
Comments on Draft One of the Voluntary Guidelines on Food Systems and Nutrition

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the Committee on Food Security Secretariat
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IDLO would like to express its appreciation to the Chair of the OEWG, the Technical Task Team and the CFS Secretariat for the commendable work and substantial improvements achieved in Draft One of the Voluntary Guidelines on Food Systems and Nutrition (VGFSyN). The current draft reflects a more coherent and systematic approach in line with other international instruments and provides better recognition of the core principles underpinning the 2030 Agenda for Sustainable Development and the Human Rights Agenda. Nonetheless, IDLO considers that there is still a margin for improvement and welcomes the opportunity to provide input in writing to Draft One, building on and expanding those presented to the previous draft.

I. General Comments

1. A comprehensive human rights-based approach

IDLO welcomes the enhanced reference to international human rights law instruments in the revised draft of the Voluntary Guidelines (VGFSyN). The VGFSyN however would still benefit from a broader and more explicit foundation in human rights law.

The human rights-based approach provides a coherent and comprehensive framework for government and civil society analysis, advocacy and action. It provides a common language for engaging multiple stakeholders in diverse government sectors and civil society organizations.

Throughout the text, Draft One refers to the progressive realization of the right to adequate food as foundation of the VGFSyN (paragraph 35), but the consequent legal obligations which arise on States from this right are not explored or referenced further in the draft. Most important is the principle that 'All human rights are universal, indivisible and interdependent and interrelated.'¹ Thus, the reference to the right to adequate food implicates the full range of civil, political, economic, social and cultural rights. In this sense, the foundation and legitimacy of the VGFSyN would be strengthened with a stronger and broader reference also to other human rights besides the right to adequate food, including in particular the right to health.

As an example of the scope of guidance available, authoritative guidance on business and human rights from the United Nations Human Rights Council identifies the legal obligations of States and the responsibilities of the private sector, which apply equally in the context of food and nutrition (see also below).²

¹ *Vienna Declaration and Programme of Action* OHCHR, 1993
<https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>

² United Nations. 'Guiding Principles on Business and Human Rights' endorsed by the Human Rights Council in resolution 17/4 of 16 June 2011
https://www.ohchr.org/documents/publications/GuidingprinciplesBusinessshr_eN.pdf

As a further example, the draft VGFSyN refer to the importance of leadership and governance – these references would be enhanced with a reference to the civil and political rights which are essential in a democratic society in which equitable and sustainable food policy can be designed and implemented.

2. SDG 16 as a cross-cutting goal for all the SDGs, including SDG2 and SDG3

IDLO welcomes the enhanced commitment of the draft VGFSyN towards the 2030 Agenda. However, the Voluntary Guidelines would benefit from the inclusion of an explicit reference to SDG 16 and the importance of the principles of the rule of law, participation and representation of all stakeholders, and accessible legal remedies when laws or rights are infringed.

SDG 16 is to ‘Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.’³ SDG 16 is both an enabler and an outcome of sustainable development. SDG 16 is a cross-cutting goal for all the SDGs, including SDG2 and SDG3 and will contribute to the SDG targets on food, nutrition and health. This is especially relevant in the context of food systems and nutrition.

For example, promotion of the rule of law and ensure equal justice for all (target 16.3)⁴ encompasses basic principles of legality, such as the equal and systematic application of legal rules. The draft VGFSyN contain references to regulatory and fiscal responses which, to be effective, must be applied consistently across the food and nutrition sector. This requires a legal environment in which the law applies equally to all parties: no one is above the law. Lack of government corruption and good governance are essential to the effective implementation of national food systems and nutrition policies.

