

# ADVANCING EQUAL RIGHTS FOR WOMEN AND GIRLS

## The Status of CEDAW Legislative Compliance in Eastern Europe and Central Asia





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UNFPA, the United Nations Population Fund, is an international development agency that promotes the right of every woman, man and child to enjoy a life of health and equal opportunity. UNFPA supports countries in using population data for policies and programmes to reduce poverty and to ensure that every pregnancy is wanted, every birth is safe, every young person is free of HIV, and every girl and woman is treated with dignity and respect.

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Rangita de Silva de Alwis

# FOREWORD

More than 30 years ago, States Parties to the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) agreed to take all appropriate measures, including the introduction of new legislation and revision of existing legislation, to end discrimination against women. The CEDAW is the most comprehensive international human rights instrument for ending discrimination against women to date. In light of new developments in the law throughout Eastern Europe and Central Asia, the UNFPA set out to map new developments in the law relating to gender equality and reproductive rights, using CEDAW as the standard-setting instrument. This report explores emerging trends in Eastern Europe and Central Asia and highlights thematic areas for law reform. This regional analysis is largely based on the national legislative analyses conducted by national consultants in seventeen countries in the EECA region, as part of the regional legislative review exercise.

Legislative compliance is only a first step in realizing the rights of women and girls in political, economic, social, cultural and civil life. Once compliance is established, implementation and enforcement of international law is required. Improving the collective understanding of rights achieved and rights not yet fulfilled is critical to identifying capacity gaps and national priorities for action, and measuring country success in meeting the Millennium Development Goals (MDGs). It is our hope that this report will provide insight to countries in the region, as well as countries throughout the globe, on the status of CEDAW legislative compliance, and practical guidance for the work that remains before us.



Thea Fierens

Director, UNFPA, Regional Office for Eastern Europe and Central As

# EXECUTIVE SUMMARY

## Background

International legal instruments, in particular conventions and treaties ('instruments'), provide an important framework for defining the human rights of women and girls. As duty-bearers, States Parties to these instruments are obligated to fulfil and guarantee the individual and collective rights outlined in them, in accordance with the specified terms. A key step to the fulfillment of the rights of women and girls (rights-claimants) is to ensure that national legislation and law conforms with international norms generally and with the treaty obligations of the State in question in particular (*de jure* compliance). Once *de jure* compliance is established, further analysis of secondary legislation and the application and enforcement of international law at the country level is required to better understand whether the rights of women and girls have actually been realized, and to determine what gaps exist in national capacity that would prevent fulfillment of these rights.

This report has been developed by the United Nation Population Fund's Regional Office for Eastern Europe and Central Asia (EECA). This document is based on the legislative analysis undertaken by National Consultants in seventeen countries in the EECA region, with a focus on new developments in the law relating to gender equality and reproductive rights.

## The Research Methodology

The author, in collaboration with UNFPA's Regional Office for Eastern Europe and Central Asia, developed a set of key questions (Annex 3), which formed the basis for the analysis of domestic law compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Country legislative expert consultants from each of the Eastern Europe and Central Asia

countries were asked to use the key questions relating to CEDAW as benchmarks to measure the compliance of domestic laws with the values of CEDAW. When relevant, domestic experts were asked to consider the interrelatedness of other international human rights conventions such as the Convention on the Rights of the Child (CRC), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of Persons with Disabilities (CRPD) with CEDAW in their Country Reports. Detailed analysis of national legislation is available in separate Country Reports. Country abstracts (Annex 1) outline key elements of the findings.

## Highlights of Major Findings

Several of the countries in the region reference human rights conventions in their constitutions, and these conventions are directly applicable in domestic laws. However, even when the Constitutions reference international human rights norms, there are few examples where these international conventions have been invoked in courts.

Several constitutions in the region have an anti-discrimination/equal protection clause, but few countries in Eastern Europe and Central Asia provide a concrete legal definition of the term 'discrimination against women'. In a significant development, several countries in the region have enacted stand-alone gender equality laws. However, these laws also do not always carry a single, clear definition of what constitutes gender equality. A few gender equality laws have included a strong equal protection clause that dismantles both direct and indirect discrimination in accordance with CEDAW. A striking gap in these laws is the establishment of an effective monitoring or implementation mechanism. Countries that have ratified or acceded to CEDAW are legally bound to transform laws into practice and to move beyond *de jure* equality to ensuring an equality of result. The overarching theme running through all the domestic country profiles is the inadequate implementation of laws. In the absence of a gender equality or anti-discrimination law, the criminal codes of most countries in Eastern Europe and Central

Asia provide remedies for discrimination against gender.

A positive development in the region is the drafting of anti-discrimination laws. Although no parliament has yet passed these drafts, they represent a unique opportunity to address the gaps in existing law and to create laws that are consistent with the letter and spirit of CEDAW. This emerging trend must be sustained through further domestic and regional advocacy based on CEDAW and other core human rights treaties.

In all of the countries under review, women enjoy equal citizenship rights with their male counterparts, irrespective of the grounds on which such citizenship was acquired. No laws discriminate against women's rights to transfer their citizenship to their children. However, in reality, children of mothers of different nationalities, such as the Roma community, are subject to discrimination when accessing services such as health care.

Several countries have introduced a quota system to facilitate women's political participation. Even when the law stipulates that parties ensure that both women and men are equally represented on their lists of candidates, in practice a larger number of women are placed among the last candidates on party lists. The establishment and regulation of NGOs is governed by laws that can sometimes restrict the role, function and independence of NGOs. The free and independent function of NGOs in any country is integral to the empowerment of women. Any arbitrary restrictions on their role have the result of undermining the advancement of women's human rights.

Very few mechanisms exist for the effective realization of affirmative action policies or temporary special measures. Those special measures for women established in Eastern Europe and Central Asia largely play a protective function rather than an empowering role, and do not necessarily facilitate equal participation of men and women. Instead, these provisions often reinforce negative stereotypes of women as in need of protection. Protective employment policies can result in disadvantaging women in the employment field and limiting women's access to certain fields of work. The better approach would be to protect

both men and women from harmful forms of employment, rather than singling out women for special consideration.

Laws that view women only, or primarily in, their maternal function can also work against women's advancement in the public and private spheres. Very few countries provide parental leave or extend family leave to men. Instead of protective policies for women, Country Reports recommend that special incentives such as tax rebates be adopted. These incentives will encourage employers to hire women and help eliminate discrimination against women in labour without further perpetrating the reinforcement of negative stereotypes.

The differential retirement practices for male and female workers is another drawback in the employment laws and regulations in the Eastern Europe and Central Asia region. Unequal retirement ages create the assumption that women are weaker than men, and thus disadvantage women's advancement in the labour market. Early retirement policies might also result in differential pension and retirement benefits.

None of the countries under review has a specific or stand-alone sexual harassment law. Countries such as Bosnia and Herzegovina attempt to cover sexual harassment in the Gender Equality Law. Despite the fact that these laws articulate sexual harassment, a stand-alone sexual harassment law will be a more powerful tool to address sexual harassment and provide concrete remedies for violation of the law.

Several countries guarantee the equal right to education in their legal system. Despite equal access to education and equal guarantees in education, gender stereotypes in pedagogical subject matter remain. Very little is done in the curriculum to facilitate gender equality in the private and public spheres. To guarantee equal rights to education, several recent law reform initiatives have included creative provisions to address gender stereotypes through education.

Although the legal framework for combating domestic violence has improved, very few countries have adopted national anti-domestic violence laws. Many countries have draft domestic violence laws before parliament.

Despite these good faith efforts to reform the legal system, unless corresponding gender sensitization programmes are formulated and adequate support systems are put in place, these laws will provide inadequate protection to women victims of violence. Furthermore, the existing laws on the books are poorly implemented.

Despite the fact that a majority of women are represented among rural populations, very few laws and policies are aimed at advancing rural women's participation in the development process.

Contrary to the letter and spirit of CEDAW and the Convention on the Rights of the Child (CRC), Tajikistan, Turkey and Ukraine allow marriage under the age of 18. In Turkey, 17 years is specified as the legal age of marriage for both sexes, and in Ukraine, the minimum statutory age of marriage is 18 years for men and 17 for women. A similar provision appears in Armenia's Family Code. In Tajikistan, the statutory minimum age of marriage for both men and women is 17 years. In Bulgaria, although the minimum age of marriage is set at 18, permission can be obtained by the District Court for persons aged 16 and up to marry. In a similar vein, Tajikistan's Family Code, in exceptional cases, allows parties to request the court to reduce the age of marriage to age 16. The statutory age of marriage is one the most pressing and urgent areas of law reform and must be addressed. The statutory age of marriage in the countries of Eastern Europe and Central Asia must be uniformly raised to age 18 in compliance with CEDAW and CRC.

A handful of countries in the region have stand-alone reproductive health laws. Although most countries have some kind of programme or policy on HIV/AIDS, these policies lack a clear gender perspective or fail to address the greater vulnerability of women and girls to HIV/AIDS or the fact that women are disproportionately concentrated as caregivers of HIV-positive family members.

Despite general legislative measures ensuring equality and non-discrimination, there is a clear disconnect between law and practice on gender equality. This gap between the law and reality is exacerbated by inadequate affirmative action

policies, absence of gender-disaggregated data and a weak gender-budgeting approach.

Several countries in Eastern Europe and Central Asia have tried to transform their legislative framework in compliance with CEDAW. These bona fide efforts have been impeded by a lack of corresponding enforcement mechanisms. In the final analysis, even though the framework is in the process of reform, the implementation of these laws and guidelines remains flawed.

# INTRODUCTION

Legislative reform is a critical cornerstone of the transformation of international human right and norms into domestic application. States Parties to the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) agree to take all appropriate measures, including the introduction of new legislation and revision of existing legislation, to end discrimination against women. One of the most important obligations under CEDAW is that under Articles 2(f) and 5(a), States Parties must correct cultural customs, practices and patterns of conduct between men and women that promote any type of discrimination or stereotyped gender roles.

What this means is that States Parties must ensure that their national constitutions and legislation advance the equal rights of women and men in political, economic, social, cultural and civil life. Moreover, States Parties must abolish existing laws and norms that work against the principle of equality. They are also urged to adopt administrative measures to implement and monitor the laws.

To determine the extent of compliance, UNFPA's Eastern Europe and Central Asia (EECA) Regional Office undertook a legislative analysis of the new developments in the law relating to gender equality in each country in the region. The lead consultant, Rangita de Silva de Alwis, in collaboration with the EECA Regional Office, developed a set of key questions that formed the basis for the domestic experts to measure how well domestic law relating to gender equality conforms to the provisions of CEDAW (See Annex One). When relevant, domestic experts were asked to consider in their Country Reports how other international human rights conventions such as the Convention on the Rights of the Child (CRC), International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of Persons with Disabilities (CRPD), relate with CEDAW. The national consultants were also asked to prepare a scorecard based on their evaluation of the domestic legislation

pertaining to gender equality. Country Reports are available for each participating country, and abstracts of those reports are presented in Annex 1<sup>1</sup>.

The matrices provided at the end of each Country Report attempt to map the new developments, while the snapshots at the beginning of each Country Report provide a thumbnail sketch of gender-related legislative developments in that country. The Regional Report provides a panoramic overview of the regional landscape. The country abstracts examine some major elements of the legal system of each country in the region as they relate to gender equality, reproductive rights and gender-based violence prevention. These abstracts were culled from the Country Reports submitted by each of the national legislative consultants. Annex 2 of the Regional Report provides a map of the status of ratification of CEDAW, CRC, ICESCR and CRPD by the countries of Eastern Europe and Central Asia.

Using CEDAW as the standard-setting instrument, the regional analysis introduces the core elements of lawmaking under each thematic heading and analyses the new developments in gender-related lawmaking in the region. The Regional Report explores some emerging trends in Eastern Europe and Central Asia and highlights some thematic areas for reform in the law.

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<sup>1</sup> County Reports are available through the UNFPA Regional Office for Eastern Europe and Central Asia.

## Core Values of CEDAW

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which came into operation in 1979, has had a profound impact on the promotion of women's and children's human rights around the world. Its most transformative potential has been the way it has guided gender-sensitive lawmaking around the world. This report analyses 17 Country Reports from Eastern Europe and Central Asian countries commissioned by UNFPA, and explores the extent to which the laws in these countries comply with CEDAW. The analysis highlights the strengths and weaknesses in the existing laws and calls for legal reforms in the most pressing areas.

CEDAW is unique in that it is the first human rights convention to address both public and private acts. The Convention seeks to dismantle the artificial construct between the two spheres, which historically has been reinforced in treaties and national laws, by unequivocally stating in Article 2(e) that CEDAW covers all discriminatory acts "by any person, organization or enterprise." This provision suggests that both public and private acts, whether in the workplace, schools, public spaces or the home, can be regulated by CEDAW. CEDAW can also be used against "enterprises," such as industries, thereby extending the traditional ambit of a convention beyond States Parties. Additionally, Article 5 of CEDAW directs States Parties to take all steps to "modify the social and cultural patterns of conduct of men and women" and to eliminate "stereotyped roles for men and women." This Article clearly allows for the modification of cultural and traditional conduct that reinforces patriarchy.

CEDAW also covers both direct and indirect discrimination, or *de jure* (discrimination in the law itself) and *de facto* (discrimination that exists in practice even when the law is facially neutral) discrimination. In effect, CEDAW covers both the intended and unintended consequences of laws.

Article 4 of CEDAW allows for temporary special measures to combat the legacy of discrimination against women. It looks beyond the simple notions of formal equality or equality of opportunity, and incorporates an equality of result, or substantive equality. The anti-discrimination clause of the CRC, Article 2, complements the equality provision of CEDAW in its embrace of affirmative action, a method focused not simply on the achievement of formal equality, but also on equality of result and impact. Article 4 of CEDAW also stresses that anti-discrimination lawmaking should include laws that embrace affirmative action or positive action plans for women.<sup>2</sup> CEDAW is a radical statement in that it dismantles the artificial construct between the public and the private and deconstructs the barriers between civil and political rights and economic, social and cultural rights. CEDAW's great value is that it goes beyond the examination of discrimination sanctified by law to examine the disproportionate or discriminatory impact of laws that appear to be facially neutral.

<sup>2</sup> Article 2 of CEDAW prohibits discrimination against women and holds States Parties accountable to a policy of eliminating discrimination against women through constitutional, legal and other appropriate means. Article 2(e) of CEDAW covers both the private and public spheres and protects women from discrimination by any "person, organization or enterprise." Traditionally, international law could only govern State action and did not cover the acts of private parties. CEDAW and the jurisprudence around CEDAW took the lead in transforming this doctrine. This transformative jurisprudence has helped develop accountability for non-State actors, especially as concerns the rights of women.

# Transforming International Norms into Domestic Application

The Vienna Convention establishes that once a State ratifies a convention, the State becomes a party to that convention and has corresponding obligations under that treaty. Constitutional and legislative reform initiatives in many countries now prohibit discrimination based on sex.<sup>3</sup>

The Country Reports note that Russia and the Commonwealth of Independent States (CIS) are among the world's most exciting laboratories of Constitutional reform.<sup>4</sup> A major characteristic of Russian and CIS development is the gradual 'opening' of the domestic legal systems of countries in the region to international law. Many CIS countries have rejected the traditional dualist approach<sup>5</sup> followed by the former Soviet Union in favor of directly applying international law in their legal systems.

Several countries in Eastern Europe and Central Asia reference human rights conventions in their constitutions,<sup>6</sup> and these Conventions are directly applicable in domestic

<sup>3</sup> Special reference must be made to the South African Constitution of 1996. See Article 28, The Constitution of the Republic of South Africa, 1996. Article 28(2) states that "A child's best interests are of paramount importance in every matter concerning the child."

<sup>4</sup> See Russia's Country Report.

<sup>5</sup> States that follow a dualist approach are obliged under international law to develop enabling legislation as transformational devices for treaties that are ratified by the State. In a monist tradition, treaties are self-executing and do not need additional domestic legislation in order to give treaties domestic effect.

<sup>6</sup> See Bosnia and Herzegovina; Romania; Moldova. The supremacy of international conventions is articulated in the Turkish Constitution and the Turkmenistan Constitution.

laws. However, a grave shortcoming is that in many countries these conventions and norms have not been used as justiciable instruments of law in courts.<sup>7</sup> Even when a country's constitution references international human rights norms, these international conventions have seldom been invoked in courts. Judges too rarely rely on international human rights norms in decision-making; instead, they make decisions in accordance with domestic laws. Several countries affirm that although ratified treaties are directly applicable in domestic laws, these treaties must be consistent with constitutional provisions.

