

Guidance Note



Gender and Law: Temporary Special Measures to Promote Gender Equality



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Asian Development Bank

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Abbreviations

- ADB – Asian Development Bank
- CEDAW – Convention on the Elimination of All Forms of Discrimination against Women
- DMC – developing member country
- GAD – gender and development
- TSM – temporary special measures

Introduction

Temporary special measures (TSM) are a set of positive or proactive affirmative action measures to narrow gender disparities, and promote gender equality and women's empowerment. TSM are actions included and permitted under international and domestic laws to create and design projects, programs, laws, and policies; and allocate resources to narrow the gaps between men and women in all economic, social, and political spheres.

Nearly all developing member countries (DMCs) of the Asian Development Bank (ADB) have adopted laws and policies to promote and support gender equality and women's empowerment. All but three ADB member countries¹ have ratified the United Nations' Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The national laws and policies, combined with commitments under international conventions, require the state to eliminate gender discrimination and to take actions to promote gender equality and women's empowerment. These actions often include TSM to correct gender imbalances and accelerate progress toward meeting gender equality goals.

Gender-inclusive design features, quotas, and targets in ADB loans and grants to promote women's increased participation in project activities or access to project benefits are examples of TSM.

This guidance note is designed to increase understanding of DMCs' legal obligations to achieve gender equality, and what this means when designing and implementing ADB projects.

It also responds to questions from mission teams, executing agencies, and implementing agencies about whether projects with proactive gender measures are in breach of constitutional and legislative equality measures, which require equal treatment between men and women. Including TSM in ADB-financed projects is also good development practice, and supports governments in meeting their own obligations under national laws and policies, as well as international commitments such as CEDAW.

Is gender equality a legal obligation?

Gender equality is enshrined in the constitutions of most countries. Aside from the constitution, many DMCs have also enacted specific gender equality legislation. Examples are the Law of the People's Republic of China on the Protection of Rights and Interests of Women (2005), the Philippines' Magna Carta for Women (2010), and The Law of the Republic of Tajikistan on State Guarantees of Equal Rights for Men and Women and Equal Opportunities in the exercise of such rights.² Adoption of such legislation confers an obligation on all parties to support, comply with, and adhere to certain principles and provisions. (For country-specific citation of legislation, see Table 2.)

¹ Palau, Tonga, and the United States.

² No South Asian country has a stand-alone, separate TSM legislation, but TSM is provided for in the constitutions of these countries (Table 2 and Box 3).

Gender equality is enshrined in the constitutions of most countries. Aside from the constitution, many developing member countries have also enacted specific gender equality legislation

CEDAW requires state parties to adopt proactive measures, policies, and strategies to promote equality and empower women

Why is CEDAW important?

CEDAW is an international treaty requiring state parties (governments) that have ratified it to prevent discrimination against women and promote substantive gender equality in all spheres. Consisting of 30 articles, CEDAW defines what constitutes discrimination against women and sets up an agenda for national action to end gender discrimination and achieve gender equality. It provides the basis for realizing equality between women and men by ensuring women’s equal access and equal opportunities in all aspects of development, including political and public participation, education, health, and employment. State parties agree to take all appropriate measures, including legislation and TSM, so that women can enjoy all human rights, fundamental freedoms, and development opportunities.

CEDAW requires state parties to adopt proactive measures, policies, and strategies to promote equality and empower women. It can also be used as a guiding principle by the courts of law to correct injustices against women as illustrated in the Indian Supreme Court case of *Vishaka v. Rajasthan* (Box 1).³

Box 1 Vishaka v. Rajasthan (Supreme Court of India)

This was a class action by civil society activists responding to the gang rape of a social worker. India’s Supreme Court used international law (the Convention on the Elimination of All Forms of Discrimination against Women [CEDAW]) to enact guidelines for combating sexual harassment in the workplace, in the absence of domestic legal provisions. It held that, “any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof.” Using CEDAW as a guideline, the court ensured that women would be better protected in the workplace, as violating the court’s standards protecting women would be a breach of the law. The court looked to CEDAW when it said that “[g]ender equality includes protection from sexual harassment and the right to work with dignity.” The court then drafted a detailed sexual harassment code and imposed a duty on employers to prevent sexual harassment in the workplace and to provide a grievance option for employees. CEDAW was used, therefore, to fill a gap in domestic legislation.

