

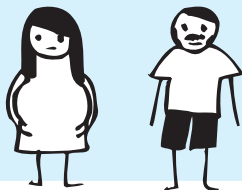
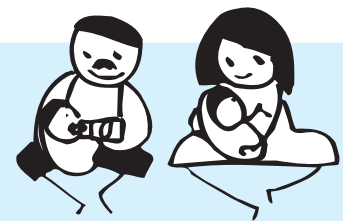
Part 1 : Key concepts and strategies

1 Key concepts

1.1 What is meant by gender?

The sex children are born with influences their chances in life, alongside other important variables such as socio-economic class or caste, race or ethnicity. The biological differences of being born as a boy or a girl become important only later in life when children reach puberty. However, from the moment of their birth, all societies assign different roles, attributes and opportunities to boys and girls. They are socialized to perform the roles of men and women in their society, based on the ideas in that society how men and women should or should not behave. These social meanings given to biological sex differences are covered by the term gender:

- **Gender** refers to the social differences and relations between girls and boys, women and men that are learned and vary widely within and between cultures and change over time. For example: in many countries women take care of young children, but increasingly men start to take care of young children too.



- **Sex** refers to the biological differences between men and women that are universal and do not change. For example, only women can give birth and only men grow a beard.

Gender is an important variable and classifier in society. It is affected by other variables such as age, class or caste, race or ethnicity, and by the geographical, economical and political environment.

Gender is a socio-economic variable to analyse differences between boys and girls, men and women with regard to:

- **roles, responsibilities and needs**
- **constraints and opportunities.**

Ideas and practices on what boys and men and girls and women can and do differ from one country to another. Wide variations may exist within one country. For example: in some countries women do not work on construction sites and men do not weave or sew textiles, while in other countries it is common to find them in these sectors.

It is useful to differentiate between gender values, norms, stereotypes and roles:

- **Gender values and norms in society** refer to ideas that people have on what men and women of all generations should be like. For example: in many societies girls should be obedient and cute and are allowed to cry. Boys, on the other hand, are expected to be brave and should not cry.
- **Gender stereotypes** are the ideas that people have on what boys and men, girls and women are capable of doing. For example: ideas that women are better housekeepers and men better with machines, or that boys are better in mathematics and girls better in nursing.





- **Gender roles** refer to the activities that both sexes actually do. For example: boys help their fathers working outside the house and girls help their mothers taking care of the household work.

Gender roles are reinforced by the gender values, norms and stereotypes that exist in each society.

However, gender roles can and do change, often faster than the ideas people have on how girls and boys, men and women should or should not behave. For example: girls and women in many societies are supposed to be the weaker sex and they are to be protected from heavy workloads. In reality, however, girls and women

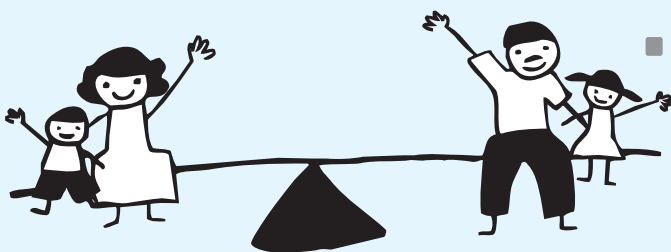
from poor population groups are often engaged in heavy work for long hours alongside boys and men. Also, in many societies, parents with limited resources have tended to invest more in the education of their sons rather than their daughters because sons are expected to become providers for the family in the future. Recently, the economic value of daughters has increased in many societies because girls

can bring regular income to their family as factory workers or as workers in entertainment services. This demonstrates that attitudes on the gender roles of girls do change, although this does not necessarily make life better for girls.



1.2 What is meant by gender equality?

In most societies there are differences between girls and boys, and women and men in the opportunities, responsibilities, rights and benefits they are given and the activities they do. While there are variations across cultures and, over time, there is one common feature: **Gender relations throughout the world are characterized by unequal and unbalanced relations between the sexes.** Disparities exist, for example, between girls' and boys' access to education and training, between women's and men's workload, their access to and control over resources and benefits, and in the roles of men and women in decision making.