Turkey, which guarantees the supremacy of international treaties in its Constitution, is one of the few countries where international human rights principles have been invoked in a court of law. For example, a major case challenged Article 159 of the old Civil Code, which required a husband's permission for his wife's professional activity. The Constitutional Court annulled this provision of the Civil Code on November 19, 1990 on the grounds that it violated the provisions of CEDAW.<sup>8</sup> Similarly, in its annulment of the provisions dealing with the definition and punishment of adultery (Articles 441 and 440 of the old Turkish Penal Code), the Constitutional Court emphasized CEDAW's notion of nondiscrimination of women in marriage.<sup>9</sup>

Few countries provide a concrete legal definition of the term 'discrimination against women'. However, given that many constitutions recognize the supremacy of the universally acknowledged principles of international law, it could be assumed that human rights guarantees still play an interpretive role in domestic legislation.

The next sections explore major laws relating to gender and are organized under thematic headings. CEDAW provisions are used as a

<sup>7</sup> Justiciability here refers to the actual application or invocation of a human rights treaty or norm in a court of law. Turkey is the only country in the region that has used international human rights norms as justiciable instruments in a court of law.

<sup>8</sup> Constitutional Court Decision 1990/31.

<sup>9</sup> Constitutional Court Decision 1996/34.

litmus test to examine the strengths and weaknesses of these laws.

## 1) Anti-Discrimination/Equal Protection Lawmaking

Legislation on anti-discrimination and equality must be informed by Article 2 of CEDAW, which calls for lawmaking that results in the “practical realization” of the principle of equality. This asks that States Parties go beyond the formal requirements of equality to ensure equality in practice. CEDAW also calls for lawmaking in this area to include legal sanctions, competent national tribunals and mechanisms or national machineries that can provide effective protection of women against any act of discrimination. CEDAW also covers acts by any “person, organization or enterprise,” thus providing broad jurisdiction in the law against acts of discrimination by both public and private entities. CEDAW further requires legislative measures to combat discriminatory laws and practices, including customs that discriminate against women. Article 4 of CEDAW provides for temporary special measures or affirmative action policies as a tool to combat the historic legacy of discrimination against women.

A critical objective of Article 2 of CEDAW is to establish an appropriate legal structure that will guarantee equality, the necessary resources for its implementation and the necessary punishments for discriminatory acts in both the public and private spheres.

Countries that have ratified or acceded to CEDAW are legally bound to transform laws into practice and to move beyond providing *de jure* equality (equality in the law) to ensuring *de facto* equality (equality in action). CEDAW provides for the dismantling of all discriminatory laws, the adoption of appropriate laws prohibiting discrimination against women and for strong accountability and enforcement mechanisms to ensure the effective protection of women against discrimination.

“Substantive equality,” as outlined by CEDAW, recognizes the differences between men and women and the legacy of discrimination against women, and hence attempts to address these

differences in order to ensure “equality of results.” As such, substantive equality is not only about creating equal opportunities but is also about taking special steps and measures to ensure real, or *de facto*, equality between the sexes. To ensure substantive equality, governments need to develop policies, programmes and temporary special measures to correct the historic legacy of discrimination that has impeded women’s *de facto* equality. Despite the articulation of affirmative action norms, few countries in Eastern Europe and Central Asia have adopted concrete temporary special measures or affirmative action policies to meet the standards of substantive equality.

The overarching theme running through all the domestic country profiles is the inadequate implementation of laws. It is important now to shift the focus towards the discriminatory effects of legislative provisions and not simply dwell on rule-based anti-discrimination lawmaking. The implementation of gender equality policies remains uniformly weak in all of the countries of Eastern Europe and Central Asia. All Country Reports note that while facially equitable laws prohibiting discrimination in employment, property ownership, marriage, divorce, reproductive health have been enacted, the difference between equality in law and equality in fact lies with the implementation of those laws.

Several constitutions in the region include anti-discrimination and/or equal protection clauses. The Constitution of the Republic of Kazakhstan, for example, has a strongly-worded equal protection clause, which states: “No one shall be subject to any discrimination for reasons of origin, social, property status, occupation, sex, race, nationality, language, attitude towards religion, convictions, place of residence or any other circumstances.”<sup>10</sup>

In Turkey, Article 10 of the Turkish Constitution mandates the realization of *de facto* gender equality, but no special law has been passed to put that Constitutional provision into action.

<sup>10</sup> Article 14, p.2.

Several countries have enacted stand-alone gender equality laws.<sup>11</sup> In Ukraine, the Law on Equal Rights and Opportunities for Women and Men (LEROWM) of 2005 defines discrimination broadly as covering action, inaction, exclusion or benefit on the basis of a person's gender. The law provides for affirmative action but does not provide for quotas for women. Similar to the other countries examined in the region, the ministry in charge of implementing the law in Ukraine lacks adjudicatory power and has only coordinating power.

Even when gender equality laws exist, they do not always carry a single, clear definition of what constitutes gender equality. Few of the provisions on discrimination provided in different areas of the law offer clear definitions of direct and indirect discrimination.<sup>12</sup> For example, the Law on Ensuring Equal Opportunities for Women and Men of Moldova prohibits sex discrimination,<sup>13</sup> but is largely declaratory in nature. The law defines what affirmative action is but does not establish affirmative action measures or a quota system. However, the Moldovan Government is currently in the process of drafting a general law on anti-discrimination.

A few gender equality laws have included a strong equal protection clause that dismantles both direct and indirect discrimination in accordance with CEDAW. The Kosovo Anti-Discrimination Law (ADL), for example, allows for special, temporary measures to promote gender equality. The ADL also provides for positive or affirmative action measures.<sup>14</sup> The ADL defines the principle of equal treatment expansively as: "no direct or indirect

discrimination against any person or persons, based on sex, gender, age, marital status, language, mental or physical disability, sexual orientation, political affiliation or conviction, ethnic origin, nationality, religion or belief, race, social origin, property, birth or any other status."

The Kosovo Assembly has promulgated the Kosovo Law on Gender Equality that recognizes gender equality as a fundamental value for the democratic development of Kosovo society,<sup>15</sup> providing equal opportunities for both males and females.<sup>16</sup> This includes participation in political, economic, social, cultural and all other areas of life, and defines equal treatment based on gender as the dismantling of direct and indirect gender discrimination.<sup>17</sup> The Kosovo Law on Gender Equality defines general, special and legal measures, including affirmative action, to accelerate *de jure* and *de facto* equality and to guarantee the protection of equality principles between men and women.<sup>18</sup>

The Republic of Bulgaria's Protection Against Discrimination Act prohibits direct and indirect discrimination, but focuses inadequately on vulnerable groups such as Roma women.

<sup>15</sup> UNMIK Regulation 2004/31 for the promulgation of the Kosovo Assembly Law on Gender Equality 2004/02.

<sup>16</sup> Further, Section 2.1 of the Kosovo Law on Gender Equality considers that gender equality should be aspired by all Kosovo society and defines gender equality as "equal participation for females and males in all relevant fields of social life, equal status, equal opportunities to be entitled to their rights and make use of their individual skills for the development of the society and equal benefit from the results of such development."

<sup>17</sup> Under Sections 2.3 and 2.4, gender direct discrimination is seen as "unequal treatment of an individual compared to another individual of the opposite gender in the same or similar conditions." Indirect gender discrimination is defined as "placing of a certain individual in an unequal position with the neutral provisions, the standards or unequal treatment under the same or similar conditions, except in cases where such provisions, standards or treatment is indispensable and furthermore provided that such treatment can be justified by objective facts which are not based on any particular gender."

<sup>18</sup> Kosovo Law on Gender Equality, Sections 2.9, 2.10 and 2.11.

<sup>11</sup> The Russian Federation, Bosnia and Herzegovina and Ukraine have specific anti-discrimination laws. Uzbekistan's law is still in the drafting process.

<sup>12</sup> See Turkey's criminal law, which penalizes discrimination on grounds of "language, race, colour, sex, disability, political ideas, philosophical beliefs, religion, sect and other reasons."

<sup>13</sup> No. 5-XIV, 9 February 2006, Official Monitor No. 47-50/200 24, March 2006.

<sup>14</sup> The law states that "in order to ensure full equality in practice, a measure to prevent or compensate for disadvantages linked to one or more grounds such as those stated in Article 2(a) shall not be deemed as discrimination, provided that it is also in compliance with international human rights standards."

The Gender Equality Law of Bosnia and Herzegovina outlaws direct and indirect discrimination. But while the law provides for special measures,<sup>19</sup> none have yet been established. As a result, the country lacks even a single woman minister and has a cabinet dominated by male decision-makers.

The Romanian Law on Equal Opportunities between Women and Men (2002) clearly defines direct and indirect discrimination and provides for affirmative action. The Tajikistan law, On State Guarantees of Equal Rights of Men and Women and Equal Opportunities for Their Implementation (2005), defines gender-based discrimination in harmony with Article 1 of CEDAW and provides special measures, such as those that protect the health of women.

Even when stand-alone laws are drafted, they lack a strong monitoring or implementation mechanism.<sup>20</sup> For example, the Women's Committee of Uzbekistan is completely advisory and its recommendations and conclusions are not mandatory and do not have binding authority. Likewise, the Moldovan law on gender equality does not establish national machinery for the monitoring and investigation of discrimination cases. The role of the national machinery is primarily an advisory role with no possibility for a complaint mechanism for individual cases.<sup>21</sup>

<sup>19</sup> Paragraph 5 of Article 3 of the Bosnia and Herzegovina Gender Equality Law, sets forth special measures aimed at promoting equality, gender equity and elimination of the existing inequality or protection of genders based on biological determination: "Establishment of a norm, criterion, or practice that can be justified objectively by achievement of a legitimate aim the effect of which is proportionate to the necessary and justified measures taken to achieve the aim is not considered discrimination based on gender."

<sup>20</sup> See Ukraine's Law on Equal Rights and Opportunities for Women and Men.

<sup>21</sup> The Law on Parliamentary Advocates allows women to allege gender discrimination. Still, inquiries of the allegations and decisions on cases are not mandatory. In practice, the gender discrimination cases may be considered in the general courts of law.

## ***De Jure and De Facto*** **Discrimination**

Apart from *de facto* discrimination, *de jure* discrimination still exists in certain countries. For example, unequal retirement laws still remain in the law of the Republic of Uzbekistan. Article 7 on the provision of pensions to citizens (1993) states that "the right to the retirement pension shall be obtained by: men—at the age of 60 with record of service not less than 25 years; and women—at the age of 55 with record of service not less than 20 years." Similarly, in Turkey the mandatory retirement age is different for men and women. Women are required to retire at 58 and men at 60. The law provides a graded system through which the retirement age for women and men eventually will be equalized at 65 in 2048. Moldova also still maintains unequal retirement ages for men and women.<sup>22</sup> The pension law of Uzbekistan, allows men to retire at 60 and women at 55,<sup>23</sup> while in Ukraine the age of retirement for women is set at 55 and men at 60.

As highlighted earlier, the differential retirement practices for male and female workers is another drawback in the employment laws and regulations. In Ukraine, for example, the retirement age for women is 55 and for men is 60. Allowing unequal retirement ages creates the assumption that women are weaker than men and might result in differential pension and retirement benefits.

Even when some laws provide for equality, others contradict the effort. In Turkey, for example, while the new Civil Code has taken steps to remove the concept of a male head of household and recognize equal representational rights of the spouses, Article 23 of the Civil Servants Law grants family benefits only to the husband, even if both spouses work for the government.

<sup>22</sup> See Law on Pensions and Social Security, No. 156, 14 October 1998, Official Monitor No.111, 17 December 1998. Article 41.

<sup>23</sup> Law of the Republic of Uzbekistan "On provision of pensions to citizens" (1993), Article 7: "The right to the retirement pension shall be obtained by: men – at the age of 60 with record of service not less than 25 years; and women – at the age of 55 with record of service not less than 20 years."

In Moldova, *de facto* discrimination persists even when laws are facially equal. Although at first glance the law in Moldova includes safeguards on childcare leave for women,<sup>24</sup> it does not protect the earnings of a woman who takes the leave. Taking the child-care leave will result in a decrease of the average salary of the woman employee and will affect the subsequent calculation of her pension.

Affirmative action policies or temporary special measures are rarely established under the laws of countries in Eastern Europe and Central Asia. The Bulgarian Prevention Against Discrimination Act (PADA) allows specific measures for the benefit of disadvantaged individuals or groups but does not spell them out.<sup>25</sup>

In the absence of a gender equality or anti-discrimination law, the criminal codes of most countries in the region provide remedies for discrimination against gender. For example, the criminal codes of Georgia and Turkey outlaw any type of discrimination based on multiple grounds of discrimination, and the Armenian Criminal Code and Uzbekistan Criminal Code require fines and remedies for discrimination. Unfortunately, the Uzbekistan law fails to define what constitutes discrimination. The Russian Federation Criminal Code, on the other hand, does define discrimination: as a violation of human and civil rights, freedoms and lawful interests because of a person's sex, race, nationality, language, background, property, official status, place of residence, religion, views, membership in non-governmental associations or social group. The Criminal

<sup>24</sup> Law on allowances for temporary lack of labour capacity and other social security allowances, No. 289-XV, 22 June 2004, Official Monitor No. 168-170/773, 10 September 2004.

<sup>25</sup> Article 7 PADA, (1) The following shall not constitute discrimination: . . .

13. educational and training measures ensuring balanced inclusion of women and men, as far as such measures are necessary;

14. specific measures for the benefit of disadvantaged individuals or groups of people on the grounds under Article 4(1) targeted at providing equal opportunities, as far as such measures are necessary;

Code also imposes a penalty for discrimination: an amount up to 200,000 rubles; the amount of the offender's salary or the garnishment of income for up to 18 months; compulsory labour for up to 180 hours; corrective labour for under one year; or imprisonment for up to two years.

Finally, there is ambiguity as to the meaning of gender discrimination. For example, nowhere in Belarus law is the term "discrimination against women" defined.

## Emerging Trends in Gender Equality Lawmaking

A positive trend in Eastern Europe and Central Asia is the drafting of anti-discrimination laws.<sup>26</sup> In Turkey, A draft law establishing the "Commission on Equality between Women and Men" is awaiting adoption. Similarly, in Russia the draft law, State Guarantees Granting Equal Rights and Liberties for Men and Women in the Russian Federation and Equal Opportunities for Their Realization, was brought before the State Duma in 2008. In Uzbekistan, special legislation "On guarantees of equal rights and opportunities of women and men" has been drafted though not yet come into force. Although these drafts are yet to be passed, they represent a unique opportunity to address the gaps in the existing law and to create laws that are consistent with the letter and spirit of CEDAW. This emerging trend must be sustained through further domestic and regional advocacy based on CEDAW and other core human rights treaties.

## 2) Citizenship Laws

Article 9 of CEDAW requires that citizenship laws and nationality laws grant women equal rights with men to acquire, change or retain their nationality. Accordingly, women enjoy equal rights with men with respect to the nationality of their children in situations where the spouse is a non-national. Mandatory

<sup>26</sup> Armenia has a draft Law on Provision of Equal Rights and Equal Opportunities for Women and Uzbekistan has a draft Law on Guarantees of Equal Rights and Opportunities of Women and Men.

registration of all women and children is critical to gender equal citizenship laws.

In all of the countries under review, women enjoy equal citizenship rights with their male counterparts, irrespective of the grounds on which such citizenship was acquired.

No laws discriminate against a woman's right to transfer her citizenship to her children. However, in reality (as the Moldovan Country Report argues), children of mothers of different nationalities might face discrimination when seeking access to health care. The registration of Roma women is a positive step taken in Bosnia and Herzegovina.

### 3) Laws on Political Participation

Laws on political participation must integrate the values inherent in Article 7 of CEDAW. Article 7 obliges States to take all appropriate measures to eliminate discrimination against women in the political and public life of the country. This entitles women to vote in all elections and referenda, to be elected to all public offices, and to participate in policy-making, in non-governmental associations and with the public and political life of the country. This guarantees that laws on political participation remove barriers to women's access to political and public life and create opportunities for women's participation in the public and political spheres. These opportunities include temporary special measures as required by Article 4 of CEDAW, and the elimination of gender stereotypes through education and awareness-raising as affirmed in Article 10 of CEDAW.

In drafting laws on political participation, it is also important to use the lens of CEDAW General Recommendation 22 as a guide. General Recommendation 22 suggests that States Parties take all appropriate measures to eliminate discrimination against women in the political and public life of the country. The Comments to the Recommendation state that: "policies developed and decisions made by men alone reflects only part of the human experience and potential." The Summary to the Comments state that "research demonstrates

that if women's participation reaches 30-35 percent there is a real impact on political style, and the content of decisions and political life is revitalized." The General Recommendation suggests that States Parties take note that Article 4 of CEDAW encourages the use of temporary special measures to give full effect to Article 7, which addresses women in public life and women's political participation.