Source: *All India Reporter*. 1997. Supreme Court at 3011.

How does CEDAW define TSM?

Article 4 of CEDAW covers the use of TSM as a mechanism to address gender disparities and to accelerate progress toward gender equality (Box 2). Under CEDAW, state parties may enter reservations to some provisions so that they are not immediately required to implement those provisions. No DMC has entered a reservation to Article 4. TSM are often also referred to as affirmative action or positive discrimination measures. Specific gender design features, gender targets, and gender-based quotas in ADB projects are a form of TSM. Such measures have been used to reserve seats for women in the legislatures and local councils of many countries, provide scholarships for women, and finance their participation in business opportunities.

³ *All India Reporter*. 1997. Supreme Court at 3011.

Box 2 Article 4 of Convention on the Elimination of All Forms of Discrimination against Women—Temporary Special Measures

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity, shall not be considered discriminatory.

Source: CEDAW.

There is a significant difference between the legal duty to not discriminate on the grounds of sex or gender, and the legal duty to promote and achieve gender equality

Why is substantive gender equality relevant to CEDAW and TSM?

Substantive equality is the type of equality that requires more than not discriminating on the grounds of sex or gender. The substantive model of equality uses the actual conditions of women's lives, rather than the wording used in legislation (i.e., "formal" equality), as the true measure of whether equality has been achieved. This is the type of equality preferred by CEDAW. The state, thus, must do more than just ensure that no existing policies, laws, projects, and programs directly discriminate against women. It must also take measures, including TSM, to ensure that women actually experience equality in their lives. Substantive equality has special relevance for accelerating gender equality because it attempts to achieve de facto, on the ground, real equality, as opposed to merely formal equality on paper, or de jure equality, which is purely formal legal equality.⁴ TSM promote substantive equality not only for women but also for other marginalized and socially excluded groups, such as indigenous peoples or ethnic minorities.

What is the difference between not discriminating on the grounds of sex or gender, and actively promoting gender equality?

There is a significant difference between the legal duty to not discriminate on the grounds of sex or gender, and the legal duty to promote and achieve gender equality. The former is a negative legal obligation and the latter is a positive legal obligation. Gender equality laws have both negative and positive obligations. These obligations are two sides of the same coin, equal in the need for compliance. Negative obligations imply a duty to not do something, while positive obligations imply a duty to proactively do something. The latter promotes substantive equality. Negative obligations include ensuring equal employment conditions and labor

⁴ Goonesekere, S. W. E. 2008. The Concept of Substantive Equality and Gender Justice in South Asia. United Nations Development Fund for Women (UNIFEM). Unpublished paper.

Preventing gender discrimination by requiring equal treatment of men and women is important, but usually insufficient to achieve substantive equality

contracts (the duty to not discriminate). Positive obligations include building in proactive gender design measures, such as minimum percentages or female quotas for electricity or water connections, livelihoods, scholarships, and employment. These are concrete steps and TSM to achieve gender equality. Negative obligations do not promote substantive equality in the long term, whereas positive obligations do. However, both are obligatory and not discretionary. Negative obligations, by themselves do not generally count as making a project an effective gender mainstreaming one.

Preventing gender discrimination by requiring equal treatment of men and women (e.g., in labor contracts or resettlement plans) is important, but usually insufficient to achieve substantive equality. A DMC must additionally take concrete steps to also promote and support gender equality where the potential exists to do so. It is possible to build in proactive gender design measures in many ADB-financed projects and programs to support governments in fulfilling their obligations under their own laws and policies.