- **Gender equality**, or equality between women and men, refers to the equal rights, responsibilities, opportunities, treatment and valuation of women and men:
 - in employment
 - in the relation between work and life.

Gender equality means that people of all ages and both sexes should have equal chances to succeed in life. It means that all human beings should have equal, in other words, **fair** and **just** access to and control over resources and benefits so that all can benefit from and participate in development.



- **Promotion of gender equality** is about ensuring equal outcomes and equal shares between men and women so that all persons are treated with dignity and allowed to develop to their full potential, leading to a higher quality of life for all. It does not mean that women and men need to become exactly the same. Women and men can be and are different, but should have equal rights, responsibilities and opportunities. The way boys and girls, women and men are treated and their work is valued should not depend on whether they are born male or female. Thus, **gender equality** includes the **same human and workers' rights and equal value and fair distribution** of:
 - responsibilities and opportunities
 - workload and decision making.

1.3 What is meant by gender discrimination?

Discrimination is any distinction, exclusion or preference based on sex, gender (or other classifiers in society, such as ethnicity, colour, religion or political opinion), which has the effect of nullifying or impairing equality of opportunity and treatment.

Two types of discrimination exist:

- **Direct discrimination** is generally intentional or explicit. Sometimes direct discrimination is found explicitly in the law. This is called 'de jure' discrimination. Examples in many countries are:
 - women cannot legally own property, such as land or buildings
 - married women cannot sign legal documents
 - the retirement ages of women and men are different
 - women are barred by law in certain types of employment.



Direct discrimination between men and women is declining as most countries prohibit discrimination on the basis of sex or gender and promote equality between men and women in the law. However, direct forms of discrimination, in other words 'de facto' discrimination continues to be widespread in practice. For example, job advertisements in many countries often specify age range or sex

- **Indirect discrimination** refers to apparently neutral situations, regulations, or practices which, in fact, result in unequal treatment of persons. There is exclusion because of preferences or stereotypes, in other words, an apparently neutral law or practice has a disproportionate negative impact on a particular group. For example:
 - enterprises often prefer to recruit men rather than women of child bearing age because they expect women will be more often absent from work because of pregnancy or family responsibilities
 - supervisory positions are often filled by men, because women are not considered to be as good 'natural' leaders as men.



While direct 'de jure' discrimination between men and women is decreasing because most countries nowadays prohibit discrimination on the basis of sex and gender in the law, direct and indirect discrimination continues to be very common in practice in many societies and workplaces, and usually results in a disadvantaged position of girls and women in society. This type of discrimination often occurs, not because people in society want to be intentionally 'mean', but because tradition and customs in practice favour men and boys and allocate a second class position to women and girls.

Direct and indirect discrimination should not to be confused with the concept of positive action or positive discrimination which is one of the necessary tools to combat the negative effects of severe discrimination that existed in the past. See Section 3 in Part 1 for more information.

1.4 What is meant by human rights?

- **Human rights** are the basic and absolute rights that every person has because he or she is a human being. They recognize the vulnerability of the human being in civil, political, economic, social and cultural processes and provide protection. Every human being has these rights although the extent to which they can be enforced in practice varies from country to country.

Having rights comes with having **duties and responsibilities**. In preserving the freedom, rights and justice for all, everyone has a responsibility to abide by the law and everyone has duties in the community. In exercising freedoms and rights, everyone must also respect the rights and freedoms of others.

At the international level most of these basic human rights have been described in the United Nations (UN) Universal Declaration of Human Rights (1948).¹ Some of the basic human rights include:

- the right to equal treatment and non-discrimination
- the right to nationality
- the right to own property
- the right to education
- the right to work and to just and favourable conditions of work
- the right to freedom from slavery and forced labour
- the right to equal access to public service in the country
- the right to freedom of movement
- the right to freedom of thought, opinion and expression
- the right to freedom of association.