In many countries in Eastern Europe and Central Asia, despite formal guarantees of equality, CEDAW's vision of *de facto* equality and equality of result have not been achieved in actual practice. Several countries have introduced a quota system to facilitate women's political participation.<sup>27</sup> For example, Section 3 of the Kosovo Law on Gender Equality provides that women should constitute no less than 40 percent in all bodies, including the legislative, judicial and executive branches. However, there is little discourse on gender equality in Parliament or as a campaign policy, and therefore gender issues have little visibility.

Indeed, quota allocation for the less-represented gender in the political party list is a hallmark in lawmaking in many countries of Eastern Europe and Central Asia. For example, Armenia offers a 15 percent quota for women on political party lists. Similarly, Romania's local election law mandates that the election list must include 30 percent of candidates from the less-represented sex. This law includes penalties for non-compliance. In Macedonia, each third place is to be reserved for the less-represented gender in the list of candidates submitted for Members of Parliament.

Even when the law stipulates that the parties ensure that women and men are equally represented on the lists of candidates as in Moldova, more women are placed among the lower rank of candidates on the party lists, thus making it much more challenging for women to become Members of Parliament.

<sup>27</sup> For example, in Bosnia and Herzegovina the quota system provides a minimum of 30 percent of women on election lists; Kazakhstan has aimed to have 30 percent of women represented in the decision-making process.

The establishment and regulation of NGOs is governed by laws that can sometimes restrict the role, function and independence of NGOs. In Belarus, for example, the law demands that NGOs obtain special permission from the authorities to use foreign aid for their legitimate activities. The free and independent function of NGOs in any country is integral to the empowerment of women. Any arbitrary restrictions on their role have the result of undermining the advancement of women's human rights.

#### 4) Labour Laws

Labour laws and new developments in labour regulations must comply and harmonize with the guarantees set out in Article 11 of CEDAW. Article 11 ensures women the right to equal employment opportunities; equality in hiring, promotion and job security including benefits and conditions of service; equal pay for equal work; social security; equal retirement policies; and equal vocational training and retraining opportunities. While Article 11 also prohibits discrimination based on pregnancy and maternity leave, employers are obliged to provide maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances. Moreover, employers are asked to ensure that both parents reconcile work/family obligations. Although employers are required to provide a safe working environment to safeguard the reproductive functions of all employees and must provide special protection during pregnancy in the types of work proven harmful to pregnant women, protective legislation must be reviewed periodically in light of scientific and technological knowledge and shall be reviewed, repealed or extended as necessary. Protective provisions based on gender roles cannot be used to either exclude women from employment opportunities or disadvantage them in the workplace.

Special measures for women established in Eastern Europe and Central Asia largely play a protective function and do not necessarily facilitate equal participation of men and women. Moreover, since these laws are not fully implemented, these provisions may reinforce negative stereotypes of women as being in

need of protection.<sup>28</sup> For instance, the Belarusian Decree of the Council of Ministers of the Republic of Belarus of May 26, 2000, No. 765, approved the List of Heavy and Hazardous Jobs for which employment of women is prohibited. Such a restriction can disadvantage women and limit their access to certain fields of work. The better approach would be to protect both men and women from harmful forms of employment rather than singling out women for special consideration.

The Gender Equality Law of Bosnia and Herzegovina guarantees equal rights and has devoted particular attention to the prohibition of discrimination on the grounds of gender at work and in employment, which includes the advertisement of vacancies, selection procedures, hiring and dismissal. The law's provisions include measures to eliminate different treatment on the grounds of pregnancy, childbirth or the right to maternity leave, including failure to enable an employee to return to the same job or another job of the same seniority with equal pay after maternity leave; different treatment for men and women in regard to deciding how to use the maternity leave following the birth of a child; and any unfavorable treatment of a parent or guardian working to balance the commitments of family and professional life.<sup>29</sup>

Laws that view women only, or primarily, in their maternal function can disservice women's advancement in the public and private spheres. For example the Bosnia and Herzegovina Labour Code may grant a mother—at her request—special leave to care for a child until the child reaches his/her third birthday, and permit payment of a monthly State allowance during that period. Given that a similar provision to the father is absent in the law, these provisions reinforce stereotypes of women as the sole caregivers of children. Further, according to the Belarus Labour Code, the same benefits granted by law to working mothers are granted only to fathers who are raising children without their mother (owing to her death, deprivation of parental rights, extended hospital stay exceeding one month, or on other grounds). In Bosnia and

<sup>28</sup> See Bosnia and Herzegovina report.

<sup>29</sup> Articles 7 and 8 of the Gender Equality Law of Bosnia and Herzegovina.

Herzegovina, the Law on Labour allows for a child's father to use the right to maternity leave only if the child's mother passes away, abandons the child or is prevented from exercising this right due to other valid reasons. This law does not foresee the possibility of both parents sharing parental leave.

In Uzbekistan, all benefits granted to women in relation to childcare, such as the limitation of night labour, overtime work on weekends and business trips, are provided to fathers, guardians, grandmothers, grandfathers and other relatives who take actual care of a child, but only if the child is deprived of the mother's care. This undermines the notion of the joint care of children and the equal parenting rights and duties as enshrined in CEDAW and CRC.

It is important that the law views both parents as equal in their caregiving roles and provides equal opportunities for work and family responsibilities to both genders.

Very few countries extend family leave to men. Turkish law, for example, grants a compulsory sixteen weeks of paid maternity leave (eight weeks before and eight weeks after birth). A draft law on parental leave, which proposes to extend workers' six months of unpaid leave to twelve months to be shared between spouses, is waiting to be passed by the Parliament.

Although certain laws, like Uzbekistan's On Additional Benefits for Women (1999), provide added labour and social security guarantees for women and introduce respective amendments into the labour codes and laws 'on the social security of citizens', these provisions that aim to protect women can result in discrimination of women in the field of labour. Instead, Country Reports recommend that special incentives, such as tax rebates, be adopted to encourage employers to hire women and help eliminate discrimination against women in labour without further perpetrating the inequity.

## Protectionist Laws

As argued in the Russian Country Report, draft laws are rarely examined through a gender lens. The general focus of lawmaking in Eastern Europe and Central Asia is on the protection of women and children, not on

gender empowerment. For example, the Uzbekistan report highlights the way in which the revival of national values may lead to stereotyping women in the traditional roles of wife and mother.

In Moldova, the labour law disallows women from specific jobs, such as boilermaker, brick layer, locksmith, riveter, welder or positions that require lifting weights. The Tajikistan Labour Code places restrictions on women's access to overtime or work travel. The Turkish Labour law prohibits women's access to employment in coal mines, underground quarries, embanking, digging and excavation of soil. Although it is important for the law to regulate hazardous employment environments, these protections should not provide blanket prohibitions that keep women from seeking employment in these work categories. Instead, regulatory and protective provisions should be extended to both women and men employees, so that women would not be disadvantaged in employment.

Of most concern are the laws in the countries of Eastern Europe and Central Asia that prohibit women from a plethora of economic activity. On one level, a focus on accommodating the reproductive roles and caregiving functions of women in the workplace can benefit women. At the same time, this focus can stereotype women and reinforce traditional gender roles that subordinate women. During a period of economic transition, the added responsibility of employers to provide special treatment to women may translate into a disincentive to hire women.

Women's employment opportunities in Eastern Europe and Central Asia are also limited by laws and regulations that prevent them from performing certain physically arduous jobs. For example, in Belarus, women are restricted from engaging in heavy jobs and jobs in dangerous working conditions, such as chemical oil processing, mining and energy industries. Similarly, Uzbekistan limits women from accessing certain types of employment deemed harmful to their physical and biological functions. There seems to be an over-inclusion in the identification of these industries as dangerous to women. This creates a fear that women might be shut out from lucrative industrial employment opportunities against

their will and relegated to traditionally female employment fields.

## 5) Sexual Harassment Lawmaking

In 1993, the CEDAW Committee adopted General Recommendation 19, which explicitly states that CEDAW prohibits gender-based violence. This Recommendation also includes sexual harassment as a form of violence against women and states that equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace, and calls upon governments to develop sanctions against sexual harassment.<sup>30</sup> Further, the Recommendation suggests that States Parties “include in their reports information on sexual harassment, and on measures to protect women from sexual harassment and other forms of violence of coercion in the workplace.”

At a minimum, sexual harassment lawmaking should include the following: a definition of harassment; establishment of a non-retaliation policy; prevention procedures and training; a designated complaints officer and advice mechanisms; complaint procedures; investigative procedures; disciplinary measures; and measures to compensate for the effects of sexual harassment. Remedies for victims of hostile work environment sexual harassment may include recovery of compensatory damages, such as medical expenses, future economic loss and loss of enjoyment of life. Punitive damages may also be awarded to successful claimants.

<sup>30</sup> General Recommendation 19 goes on to state that sexual harassment will include such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, pornography and sexual demands, whether by words and actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile work environment.

None of the countries under review have a specific or stand-alone sexual harassment law. Countries such as Bosnia and Herzegovina attempt to cover sexual harassment in the Gender Equality Law. Similarly, the Kosovo Gender Equality Law prohibits sexual harassment as a form of gender discrimination. In Macedonia, the labour law covers sexual harassment and all related behaviour, and defines sexual harassment as verbal, non-verbal or physical conduct of a sexual nature.

Despite the fact that the laws articulate sexual harassment, a stand-alone sexual harassment law will be a more powerful tool to address sexual harassment and provide concrete remedies for the violation of the law.

## 6) Lawmaking on Equal Access to Education and Raising Awareness on Gender Equality

Article 10 of CEDAW must inform lawmaking on equal access to education. Under Article 10, States Parties are required to take all appropriate measures, including legislative drafting, to eliminate discrimination against women in education and ensure equality of men and women in all educational fields. The cornerstones of any law on equal rights in education must ensure equal rights in career and vocational guidance, equal access to studies in all categories—in rural as well as in urban areas. Gender equality must be ensured in all fields, including sports education and education ranging from pre-school to technical, professional and higher technical education, and vocational training. CEDAW recognizes that equality in education can only be achieved through the elimination of any stereotyped concept of the roles of men and women at all levels. CEDAW also allows for temporary special measures in areas of education where a gap exists between men and women. A cardinal element of Article 10, which must inform effective lawmaking, calls for access to educational information to help ensure the health and well-being of families, including access to information and advice on family planning.

The legal systems of several countries in Eastern Europe and Central Asia guarantee the equal right to education. Article 35 of the Constitution of the Republic of Moldova, for instance, ensures the right to education,<sup>31</sup> and several provisions of other Moldovan laws address the right to education. Article 13 of the Moldova Law on Culture calls for equal access to education and training for both women and men<sup>32</sup> in evaluation, in scientific-teaching activity, in development of instructional materials and curricula, by the inclusion of gender education in the curriculum, and by mutual respect for the partnership between males and females. The law also strikes down direct and indirect discrimination based on gender, but allows affirmative action measures to promote the balanced participation of women in specific professions where one gender is overrepresented.

Despite equal access to education and equal guarantees in education, gender stereotypes in pedagogical subject matter remain. For example, in Moldova the gender roles captured by images in textbooks and the curriculum still tend to assign women their traditional roles. The portrayal of activities undertaken by women and girls are limited to serving food, growing flowers, teaching, caring for children, the sick and the elderly.

Macedonia provides a positive example of how gender stereotypes can be addressed through the school curriculum. Though not a law, the

<sup>31</sup> Article 35 of the Moldova Constitution:

“1) The right to education is ensured through general obligatory education, high school and professional education and higher education as well as other forms of education and training.

2) The State shall ensure based on the law, the individuals’ right to choose the language of education and training.

3) Learning of the state language shall be ensured in the education establishments of all levels.

4) State education is free of charge.

5) Educational establishments, including private ones shall be established in accordance with the provisions of the law.”

<sup>32</sup> Law on Culture, Law No. 413, 27 May 1999, Official Monitor No. 83-86/401, 5 August 1999.

National Action plan for Gender Equality 2007-2012 of the Republic of Macedonia provides the following strategic goals directed toward elimination of the gender stereotypes in the educational process:

- Introduction of education on gender equality in the process of education and in the scientific research activities at all the levels in the educational process.
- Gender balance in the selection of educational vocations and profiles in secondary and higher education institutions.
- Increased coverage and decreased percentage of drop-outs in the educational process of girls from rural areas and representatives of minority communities and improved access to adult education.

Similarly, Ukraine’s Law on Equal Rights and Opportunities for Women and Men calls for inculcation of gender equality culture and equal distribution of professional and family responsibilities.<sup>33</sup>

<sup>33</sup> Article 21, Securing Equal Rights and Opportunities for Women and Men in Acquiring Education and Vocational Training declares that: “The state shall provide for equal rights and opportunities of women and men in acquiring education.

Educational institutions shall provide for:

Equal conditions for women and men during matriculation, assessment of knowledge, providing student grants and loans;

Development and publication of textbooks and manuals free from stereotypes about roles of women and men;

Inculcation of gender equality culture, equal distribution of professional and family responsibilities.

The central executive body for science and education shall organize expert analysis of curricula, textbooks and manuals for educational institutions as to their compliance with the principle of equal rights and opportunities for women and men.

Curricula of higher educational institutions and retraining courses shall contain disciplines related to securing equal rights and opportunities for women and men, optional courses on legal principles of

The Georgian legal system includes three comprehensive laws on education. The Georgian Law on General Education; the Law on Professional Education; and the Law on Higher Education provide for equal access to education for all and guarantees that it will eliminate all types of discrimination in education. The Tajikistan Law on Educational Institutions calls for the introduction of a special gender course and use of educational curricula that exclude gender discrimination.

To guarantee equal rights to education, several recent law reform initiatives have included creative provisions to address gender stereotypes through education.<sup>34</sup> A good model is the Kosovo Law on Gender Equality (LGE), which affords equal access to education for both men and women in order to ensure their equal active participation in society, family and the labour market.<sup>35</sup> Similar to the Moldovan law, Section 14.2 of the LGE states that all educational authorities are to establish, implement and supervise gender equality policies, especially when it comes to increasing women's access to education. The law also calls for special training and education for women in fields historically dominated by men as a way to address the gender imbalance in those areas.

The Kosovo LGE law also recognizes that negative portrayals of women in the media may cause or reinforce the stereotyping of women and girls and disadvantage and subordinate them. Therefore, the law requires that media—including print, audio-visual and electronic media—promote equality between men and women. The media is called upon to focus on gender sensitive educational programmes, ensure equal participation of men and women in their staffs, and promote the equal role of men and women in the public sphere by providing accurate information on gender equality issues. Further, the LGE prohibits the broadcasting of discriminatory information and

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gender equality on the basis of harmonization of national and international legislation.”

<sup>34</sup> Croatia's Gender Equality Act of 2003; Ukraine's Law on Equal Rights and Opportunities for Women and Men.

<sup>35</sup> Section 14.1 of the Kosovo Law on Gender Equality (LGE).

media materials and prohibits the public display of individuals in a degrading way or on the basis of sexual and gender discrimination. In the education sector, the law also states that both public and private sector institutions are to provide equal rights and opportunities for women and men, including in labour and employment.<sup>36</sup>

In reference to education facilities, the law requires that they should ensure that boys and girls are encouraged to participate equally in all sport and leisure activities during educational hours. Therefore, gender discrimination is prohibited in all schools, educational and other pedagogical institutions.<sup>37</sup> Both the Kosovo LGE and Anti-Discrimination Law provide for special temporary measures to uphold the principles of gender equality, including addressing issues such as the high dropout rate of girls from school. However, such measures have not been implemented in regard to increasing girl children's access to education. Under the Law on Primary and Secondary Education, primary education is mandatory for both girls and boys.<sup>38</sup> Further, the law also provides that teaching about family life issues, including reproductive and sexual health, is to be compulsory in schools.<sup>39</sup> The law also states that occupations that have traditionally been considered as male professions are to be equalized by providing training and educational advantages to women.<sup>40</sup>

In order to implement the legislative principals on gender equality, the Kosovo Ministry of Education, Science and Technology in 2005 drafted and adopted the Kosovo Education Gender Strategy. However, a recent auditing of the Kosovo education system has shown that the text books and teaching materials continue to be gender-biased by showing women and girls in more stereotypical roles than men.<sup>41</sup>

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<sup>36</sup> Section 13.1 of the LGE.

<sup>37</sup> Section 14.3 of the LGE.

<sup>38</sup> See Section 3 and 7.8 on the right to education provision of the Kosovo Law on Primary and Secondary Education.

<sup>39</sup> Section 19.2.c.

<sup>40</sup> Section 14.2 of the LGE.

<sup>41</sup> See for example Kosovo Gender Studies Center, Auditing of the Kosovo Education System, 2006.

## 7) Lawmaking on Violence Against Women

Lawmaking to address violence against women must be endowed with the principles and values enshrined in CEDAW and the Declaration on the Elimination of Violence against Women (DEVAW). Article 16 of CEDAW obligates States Parties to remove discriminatory laws and practices against women. Article 16(1) grants women and girls equality in all matters relating to family and marriage. It also protects young girls from marriage by declaring any such marriages legally void and mandates that States Parties specify a minimum age for marriage.