Table 1 analyzes various gender design measures in terms of their underlying legal obligations. The gender design measures that represent positive obligations or TSM are more likely to promote substantive gender equality and effective gender mainstreaming.

Table 1 Gender Design Features in ADB Projects—Nature of Legal Obligations

Examples of gender design measures, indicators, targets, mitigation measures, etc.	Nature of legal duty	Nature of legal obligation and/or TSM
Equal labor conditions	Duty to not discriminate	Negative obligation
Equal employment contracts	Duty to not discriminate	Negative obligation
Minimum percentages or quotas for females for connections to energy and water supply, e.g., for connections to households headed by women	Duty to promote substantive gender equality (also a poverty reduction measure)	Positive obligation and/or TSM
Minimum percentages or female quotas for employment or scholarships	Duty to promote substantive gender equality (also a poverty reduction measure)	Positive obligation and/or TSM
Mitigation measures such as those designed to prevent human and sex trafficking, or the spread of HIV	Both a duty to promote gender equality and a duty to not discriminate	Positive and negative legal obligations
Minimum percentages or quotas reserving commercial spaces for female entrepreneurs in new infrastructure, such as market spaces, train stations, bus stations, etc.	Duty to promote gender equality	Positive obligation and/or TSM

continued on next page

Table 1 *continued*

Examples of gender design measures, indicators, targets, mitigation measures, etc.	Nature of legal duty	Nature of legal obligation and/or TSM
Females-only carriages on trains or reserved seating on buses or other transport, spaces to store shopping and prams, secure lighting	Duty to promote gender equality	Positive obligation and/or TSM
Free or subsidized water and power connections to households headed by females or other marginalized groups	Duty to promote gender equality (also a poverty reduction measure)	Positive obligation and/or TSM
Ensuring equal legal title to land and property in resettlement cases for married couples or households headed by women in public and private sector operations	Both a duty to promote gender equality and a duty not to discriminate	Positive and/or TSM and negative legal obligations
Minimum percentages or quotas for females in community organizations, water user groups, and road safety campaigns, or the creation of women-only organizations in sector projects to further project goals	Duty to promote gender equality	Positive obligation and/or TSM

TSM = temporary special measures.

Source: Author.

What is the legal basis for TSM?

Many DMCs have adopted national laws and policies that contain TSM provisions to promote gender equality (see Table 2 for the full list of DMCs and the legislation that contain TSM). TSM are either included in national constitutions, such as in India, the Kyrgyz Republic, Nepal, Pakistan, and Sri Lanka (Box 3); or stipulated in stand-alone legislation, such as in Azerbaijan, Mongolia, and Viet Nam (Box 4). Mongolia has drafted some of the most comprehensive provisions for TSM in modern legislation.⁵ In either case, making special provisions or adopting TSM to advantage women in projects and programs is neither unconstitutional nor considered discriminatory against men and other groups. The establishment of the First Women's Bank, providing easy loans and funding to women, was challenged in the High Court of Pakistan for being gender discriminatory. The High Court upheld the establishment of the bank under Article 25 of the Constitution, stating that such measures were permissible to promote gender equality.⁶

⁵ Unofficial English transcript of Mongolian legislation.

⁶ Lahore High Court. 1997. *Women's Action Forum v. Government of Pakistan via Writ Petition no. 25069/97*. Pakistan.

Box 3 Provision for Temporary Special Measures in National Constitutions**Constitution of India**

Section 15 (3) – Nothing in this article shall prevent the State from making any special provision for women and children.

Constitution of Sri Lanka

Article 12 (4) Nothing in this Article shall prevent special provision being made, by law, subordinate legislation or executive action, for the advancement of women, children or disabled persons.

Constitution of Samoa

Section 15 (3) Nothing in this article shall prevent the making of any provision for the protection of the advancement of women.