The fundamental human rights are often described in each country's Constitution which guarantees the fundamental rights of its citizens, regardless of their sex, race, ethnicity, class or caste, religion, or other statuses. National legal rights are those rights which are defined by national laws in each country, usually consisting of constitutional rights, and specific rights laid down in national legislation such as the Penal Code, the Labour Code and the Civil Code and rules such as government regulations.

¹Other key UN instruments are: the International Covenants on Civil and Political Rights (ICCPR, 1966) and on Social, Economic and Cultural Rights (ICESCR, 1966).





While there is considerable variation in national legislation between countries, most constitutions worldwide state that everyone is equal before the law, and that each person is entitled to equal protection under the law without any discrimination. If a person's legal right is violated, the person is entitled to seek justice and to a just and fair judicial process.

1.5 What is meant by fundamental rights at work?

In 1998, ILO member States adopted the Declaration on Fundamental Principles and Rights at Work which sets out the core labour principles that are fundamental to the rights of human beings at work, irrespective of the level of development of countries. The core labour principles endorsed by the international community cover four main areas:²

- the elimination of all forms of forced and compulsory labour
- the abolition of child labour
- the elimination of discrimination in respect of employment and occupation
- freedom of association and the recognition of the right to collective bargaining.

1.6 What is meant by fundamental rights for women workers?

The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is the key overall UN instrument for gender equality promotion. It was adopted in 1979 with a view to combat the continuing discrimination against women because earlier human rights instruments reflected mostly male concerns and perspectives. It identifies many areas where there has been notorious discrimination against women, for example, with regard to political rights, marriage and the family, and employment. The Convention spells out specific goals and measures that are to be taken to facilitate the creation of a global society in which women enjoy full equality with men and, thus, full realization of their guaranteed human rights.

In addition to the fundamental rights at work described above, two other international labour standards³ are vital to address widespread discrimination and thereby key constraints of women workers:

- maternity protection which protects women's biological functions before, during and after child birth
- provision of equal opportunities for workers with family responsibilities which are reproductive tasks in the social sphere that are almost exclusively assigned to girls and women in many societies.

²The corresponding eight fundamental conventions and four recommendations are:

- Convention No. 29 on Forced Labour (1930)
- Convention No. 105 on the Abolition of Forced Labour (1957)
- Convention No. 138 and Recommendation No. 146 on Minimum Age (1973)
- Convention No. 182 and Recommendation No. 190 on the Worst Forms of Child Labour (1999)
- Convention No. 100 and Recommendation No. 90 on Equal Remuneration (1951)
- Convention No. 111 and Recommendation No. 111 on Discrimination (Employment and Occupation) (1958)
- Convention No. 87 on Freedom of Association and Protection of the Right to Organize (1948)
- Convention No. 98 on the Right to Organize and Collective Bargaining (1949).

³The corresponding two conventions and recommendations are:

- Convention No. 156 and Recommendation No. 165 on Workers with Family Responsibilities (1981)
- Convention No. 183 and Recommendation No. 191 on Maternity Protection (2000).





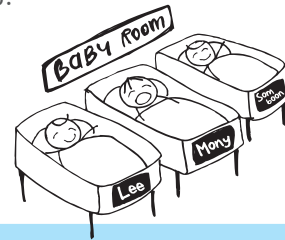
1.7 What is meant by child rights?

All human rights apply to all boys and girls. While societies may vary in their ideas on childhood and child development, one thing that all can agree on is the importance of the well-being of children. It is well recognized everywhere that children need special care and protection for healthy development because of their special needs and vulnerability. Special instruments have been drawn up to safeguard and enforce child rights. The recognized standard is the UN Convention on the Rights of the Child (CRC), which was drawn up in 1989 and has been ratified by almost all countries in the world. It covers all persons under 18 years of age.