Similarly, General Recommendation No. 12 of CEDAW requires that States Parties act to protect women against violence of any kind occurring within the family, at the workplace or in any other area of social life. It recommends that periodic reports provide information on the legislation in force to protect women against violence in everyday life—including sexual violence, abuses in the family, and sexual harassment at the workplace.

Recommendation 12 also asks States to adopt measures to eradicate violence against women, to compile data on the existence of support services for women who are the victims of abuse and gather statistical data on the incidence of violence.

In 1993, the Committee on CEDAW adopted General Recommendation 19, which explicitly states that CEDAW prohibits gender-based violence. General Recommendation No. 19 addresses violence against women (including sexual harassment) and emphasizes, among other things, that discrimination under CEDAW is not restricted to action by or on behalf of governments (see Articles 2(e), 2(f) and (5)). For example, under Article 2(e), the Convention calls on States Parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of

violence. They may also be obligated to provide compensation. The Recommendation emphasizes the fact that equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace. Therefore, the Recommendation also suggests that States Parties establish support services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including specially-trained health workers, rehabilitation and counselling. Further, recommendations are made to conduct gender-sensitive training of judicial and law enforcement officers and other public officials for the implementation of CEDAW. Also, it is recommended that measures to overcome family violence should include criminal penalties and civil remedies where necessary in cases of domestic violence. The CEDAW Committee has urged States Parties to place high priority on implementing comprehensive measures to address violence against women and girls in accordance with General Recommendation 19 and has called upon States to enact legislation on domestic violence to ensure that women and girls who are victims of violence have access to immediate means of redress. Further, the CEDAW Committee has asked that governments conduct public campaigns against violence against women and girls—and particularly against trafficking in women and children.

The Declaration on the Elimination of Violence against Women (DEVAW) defines violence as “any gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in the family, such as battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.”

In 1994, the Human Rights Commission appointed a Special Rapporteur to investigate the causes and consequences of violence against women. In 1999, the report by the Special Rapporteur on Violence Against Women adopted an expansive definition of

violence in the family and included, *inter alia*, “woman-battering, marital rape, incest, forced prostitution, violence against domestic workers, violence against girls, sex selective abortions and female infanticide, traditional violent practices against women including forced marriage, son preference, female genital mutilation and honor crimes.”

The model framework prepared by the first U.N. Special Rapporteur on Violence Against Women,<sup>42</sup> Radhika Coomaraswamy, sets out the general standards and core elements for a domestic violence law in compliance with international standards. The framework first urges States to adopt the broadest possible definition of domestic violence, which makes clear that domestic violence can be either physical, sexual or psychological and can include threats, intimidation, coercion, stalking and humiliating verbal abuse.

The model framework prepared by the first U.N. Special Rapporteur also highlights the need to provide speedy and flexible remedies, holistic and comprehensive support and emergency services for victims of abuse and their families.<sup>43</sup> Further, the guidelines focus on the need to train law enforcement officials on how to respond to calls of domestic violence and gender-sensitivity training for judges on issues relating to child custody, economic support and security for the victims in cases of domestic violence.<sup>44</sup> The Special Rapporteur’s guidelines

<sup>42</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights Resolution 1995/85: A framework for model legislation on domestic violence, Commission on Human Rights, 52nd Session, Provisional Agenda Item 9(a), U.N. Doc. E/CN.4/1996/53/Add.2 (1996).

<sup>43</sup> The recommended programs include: education and counseling for both abusers and victims; programs to assist in the prevention and elimination of domestic violence, which include raising public awareness and public education on the subject, expanding the capacity of law enforcement officers to assist victims, and enforcing the law effectively in cases of domestic violence.

<sup>44</sup> CEDAW Committee noted that the Convention was yet to be invoked in a court of law and that although special courts had been established, few legal remedies have been developed, thereby circumscribing women’s access to justice. The

also provide the need to establish departments, programmes, services, protocols and duties, including but not limited to shelters, counselling programmes and job training programmes to aid victims of domestic violence.

Although the legal framework for combating domestic violence has improved,<sup>45</sup> very few countries in Eastern Europe and Central Asia have adopted national anti-domestic violence laws. For example, the Russian Federation does not have a domestic violence or sexual harassment law, but the Criminal Code contains a list of sexual abuses and personal freedom offences,<sup>46</sup> as well as offences against family and minors.<sup>47</sup> However, in the absence of a domestic violence law, the existing legal provisions on domestic violence are inadequate.

As previously stated, several countries have revised their criminal codes to address domestic violence. For example, Macedonia’s recent amendment to the Criminal Code, Article 122, defines and sanctions the phenomenon of violence within the family in a broad manner:

“(19) Family violence shall mean abuse, rude insults, threatening of the safety, inflicting physical injuries, sexual or other physical and psychological violence which causes a feeling of insecurity, being threatened, or fear towards a spouse, parents or children or other persons which live in a marital or other community or joint household, as well as towards a former spouse or persons which have a common child or are have close personal relations.”<sup>48</sup>

CEDAW Committee also recommended that the Convention and the recommendations become part of the legal education of judges, prosecutors and lawyers. Most importantly, China is called upon to set up legal remedies and implement awareness-raising and sensitization measures on those remedies, so that women can have recourse to those remedies.

<sup>45</sup> Several countries have specific domestic violence laws. See Bosnia and Herzegovina.

<sup>46</sup> Definitions of such offences and penalties are in Chapter 18, articles 131-135.

<sup>47</sup> Chapter 20, articles 150-157.

Romania is one of the few countries that has a stand-alone Domestic Violence Law, which came into force in 2003 and covers physical, psychological and sexual violence. Ukraine's Law on the Prevention of Domestic Violence 2001, covers violence against women, including rape, but excludes marital rape from the ambit of the law. In Bosnia and Herzegovina, the law on protection against family violence in both entities introduces new police procedures in the Brčko District, the creation of focal points in the cantonal ministries for internal affairs in the Federation of Bosnia and Herzegovina, and the promotion of an SOS hotline in the Republika Srpska to assist women victims of violence.

### Emerging Trends in Domestic Violence Lawmaking

Although very few countries have separate domestic violence laws, many countries, including Kazakhstan, have draft domestic violence laws under consideration in Parliament. Despite these good faith efforts to reform the legal system, unless corresponding gender sensitization programmes are formulated and adequate support systems put in place, these laws will provide inadequate protection to women victims of violence. Furthermore, the laws on the books are poorly implemented. In Belarus, for example, the author of the Country Report writes that "family conflicts are one of the most common reasons for which the police are called, but their role in dealing with complaints of violence in the family is traditionally one of limited intervention."

In the final analysis, the lack of clear definitions in the law and lack of clarity in implementation processes are impediments to the fulfilment of the letter and spirit of CEDAW.

As the Kosovo report argues, even when laws seem to comply with international human rights standards, they lack specificities such as a clear definition of violence. This ambiguity in the law leads to discriminatory practices and gender-based violence.

The Bosnia and Herzegovina law provides a definition that could be a useful guide in other law making initiatives. Article 4, para. 1, point b

of the Gender Equality Law (GEL) defines gender-based violence as:

"any act that causes physical, mental, sexual or economic harm or suffering, as well as threats of such acts that seriously impede a person's ability to enjoy his or her rights and freedoms on the grounds of gender equality in both public and private life, including trafficking in human beings for the purposes of forced labour, and constraints on or the arbitrary deprivation of freedom."

Following this definition, Article 17 of the Gender Equality Law prohibits all forms of violence in private and public life on the grounds of gender and directs the relevant authorities to undertake appropriate steps to eliminate and prevent violence on the grounds of gender in public and private life, and apply instruments for the provision of protection, assistance and compensation to the victims of violence. Particularly, the law requires all relevant authorities to undertake steps to prevent gender-based violence, particularly in the field of education, to eliminate prejudices, customs and all other practices based on the idea of the inferiority or superiority of either sex or on the stereotypical roles of men and women. This includes, but is not restricted to, education and awareness raising among State officials, the general public and others.

As is shown in the Moldova case study, the introduction of the Domestic Violence Law has a powerful transformative potential, thus it is important that domestic violence lawmaking in accordance with CEDAW and DEVAW become a cornerstone of future law reform in Eastern Europe and Central Asia.

## 8) Rural Women

CEDAW pays special attention to the rights of rural women. Article 14 states that rural women have rights to participate in the planning and implementation of development at all levels; have access to adequate health care facilities, including information counselling and services in family planning; to participate in all community activities through employment or

self-employment; to have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement programmes.

Despite CEDAW's emphasis on rural women and despite the fact that a majority of women in Eastern Europe and Central Asia live in rural populations, very few laws and policies in the region aim to advance rural women's participation in the development process.

## 9) Child Marriage

Laws and regulations on marriage must be consistent with Article 16 of CEDAW, which prescribes equal rights for men and women entering into marriage and the same right to freely choose a spouse with free and full consent. Most importantly, Article 16(2) prohibits child marriage and affirms that the betrothal and marriage of a child shall have no legal effect. Every country in Eastern Europe and Central Asia has ratified the Convention on the Rights of the Child (CRC), which declares in Article 1 that "a child means every human being below the age of eighteen years."

Child marriage is also among the most common issues addressed by the CEDAW Committee in its dialogue with States Parties, in oral questions raised when considering the State Parties' reports and in the Concluding Observations.<sup>49</sup> The Convention calls for non-discrimination against women and girls applies to all ages, including the girl child. While the CRC does not specifically prohibit child marriage, reading the CRC in light of CEDAW provides an urgent rationale to abolish early marriage through legislation and create strict measures to monitor those laws.

With some exception, most countries in Eastern Europe and Central Asia have raised the age of marriage for both men and women to 18 in accordance with the CRC and CEDAW. In July

<sup>49</sup> Goonesekere, Savitri and De Silva de Alwis, Rangita (2005), *Women's and Children's Rights in a Human Rights Based Approach to Development*, Working Paper, Division of Policy and Planning, UNICEF, p. 14.

2008, the Government of Moldova introduced amendments to the Family Code on the marriage age to raise it from 16 to 18 in accordance with the CEDAW recommendations. However, the law still allows the age of marriage to be lowered on certain grounds.<sup>50</sup> Although the family law defines 18 as the minimum age of marriage in the Russian Federation, under special circumstances marriages can be entered into at age 16.

Contrary to the letter and spirit of CEDAW and CRC, Tajikistan, Turkey and Ukraine allow marriage under the age of 18. In Turkey, 17 is specified as the legal age of marriage for both sexes,<sup>51</sup> and in Ukraine the minimum statutory age of marriage for men is 18 years for men and 17 for women.<sup>52</sup> A similar provision appears in Armenia's Family Code.<sup>53</sup> In Tajikistan, the statutory minimum age of marriage for both men and women is 17. In Bulgaria, although the minimum age of marriage is set at 18, permission can be obtained by the District Court for persons aged 16 and up to marry. In a similar vein, Tajikistan's Family Code allows in exceptional cases for the parties to request the court to reduce the age of marriage even below 17, to age 16.

To pursue the best interests of children, parents and governments are responsible for protecting children's health, education, development and overall well-being to the best of their capacities. Because child marriage harms a girl's health—particularly her sexual and reproductive health, which is manifested in maternal mortality and morbidity due to early pregnancies and STIs—States are obliged

<sup>50</sup> Moldova Family Code, Article 14. Matrimonial age:

"1) The minimal matrimonial age shall be 18 years.

2) For well-founded reasons it is possible to approve marriage and to reduce the matrimonial age, but not more than by 2 years. The reduction of matrimonial age shall be approved by the local public administration body within the territorial unit where the persons wishing to marry reside, based on their request and the agreement of the child's parents."

<sup>51</sup> Article 124 of the Civil Code, No. 4721 (2001).

<sup>52</sup> Article 22 Family Code of Ukraine.

<sup>53</sup> Article 10 of Armenia's Family Code.

under CEDAW and CRC “to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”<sup>54</sup> Inaction on the part of the States to eliminate child marriages also violates the principal of life, survival and development and girls’ right to the highest attainable standard of health of the CRC<sup>55</sup>. This further violates girls’ rights to health guaranteed in CEDAW.<sup>56</sup> Sexual and reproductive health problems linked to early marriage is also a result of girls’ lack of information and education on sexual and reproductive health issues, and thus violates CEDAW’s entitlements that girls shall have access to the necessary information, education and means to enable them to decide freely and responsibly on the number and spacing of their children.<sup>57</sup>

Early marriage disrupts girls’ schooling and employment opportunities and violates girls’ right to education enshrined in CEDAW and the CRC<sup>58 59</sup> and their right to employment

<sup>54</sup> Article 24.3 of the CRC.

<sup>55</sup> Article 6 of the CRC states that “(1) States Parties recognize that every child has the inherent right to life. (2) States Parties shall ensure to the maximum extent possible the survival and development of the child.” Article 24(1) of the CRC states that States should “recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

<sup>56</sup> Article 12 of CEDAW guarantees non-discrimination on the grounds of sex in the field of health care and access to health care services, including those related to family planning and pregnancy.

<sup>57</sup> Article 16(e) of CEDAW.

<sup>58</sup> Article 10(a) of CEDAW guarantees equality in preschool, general, technical, professional and higher technical education, as well as in all types of vocational training.”

<sup>59</sup> A minimum age for completion of compulsory education is not mentioned in the CRC. However, the CRC Committee’s Guidelines for Periodic Reports require States to “indicate the particular measures adopted to make primary education compulsory and available free for all, particularly children, indicating the minimum age for enrolment in primary school, the minimum and maximum ages for compulsory education.” In Article 28(1)(b), the CRC provides that States should encourage the development of different forms of secondary education, including vocational education, make

provided by CEDAW, which includes the right to vocational training.<sup>60</sup> In light of the early childbearing that mostly follows child marriage, the CEDAW Committee has forcefully emphasized the negative affect child marriage has on the education and employment of girls, stating that “the responsibilities that women have to bear and raise children affect their right of access to education, employment and other activities related to their personal development. They also impose inequitable burdens of work on women.”

The rights to marry and found a family are the rights of adults, not children and adolescents. The social pressures on young brides to bear a child immediately after marriage are great, as it is a principal means of proving their worth as wives, daughters- and sisters-in-law. Young girls do not have the capacity to negotiate with their spouses, nor the information and services to delay the birth of their children. Thus they are denied the right to freely and responsibly decide on the number and spacing of their children, a right that is specified in CEDAW.<sup>61</sup>

## 10) Equality in Marriage and Family

The letter and spirit of Article 16 of CEDAW must animate the principles of family law and marriage law. Article 16 of CEDAW asks that States Parties take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family. Laws that comply with CEDAW must ensure equal rights for men and women to enter into a marriage of one’s choice; must guarantee equal responsibilities during marriage and in relation to matters relating to children, including the number and spacing of children, the custody of children, the right to choose a family name, profession and occupation; and must establish equal rights to ownership, acquisition, management, administration, enjoyment and

them accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance. Similarly, CEDAW clearly guarantees the equal access to education for girls and women.

<sup>60</sup> Article 11.1(c) of CEDAW.

<sup>61</sup> Article 16(1). of CEDAW.

disposition of property, including inheritance of property.

General Recommendation No. 21 of CEDAW also addresses the issue of equality in marriage and family relations. This Recommendation makes clear that any law or custom that does not acknowledge the right of women to own an equal share of the property with the husband during a marriage or *de facto* relationship, or when that marriage or relationship ends, violates CEDAW. Further, any law or practice concerning inheritance that discriminates against women is considered a contravention of the CEDAW principles.

In examining the landscape of the laws in Eastern Europe and Central Asia, one sees that Ukraine provides for mandatory birth<sup>62</sup> and marriage registration.<sup>63</sup> Although the Family Code allows women the equal rights to choose to marry or remain unmarried; to choose when to marry; and to choose whom to marry and divorce, the law still retains gender-based inequality in the minimum age of marriage.<sup>64</sup> A positive characteristic of the Family Code is that it allows courts to take into consideration the care of children with disabilities when dividing property between husband and wife at divorce.<sup>65</sup>

Transformative gender equality in the public sphere can be achieved only through gender equality in the private sphere. New legal reforms, such as the Ukraine law on gender equality, define gender equality in both public and private life—including in the family. On the other hand, some laws make explicit references only to equality in public life. For example, the Albanian Law of Gender Equality explicitly refers only to gender equality in public life.<sup>66</sup>

Both Tajikistan<sup>67</sup> and the Kyrg Republic<sup>68</sup> have directly addressed in legislation the need to

<sup>62</sup> Article 122, Family Code of Ukraine.

<sup>63</sup> Article 21.1-2, Family Code of Ukraine.

<sup>64</sup> Article 17, Family Code of Ukraine.

<sup>65</sup> Article 70, Family Code of Ukraine.