Interim Constitution of Nepal

13.(3) The State shall not discriminate among citizens on grounds of religion, race, caste, tribe, sex, origin, language or ideological conviction or any of these. Provided that nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of the interests of women, Dalit, indigenous ethnic tribes, Madeshi, or peasants, labourers or those who belong to a class which is economically, socially or culturally backward and children, the aged, disabled and those who are physically or mentally incapacitated.

Constitution of Pakistan

Article 25. There shall be no discrimination on the basis of sex. Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

Constitution of the Kyrgyz Republic

Section 2. Special measures defined by law and aimed at ensuring equal opportunities for various social groups in accordance with international commitments shall not be considered as discrimination.

Constitution of Papua New Guinea

Section 55 (2). Subsection (1) does not prevent the making of laws for the special benefit, welfare, protection or advancement of females, children and young persons, members of underprivileged or less advanced groups or residents of less advanced areas.

Sources: Constitutions of cited countries.

Box 4 Provision for Temporary Special Measures in Stand-Alone Domestic Legislation

Law of the Republic of Azerbaijan on State Guarantees of Equal Rights for Women and Men

- 3.2. The following is not considered as gender-based discrimination—(includes)
 3.2.5. Special temporary measures foreseen in the law, aimed at ensuring the equal social status of men and women.

Viet Nam—The Law on Gender Equality

Article 5 (6). [The] measure to promote gender equality is the measure aimed at ensuring substantial gender equality, set forth by the state authorities in cases [where] there remains considerable (disparity) between man and woman concerning the positions, roles, conditions, and opportunities for man and woman to bring into play all their capacities and to enjoy the achievement of the development where the application of equal regulations for man and woman cannot remove this (disparity). The measure to promote gender equality is to be implemented for a certain period of time and shall end when the gender equality goals have been achieved.

Mongolia—The Law on Gender Equality, 2011

Article 7. Special measures to ensure equality of men and women.

- 7.1. The state policy referred to in Article 5.2 of this law may involve special measures aimed at protecting maternity or establishing equality of men and women in social or family relations. These special measures shall not be considered as gender discrimination.
- 7.2. Special measures referred to [in] Article 7.1 of this law shall be implemented for the purposes of
- 7.2.1. approving and implementing laws, policies, programs, and projects aimed at protecting maternity rights and interests; or
 - 7.2.2. determining the number of seats or implementing other such quotas aimed at equalizing the representation of men or women at political and decision-making levels; or
 - 7.2.3. special measures to eliminate gender imbalances in certain sectors or setting up discounts, incentives, or benefits to improve imbalanced gender representation in a trade or occupation.
 - 7.2.4. Establishing different admission conditions and requirements for specific[-] sex applicants to educational institution pursuant to the provision 6.4.6. of this law.
- 7.3. With the exception of special measures referred to in Article 7.2.1, special measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

Sources: Government of the Republic of Azerbaijan. Law of the Republic of Azerbaijan on State Guarantees of Equal Rights for Women and Men; Government of Mongolia. 2011. The Law on Gender Equality; Government of Viet Nam, The Law on Gender Equality.

How temporary are TSM?

TSM are not intended to be permanent. According to the United Nations CEDAW Committee, TSM should remain in place until they are no longer necessary; that is, until the objective of gender equality has been attained and sustained over time. TSM can then be removed. TSM recognizes that women face barriers that unfairly constrain their effective participation in a country's economic and social

development. These constraints will take time to overcome. TSM should be used as a short-term measure, as a catalyst to kick-start women’s equal representation or access, while longer-term efforts are made to create a more sustainable level playing field for women.⁷

What is the consequence of not complying with CEDAW or TSM or domestic gender equality laws for DMCs?