The Rights of the Child as defined by the CRC Convention include four core principles as follows:⁴

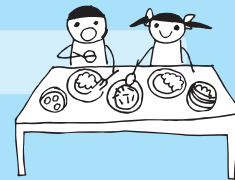
■ **Equality** - Like adults, children can be subject to discrimination which has a negative impact on a child's opportunities and conditions in life. Therefore, all children are entitled to equal rights and governments have an obligation to uphold these. For example:⁴

- right to birth registration
- right to a name and nationality
- right to protection from all forms of abuse, neglect, discrimination and exploitation.

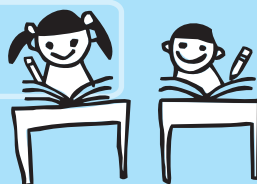


■ **Rights to survival and healthy development** - Every child has a right to develop to his or her fullest potential, and is entitled to:

- right to basic needs, including food, shelter and access to healthcare



- right to free primary education

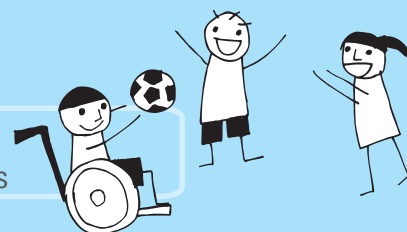


- right to childhood - to rest and play and to have friends



- right to protection from economic exploitation or any work that interferes with education or that is hazardous and harmful to health, physical, mental, and social development

- right to special assistance for children with special needs.
For example: child refugees, displaced children, child victims of abuse and disabled children.



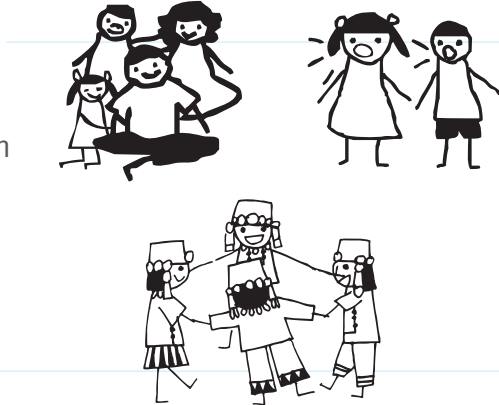
⁴For more guidelines on how to apply rights-based approach to programming, see International Save the Children Alliance handbook, *Child Rights Programming*, 2002.



- **Participation** - All girls and boys, according to their age and maturity, have the right to participate in making decisions that affect them. Boys and girls should be encouraged to take part in decision making at home, in school and in their own community.

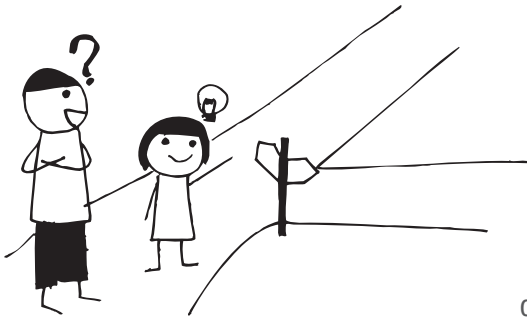
Key participation rights are:

- right to express views and opinions
- right to receive and give information in an accessible and understandable form
- right to be an active member of community - to enjoy own culture, to practice own religion and to use own language
- right to be a member of a group.



- **Best interest of the child** - The two notions of children as competent human beings on the one

hand, and as children who are vulnerable and need protection on the other hand, may conflict when deciding what is best for the child. This principle provides the solution to this problem: all decisions that affect boys and girls must give primary consideration to them. In determining what is 'best' for them, it is important to seek the views of the affected girls and boys.