<sup>66</sup> Republic of Albania, The Assembly, Law No.9198, 26, February, 2004, On an Equal Gender Society, Article 1.b.

<sup>67</sup> The law of the Republic of Tajikistan State guarantees equal rights for men and women and equal opportunities in the exercise of such rights, 2005.

consider family responsibilities of employees of both sexes. The Kosovo law goes even further to embody the principles of gender equality in child care responsibilities and takes into consideration the need for parental leave in the event that a child is hospitalized due to sickness. Further, as seen below, parental leave up to three months is granted for parents who are engaged in less than 25 percent of active labour. All provisions apply to the care of natural as well as adopted children.<sup>69</sup>

Most laws provide paid and non-paid leave for childcare of young children or children with disabilities. Under Ukraine's labour law, mothers who take care of HIV-positive children under age 16 have the right to annual vacations in the summer or at any time appropriate for them. The law states that "If such [a] child is cared for by [the] father or other person in this case these persons have the same right." Under Article 232 of its labour law, Uzbekistan also allows women to take leave under special circumstances:

"Women with two or more children up to 12 years of age or with a disabled child up to 16 years of age shall be provided additional paid leave of not less than three working days per year. Women with two or more children up to 12 years of age or with [a] disabled child up to 16 years of age shall be provided, at their will, unpaid annual leave of not less than fourteen calendar days."

Once again, these provisions do not extend to the father unless the mother is no longer present in the child's life.

The statutory age of marriage is one the most pressing and urgent areas of law reform must be addressed. The statutory age of marriage in the countries of Eastern Europe and Central Asia must be uniformly raised to age 18 in compliance with CEDAW and CRC, and on no grounds should this provision be qualified.

<sup>68</sup> Law of the Kyrg Republic on the Basics of the State Guarantees of Gender Equality, Law on Gender Equality in Labour, 2003.

<sup>69</sup> Article 15(a), section V, Kosovo Law on Gender Equality, 2004.

## 11) Some Elements of Disability Lawmaking

General Recommendation 18 of CEDAW recommends that States Parties to CEDAW take measures to address the equal access of women with disabilities to education, employment, health services and social services and ensure the participation of women with disabilities in all areas of political, social and cultural life. Further, General Recommendation 24 of CEDAW analyses the right to health in the context of women with disabilities and also acknowledges that cultural or traditional practices carry a high risk of causing discrimination. General Recommendations to CEDAW must be read along with the CRC provisions dealing with children with disabilities. Article 23 of the CRC, along with all of the provisions of the CRC, affirms that children with disabilities should enjoy a full and decent life in conditions that ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

Although only Croatia and Turkmenistan are among the few countries of Eastern Europe and Central Asia that have ratified the Convention on the Rights of Persons with Disabilities (CRPD), the CRPD provides a paradigm change in the way States Parties must draft legislation on persons with disabilities. Building on the rights-based approach, the CRPD affirms the equality between men and women and recognizes in Article 6 that women and girls with disabilities are vulnerable to multiple discrimination and calls upon States Parties in Article 8 to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age..." In Articles 23 and 25 of the CRPD, States Parties are called upon to provide age appropriate information and education on reproductive and family planning education and to provide health care and programmes in the area of sexual and reproductive health.

These cardinal values of CEDAW, CRC and CRPD must inform effective legislation on the rights of persons with disabilities, including women and children with disabilities.

Very few countries in Eastern Europe and Central Asia have stand-alone disability laws. A few countries have provisions relating to women and children with disabilities included in other areas of the law. For example, Macedonia not only provides for children with disabilities to access education, but also provides incentive to actualize those rights. The Macedonian Law on Primary Education allows every pupil with a special need the right to free transport to school regardless of the distance between the home and school.<sup>70</sup>

Uzbekistan law allows an employee who takes care of young children or a sick member of the family the option of part-time work. However, the provision that allows certain benefits, such as special leave for those taking care of children with disabilities, is only afforded to women employees. This again reinforces the notion that women are the sole or primary caregivers. Although this might reflect the reality, law reform must play a constitutive and normative role in changing gender stereotypes and creating more equal caregiving opportunities for both men and women.

## 12) Reproductive Health Lawmaking

Article 12 of CEDAW obliges States Parties to take all measures, including implementing legislation to eliminate discrimination in women's access to health care and health services, which includes those relating to family planning. Legislative developments are also called upon to guarantee women services in connection with pregnancy, confinement and the postnatal period.

Few countries in Eastern Europe and Central Asia have stand-alone reproductive health laws.<sup>71</sup> The Kosovo Law on Reproductive

<sup>70</sup> Article 61, the Macedonian Law on Primary Education.

<sup>71</sup> Armenia's Law on Reproductive Health and Reproductive Rights of Humans was adopted in 2002. Tajikistan's Law on Reproductive Health and Reproductive Rights was also adopted in 2002. The reproductive health law of Georgia is regulated by

Health outlines the responsibilities of the Ministry of Health in the implementation of the law. The law states that the Ministry of Health must provide “information, education and advice on sexual and reproductive health during life cycle” and that every person “regardless of gender, ideological, religious or cultural orientation is guaranteed-ensured the right to information and education for sexual and reproductive health during all his/her life cycle.” The law also guarantees every person “the right to make a decision on realization of reproductive rights according to their free wish and interest without any discrimination, enforcement and violence.” The law stipulates that the Ministry of Health should enact policies and subsidiary legislation to create enforcement mechanisms for implementing the law on reproductive health. However, the Ministry of Health has not enacted any subsidiary legislation so far to implement such a crucial role related to women’s access and information on reproductive rights.

Similarly, Tajikistan’s strategic Plan on Reproductive Health sets comprehensive goals and objectives on reproductive health. Unfortunately, they are not fully addressed at the practical level. For instance, no action plan exists to implement the reproductive rights of refugees and internally displaced persons.

### 13) HIV/AIDS Lawmaking

The guarantees under Article 12 of CEDAW cannot be fulfilled unless legislative measures are taken to combat sexually transmitted diseases, particularly HIV/AIDS. Very few countries in Eastern Europe and Central Asia have HIV/AIDS laws or policies dedicated to women and girls. Nor do any laws or policies pay particular attention to women’s reproductive role and female subordination as factors that make women and girls vulnerable to HIV/AIDS. Women are doubly vulnerable to reproductive and other gender-specific health

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Chapter XXIII, Family Planning of the Law of Georgia on Healthcare. Serbia has a law on Abortion in Medical Facilities, and Kazakhstan has a Law on Reproductive Health of Citizens and Guarantees of Their Implementation, 16.06.2004 N 565-2.

afflictions in trafficking situations where gender-specific problems such as rape, forced abortions and limited access to birth control become more pronounced. Women in forced prostitution also suffer from sexually transmitted infections, including HIV/AIDS.

In accordance with Belarus’ State Programme of HIV Prevention for 2001–2005, the National Strategic Action Plan to Fight the HIV/AIDS Epidemic for 2004–2008 and the Ministry of Public Health Law, all citizens have the right to anonymous and free testing for HIV in any health care facility. Antiretroviral drugs are accessible to all pregnant women and newborns living with HIV/AIDS. HIV testing in Belarus is mandatory for blood donors, prisoners, people with sexually transmitted infections, drug users and sex workers.

In Belarus, abortions are permitted by law, and a woman can choose to terminate a pregnancy within 12 weeks of conception. Within 13-22 weeks of pregnancy, abortion can be sanctioned only with the woman’s consent in cases of rape, medical complications, or the mother being under age. Interruption of pregnancy when there are medical-genetic indications (such as when the fetus reveals a birth defect incompatible with life) can be made any time after the defect is revealed—with the woman’s personal consent.

Turkmenistan adopted the law ‘On Prevention of the AIDS Disease’ in 1991, and its law ‘On Prevention of the Disease Caused by the Human Immunodeficiency Virus (HIV Infection)’ was adopted in July 2001.

Although most countries have some kind of programme or policy on HIV/AIDS, these policies lack a clear gender perspective, or are silent on the issue of greater vulnerability of women and girls to HIV/AIDS or to the fact that women are disproportionately concentrated as caregivers of HIV-positive family members.

Poverty, early marriage, trafficking, sex work, migration, lack of education, gender discrimination and violence are some of the triggering factors affecting the spread of HIV/AIDS among women and girls. Double standards in female/male sexual relations and inequality in family relations make it acceptable for men to have multiple partners, while women

must be faithful to one partner. Economic disempowerment also makes women dependant on abusive male members in the family and community and restricts their capacity to practice safe sex and access medical help.

More than any other disease, HIV/AIDS has exposed the discrimination that makes women more vulnerable to infection. Thus, countering the prevailing gender stereotypes that increase risky behaviours and the multiple and intersecting grounds of discrimination against women must be a major factor in addressing HIV/AIDS in women.

The gap between the law on the books and the law in practice is also present in this area. Despite general legislative measures ensuring equality and non-discrimination, this gap is exacerbated by the absence of gender-disaggregated data and a weak gender budgeting approach.

As the Country Report from Moldova points out, the Law on Reproductive Health and the National Strategy on Reproductive Health reflects the international WHO standards in the field and cover women and men equally.<sup>72</sup> However, due to lack of resources for implementation, the law remains mostly declaratory.

A major obstacle to the realization of gender equality and other women's human rights is the absence of a specialized gender equality body at the governmental level that has implementing and monitoring power and is responsible for gender-based policy in all spheres.

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<sup>72</sup> The main areas regulated by law include the right to family planning and safe maternity; reproductive health education for adolescents and youth in schools; domestic violence and sexual abuse; trafficking in human beings and managing migration; and reproductive health for men.

## CONCLUSION

This analysis reveals that CEDAW has provided important benchmarks for law reform and the CEDAW Committee recommendations have provided valuable guidelines and impetus for revision of the laws in favour of women's human rights.

Efforts to define and reframe equality have been part of a large trend in Eastern Europe and Central Asia. Many countries that were reviewed do not define gender discrimination, thus leaving it open for arbitrary and capricious interpretations. Few laws have a right of action for rights violations or implementation of provisions.

Even when laws on the books are strong, they have little impact unless corresponding implementation mechanisms are established to redress wrongs and provide remedies for rights violations. At the same time, one of the challenges facing the implementation of laws is the lack of effective mechanisms for the investigation of rights violations and for their redress. Several newly drafted laws, including laws in Croatia and Kosovo, have set up Gender Equality Ombudsman/Equal Opportunities offices with quasi-judicial responsibilities or a Gender Equality Attorney to prosecute gender-based violations. These offices will be effective only if they are able to enforce their decisions.

Equal protection and anti-discrimination are the cornerstones of CEDAW. Building on the goal of eliminating discrimination in all its forms, the Convention both identifies various realms in which women face heightened levels of discrimination and proposes means by which discrimination in these realms can be challenged. CEDAW goes beyond formal equality to embrace a view of equality that focuses on the laws' effect on women.

This analysis reveals a tension between protecting the special needs of women and achieving equality of employment between men and women. Special protection reinforces negative stereotypes, which perpetuate the

notion that women are fragile and more comfortable in their traditional caregiving roles. Protective measures also reflect an implicit conceptualization of a woman's role in society by defining her solely as a childbearer and nurturer. Therefore, it is important to design protective measures that foster a more dynamic conceptualization of women's roles. The best response to reform of protective legislation for women is to extend protective legislation to both men and women. Non-discriminatory protective legislation will also create more opportunities for men to assume family responsibilities.<sup>73</sup> It is important to draft guidelines now in order to change stereotypes that place and keep women in low-paying jobs and positions while also developing creative strategies to enforce laws pertaining to women's equality.

In this vein, it is important to outlaw differential retirement policies that call for women to retire earlier than men, and give the opportunity for both men and women to retire early if they wish.

Despite articulations of gender equality, there is little real effort to meet those goals. It is important that concrete steps be taken to make gender equality a reality. Gender equality in employment and its integration with family activities seems to be the hallmark of most revisions in gender equality laws in the countries of the Council of Europe. Legislation like the newly-promulgated law on gender equality in Spain, passed in March 2007, has taken the lead in transforming gender roles by shaping both men's and women's work and family aspirations. Mandating pregnancy leave,

<sup>73</sup> For example, the 1948 International Labour Organization (ILO) prohibition on night work for women was reversed at the 1990 ILO Conference. The 1990 Convention is more flexible than the 1948 Convention and allows women and men to be employed at night. However, though it aims to improve conditions for both male and female night workers, it still preserves the ban on women's night work during pregnancy. The 1990 Convention also provides: 1) health monitoring—medical exams, advice, information on possible health consequences; 2) increased pay for these hours of work; 3) maternity protection—alternative work or extension of leave up to eight weeks before and after birth; and 4) the right to transfer to day work for medical reasons.

not just for the mother but for the father as well, has eased the burden of care on the mother. The workplace has been reinvented to recognize the role that both parents play in childbearing and child-rearing. For example, the highlights of the new Spanish law include 15 days of paternity leave for new fathers. This provision changed a little-used arrangement in which mothers of newborns could lend all or part of their 10-week leave to the father. According to the new law, Spanish companies that achieve more of a male-female balance among their executives and at lower levels will receive favorable treatment when they bid for government contracts. This provision hopes to address the way in which women are grossly underrepresented in Spanish businesses. Similarly, the gender equality law of Iceland, urges employers to take concrete measures, such as promoting increased flexibility in organizing work and working hours, taking into consideration the needs of the labour market and the family situation of employees, thus making it easy for employees to return to work after parental leave and to take time off from work on grounds of *force majeure* for urgent family reasons.<sup>74</sup> These emerging trends in the countries belonging to the Council of Europe can be used as best practices in law reform in Eastern Europe and Central Asia.

A look at the protective labour regulations reveals an analogous cause-and-effect relationship between protective labour laws and gender bias in the hiring and firing of employees. In Central Asia and Eastern Europe, protectionist provisions can only reinforce notions that motherhood is the natural role for women. The unequal retirement policies also perpetuate the myth that women are weaker than men, while subordinating women in the work world.

The HIV/AIDS laws and policies in the countries that have such laws and policies put in place do not include a gender perspective on the ways women are disproportionately affected by HIV/AIDS and the way in which Roma women are doubly vulnerable to HIV/AIDS. Even though antiretroviral drugs are made available to women, including pregnant women, there is no understanding in the law

that pervasive gender inequality is both a cause and consequence of HIV/AIDS.

The unequal and low ages of marriage are among the most discriminatory provisions in some of the country laws in Eastern Europe and Central Asia. One of the first steps taken should be to bring the minimum age of marriage in line with CEDAW and CRC and ensure that the minimum age of marriage is made mandatory.

In the final analysis, in the absence of implementing regulations, law reform represents only symbolic gains for women's rights. These transformations in the law in Eastern Europe and Central Asia can be attributed in part to the role of international treaties and the benchmarks they have provided governments and non-governmental organizations in the drafting of domestic policies on women's issues. But they need to go further and embrace the letter and spirit of CEDAW. It is time now for legal reform to advance from mere laws on the books that protect women to a rights agenda that champions women's rights. Unfortunately, most laws in the region are little more than hortatory and aspirational statements that provide no corresponding redress mechanisms for rights violations. Much has been done in Eastern Europe and Central Asia to achieve equality for women on paper, but much still remains to be done to fully realize the potential of those rights.

<sup>74</sup> Article 16, Iceland Act on the Equal Status and Equal Rights of Women and Men, 2000.

# ANNEX 1: Country Abstracts

## REPUBLIC OF ARMENIA

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The Armenian Constitution does not make any reference to a specific convention. Prior to the ratification of an international treaty, the Republic of Armenia's Constitutional Court examines a treaty to review it for compliance with the Armenian Constitution. When ratified, international treaties are self-executing and do not need the passage of additional national legislation for domestic application.<sup>75</sup> The Constitution guarantees that "the State shall ensure the protection of fundamental human and civil rights in conformity with the principles and norms of the international law."

The Constitution prohibits any discrimination based on any grounds, such as "sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or other personal or social circumstances."

The Labour Code guarantees the "equality of parties to labour relations regardless of . . . gender,"<sup>76</sup> and gender may not be considered as a legitimate ground for severing a labour contract. The law mandates that women get equal pay "for the same work or for the work of equal value." The Labour Code also attempts to address sexual harassment and defines it as a "violation of equality between women and men."

The Criminal Code (2004) provides remedies for direct or indirect discrimination. Under the Criminal Code, direct or indirect violation of human rights and freedoms because of a person's gender shall be punishable by fines, imprisonment and/or, for officials, by forfeiting the opportunity to hold certain positions or to engage in certain activities. However, nowhere in the Constitution or the legal system is the term "discrimination" defined.

A special temporary measure requires a 15 percent quota for women on political party lists in elections to the Armenian Parliament.<sup>77</sup>

The minimum age of marriage as set out in the Family Code discriminates between men and women. The minimum age of marriage currently is 18 for men and 17 for men. A recommendation to amend the provision to equalize the age for both sexes is part of a package to be submitted to Parliament in the near future.