Constitutional laws in most DMCs permit legal action against the state to ensure compliance with the constitution, including gender equality provisions contained in it

Under Domestic Law

Gender equality laws are civil and not criminal matters. States cannot be held criminally accountable for not complying with gender equality laws. However, they can be ordered to do something by the courts or pressured into compliance through media campaigns. Use of public pressure by civil society is a legitimate method of influencing a state into compliance. In developing countries, nongovernment organizations and civil society have generally not used litigation to ensure compliance with gender equality laws, with the notable exception of India. However, constitutional laws in most DMCs permit legal action against the state to ensure compliance with the constitution, including gender equality provisions contained in it.

Under International Law

CEDAW requires accountability in achieving gender equality through a regular reporting process. All states that have ratified CEDAW must report every 4 years, verbally and in writing, before the CEDAW Committee, made up of 23 experts appointed by member governments. Country representatives are required to appear before this committee to report on actions taken to promote gender equality and women’s empowerment. Country delegations are typically led by senior ministers supported by the national women’s ministry or department. During this “constructive dialogue,” the committee asks questions and clarifies from the government delegation actions taken in support of gender equality. Almost without exception, developing countries are requested to provide information on the extent of TSM being adopted, and the progress made as a result of TSM. The committee presents its findings in “Concluding Comments” that include recommendations for the government to follow. The government is asked for evidence of progress on these recommendations at follow-up meetings. The process is essentially a public accountability mechanism on the country’s progress on substantive gender equality. Apart from the government report, many nongovernment organizations file alternative, parallel, or shadow reports, which has the effect of keeping the process open and transparent.

⁷ Pacific Islands Forum Secretariat (PIFS) and United Nations Development Programme (UNDP) Pacific Centre. 2009. *Utilizing Temporary Special Measures to Promote Gender Balance in Pacific Legislatures: A Guide to Your Options*. Suva, Fiji: UNDP and PIFS.

Who is responsible for promoting gender equality in ADB-financed projects?

Promoting and supporting gender equality and women's empowerment are the responsibility of all parties engaged in supporting the development goals of a DMC, including the government, development partners, the private sector, and civil society. DMCs have legal and policy obligations by virtue of their own legal commitments, either under domestic law, or as parties to CEDAW. (See the examples of Cambodia, Fiji, and Viet Nam in Box 5 where their constitutions require the governments to apply international law such as CEDAW). Development partners also have an obligation to support and comply with national legislation. The primary responsibility, however, lies with governments, i.e., the executing and implementing agencies, to comply with all laws, including gender equality legislation. When ADB includes gender design features in projects, such as minimum quotas for females and targets for women's participation in project activities, ADB is working with DMC counterparts to help meet the country's own legal and policy commitments on gender equality. In the case of private sector loans, the private sector is also bound by domestic law (including ratified treaties, such as CEDAW) to comply with constitutional principles and other gender equality legislation, unless it is specifically exempted.

TSM should be used as a short-term measure, as a catalyst to kick-start women's equal representation or access

Box 5 Examples of the Application of International Law to Domestic Situations in Developing Member Countries

Constitution of Cambodia

Article 31.1

The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the Covenants and Conventions related to human rights, women's and children's rights.

Public Authorities, Private Organizations, and Individuals

Viet Nam: Law on Gender Equality 2006.

Article 2

The subjects of regulation are Vietnamese state agencies, political organizations, socio-political organizations, socio-political professional organizations, social organizations, socio-professional organizations, economic organizations, non-business units, units of people's armed forces, families and citizens.

Constitution of Fiji

Article 43 (2)

In interpreting the provisions of this Chapter, the courts must promote the values that underlie a democratic society based on freedom and equality and must, if relevant, have regard to public international law applicable to the protection of the rights set out in this Chapter.

Sources: Constitutions of cited countries.

Efforts should be made to include temporary special measures in ADB-financed projects where this is feasible, realistic, and appropriate. Putting in such measures increases the likelihood that the project will meet ADB's Effective Gender Mainstreaming standards

Is it necessary to put TSM in all ADB-financed projects?