1.8 What is meant by child labour?

Work is not always bad for children and can be healthy but it can also seriously hamper children's development. In order to decide whether children's economic activities are healthy or harmful, the international community has set the following yardsticks:

Child work

- light work (less than 14 hours/week) for 12-17 year olds
- not harmful to a child's health and development
- not obstructing schooling or vocational training
- not hazardous in nature



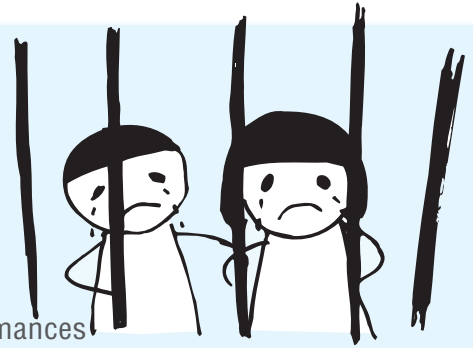
Child labour

- regular work (14-43 hours/week)
- causes physical or psychological damage
- hinders education and mental and/or physical development
- child under minimum age set by ILO Convention No.138
- hazardous work as defined by provisions of ILO Convention No.182



The worst forms of child labour:

- all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict
- the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances
- the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs
- work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.



1.9 What is meant by trafficking?

Lack of economic opportunities at home, armed conflicts or natural disasters can encourage people to leave home - often from the rural to urban areas and sometimes across borders. While migration can be a positive experience, providing better opportunities for many, it can lead to serious violations of their human and labour rights. There is increasing pressure on women to financially support their families and changing traditional roles have resulted in more women leaving their traditional place at home for work somewhere else - a process referred to as the **feminization of migration**. Often not aware of dangers, many who aspire for better opportunities elsewhere end up being trafficked for labour and sexual exploitation. Rights violations can occur from the recruitment stage to transit, and while living and working in the destination. At any of these stages, women and children can find themselves being exploited, abused, or trafficked.

- **Trafficking in persons** is a particularly abusive form of migration. It is defined by the coercive, non-consensual and exploitative or servile nature of the purpose of movement, and involves a number of serious human rights violations, including forced labour, sexual and labour exploitation, violence and abuse of the victims (GENPROM, 2003).

1.10 Relations between migration, trafficking and labour exploitation

Children and youth most vulnerable to severe labour exploitation often come from disadvantaged, marginalized and socially excluded groups. They include orphans, children of single-parent or child-headed families, children of tribal or ethnic minorities, street children, migrant children, and refugees.

Younger children often migrate along with their parents, while adolescents may choose to take their own path. Although there is no clear linkage between migration and child labour, some studies suggest that foreign-born children are found in more exploitative and dangerous work than native children of similar economic status due to lack of legal status in the host country and discrimination of the local population against foreigners.





Children who migrate or are trafficked alone are separated from their familiar support networks. They often find themselves in a new, often hostile, environment, unable to speak the language, being excluded from the mainstream society, and not being able to attend school or have access to medical care because they do not have the necessary documents. Many children born of migrant parents in a new city or country are not registered and do not have a birth certificate. This results in their being stateless and deprives them of social and economic opportunities and exposes them to many forms of discrimination.

In these conditions, often the only available options left to migrant and trafficked workers are to work in **'3D' jobs - difficult, dirty and dangerous**. Their jobs are often undocumented, unprotected, or illegal. Many lack immigration status, making them prime targets for police crackdowns, detentions and deportation. It is not uncommon for migrants to be asked by authorities to pay bribes and for women sex workers to be asked to provide free sex, to avoid penalties (Asian Migrant Centre, 2002).

There are clear age and gender dimensions in trafficking of children into forced labour.

That is, the younger the child, the less likely he or she is able to escape the forced labour situation. In addition, boys and girls tend to be involved in different activities, although there is considerable overlap. Girls predominate in commercial sexual exploitation and domestic work, and boys in forced recruitment for armed conflict and for camel jockeying in the Middle East (ILO, *A Future Without Child Labour*, 2002).