A draft Law on the Provision of Equal Rights and Equal Opportunities for Women and Men has been submitted to the government and will soon be submitted to Parliament for consideration. This draft provides definitions and explanations of discrimination and gender equality and is modeled after the definition provided in Article 1 of the CEDAW Convention.

Some existing laws and policies contain elements of substantive equality, including temporary special measures, affirmative action and special treatment and protection. Most of them, however, are limited to pregnant women. Thus, under the Armenian Labour Code, a "labour contract cannot be cancelled with a pregnant woman for the entire pregnancy period. . . during the maternity leave and one month after it"<sup>78</sup> As per the Law on Health Care and Services to Population (as amended on 6 November

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<sup>75</sup> Law on the International Treaties of the Republic of Armenia.

<sup>76</sup> Article 3 of the Labour Code.

<sup>77</sup> Electoral Code 2005.

<sup>78</sup> Article 107 of the Labour Code.

2000), “a woman has the right to get health care and medical services related to pregnancy and childbirth within the framework of annual targeted health care programmes guaranteed by the State.”

According to the Criminal Code, pregnant women cannot be sentenced to corrective labour or to life in prison. Pregnant women can also be given a reprieve or have a sentence reduced. The Criminal Code also provides sanctions for the unjustified refusal to hire a pregnant woman or for groundless termination of her employment. The Criminal-Penitentiary Code, on the other hand, prohibits the employment of pregnant women and women’s involvement in unpaid work. The law also calls for a nourishing diet for pregnant women and special arrangements for their children.

## REPUBLIC OF BELARUS

The Belarusian Constitution affirms that all people are equal before the law and are entitled without discrimination to equal protection of their rights and legitimate interests. However, a direct prohibition of discrimination on the basis of sex or an explicit provision on gender equality is absent from the Constitution. Belarus also lacks a specific gender equality law.

The Criminal Code addresses not only trafficking in human beings, but also four other crimes closely related with trafficking, including profiting from prostitution or creating conditions for practicing prostitution; involvement in prostitution or compulsion to continuing practicing in prostitution;<sup>79</sup> kidnapping, if the actions are committed with the aim of exploitation;<sup>80</sup> and illegal steps taken to secure employment abroad.<sup>81</sup>

The Law on Education (2007) grants women and men equal opportunities to education and vocational training, continuing education and non-formal education.

Women are restricted from certain types of employment, including heavy jobs and jobs with dangerous working conditions in which the employment of women is prohibited (mainly in the chemical, oil processing and mining industries and in the energy sector and construction). This bars women from a large pool of employment opportunities.<sup>82</sup>

Although there is no specific law to combat HIV/AIDS, in accordance with the State Programme of HIV Prevention for 2001–2005, the National Strategic Action Plan to Fight the HIV/AIDS Epidemic for 2004–2008 and the Public Health Law, all citizens have the right to anonymous and free testing for HIV in any health care facility. The Ministry of Public Health also provides antiretroviral therapy, free of charge, and makes it accessible to all pregnant women and newborns living with HIV/AIDS.

## BOSNIA and HERZEGOVINA

The Bosnia and Herzegovina Constitution provides for the direct application of human rights conventions. The Constitution of Bosnia and Herzegovina also affirms the equality of women in its anti-discrimination clause.

The Gender Equality Law of Bosnia and Herzegovina (2003) guarantees equal opportunities to all citizens in all areas, and prevents direct or indirect sex discrimination.

<sup>79</sup> Article 171 of the Criminal Code.

<sup>80</sup> Article 182 of the Criminal Code.

<sup>81</sup> Article 187 of the Criminal Code.

<sup>82</sup> The Decree of the Council of Ministers of the Republic of Belarus of May 26, 2000, No. 765, approved the List of Heavy and Hazardous Jobs.

The Gender Equality Law (GEL) guarantees everyone equal rights on the basis of gender in employment. Gender-based violence is defined broadly as “any act that causes physical, mental, sexual or economic harm or suffering, as well as threats of such acts that seriously impede a person’s ability to enjoy his or her rights and freedoms on the grounds of gender equality in both public and private life, including trafficking in human beings for the purposes of forced labour, and constraints on or the arbitrary deprivation of freedom.”

Although in theory, the Bosnia and Herzegovina Gender Equality Law provides for affirmative action,<sup>83</sup> no provisions have been made to operationalize this law. Although the law was adopted in June 2003, this provision of the law has not yet been implemented.

An interesting provision of the GEL is the stipulation against sexual harassment and violence against girls in the education system. The law authorizes all relevant authorities, educational institutions and other juristic persons to provide effective mechanisms for protection against discrimination and sexual harassment. Moreover, the law prohibits disciplinary or other punitive measures against a person for bringing a claim for discrimination, harassment or sexual harassment or giving evidence in relation to discrimination, harassment or sexual harassment. Despite these good faith efforts, little appears to be done to address sexual harassment in the education system.

The Law on Labour allows for a father of the child to use the right to paternity leave only in case of the death of the child’s mother or in the event the mother abandons the child or if the mother is prevented from exercising this right to maternity leave due to valid reasons. The law does not foresee the possibility of having parents share parental leave.

The Law on the Protection from Domestic Violence (2005) establishes protection for victims from domestic violence, but the law does not focus on the protection of victims if they are pregnant. Bosnia and Herzegovina lacks a special law on reproductive and/or sexual health. This issue is regulated by the laws on health care protection.

## REPUBLIC of BULGARIA

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The Constitution of the Republic of Bulgaria and the Protection Against Discrimination Act (PADA) (2003) guarantee women’s equal protection under the law. PADA defines direct and indirect discrimination and outlaws both—unless indirect discrimination is a means of achieving an appropriate result, thereby guaranteeing affirmative action in law.

The Labour Code also forbids direct or indirect discrimination based on ethnicity, origin or sex. There is inadequate focus on vulnerable groups of women, such as Roma.

The Law of Health (2005), provides for special health protection for children, pregnant women and mothers of children up to one year of age, and persons with physical and mental disabilities. However, there is no focus on women-specific risk factors.

The Law on Protection Against Domestic Violence (2005) provides for civil orders of protection by the court.

Although the minimum statutory age of marriage is 18 years for both women and men, the permission of the presidents of the District Court can be obtained for persons of 16 years and up to enter into marriage.

<sup>83</sup> “Establishment of a norm, criterion, or practice that can be justified objectively by achievement of a legitimate aim the effect of which is proportionate to the necessary and justified measures taken to achieve the aim is not considered discrimination based on gender.”

Despite laws on the books ensuring equality and anti-discrimination, the reality is very different. There is a clear disconnect between law and practice. There are no effective mechanisms to address gender stereotyping, sexual harassment and gender-based segregation in labour. The lack of concrete affirmative action plans and a gender budget also undermines the laws.

The lack of national gender machinery responsible for the day-to-day policy on gender equality impedes the actualization of laws in Bulgaria.

## GEORGIA

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International agreements and conventions to which Georgia is a party take precedence over the domestic law.

In the absence of a stand-alone gender equality law, the Parliament of Georgia adopted the State Concept on Gender Equality (2006) based on CEDAW and Council of Europe definitions was and intended to become the instrument for defining State gender policy. The aim of the Concept is to support the effective implementation of equal rights and opportunities for men and women in all areas of life and to set appropriate actions to prevent and eliminate all forms of discrimination based on sex.

The criminal law of Georgia sets out provisions that prohibit discrimination based on race, colour of skin, language, sex, attitude to religion, confession, political or other view, nationality, ethnicity, social class, membership in any association, origin, place of residence and material condition.

The Labour Code of Georgia also outlaws “any type of discrimination due to race, colour, ethnic and social category, nationality, origin, property and position, residence, age, gender, sexual orientation, limited capability, membership of religious or any other union, family conditions, political or other opinions” in employment relations.

The Law on Professional Education 2000 and the Law on Higher Education 2004 also deal with the issue of sex discrimination and gender equality. The Georgian Law on General Education provides for equal access to education for everyone. Further, it sets out guarantees to eliminate all types of discrimination in education. The Law on Professional Education also deals with the issue of equal access to education. However, the law expressly obligates professional education centers to guarantee equal treatment to all students despite their sex or other characteristics. In this case, the law expressly prohibits discrimination based on sex. The Law on Higher Education provides that the State and institutions of higher education should ensure accessibility and openness of higher education and prohibit all forms of discrimination in the sphere of higher education, on academic, religious and ethnic grounds, gender, social origin or any other grounds.

The Law Against Trafficking (2006) and the Law on the Elimination of Domestic Violence Protection and Support to its Victims (2006) set out appropriate action plans were for the implementation of these laws.

The Law on HIV/AIDS Prevention and Control (1995) was revised in 2000. Since December 2004, Georgia has ensured universal access to antiretroviral therapy for all registered people.

## REPUBLIC of KAZAKHSTAN

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The Constitution of the Republic of Kazakhstan provides an anti-discrimination clause and outlaws discrimination for reasons of “origin, social class, property status, occupation, sex, race, nationality, language, attitude towards religion, beliefs, place of residence or any other circumstances.” The

Constitution asserts that “marriage and family, motherhood, fatherhood and childhood shall be under the protection of the State.”

A draft Law on Prevention of Domestic Violence is under consideration in Parliament, but has not yet been adopted. Another draft Law on the Health of the Population and the Public Health Service System has been finalized and submitted to the Lower Chamber of the Parliament.

## KOSOVO (UNSC 1244)

The Constitution of Kosovo<sup>84</sup> was adopted by the Kosovo Assembly in 2008. The Kosovo Law on Gender Equality (2004) was promulgated by a UN Interim Administration Mission in Kosovo (UNMIK) Regulation. Kosovo also has a Law on Anti-Discrimination (ADL) promulgated that same year.

Both the Kosovo Law on Gender Equality (LGE) and the Kosovo Anti-Discrimination Law (ADL) have foreseen the need for temporary special measures. The LGE defines general, special and legal measures, including affirmative action, to accelerate *de jure* and *de facto* equality and to guarantee the protection of equality principles between men and women. Further, the law allows for special measures as a temporary effort to promote gender equality and eliminate inequalities in different areas of life. Positive action measures are provided “to ensure full equality in practice, a measure to prevent or compensate for disadvantages linked to one or more grounds such as those stated in Article 2(a) shall not be deemed as discrimination, provided that it is also in compliance with international human rights standards.” The ADL also covers both direct and indirect discrimination and defines the principle of equal treatment expansively, as “no direct or indirect discrimination against any person or persons, based on sex, gender, age, marital status, language, mental or physical disability, sexual orientation, political affiliation or belief, ethnic origin, nationality, religion or belief, race, social origin, property, birth or any other status.”

To guarantee equal representation of women and men, the LGE provides that all institutions and leading bodies in Kosovo should aim for participation of 40 percent of the gender that is commonly underrepresented.

The LGE also prohibits harassment and sexual harassment as a form of gender discrimination. Harassment is defined by the LGE as “all forms of behaviour that aim or constitutes a threat to personal dignity” and sexual harassment as “any form of sexual, verbal, non-verbal, physical or symbolic behaviour that constitutes a threat to personal dignity.”

The LGE also provides equal access to education to be afforded both men and women in order to ensure their equal, active participation in society, the family and the labour market.

## FORMER YUGOSLAV REPUBLIC of MACEDONIA

One of the fundamental values of the Constitution of the Republic of Macedonia is its respect for the generally accepted norms of international law.<sup>85</sup> The Constitution guarantees the equality of all citizens in their freedoms and rights, regardless of their gender, race, complexion, national and social origins, political and religious beliefs, property and social status.

The Law on Equal Opportunities Between Women and Man refers directly to equal access, equal treatment and equality in results and prohibits direct and indirect discrimination.

<sup>84</sup> See Chapter 3, Fundamental Rights and Freedoms, Constitution of Kosovo, 15 June 2008.

<sup>85</sup> Constitution of the Republic of Macedonia, Article 8..

Quotas for women's political participation are also provided for in the Constitution. In accordance with the Election Code,<sup>86</sup> each third place shall be reserved for the less-represented gender on the submitted lists of candidates for Members of Parliament and lists of candidates for member of the council of the municipality and city of Skopje.

In the absence of a domestic violence law, violence within the family is regulated by the amendments in the Family Law (2004) and by the amendments of the Criminal Code of the Republic of Macedonia (2004). The law defines and sanctions violence as follows:

“(19) Family violence shall mean abuse, rude insults, threatening of the safety, inflicting physical injuries, sexual or other physical and psychological violence which causes a feeling of insecurity, being threatened, or fear towards a spouse, parents or children or other persons which live in a marital or other community or joint household, as well as towards a former spouse or persons which have a common child or are have close personal relations.”

The prohibition of harassment and sexual harassment and all related behaviours as acts of discrimination is incorporated into labour legislation. Harassment is defined as any unwanted conduct initiated with the purpose or effect of violating the dignity of a person seeking employment or of an employee, and which creates an intimidating, hostile, humiliating or offensive environment. Sexual harassment is defined as any verbal, non-verbal or physical conduct of a sexual nature, occurring with the purpose or effect of violating the dignity of a person seeking employment or of an employee, and which creates an intimidating, hostile, humiliating or offensive environment.

## REPUBLIC of MOLDOVA

The Moldovan Constitution allows the direct application of the provisions of international laws in the field of human rights. Any international document on human rights that the Republic of Moldova adheres to automatically becomes part of its domestic legislation.

The Constitution has enshrined an equal protection clause<sup>87</sup> that affirms:

“All citizens of the Republic of Moldova are equal before the law and public authorities, regardless of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin.”

The Law on Ensuring Equal Opportunities for Women and Men,<sup>88</sup> which entered into force in 2008 aims to “prevent and eliminate all forms of discrimination on the grounds of sex.”<sup>89</sup> Currently, the government is drafting a general law on anti-discrimination, which unfortunately will not provide for a separate complaint mechanism in cases of discrimination. It will, however, provide for the right of complaint to the Ombudsman and to the general courts of law.

The Law on Preventing and Combating Human Trafficking and the Law on Preventing and Combating Violence in the Family also contain anti-discrimination clauses.

Although provided for specifically in the Law on Ensuring Equal Opportunities, so far no positive or temporary special measures or affirmative action policies have been adopted to achieve equality of result between men and women. Similarly, no quotas in the educational and employment fields or

<sup>86</sup> Official Gazette 40/2006, Article 64, paragraph 5.

<sup>87</sup> Article 16(2) on equality.

<sup>88</sup> Law on Ensuring Equal Opportunities for Women and Men, No. 5-XIV, 9 February 2006, Official Monitor No. 47-50/200, 24 March 2006.

<sup>89</sup> Article 1, Law on Equal Opportunities.

special measures have been adopted to assure access to health care, education information or reproductive health. Moreover, the Parliament has declined to introduce the proposed quota of 30 percent in the equal opportunities law. The Parliament also rejected the establishment of an Ombudsman on Gender and excluded the complaint mechanism on individual cases of gender discrimination procedure as well as the system of sanctions for discrimination.

The labour law is built more on the principle of protecting women than on the principle of empowering them. Women are categorically prohibited from working in specific jobs such as boilermaker, brick layer, locksmith, riveter and welder, and from lifting weights heavier than 10 kilograms. The reality, however, is that women do work in hazardous environments. It might be more useful for the law to regulate these hazardous occupations for both genders, rather than prohibit only women from them.

The equal opportunities law specifically prohibits discrimination in access to all levels of medical assistance.<sup>90</sup> The law allows that certain categories of the population, including pregnant women, children, retired persons, persons with disabilities, person with HIV/AIDS, war veterans and those suffering from cancer, may receive free medical assistance and hospitalization.<sup>91</sup>

In 2007, the government adopted a law on the prevention and control of HIV/AIDS,<sup>92</sup> which includes general non-discrimination principles, including a prohibition against discrimination in education, labour, access to services and institutions. Although the latest data indicates that HIV/AIDS is increasingly affecting women, the legal framework and policies do not contain gender specific provisions on HIV/AIDS.

The equal opportunities law prohibits direct and indirect discrimination in education. In accordance with the law, the notion of direct discrimination includes discriminatory actions based on pregnancy and maternity, thus prohibiting discrimination based on pregnancy and maternity in education.<sup>93</sup> Theoretically, the law protects the right of girls to attend school during pregnancy and motherhood. Despite this provision, though, pregnant girls are usually excluded from schools.

The Law on Domestic Violence entered into force in 2008. The introduction of the domestic violence law was a transformative act, as it was the first time the lawmaking process acknowledged the phenomenon of domestic violence in Moldova. The law includes a broad definition of domestic violence and its different forms and introduces the protection order. The law defines the notion of domestic violence as “any intentional action or inaction, with the exception of cases of self-defence or defence of other persons, of physical or verbal nature, through physical abuse, sexual, psychological, spiritual or economic abuse or through causing of material or moral damages, by a family member against other family members, including against children and common or personal property.”<sup>94</sup> The law also provides definitions of different forms of violence including physical violence, sexual violence, psychological violence, spiritual and economic violence.