Including TSM in ADB-financed projects is a good development practice and supports governments in meeting their own obligations under national laws and policies, and international commitments such as CEDAW. Promoting gender equality is also one of ADB's own commitments under its Policy on Gender and Development (GAD) and Strategy 2020, ADB's long-term development framework. Hence, efforts should be made to include TSM in ADB-financed projects where this is feasible, realistic, and appropriate. Putting in such measures increases the likelihood that the project will meet ADB's Effective Gender Mainstreaming (EGM) standards.

Does ADB need to address gender equality when there is no overt discrimination against women?

Nondiscrimination on the grounds of sex or gender and promoting gender equality are two different things, as stated previously. Many implementing agencies, as well as ADB staff, mistakenly assume that as long as ADB-financed projects do not overtly discriminate against women, e.g., in labor conditions, employment contracts, or resettlement cases, the project is a gender mainstreaming one and it complies with gender equality laws. Nondiscrimination fulfills only a negative legal obligation. It does not meet a positive legal obligation to actively promote substantive equality (Table 1). Gender equality still needs to be promoted through proactive gender design measures.

Is ADB's GAD policy subject to review by ADB's Accountability Mechanism?

ADB's GAD policy is an operational policy, subject to review by ADB's Compliance Review Panel. Failure to comply with the GAD policy and causing harm as a consequence of the breach, may result in complaints by project-affected communities and an ensuing inspection. In a few cases, ADB's alleged failure to conduct a proper gender analysis resulted in a full inspection being required, and ADB having to prepare and implement a gender action plan to address the shortcomings.

What is the legal basis for ADB–DMC dialogue on positive gender design measures or TSM?

Table 2 indicates the various levels of obligations to gender equality by DMCs. Most have two levels of legal obligation, under both domestic and international laws. Most also have a policy commitment and/or gender equality national action plan. If a DMC has domestic legislation and policies on gender discrimination and/or gender equality, and has ratified CEDAW (and is therefore committed to TSM), ADB

is in a very strong position to pursue gender policy dialogue with the government and include gender design measures and targets in projects. Most DMCs are in this position. Even without a legal provision in domestic legislation, ratification of CEDAW (and therefore Article 4 that provides for TSM) is enough to argue for proactive gender design measures as no state party to CEDAW has entered a reservation to Article 4. The weakest position is engaging in dialogue with a DMC that has no policy commitment or gender equality domestic legislation, and has also not ratified CEDAW. In the rare case where a DMC has not ratified CEDAW and has not enacted any gender equality legislation, ADB could still advocate gender design measures in projects based on its own GAD policy.

Table 2 Legal Commitments to Gender Equality by Developing Member Countries

Developing Member Country	Constitutional provisions on gender equality, prohibition of discrimination on the basis of sex/gender, and TSM for women	Other gender equality legislation and TSM	Ratification of CEDAW and legal obligation to Article 4 on TSM
Afghanistan	Article 22, Chapter 2, Art. 1. "Any kind of discrimination and privilege between the citizens of Afghanistan (is) prohibited. The citizens of Afghanistan—whether man or woman—have equal rights and duties before the law."	Declaration on the Essential Rights of Afghan Women, 2002	2003
Armenia	Constitution, Article 14.1 prohibits sex discrimination.		1993
Azerbaijan	Constitution, Article 25 prohibits sex discrimination.	State Guarantees of Equal Rights for Women and Men, 2006 (3.2.5. Special temporary measures foreseen in the law, aimed at ensuring the equal social status of men and women)	1995
Bangladesh	Constitution, Article 28 prohibits sex discrimination and inequality. Article 28 (1) specifically provides for TSM by stating that the state is allowed to make special provision for women.		1984

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In the rare case where a developing member country has not ratified CEDAW and has not enacted any gender equality legislation, ADB could still advocate gender design measures in projects based on its own gender and development policy