Gender is a determining factor in trafficking on both the supply and demand sides. In some areas the largest numbers of victims of trafficking are men, for example, more than 80 per cent of migrants trafficked into Ukraine and Poland are men.⁵ Generally, however, women and girls are more likely than men and boys to be the victims of trafficking. Women and girls are often trafficked into prostitution and sexual exploitation. However, trafficking should not be equated with prostitution and sexual exploitation because many other forms of labour exploitation also occur. "Trafficking is a serious manifestation of the feminization of poverty and the broader challenges facing women and girls in a world still characterized by gender discrimination, both within and outside the labour market" (GENPROM, 2003). On both the supply and demand sides, multi-layered discrimination and inequality are pervasive which prevents women and girls from taking control over their own lives.

Factors behind the trafficking of women and girls

Supply-side

- Feminization of poverty
- Chronic unemployment and lack of economic opportunities
- Growing materialism and desire for a better life
- Dysfunctional family situations
- Gender inequality in access to education and training
- Lack of access to information
- Discrimination on the basis of gender and/or ethnicity
- Cultural contexts and community attitudes and practices which tolerate violence against women
- Sex-selective migration policies
- Ineffective legal and regulatory frameworks
- Displacement and disruption due to natural and human-created catastrophes

Demand-side

- Employer demand for cheap and exploitable labour
- Consumer demand for services sometimes provided by trafficked persons
- Gender discrimination
- Increasing casualization and informatization in the labour market
- Growth of sex and entertainment industries
- Low-risk, high-profit nature of trafficking
- Absence of effective regulatory framework and lack of enforcement
- Lack of organization and bargaining power of workers
- Discriminatory socio-cultural practices relating, for example, to marriage
- Violations of human rights

Source: GENPROM, *Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers: An Information Guide, Booklet 6, Trafficking of Women and Girls*, ILO: Geneva, 2003, Text Box 6.6, p. 29.

⁵Office of the High Commissioner for Human Rights, "Trafficking in persons: a human rights issue", in *Trafficking in Migrants Quarterly Bulletin* No. 26, September 2002 (Geneva, IOM, 2002); <http://www.iom.int>, in GENPROM, 2002.





1.11 Challenges in the application of the law

It is commonly accepted that basic human rights described in international declarations and conventions cannot be denied to any human being and governments cannot deny these rights to their citizens without justification. For example, everybody has the right to life. In case of war, soldiers from the enemy can be denied this right but not civilians. At the international level it has been agreed that no country can exclusively rely on the sovereignty principle to infringe on the basic human rights of its citizens (UN, *Agenda for Peace*, 1992). This is still a politically sensitive issue but consensus on this agreement is growing worldwide, in an increasing number of countries, irrespective of their level of development.

However, application of basic human rights, laid down at the international level and in national laws and rules is often problematic as rights can only be enforced when there is a remedy, i.e. a law, legal rule or procedure and a working judicial system (courts and application machinery). This is a problem in many countries. One of the more recent new mechanisms to provide vulnerable groups with a means to protect their basic human rights is the set up of National Human Rights Commissions in many countries.

Sometimes there is a conflict of interest in respecting rights. For example, the 'right to development' and 'absence from poverty' for all citizens cannot be met by many governments due to the different political stake holders within that government and lack of awareness and skills among the population and marginalized groups to express their rights. Cultural norms and values also underlay the hierarchy of rights and often determine whether the rule of law is followed. Women's and children's human rights, laid down in international human rights instruments and national laws, are often violated because cultural and social norms grant a lower status to them than men.

Protection of the rights of migrants and trafficked persons is difficult. For example, in the case of trafficking of young persons for labour exploitation rights protection usually involve trafficking laws, prostitution laws and child labour laws. However, these laws do not exist in some countries, and when they exist, weak enforcement, corruption, contradiction in the laws, and traditional biases against women and girls undercut the effectiveness of these laws. Moreover, the laws, in particular prostitution and trafficking or migrant labour laws, tend to be more punitive rather than protective towards the victims. Migrant workers and trafficked victims often end up being penalized and deported for illegal entry, while employers and traffickers rarely face punishment. In the case of trafficking for child prostitution, punishment for clients is rarely mentioned (Tumlin, 2000).