## ROMANIA

Article 20 of the Romanian Constitution gives primacy to international human rights treaties to which Romania is a party. The Constitutional provisions concerning the citizens’ rights and liberties provide for interpretation and enforcement in conformity with the Universal Declaration of Human Rights and

<sup>90</sup> Article 14, Law on Ensuring Equal Opportunities for Women and Men.

<sup>91</sup> Government decision regarding the protection of certain categories of population, No. 163, 2 April 1993.

<sup>92</sup> Law on prevention and control of HIV/AIDS, No. 23-XV, 16 February 2007, Official Monitor No. 054, Article 250, 20 April 2007.

<sup>93</sup> Article 2 and 13(2), Law on Ensuring Equal Opportunities.

<sup>94</sup> Article 2, Law on the prevention and combating of domestic violence, No.178, Official Monitor No. 55-56, 18 March 2008.

the human rights conventions to which Romania is a party. In the case of any inconsistency between the covenants and treaties and the national laws, the international conventions shall take precedence, unless the Constitution or national laws offer more favorable provisions.

The Law on Equal Opportunities Between Women and Men (2002) regulates measures for the promotion of equal opportunities between men and women and prohibits direct and indirect discrimination based on sex in all areas of public life in Romania. The law covers sexual harassment and clearly defines direct and indirect discrimination and outlaws the discriminatory impact of facially neutral laws unless a legitimate purpose is served.

The Labour Code (2003) prohibits direct or indirect discrimination of any employee based on sex, sexual orientation, genetic features, age, nationality, race, colour, ethnicity, religion, political belief, social origin, handicap, marital status or family situation, membership or support of a union.

Romania also passed a special law on the protection of pregnant women in the workplace in 2004. This law mandates leave only for the mother and guarantees two breaks, each up to one hour, during the working hours for breastfeeding mothers.

The Law on Preventing and Combating Family Violence (2003) covers physical, psychological and sexual harm against a family member and the prevention of women fulfilling their fundamental rights and liberties.

The 2002 law for the Prevention of Spreading of AIDS in Romania and the Protection of HIV-Positive People or People Living with AIDS ensures access to antiretroviral drugs to any HIV-positive persons who meet the medical criteria and are registered with the national monitoring system for HIV/AIDS.

## RUSSIAN FEDERATION

The Russian Federation Constitution does not include references to international human rights conventions, including CEDAW. The Law on the Realization of Equal Opportunities was passed in 2003. A draft law on State Guarantees Granting Equal Rights and Liberties for Men and Women in the Russian Federation and Equal Opportunities for Their Realization went before the State Duma in 2008 .

The Russian Federation Criminal Code provides a definition of discrimination and penalties for a discriminatory act. Discrimination is defined as a violation of human and civil rights, freedoms and lawful interests because of a person's sex, race, nationality, language, background, property and official status, place of residence, religion, views, membership in non-governmental associations or social group. The possible penalties include:

- payment up to 200,000 rubles;
- payment in the amount of the offender's salary;
- the garnishment of income for up to 18 months;
- compulsory labour for up to 180 hours;
- corrective labour for under one year; or
- imprisonment for up to two years.

A discriminatory action resulting from an abuse of power carries these possible penalties:

- payment from 100,000 and 300,000 rubles;
- payment in the amount of the offender's salary or income during a period of 1-2 years;
- loss of the right to hold certain offices or go into business for up to five years;

- compulsory labour from 120 up to 240 hours; or
- imprisonment for up to five years.

The Russian Federation Labour Code bans discrimination in labour and prohibits restrictions based on a person's sex, race, colour, nationality, language, origin, property, family, social and official status, age, place of residence, religion, political views, membership or non-membership in non-governmental associations, or other circumstances not connected with the efficiency of an employee's work. Special measures for persons in need of special care by the State are not deemed discrimination.

The Fundamentals of Russian Federation Legislation on Public Health Care also ensures health care of citizens irrespective of their sex, race, nationality, language, social background, official status, place of residence, relation to religion, views, participation in non-governmental organizations and other circumstances. The State prohibits discrimination on the grounds of a person's ailments.

The Family Code stipulates age 18 as the age of marriage, but allows the marriage of persons 16 years and up if granted permission by the local authorities at the place of residence of the parties to the marriage.

According to Article 36 of the Fundamentals of the Russian Federation Legislation on Public Health Care, each woman has the right to independently decide on motherhood. Abortions may be performed up to 12 weeks of a pregnancy, or as late as 22 weeks when there are social indications for doing so. In cases with medical indications, abortions may be performed at any during the pregnancy term if the woman consents.

The Criminal Code criminalizes trafficking in human beings and exploitation of persons, including recruitment, transportation, transfer, concealment or procurement of humans, and activities involving prostitution, organization and operation of brothels and commercial sex.

The Russian Federation does not have a domestic violence or sexual harassment law. Given the lack of a domestic violence law, the existing legal provisions in this sphere are inadequate. For example, pedophilia and sexual abuse of minors are not adequately addressed in the Criminal Code.

## REPUBLIC of SERBIA

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All international human rights treaties ratified by the Socialist Federal Republic of Yugoslavia (SFRY), the Federal Republic of Yugoslavia (FRY), as well as Serbia and Montenegro (S&M) are binding on the Republic of Serbia. The former Yugoslavia had ratified all major international human rights treaties.

The current Constitution of Serbia (2006) affirms that ratified international agreements are an integral part of the legal system of the Republic of Serbia and are directly implemented. However, the ratified international agreements have to be consistent with the Constitutional provisions.

The Constitution of Serbia guarantees a broad panoply of human rights and embraces second- and third-generation rights, such as health care, social protection, social security, pension insurance, right to education, the right to a healthy environment and protection of consumers. The Constitution also provides a gender-neutral definition of discrimination consistent with the CEDAW definition. Further, the Constitution prohibits direct and indirect discrimination based on sex, *inter alia*, and guarantees the right to equal protection of the law. The Constitution also provides grounds for affirmative action measures in keeping with Article 4 of CEDAW and calls for the special protection of the family, the mother, single parent and child.

An unusual feature in the Constitution is the “freedom to procreate.” For example, Article 63 reads: “Everyone shall have the freedom to decide whether they shall procreate or not.” The provision further enumerates that the Republic of Serbia “shall encourage the parents to decide to have children and assist them in this matter.”

Serbia currently lacks an anti-discrimination or equality law. The existing institutional mechanisms for gender equality provide no adjudicatory decision-making power. The Witness Protection Law (2005) prohibits direct and indirect discrimination on the grounds of sex.

The Labour Law, which was amended in 2005, prohibits both direct and indirect discrimination and references marital status and family responsibilities as grounds for prohibition of discrimination, *inter alia*. The Labour Law prohibits sexual harassment in the workplace; the requirement of a pregnancy test and/or data on marital/family status and family planning from job candidates; and extends the principle of equal pay for equal work or work of equal value, among other protections.

The Family Law (2005) regulates marriage and marital relations, parent-child relationships, adoption, foster care, guardianship, child support, property relations in the family, protection from domestic violence, proceedings related to family relationships and personal names.

Although the Family Law stipulates age 18 as the age of marriage, a court may provide permission for marriage to a juvenile who has reached age 16 and attained the physical and mental maturity necessary for exercising marital rights and duties. This provision goes against the letter and spirit of CEDAW and CRC.

Certain provisions in the Health Insurance Law relate to family planning, reproductive rights of women, treatment of sexually transmitted diseases and HIV. Although the law mentions the treatment of HIV, there is no specific reference to antiretroviral drugs.

The Law on Local Elections (2007) stipulates that the election lists must include 30 percent of candidates of the less-represented sex. The law not only provides for a quota but also includes concrete conditions and safeguards to ensure compliance. An election list that does not meet the conditions or the quota is considered defective, and the bearer of the list must address the deficiency in accordance with this law. If the bearer of the list fails to correct the deficiencies as described, the Electoral Commission is called upon to reject proclamation of the list.

## REPUBLIC of TAJIKISTAN

Article 17 of the Constitution of the Republic of Tajikistan establishes the general principles of equality and non-discrimination. Accordingly, the Constitution guarantees the rights and freedoms of everyone regardless of ethnicity, race, sex, religion, political convictions, education, social and property status.

In 2005, equal rights legislation, On State Guarantees of Equal Rights of Men and Women and Equal Opportunities for Their Implementation, came into force. The law governs gender relationships based on the Constitutional guarantees of equality of men and women in social, political, cultural and all other fields, and is aimed at the prevention of gender-based discrimination. It establishes State guarantees of equal opportunities for both sexes.

Article 1 of the equal rights law addresses discrimination as provided for in Article 1 of CEDAW. Further, it prohibits discrimination against the rights of men and women. The violation of the principle of gender equality (any actions that place men and women in unequal conditions on the basis of sex) shall be considered as discrimination and shall be subject to elimination. The law also allows special measures or positive discrimination, such as special measures on the protection of health for women.

The Labour Code establishes a general provision prohibiting discrimination in the sphere of labour relations. Discrimination (any distinction, exclusion and preference) on the basis of nationality, race, colour, sex, age, religion, political convictions, place of birth, foreign extraction or social origin resulting in inequality of opportunity in the workplace is prohibited.<sup>95</sup>

The Law on Educational Institutions calls for both private and public schools to introduce a special gender course and use educational curriculums and textbooks that exclude gender-based discrimination.

The Law on Health Protection was adopted to define and govern the relationships between the State and individuals with regard to the obligation of the State in the protection of health.

The Labour Code restricts women's employment opportunities and places certain prohibitions against women working at night, overtime, on days off and travelling for work. The law also calls for transferring pregnant women and women with children to lighter work. These protective elements of the law come into conflict with the values of women's empowerment as guaranteed in CEDAW.

Tajik legislation has no special act to provide protection of women from violence. However, the Criminal Code of Tajikistan addresses and provides penalties for crimes against sexual freedom and the integrity of individuals. Amongst them are rape; violent actions of a sexual nature; coercion to fulfil actions of a sexual nature; and sexual intercourse and other actions of a sexual nature with a child less than 16 years old. The Criminal Code of the Republic of Tajikistan also provides a legal basis for combating human trafficking in Tajikistan.

Tajikistan's Family Code establishes the age of marriage at the minimum statutory age of 17 for both women and men. In exceptional cases and upon application of the parties a court may decide to reduce this age by one year. Both these provisions are in clear contradiction of CEDAW and CRC, which have established 18 as the minimum age of marriage for both men and women.

## REPUBLIC of TURKEY

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The supremacy of international treaties in the area of fundamental rights is articulated in the Turkish Constitution. The Constitution states that "men and women have equal rights;" that the "State shall have the obligation to ensure that this equality exists in practice;" and, in Article 41, that the "family is based on the equality between spouses." The Turkish Constitution also mandates the realization of *de facto* gender equality, but no special law has been passed to operationalize this provision. One of the positive characteristics is that the Constitutional provisions are justiciable in courts, and in numerous cases international law has been used in courts.

The Labour Law bans direct or indirect discriminatory treatment due to sex and pregnancy, birth of a child or marital status.

The Penal Code forbids discrimination based on race, religion or sect, language, nationality, colour, sex, political opinion, philosophical belief, social and ethnic roots, birth, economic or other social status in the implementation of the law.

Currently, the mandatory retirement age is 58 for women and 60 for men. The law has introduced a graded system through which the retirement age for women and men will be equalized at 65, in 2014.

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<sup>95</sup> Article 7 of the Labour Code.

The Turkish Constitution asserts that no one shall be required to perform work unsuitable to the person's age, sex and capacity. Given this Constitutional guarantee, the labour law and other regulations assume that some jobs are unsuitable for women, such as work in coal mines, underground quarries, embanking, digging and excavation of soil. The laws also limit women's night work to seven-and-a-half hours and prohibit pregnant women's night work. Further, the law prohibits breastfeeding women from night work for up to nine months after giving birth

The Population Planning Law defines family planning as an individual's right to decide on the number and timing of children, and specifies that the State is responsible for the provision of health services on family planning issues and for regulating the conditions for termination of a pregnancy.

Certain restrictions in the inheritance law create impediments for women's full inheritance rights. Under the Civil Code, if there are no children, the widows have the right to only half of the property of the deceased spouse. The rest is inherited by the family (parents, siblings) of the deceased if they legally claim inheritance.

## TURKMENISTAN

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Article 6 of the Constitution of Turkmenistan recognizes the primacy of universal norms of international law and provides that the norms of an international treaty will prevail when in conflict with national law.

The Constitution also guarantees the equality of all persons irrespective of their ethnicity, race, sex, origin, property status or official capacity, residence, language, religion, political views, affiliation to any party or lack of such affiliation. The Constitution also guarantees the equal rights of men and women and enshrines the health, social, economic and cultural rights of people.

Apart from the Constitutional provisions, gender equality issues are regulated by the Labour Code of Turkmenistan, the Marriage and Family Code, the Social Welfare Code, the law, On the State Guarantees of the Equality of Women, the law, On the Health Care of the Citizens of Turkmenistan, laws on education, labour and employment and other relevant laws.

The law, On the Health Care of Citizens, contains a special measure that deals with reproductive rights. Turkmenistan adopted a special law, On Prevention of the AIDS Disease, in 1991, and the law, On Prevention of the Disease Caused by the Human Immunodeficiency Virus (HIV Infection), was adopted in July 2001.

## UKRAINE

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Ukraine's Constitution guarantees the equal rights of women and men to participate in law and policymaking and equal opportunities to participate equally in all spheres of social life. Ukraine's Constitution also guarantees equal employment opportunities for women and men.

Ukraine's Law on Equal Rights and Opportunities for Women and Men (LEROWM), which came into force in 2005, guarantees equal legal status of women and men and equal opportunities in all spheres of social life. The LEROWM prohibits gender-based discrimination, action or inaction based on difference, and special treatment or benefits awarded on the basis of a person's gender. The law calls for affirmative action, but stops short of providing for quotas for women's political participation.

The Law on Prevention of Domestic Violence (2001) addresses violence against women and covers rape and sexual violence, but not marital rape specifically.

A marked inequality in the law is contained in the Law on Retirement Support (LRS). Under this law, women and men have different retirement ages—55 for women and 60 for men. Unequal retirement ages correspond to unequal retirement benefits and pensions and reinforce the norm that women are weaker than men and that men have a more dominant role in the workplace. Women in Ukraine are also prohibited access to certain forms of work, such as underground and mine work.<sup>96</sup>

Ukraine also retains a provision that allows for unequal age of marriage for men and women. While the minimum statutory age of marriage for men is 18 years, it is 17 for women. This directly contradicts CEDAW and CRC.

Another inequality in the law is the provision in the Labour Code that specifies that maternal leave is considered employment for the purposes of calculating pensions or other benefits, while paternal leave is considered a social vacation without pay.

The Law on the Prevention of Acquired Immune Deficiency Syndrome (AIDS) and on the Social Protection of Population (LPAIDS) (1992) provides mothers of HIV-positive children under the ages of 16 years the right to annual vacations in the summer or at any time appropriate for them. If such a child is cared for by the father or other persons, these persons have the same right.

Ukraine is in the process of introducing workplace policies to help balance work and family obligations. For example, the draft law No. 1136 on 25.02.2008, On Family Leave for Fathers, suggests allowing 30 days of parental leave for fathers.

## REPUBLIC of UZBEKISTAN

The principles of non-discrimination and equality are guaranteed not only in the Constitution of Uzbekistan but also in other legislative acts

A draft Law on Guarantees of Equal Rights and Opportunities of Women and Men, has been developed but is not yet in force. The draft law provides basic definitions related to equal rights and opportunities and guarantees electoral rights and equal opportunities for men and women in public service and in the social, economic and cultural spheres. Finally, it also stipulates remedies for the violation of the legislation on equal rights and opportunities for men and women. The draft law is currently under consideration in the legislative chamber of the Oliy Majlis or Parliament of Uzbekistan.

Currently, the Criminal Code provides remedies for violation of equal protection. The law provides that direct or indirect violation of rights, or direct or indirect privileges made on the basis of sex, race, ethnic origin, language, religion, social background, beliefs, or personal or social status shall be punished by a fine of a minimum fifty months of wages or correctional labour up to one year.

The Labour Code (1996) also provides an anti-discrimination clause: “All citizens shall have equal opportunities to enjoy and exercise labour rights. Imposition of any restrictions or grant of privileges in the field of labour relations made on the basis of sex, age, race, ethnic origin, language, social background, property status and official capacity, religion, beliefs, membership of a civic association, and other conditions not related to professional qualities of workers and their performance, is inadmissible and constitute discrimination.” The law also allows that positive discrimination in favour of those deemed to be in need of social protection, such as women, minors, disabled people, and others does not constitute discrimination.

