement officials regarding violence against women and girls, including domestic violence?

Please explain and provide examples. Legal enforcer institution such as Attorney General office and Police Headquarter provide training for prosecutor and police on gender, CEDAW and all kind of legislation regarding gender based violence (ie. Domestic violence act, Rape, Anti Trafficking law etc)

47. Are there special law enforcement units to respond to complaints of violence against women and girls, including domestic violence?

Yes ( X ) No ( )

 If yes, do these include female law enforcement officers? Yes. Most of the head of this unit led by women.

48. Please provide information on the incidents/complaints of domestic violence, sexual assault including rape, and child abuse against women and girls in your State.

49. Are there shelters or safe houses for women and girls who are victims of gender-based violence, including domestic violence in your State?

Yes ( X ) No ( )

If yes, are these available to women and girls living in rural and remote areas? No

**Participation in cultural life**

50. Are men and women equally entitled in law and practice to interpret cultural traditions, values and practices in your State?

Yes ( ) No ( X )

If yes, please describe and provide examples.

51. Are there restrictive dress codes for women which do not apply to men? Yes

If yes, please describe and provide examples. There are more than 63 regional bylaws that discriminate against women in term of dress code, movement, running in office, getting public services, attain higher educationetc. Anti Porn law is alsodiscriminate against women.

52. Are women in the country allowed to be a member and fully participate in cultural and scientific institutions in your State?

Yes ( X ) No ( )

If yes, please describe and provide examples. There is no prohibition for women to participate in cultural events or scientific institution. However in some places for example in Bandung, there is a regulation that prohibit women to perform at the traditional dances that consider sexy or erotic dance in the traditional dress code.

53. Are women entitled in law and practice, independently of their marital status, to decide freely whether or not to participate in certain cultural events, traditions and practices in your State?

Yes ( X ) No ( )

If yes, please describe and provide examples. It is guaranteed in the article 28 of 1945 Constitution.

54. Are there any specific actions to recognize and value the contributions of women to culture in your State?

Yes ( ) No ( X )

If yes, please describe and provide examples.

55. Do you have data regarding the participation of women in arts, science, sports and in the proportion of public funding allocated to women in these activities? No, we don’t have it.

If yes, please provide information.

56. Has your State developed any temporary special measures to enhance the participation of women in arts, science, sports and any other cultural activity?

Yes ( ) No ( X )

If yes, please provide specific examples of these temporary special measures.

57. Are women allowed and encouraged by your State to participate in all sports?

Yes ( X ) No ( )

If yes, please describe and provide examples. Women could do any kind of sports including football, lifting, karate and all kind of “man” sports.

58. Is any special dress code provided in the legal regulations for all women exercising sports in your State?

Yes ( ) No ( X )

If yes, please describe and provide examples.

59. Are there any differences in your State in conditions for women’s access, to museums, parks, theaters, sports stadiums and other facilities where culture, sports and science are disseminated in comparison with men?

Yes ( ) No ( X )

If yes, please explain and provide examples.

60. Is your State promoting the participation of women in the arts?

Yes ( ) No ( X )

If yes, please explain and provide examples. Women is allowed to do all kind of arts activities.

61. Have there been any cases in your State in last decade of women artists prosecuted for the performance of art, allegedly violating public authority or morals?

Yes ( ) No ( X )

If yes, please describe.

1. Article 16, UN Convention on the Elimination of All Forms of Discrimination against Women, adopted by the UN General Assembly on 18 December 1979 (AG Resolution 34/180) and entered into force on 3 September 1981. [↑](#footnote-ref-1)
2. *Ibid* art. 5. [↑](#footnote-ref-2)
3. Article 1, and 13(c), UN Convention on the Elimination of All Forms of Discrimination against Women, adopted by the UN General Assembly on 18 December 1979 (AG Resolution 34/180) and entered into force on 3 September 1981. [↑](#footnote-ref-3)
4. International Covenant on Economic, Social and Cultural Rights adopted by UN General Assembly resolution 2200A (XXI) of 16 December 1966 and entry into force on 3 January 1976. [↑](#footnote-ref-4)
5. UN Human Rights Committee, General Comment No. 28 on article 3 “Equality of Rights between Men and Women”, adopted on 29 March 2000 (HRI/GEN/1/Rev.9 (Vol. I)). [↑](#footnote-ref-5)