Similarly, the principles of inclusive participation and representation in decision making (target 16.7)⁵ are also central to ensuring that public institutions including food agencies are responsive and effective. When governments and other stakeholders fail to meet their legal responsibilities, there must be an accessible legal remedy to hold them to account. Civil society must have recourse to an independent judiciary with the capacity to make enforceable determinations.⁶

3. The role of law in implementation of the Voluntary Guidelines

The law as a tool for achieving policy goals is noted in various sections of Draft One, however, the VGFSyN can reinforce the role of law in addressing malnutrition in all its forms. This can be done in a dedicated paragraph under ‘1.1. Background and Rationale’ (e.g. after paragraph 14, on the need of new policies). In addition, Part 4 of the Zero Draft can be also strengthened to note the general role of the law and legal instruments in the implementation of the voluntary guidelines (see specific comments to Part 4, below).

4. Legal status of the Voluntary Guidelines

³ <https://sustainabledevelopment.un.org/sdg16>

⁴ Target 16.3, ‘Promote the rule of law at the national and international levels and ensure equal access to justice for all’

⁵ Target 16.7, ‘Ensure responsive, inclusive, participatory and representative decision-making at all levels’

⁶ See *Litigating the Realizing the Right to Food: Legal Strategies and Approaches* (IDLO, 2015) <https://www.idlo.int/publications/realizing-right-food-legal-strategies-and-approaches>

As in the previous version, the Voluntary Guidelines still uphold their non-binding nature. The guidelines will likely provide global standard for measuring States' compliance with existing international legal obligations, including with the obligation to respect, protect and promote the right to adequate food and the right to the highest attainable standard of health under international human rights treaties, for example under the International Covenant on Economic, Social and Cultural Rights (art. 11 - 12), and the Convention on the Rights of the Child (art. 24).⁷ The VGFSyN would benefit from an explicit reference to this function.

The UN human rights treaty bodies, which monitor States' compliance with the treaties, are taking an increasing interest in the steps taken by States to implement the right to food. In 2013, the Committee on the Rights of the Child, in General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), notes regarding art. 24 (b) of the Convention on 'the provision of adequate nutritious foods':

States are required to introduce into domestic law, implement and enforce internationally agreed standards concerning children's right to health, including the International Code on Marketing of Breast-milk Substitutes and the relevant subsequent World Health Assembly resolutions, as well as the World Health Organization Framework Convention on Tobacco Control.

The Committee used UN guidance documents and other international treaties to determine States' obligations under the Convention on the Rights of the Child.

The CRC and other UN treaty bodies could make direct reference to the VGFSyN when assessing States' obligations and compliance. For example, the UN Committee on Economic, Social and Cultural Rights is also examining State obligations in respect of the right to food.

In 2018 the United Nations Committee on Economic, Social and Cultural Rights recommended that Argentina '...(a)dopt a regulatory framework that expressly recognizes the right to food and steers public policies that ensure access to healthy, nutritious and sufficient food, especially for disadvantaged groups...' The Committee also recommended that Argentina '...(t)ake effective measures to discourage the consumption of unhealthy foods and beverages, including an increase in the tax on sugary beverages, strengthening of regulations under the Argentine Food Code with regard to front-of-pack food labelling that includes information on sugar content, and restrictions on the advertising of unhealthy foods and beverages, especially those directed towards children.'⁸

5. Participation – strengthen references to civil society leadership and governance

While acknowledging the enhanced multistakeholder approach of the revised draft, the VGFSyN can further reinforce the role of social mobilization in implementing food systems and nutrition policies, e.g. recommendations on diets. This is mostly likely if a wide range of civil society organization has been consulted in the development of the policies. Whilst paragraph 3.1.1.a) encourages States to engage with "stakeholders working with or in food systems", there are over 5000 UN-accredited civil society organizations with related mandates, e.g. relating to the rights and health of women, children, people with disabilities, older persons, workers, faith communities and indigenous people.⁹ These

⁷ See generally <https://www.ohchr.org/EN/Issues/Food/Pages/Links.aspx>

⁸ United Nations. Committee on Economic, Social and Cultural Rights. Concluding observations of the fourth periodic report of Argentina. E/C.12/ARG/CO/4. United Nations Economic and Social Council: 2018

⁹ See

<https://esango.un.org/civilsociety/displayConsultativeStatusSearch.do?method=search&sessionCheck=false>

This database does not include civil society organizations in relation with WHO.

organizations can be mobilized to support action to advance the right to food and right to health in UN and other forums, and mobilize tens of thousands more civil society partners at regional and national levels.