Table 2 *continued*

Developing Member Country	Constitutional provisions on gender equality, prohibition of discrimination on the basis of sex/gender, and TSM for women	Other gender equality legislation and TSM	Ratification of CEDAW and legal obligation to Article 4 on TSM
Bhutan	Constitution, Articles 7 and 9 guarantee and protect women's rights and allow TSM for disadvantaged groups.		1981
Cambodia	Constitution, Article 31.I accepts CEDAW, and therefore TSM, as domestic law. Article 45.1 prohibits sex discrimination.		1992
China, People's Republic of	Constitution, Article 48 states that women have equal rights with men and that the state protects the rights and interests of women, applies the principle of equal pay for equal work for men and women, and trains and selects cadres from among women.	Law of the People's Republic of China on the Protection of Rights and Interests of Women (1992 and 2005). Article 21 permits the adoption of temporary special measures to advance de facto parity with men.	1980
Cook Islands	No specific provision against sex or gender discrimination.		2006
Fiji	Constitution, Article 38 prohibits sex discrimination. Article 44 allows TSM for any disadvantaged group. Section 43 allows the direct application of international human rights laws such as CEDAW.		1995
Georgia	Constitution, Article 14 prohibits sex discrimination and Article 6 allows an international treaty or agreement (such as CEDAW) to apply domestically unless it contradicts the Constitution of Georgia.	Law on Gender Equality, 2010 provides broadly for temporary special measures for women across several sectors.	1994

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Table 2 *continued*

Developing Member Country	Constitutional provisions on gender equality, prohibition of discrimination on the basis of sex/gender, and TSM for women	Other gender equality legislation and TSM	Ratification of CEDAW and legal obligation to Article 4 on TSM
India	Section 15 (1) prohibits sex discrimination against any citizen and Section 15 (3) allows TSM.		1993
Indonesia	No explicit prohibition of sex discrimination.	A bill for an Act Concerning Gender Equality and Equity (Draft form only)	1993
Kazakhstan	Constitution, Article 14 prohibits sex discrimination.	Law on Equal Opportunities for Men and Women (2010) but does not provide for TSM.	1995
Kiribati	No. The definition of discrimination specifically excludes sex or gender discrimination.		2004
Kyrgyz Republic	Constitution, Section II prohibits sex discrimination and allows TSM for various disadvantaged groups.	Law on the Basics of State Guarantees of Gender Equality, 2008 broadens the scope of TSM.	2010
Lao People's Democratic Republic	Constitution, Article 35—general anti-discrimination provision only, does not explicitly prohibit sex/gender discrimination. Article 29 allows TSM. Other provisions specifically allow TSM in education and health.	Law on the Protection and Development of Women, 2004; Decree on the Implementation of the Law on the Development and Protection of Women, 2006	1981
Malaysia	Constitution, Article 8 prohibits gender discrimination.		1995
Maldives	Constitution, Section 17 prohibits sex discrimination and allows TSM.		1993

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Table 2 *continued*

Developing Member Country	Constitutional provisions on gender equality, prohibition of discrimination on the basis of sex/gender, and TSM for women	Other gender equality legislation and TSM	Ratification of CEDAW and legal obligation to Article 4 on TSM
Marshall Islands, Republic of	Constitution, Sections 1–16 prohibit sex discrimination.		2006
Micronesia, Federated States of (FSM)	FSM Code, Article IV, Sections 1–13, especially Sections 3–4; Title 1, Cap 1, Section 107 and Title 11, Cap 7, Section 702 prohibit sex discrimination.		2004
Mongolia	Constitution, Section 15 prohibits sex discrimination.	The Law on Gender Equality, 2011, Section 7 allows TSM.	1981
Myanmar	No provisions		1997
Nauru	No provisions		Not ratified
Nepal	Interim Constitution, Sections 13 (2) and (3) prohibit sex discrimination and Section 13 (3) allows TSM.	Gender Equality Act, Nepal (2006) amends existing legislation to remove explicit sex discrimination and creates gender-neutral language, but does not provide for TSM, which is provided for in the Interim Constitution.	1991
Pakistan	Constitution, Articles 25 (1) and (2) prohibit sex discrimination “on the basis of sex alone.”		1996
Palau	Constitution, Article IV, Sections 1–13, especially s.5, prohibit sex discrimination.		No
Papua New Guinea	Section 39 (5) allows the direct application of international human rights laws such as CEDAW. No specific domestic provision against sex discrimination.		1995

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Table 2 *continued*

Developing Member Country	Constitutional provisions on gender equality, prohibition of discrimination on the basis of sex/gender, and TSM for women	Other gender equality legislation and TSM	Ratification of CEDAW and legal obligation to Article 4 on TSM
Philippines	Constitution, Article II, Section 14 is a general law that ensures fundamental equality before the law of women and men.	Magna Carta for Women (2010) prohibits sex and gender discrimination and allows TSM.	1981
Samoa	Constitution, Section 15 (1) prohibits sex discrimination and Section 15 (3) (b) allows TSM for the advancement of women.		1992
Solomon Islands	Constitution, Section 15 prohibits sex discrimination.		2002
Sri Lanka	Constitution, Article 12 prohibits sex discrimination and allows TSM for women.		1981
Tajikistan	Constitution, Article 17 prohibits sex discrimination.	The Law of the Republic of Tajikistan on State guarantees equal rights for men and women and equal opportunities in the exercise of such rights, and allows for a range of TSM.	1993
Thailand	2007 Constitution, Section 30 prohibits sex discrimination and allows TSM.		1985
Timor-Leste	Constitution, Sections 16 and 17 prohibit sex discrimination. Section 9 allows the direct application of international human rights laws such as CEDAW.		2003

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Table 2 *continued*

Developing Member Country	Constitutional provisions on gender equality, prohibition of discrimination on the basis of sex/gender, and TSM for women	Other gender equality legislation and TSM	Ratification of CEDAW and legal obligation to Article 4 on TSM
Tonga	No provisions		Not ratified
Turkmenistan	Constitution, Article 18 prohibits gender-based discrimination.	Law on State guarantees of equal opportunities for women. 2007.	1997
Tuvalu	No. The definition of discrimination specifically excludes sex or gender discrimination. Constitution, Section 15 (5) (c) allows the application of international human rights laws such as CEDAW.		1999
Uzbekistan	Constitution, Article 46 prohibits sex gender discrimination.		1995
Vanuatu	Constitution, Section 5, especially Section 5 (k) prohibits sex discrimination and allows TSM for women.		1995
Viet Nam	Constitution, Article 63 states that any discrimination against women and violation of women's dignity are strictly prohibited.	Law on Gender Equality, 2006 prohibits sex discrimination and allows TSM. The legislation provides for comprehensive TSM in all sectors. A 2009 decree contains strong language that promotes TSM.	1982

CEDAW = Convention on the Elimination of All Forms of Discrimination against Women,
TSM = temporary special measures.

Sources: Based on information from country legislation.

Guidance Note

Gender and Law

Temporary Special Measures to Promote Gender Equality

Nearly all developing member countries (DMCs) of the Asian Development Bank (ADB) have adopted laws and policies to promote gender equality. However, there is often a reluctance to operationalize these, and/or a lack of knowledge of the appropriate mechanisms. This publication presents a case for the use of temporary special measures as a mechanism to correct gender imbalances and accelerate progress toward gender equality goals. Temporary special measures are a set of proactive measures that include gender-inclusive design features, quotas, and targets in ADB projects. This note is designed to increase understanding of the legal obligations of DMCs to achieve gender equality, and what this means for designing and implementing ADB projects.

About the Asian Development Bank

ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to two-thirds of the world's poor: 1.8 billion people who live on less than \$2 a day, with 903 million struggling on less than \$1.25 a day. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.

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