The VGFSyN should thus acknowledge the wide range of civil society actors actively engaged in determining food systems and nutrition policy¹⁰ and provide guidance to States on the broader engagement of civil society as active partners in the process of determining and implementing policies on food systems and nutrition.

6. Additional reference to other sources of United Nations guidance on food systems and nutrition.

While welcoming the inclusion of some references to international instruments, the VGFSyN may further expand reference to sources of authoritative guidance, including but not limited to:

- UN Global Strategy on Women’s, Children’s and Adolescents’ Health (2016-2030)¹¹

The United Nations Global Strategy for Women’s, Children’s and Adolescent Health contains extensive references to food and nutrition and is explicitly rights-based.¹² The Strategy tasks the ‘agriculture and nutrition sector’ with the following key policies and interventions:

- Enhance food security, especially in communities with a high poverty and mortality burden
- Protect, promote and support optimal nutrition, including legislation on marketing of breast milk substitutes and of foods high in saturated fats, trans-fatty acids, sugars, or salt

In 2017, the United Nations High-Level Working Group on the Health and Human Rights of Women, Children and Adolescents Health noted ‘inadequate nutrition’ as a determinant of health, and recommended that ‘All States should ensure that national accountability mechanisms (for example, courts, parliamentary oversight, patients’ rights bodies, national human rights institutions, and health sector reviews) are appropriately mandated and resourced to uphold human rights to health and through health. Their findings should be regularly and publicly reported by States.’¹³

- UN Guiding Principles on Business and Human Rights¹⁴

The Guiding Principles on Business and Human Rights were endorsed by the Human Rights Council in resolution 17/4 of 16 June 2011. They note that although the private sector does not have legal obligations to respect human rights under international law (as these treaties are agreed to by States), the responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. States have a duty to clarify the expectation that enterprises will respect human rights. States should also ensure adequate monitoring accountability mechanisms to effectively oversee enterprises’ activities.

¹⁰ See e.g. the wide participation of civil society organizations in the CFS Civil Society Mechanism <http://www.csm4cfs.org/the-csm/>

¹¹ <https://www.who.int/life-course/partners/global-strategy/en/>

¹² <https://www.who.int/life-course/partners/global-strategy/globalstrategyreport2016-2030-lowres.pdf>

¹³ WHO. Report of the High-Level Working Group on the Health and Human Rights of Women, Children and Adolescents: Leading the realization of human rights to health and through health. World Health Organization: 2017.

¹⁴ United Nations. ‘Guiding Principles on Business and Human Rights’ https://www.ohchr.org/documents/publications/GuidingprinciplesBusinessshr_eN.pdf

International law in this area is evolving. In 2019 the United Nations circulated a revised draft treaty on business and human rights, with implications for transnational tobacco, alcohol, food and beverage corporations.¹⁵

- UN Guiding Principles on Extreme Poverty and Human Rights¹⁶

The United Nations Human Rights Council adopted the Guiding Principles at its 21st session in September 2012. The UN Guiding Principles note the following State duties regarding the right to adequate food and nutrition in paragraph 76. This paragraph is noted here in full to demonstrate the depth and breadth of the guidance provided by the Human Rights Council on the issue of extreme poverty, food, nutrition and human rights.

States should:

- (a) Establish disaggregated mapping systems to identify groups and households particularly vulnerable to food and nutrition insecurity and the reasons for that vulnerability, and take corrective measures, to be implemented both immediately and progressively, to provide access to adequate food;*
- (b) Adopt a national strategy to ensure food and nutrition security for all, based on human rights principles. Access to adequate food for persons living in poverty should be accorded priority and take into account the interdependence of access to productive and monetary resources and adequate nutrition;*
- (c) Put in place adequate early-warning mechanisms to prevent or mitigate the effects of natural or human-caused disasters, including on persons living in poverty in remote and marginalized areas, and take appropriate emergency preparedness measures;*
- (d) Ensure adequate access to productive resources, including land, forests and fisheries, in order for persons living in poverty to produce food for themselves and their families;*
- (e) Implement effective land distribution and agrarian reform programmes, especially in areas in which land concentration threatens access to livelihoods for rural communities, and adopt preventive measures to avoid land and water grabbing;*
- (f) Revise and repeal discriminatory laws and related administrative practices that impede the recognition of ownership or tenure rights of land and resources by groups or individuals living in poverty, in particular women;*
- (g) Adopt measures to eradicate any kind of discriminatory practices regarding food distribution within the household or community, especially with regard to gender, for example by channeling food production support through women;*
- (h) Consider, to protect those who are unable to provide for themselves, establishing and maintaining food safety nets linked to other complementary interventions that promote food security in the medium and longer terms. There is also a need to ensure that social assistance policies and programmes take into account the true costs of a nutritious and culturally adequate diet;*

¹⁵ United Nations. Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights: Legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises. Revised draft 16 July 2019. United Nations Human Rights Council.

<https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/DraftLBI.pdf>; Zorob M. New business and human rights treaty takes shape. Business and Human Rights Resource Centre.

<https://www.business-humanrights.org/en/blog-new-business-and-human-rights-treaty-takes-shape>

¹⁶ <https://www.ohchr.org/en/issues/poverty/pages/dgpintroduction.aspx>

- (i) *Ensure effective distribution mechanisms that recognize market shortcomings to make adequate food physically and economically accessible to persons living in poverty, in a culturally acceptable way and without negatively affecting small farmers, indigenous peoples, forest dwellers, pastoralists or local subsistence fishing communities and women. This should include a review of overall systems for food pricing; A/HRC/21/39 17*
- (j) *Strive to ensure that all trade and investment policies, including those specific to food and agriculture, are conducive to fostering food and nutrition security for all, and take international collective action to address widespread food and nutrition insecurity and rising food prices. Strategies that support rural development based on human rights, promote sustainable food production and equitable distribution, and reduce volatility in commodity markets affecting food prices must be a priority for States at both the national and international levels.¹⁷*

7. Trade and investment law and the extraterritorial obligations of States

States have legal obligations under international human rights law beyond their own borders in addressing complex contemporary cross-border challenges, including global poverty, hunger and food security, and access to water. These obligations are recognized, inter alia, in the UN Guiding Principles on Extreme Poverty¹⁸ and in the Maastricht Principles.¹⁹

In particular, the VGFSyN should make specific reference to the human rights legal framework (especially to the right to adequate food and right to health) when noting the impact of current and future trade and investment treaties on public health. Restrictions on the importation of unhealthy products may infringe international and regional trade agreements.²⁰ Investment treaties may contain foreign investor-state dispute mechanisms which may provide for substantial compensation if a public health measure results in an anticipated loss of profits.²¹

The UN Guiding Principles on Extreme Poverty note (paragraph 61):²²

States should take into account their international human rights obligations when designing and implementing all policies, including international trade, taxation, fiscal, monetary, environmental and investment policies. The international community's commitments to poverty reduction cannot be seen in isolation from international and national policies and

¹⁷ <https://www.ohchr.org/en/issues/poverty/pages/dgpinintroduction.aspx>

¹⁸ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/154/60/PDF/G1215460.pdf?OpenElement>

¹⁹ See e.g. 'Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights' https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23; 'Human rights beyond borders: UN experts call on world governments to be guided by the Maastricht Principles' <https://newsarchive.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13792&LangID=E>; brief by Global Network for the Right to Food and Nutrition https://www.righttofoodandnutrition.org/files/the_maastricht_principles_on_states_extraterritorialobligations.pdf

²⁰ Thow, A.M. et al. 'Food supply, nutrition and trade policy: reversal of an import ban on turkey tails' in *Bulletin of the World Health Organization* 2017;95:723-725. doi: <http://dx.doi.org/10.2471/BLT.17.192468>

²¹ McGrady, B. 'Investor State Dispute Settlement and Noncommunicable Diseases: Contemporary Disputes, Debates and Options for Reform' WHO webinar 27 August 2015 PPT slides available at <https://www.who.int/global-coordination-mechanism/news/GCM-webinar-investment.pdf>

²² 'Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights' https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23

decisions, some of which may result in conditions that create, sustain or increase poverty, domestically or extraterritorially. Before adopting any international agreement, or implementing any policy measure, States should assess whether it is compatible with their international human rights obligations.

A former UN Special Rapporteur on the Right to Food, Prof. Olivier de Schutter, has noted that “(m)oving towards the right to food depends on the promise of Article 28 of the Universal Declaration of Human Rights being fully implemented...This provision guarantees to each individual an international social order in which human rights can be fully realized. It calls for trade, investment and development cooperation policies to be aligned with the requirements of human rights.”²³

II. General Recommendations:

1. The VGFSyN should enhance their explicit foundation in international human rights law, acknowledging broader legal basis besides the right to adequate food, including the right to health.
2. The VGFSyN should include a reference to SDG 16 and the importance of the principles of the rule of law, participation and representation of all stakeholders, and accessible legal remedies.
3. The VGFSyN should acknowledge the key role of the law and legal instruments in addressing malnutrition in all its forms.
4. The VGFSyN should replace the concept of “Gender Equity” with that of “Gender Equality”. The latter acknowledges the legal foundation of the concept in women’s rights and is agreed and recognized language in international legal instruments. Moreover, the Guidelines should show a broader awareness and ensure more specific integration of gender sensitivity across the text, besides Section 3.5.
5. The VGFSyN should strengthen the role of civil society actors in engaging with food systems and nutrition policy and provide guidance to States on the engagement of civil society as active partners in the process of determining and implementing policies on food systems and nutrition.
6. The VGFSyN should further expand reference to authoritative legal sources of guidance on food systems and nutrition.
7. The VGFSyN should make specific reference to the human rights legal framework (especially to the right to adequate food and right to health) when noting the impact of current and future trade and investment treaties on public health.

III. Specific Comments

Part I: Introduction

1. Paragraph 10

²³ ‘Human rights beyond borders: UN experts call on world governments to be guided by the Maastricht Principles’ <https://newsarchive.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13792&LangID=E>; brief by Global Network for the Right to Food and Nutrition https://www.righttofoodandnutrition.org/files/the_maastricht_principles_on_states_extraterritorialobligations.pdf

The interlinkage between climate change, agriculture and nutrition is accurate and welcome. However, this connection would be reinforced by the inclusion of health, as one crucial element in this relation.

2. Paragraph 14

This paragraph would benefit from a reference to the role of law and regulatory framework in enhancing sustainable and healthy diets and address malnutrition in all its forms (see general comment 3 above).

3. Paragraph 17

In addition to SDG 2, include a reference to SDG 3 and in particular target 3.4 *'by 2030 reduce by one-third pre-mature mortality from non-communicable diseases (NCDs) through prevention and treatment, and promote mental health and wellbeing'*. Risk factors include unhealthy diets. This addition would also mirror and emphasize the connection between right to adequate food and right to health which is already mentioned in the same sentence.

4. Paragraph 18

Suggested amendment:

The VGFSyN are intended to be a reference point that provides evidence-based guidance mainly to governments, specialized institutions and other stakeholders, including international organizations, on effective policies, [legal frameworks], investment and institutional arrangements that will address malnutrition in all its forms from a food systems perspective.

5. Paragraph 21

Suggested amendment: *Food systems are integrally connected with issues related to trade and investment, food safety, [health], climate change, biodiversity and genetic resources, among others, which are all addressed in dedicated normative intergovernmental processes. Different actors dealing with these matters need to refer to, and build upon, existing international commitments, promoting coherence and addressing the current policy fragmentation, without duplicating efforts or moving beyond their mandates.*

6. Paragraph 22

Suggested amendment: *The VGFSyN are intended to be global in scope and to provide guidance to policy-makers and relevant stakeholders when designing context-specific policies, [laws,] strategies, plans and programmes.*

7. Paragraph 24 c)

Suggested amendment: *[legal,] political and economic (leadership, globalization, foreign investment, trade, food policies and regulatory frameworks, land tenure, conflicts, and humanitarian crises).*

Part 2. Key concepts and guiding principles

Section 2.1 - Key concepts concerning food systems and nutrition

8. Suggest including definition of the right to the highest attainable standard of physical and mental health.²⁴

Section 2.2. Guiding Principles for reshaping or promoting sustainable food systems

9. Paragraph 34

As elaborated in general comment 1 above, Human Rights Based Approach (HRBA) should have a pivotal role in the normative framework of the VGFSyN. HRBA should be therefore included among the guiding principles identified in para. 34, besides the reference to the Right to Adequate Food (34, g)).²⁵

As noted above, the Guiding Principles should also include reference to:

- Governance and accountability:
 - The central role of governments in respecting, protecting and fulfilling the right to food and the right to health.
 - The extraterritorial obligations of governments in the context of the right to food.²⁶
- Nutrition knowledge and awareness:
 - Public health law should be also considered a key competency for public health professionals. The VGFSyN should therefore encourage training public health professionals on available legal instruments to address malnutrition in all its forms.
- Realization of the Right to Adequate Food:
 - The right to adequate food as guiding principle, noting that all human rights are universal, indivisible and interdependent and interrelated.
- The responsibilities of the business sector in the context of the right to food and right to health.
- The centrality of civil society participation in the development and implementation of food systems and nutrition policies.

Part 3. The Voluntary Guidelines on food systems and nutrition

10. Paragraph 35

In light of the above analysis, the proposed scope of the VGFSyN should be expanded to include a comprehensive exploration of State obligations under international human rights law, besides the legal basis provided by the right to adequate food.

Under the proposed framework, the VGFSyN should identify states as having legal obligations to take steps to ensure that supply chains, food environments and consumer behavior all contribute to the progressive realization of the right to adequate food and the right to health.

²⁴ ICESCR. Article 12, 1966; CESCR. General Comment no. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 2000; OHCHR & WHO. The Right to Health Fact Sheet No. 31

²⁵ <https://hrbaportal.org/fag/what-is-a-human-rights-based-approach>

²⁶ As noted in the UN Guiding Principles on Extreme Poverty and Human Rights and the Maastricht Principles, above.

In addition, the VGFSyN should highlight the opportunities to involve civil society not only as consumer but as equal stakeholders in the development and implementation food systems and nutrition policies.

Section 3.3 – Equitable access to sustainable and healthy diets

11. Paragraph 40

Policies and programmes aimed at improving food environments to ensure healthy diets have their legal foundations in the States’ obligation to respect, protect and promote human rights, including the right to adequate food and the right to health. Regulatory and fiscal measures provide tools for governments to advance these policies and comply with international obligations.

Section 3.5 – Gender equity and women’s empowerment across food systems

12. Paragraph 42

As noted above, IDLO supports the idea of replacing the concept of “Gender Equity” with that of “Gender Equality”. The latter acknowledges the legal foundation of the concept in women’s rights and is agreed and recognized language in international legal instruments.²⁷

Part 4. Implementation and monitoring of the use and application of the VGFSyN

13. Paragraph 44

Suggested amendment: [...] *States are invited to promote the use and implementation of the VGFSyN through coordinated and multi-sectoral policies, [laws and other interventions], ensuring that activities of different ministries converge toward the promotion of sustainable food systems that enable sustainable and healthy diets and improve nutrition.*

14. Paragraph 47

Suggested amendment: [...] *Such support could include technical cooperation, financial assistance, the provision of evidence-based policy [and legal] advice [...]*

15. Paragraph 53

Suggested amendment: [...] *Parliamentarians and their regional and sub-regional alliances have a key role in designing [laws] and policies, raising awareness and promoting dialogue among relevant stakeholders, and allocating resources for the implementation of laws and programmes dealing with food systems and nutrition.*

²⁷ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1978