<sup>96</sup> Article 43 of the Ukraine Constitution.

The Labour Code also includes an equality clause which guarantees equality in employment, work conditions, promotion and remuneration. However, Uzbekistan does not have a special mechanism that deals with implementation, monitoring and reporting of anti-discrimination provisions.

The Labour Code of the Republic of Uzbekistan also prohibits certain categories of women from certain types of employment. For example, Article 228 states that “involvement of pregnant women and women with children up to 14 years of age (disabled children up to 16 years of age) in night work, overtime work, work during the weekend or their assignment to a business trip without their consent shall be prohibited.”

Article 229 establishes that “at request of a pregnant woman, a woman with a child up to 14 years of age (disabled child up to 16 years of age), or a person taking care of a sick member of a family proved by the medical report, the employer is obliged to establish to them part-time working day or part-time working week.”

The law further provides special treatment to employees who take care of a child with disabilities who is under 16 years of age. However, a provision that grants an additional three days of paid leave each year to an employee with two or more children or with a child with disabilities under 16, is granted only to women employees. This not only stereotypes women and reinforces their image as the primary caregivers, but also disadvantages fathers who would like the equal opportunity to be caregivers. A positive aspect of the Labour Code is that it calls for a State-sponsored childcare system in the territory of Uzbekistan.

There is no law on domestic violence in Uzbekistan, but a law on combating human trafficking was passed in 2008. The law calls for the social rehabilitation of victims of human trafficking with the goal of reintegrating them into everyday life. The law provides for legal assistance to the victims; help with their psychological, medical and professional rehabilitation; employment and provision of temporary accommodations.

## ANNEX 2: Human Rights Instrument Chart

	ICESCR	CEDAW	CEDAW Op. Protocol	CEDAW Art. 20 Amendment	CRC	11c. CRC Op. Protocol	11b. CRC Op. Protocol	CRC Art. 43 (2) Amendment	CRPD	CRPD Op. Protocol
<b>Republic of Albania</b>	Accession	Accession	Accession		Signed, Ratified	Accession				
<b>Republic of Armenia</b>	Accession	Accession	Accession		Accession	Signed, Ratified	Signed, Ratified*		Signed	Signed
<b>Republic of Azerbaijan</b>	Accession	Accession	Signed, Ratified	Accepted	Accession	Signed, Ratified	Signed, Ratified*		Signed	Signed
<b>Republic of Belarus</b>	Signed, Ratified	Signed, Ratified	Signed, Ratified		Signed, Ratified	Accession*	Accession*	Accepted		
<b>Bosnia and Herzegovina</b>	Succession	Succession	Signed, Ratified		Succession*	Signed, Ratified	Signed, Ratified			
<b>Republic of Bulgaria</b>	Signed, Ratified	Signed, Ratified	Signed, Ratified		Signed, Ratified	Signed, Ratified	Signed, Ratified*	Accepted	Signed	
<b>Georgia</b>	Accession	Accession	Accession	Accepted	Accession	Accession		Accepted		
<b>Republic of Kazakhstan</b>	Signed, Ratified	Accession	Signed, Ratified		Signed, Ratified	Signed, Ratified	Signed, Ratified*			
<b>Kosovo (UNSC 1244)</b>										
<b>Kyrgyz Republic</b>	Accession	Accession	Accession		Accession	Accession	Accession*	Accepted		
<b>Former Yugoslav Republic of Macedonia</b>	Succession		Signed, Ratified		Succession	Signed, Ratified	Signed, Ratified*	Accepted	Signed	
<b>Republic of Moldova</b>	Accession		Accession	Accepted	Accession	Signed, Ratified*	Signed, Ratified*	Accepted	Signed	
<b>Romania</b>	Signed, Ratified*	Signed, Ratified*	Signed, Ratified		Signed, Ratified	Signed, Ratified	Signed, Ratified	Accepted	Signed	Signed
<b>Russian Federation</b>	Signed, Ratified*	Signed, Ratified	Signed, Ratified		Signed, Ratified		Signed, Ratified	Accepted	Signed	
<b>Republic of Serbia</b>	Succession	Succession	Accession		Succession	Signed, Ratified	Signed, Ratified*	Accepted	Signed	Signed
<b>Republic of Tajikistan</b>	Accession	Accession	Signed		Accession	Accession	Accession*			
<b>Republic of Turkey</b>	Signed, Ratified*	Accession*	Signed, Ratified	Accepted	Signed, Ratified*	Signed, Ratified*	Signed, Ratified*	Accepted	Signed	
<b>Turkmenistan</b>	Accession	Accession	Accession		Accession	Accession	Accession*		Accession	
<b>Ukraine</b>	Signed, Ratified*	Signed, Ratified	Signed, Ratified		Signed, Ratified	Signed, Ratified	Signed, Ratified*	Accepted	Signed	Signed
<b>Republic of Uzbekistan</b>	Accession	Accession			Accession			Accepted		

\* The country has made declarations or reservations to the treaty, the amendments, or the optional protocols. Romania has withdrawn its reservation to CEDAW; Bosnia and Herzegovina has withdrawn its reservation to the CRC.

# ANNEX 3: Key Questions

## Key Questions to Guide Regional Legislative Analysis and Mapping

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# INTRODUCTION

Part One examines CEDAW and the General Recommendations that are relevant to this study and poses questions that country partners will need to ask as you evaluate relevant laws and policies. Part Two examines other human rights treaty provisions that are of particular relevance to this study. Questions are not included in this section, as partners are not called upon to analyse the domestic laws in light of those treaties. However, due consideration should be paid to the relevance and effect of treaties other than CEDAW on gender equality and reproductive rights. Part Three provides a suggested format or outline for the country studies.

The questions under the CEDAW provisions are meant to guide the country partner's review and analysis of the different laws in the legal system that relate to gender equality and reproductive rights. The country partners must answer these questions in light of their review and analysis. Since this exercise is an effort to map the congruence of the domestic laws with the relevant treaties, please include a matrix in which you mark "yes," "no" or "partial" for each question. If you answer "yes" or "partial" to a question, please explain why and provide an example, provision, law or policy that will offer further insight to this answer. Whenever possible, include the actual name of the law, the year that it came into force and the relevant provision of the law dealing with the specific question.

Country partners are also called upon to provide a list of in-country and regional NGOs and civil society organizations active in the area of gender equality, anti-violence against women, women and health, women and reproductive health, women and political participation and gender-based education. Please provide a very brief description of the aims and goals of these organizations.

A key must be provided for the acronyms used in the Country Reports.

# PART ONE

## Convention on the Elimination of All Forms of Discrimination Against Women (1979)

**Article 1:** For the purpose of the Convention, the term “discrimination against women” means any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other fields.

**Article 2:** States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay, a policy of eliminating discrimination against women and, to this end, undertake:

- a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means the practical realization of this principle;
- b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation.
- e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- g) To repeal all national penal provisions which constitute discrimination against women.

Key Questions	Compliance	Relevant Legislation	Comments
Has a law guaranteeing equal opportunities for men and women been drafted and/or adopted?			
Are affirmative action or other temporary measures such as a quota system mandated by law in order to guarantee substantive equality or equality of result for women?			
What implementation, monitoring and reporting mechanisms exist for anti-discrimination provisions?			

<b>Is the establishment of a national machinery for the protection and promotion of gender equality mandated by law?</b>			
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**Article 3:** States Parties shall take in all fields, in particular, in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Key Questions	Compliance	Relevant Legislation	Comments
<b>Do women have the same access as men, in law and in fact, to the political process, social services, health and medical care, education, labour, marriage, childcare, ownership of property, inheritance and access to justice?</b>			
<b>What are the provisions in the law for women to participate in law and policy-making?</b>			
<b>What are the laws and policies that prohibit discrimination on the basis of gender?</b>			
<b>How are gender equality and discrimination defined in the laws?</b>			

**Article 4:** 1. Adoption by States Parties of temporary 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 measure 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.

Key Questions	Compliance	Relevant Legislation	Comments
<b>What positive or temporary special measures or affirmative action policies have been adopted to achieve equality between men and women?</b>			

<b>Have special measures been adopted to improve access to health care and educational information on reproductive health?</b>			
<b>Are quotas established in educational and employment fields in which women are underrepresented?</b>			
<b>What enforcement mechanisms have been established to ensure that those quotas are met?</b>			

**Article 5:** States Parties shall take all appropriate measures:

- a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

<b>Key Questions</b>	<b>Compliance</b>	<b>Relevant Legislation</b>	<b>Comments</b>
<b>What legal and policy measures have been taken to change social and cultural patterns that lead to stereotyping or reinforcing the idea of the inferiority of women?</b>			
<b>Do gender equality laws affirm equality in both the public and private spheres?</b>			
<b>Do gender equality laws and anti-discrimination in the workplace policies create opportunities for both men and women to balance work/family obligations?</b>			
<b>How do educational programmes and school textbooks reflect men's caregiving and childcaring roles, family responsibilities and women's equal role in the public sphere?</b>			

What provisions have been taken in the legal system to address violence against women, including rape, sexual violence and marital rape?			
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**Article 6:** States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Key Questions	Compliance	Relevant Legislation	Comments
Is commercial sex work criminalized or regulated?			
What provisions cover illicit trafficking in men, women and children?			
Are there laws and policies in place to protect women and young girls from sex work?			
Are there provisions in the law that cover rehabilitation and reintegration of women and child sex workers?			

**Article 7:** States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

- a) To participate in the formulation of government policy and the implementation thereof, and to hold public office and perform all public functions at all levels of government;
- b) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Key Questions	Compliance	Relevant Legislation	Comments
Is there an equal right to vote?			
Is there equal eligibility for political representation?			
Is there legislative provision for minimum quotas of women in parliament and/or in political parties?			
What percentage of elected officials are women?			

What senior public offices are currently held by women?			
Do women have an equal right to participate in NGOs?			
Is there legislation allowing NGOs to register and mobilize to promote the advancement of women without political interference?			
Are there any regulations restricting the activity of NGOs and other civil society organizations?			

**Article 8:** States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Key Questions	Compliance	Relevant Legislation	Comments
Do women have equal opportunities to represent government at the international level?			
Do women have equal opportunities to participate in the work of international organizations?			
Are there any legal restrictions on women's access to international organizations?			
What proportion of women are represented in the foreign service?			
Are there quotas for women's representation in the foreign service?			
Are women represented in the higher strata of the foreign service (ambassadorial level)?			

**Article 9:** 1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

Key Questions	Compliance	Relevant Legislation	Comments
Do women and men have the same rights with regard to nationality and citizenship?			
Are male and female citizens' foreign-born spouses similarly treated by law?			
How is the nationality of a child determined?			
Can a mother pass on her nationality to her child?			
Are the children of women who marry foreign nationals denied citizenship rights and access to services that are allowed to other children?			

**Article 10:** States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- d) The same opportunities to benefit from scholarships and other study grants;
- e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- g) The same opportunities to participate actively in sports and physical education;
- h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Key Questions	Compliance	Relevant Legislation	Comments
Is there legislation that mandates equal access to education for women and girls?			

<b>Is there legislation that creates special measures for the advancement of women in education?</b>			
<b>Is there compulsory primary education for girls and boys?</b>			
<b>Are there laws or policies that bar girls' access to participation in sports or recreational activities?</b>			
<b>Is reproductive and sexual health education compulsory in schools?</b>			
<b>What guidelines exist on how reproductive and sexual health education is conducted? For example, are there gender-sensitive guidelines for the dissemination of these programmes? Is there a legislative prohibition on expulsion from school because of pregnancy?</b>			
<b>Does sex stereotyping, such as representations of women as sole caregivers of children and the family exist in programmes, curricula, textbooks, etc.? Have policies been enacted to address this stereotyping?</b>			
<b>What kind of sexual harassment policies and anti-violence against girls policies have been enacted in educational institutions? Does this cover travel to educational institutions provided by the state and school?</b>			

**Article 11:** 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- a) The right to work as an inalienable right of all human beings;
- b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, and advanced vocational training and recurrent training;
- d) The right to remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

- f) The right to protection of health and safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.
- e)

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be reviewed, repealed or extended as necessary.

Key Questions	Compliance	Relevant Legislation	Comments
Are there laws and policies that define discrimination in formal and informal labour?			
Are there laws and policies that mandate equal employment opportunities for women and men?			
Do these laws and policies cover both direct and indirect discrimination in employment?			
Do these laws and policies address gender stereotypes and cultural biases that deter women from certain fields of employment, such as engineering, aerospace or scientific research, and technology?			
Are training and employment opportunities available for women in non-traditional employment areas?			
Do laws mandate equal pay for equal work of the same value?			
Do women and men have equal retirement ages? What is the mandatory retirement age for men and for women?			

<b>Are there forms of work, for example night, underground or mine work, or work in particular industries, that restrict women from participating?</b>			
<b>Are sufficient regulations put into place to protect both men and women from harmful chemicals and injuries at work that might affect the general health and reproductive health of both male and female employees?</b>			
<b>Have sexual harassment policies in the workplace been introduced?</b>			
<b>Do workplace policies help balance work/family obligations?</b>			
<b>What parental/family leave options are available in the law? Do these policies mandate family leave for fathers?</b>			
<b>Do workplace policies have a quota for women on board membership?</b>			
<b>What are the incentives in workplace laws or policies to ensure that workplaces meet quota requirements (e.g. preferential treatment in government contracts for firms that comply with quotas)?</b>			
<b>Are firms (public and private) penalized for not meeting these quotas?</b>			
<b>If policies are in place, what provisions refer to employment leave (maternity, paternity, and other parental leave and childcare)? Do these provisions apply equally to men and women? Does the law or policy mandate continuation of income during leave?</b>			
<b>Is maternal/paternal leave considered employment for the purposes of calculating pensions or other benefits?</b>			
<b>Are employees returning from paternal or maternal leave guaranteed the same working position, level and salary as prior to leave ?</b>			
<b>What efforts have been made to put in place policies on caring for sick or disabled children or family members?</b>			

Where parental leave is specified by law, to what extent do both women and men take advantage of these provisions? Are inducements in place for fathers to make use of parental leave?			
What are the workplace policies on childcare? Does the employer provide on-site childcare and/or is childcare subsidized?			
In the absence of State-sponsored childcare, do workplaces offer free-of-charge or subsidized childcare options to employees? What other means do parents use to resolve conflicts between childcare and work obligations?			

**Article 12:** 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health services, including those relating to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the postnatal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Key Questions	Compliance	Relevant Legislation	Comments
Do women and men have equal access to health care services?			
What are the infant and child mortality rates for boys and for girls? What are the major causes of infant and child mortality and morbidity for girls?			
What are the policies, laws and programmes put into place to combat HIV/AIDS? Are these programmes, policies and laws gender specific?			
Do these programmes emphasize women's reproductive role and female subordination as factors that make women and girls doubly vulnerable to sexually transmitted diseases?			

<b>Is there a law on reproductive and/or sexual health? What areas refer to the sexual and reproductive rights of women?</b>			
<b>What enforcement and monitoring mechanisms pertain to any law on reproductive health?</b>			
<b>What is included in the curricula of sex or health education classes about the rights of women and girls with disabilities?</b>			

**Article 13:** States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

The right to family benefits;

- a) The right to bank loans, mortgages and other forms of financial credit;
- b) The right to participate in recreational activities, sports and in all aspects of cultural life.

<b>Key Questions</b>	<b>Compliance</b>	<b>Relevant Legislation</b>	<b>Comments</b>
<b>Do women and men have equal access to loans, mortgages and other forms of financial credit?</b>			
<b>What family benefits are put in place by the employer? Are benefits such as children's allowances, housing allowances, health insurance and educational allowances available to both men and women?</b>			
<b>Do women and men have equal access to loans and other forms of credit made available by the employer?</b>			

**Article 14:** 1. States Parties shall take into account the particular problems faced by rural women and the significant roles which they play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on the basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- a) To participate in the elaboration and implementation of development planning at all levels;

- b) To have access to adequate health care facilities, including information, counseling and services in family planning;
- c) To benefit directly from social security programmes;
- d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as *inter alia*, the benefit of all community and extension services, in order to increase their technical proficiency;
- e) To organize self-help groups and cooperatives in order to obtain equal access to economic opportunities through employment or self-employment;
- f) To participate in all community activities;
- g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

Key Questions	Compliance	Relevant Legislation	Comments
By law, do rural women and girls have equal access with men and their counterparts in urban areas to health care, reproductive rights information, education and services?			
By law, do rural women and girls have equal access with men and their counterparts in urban areas to education and training?			
Are rural women represented in government and in programmes on reproductive rights and health care?			
What special policies and programmes have been put into place to meet the health and reproductive needs of rural women?			

**Article 15:** 1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect that restricts the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Key Questions	Compliance	Relevant Legislation	Comments
Do women have equal rights to contract under law?			
Do laws have an indirect effect on women entering into contracts?			

**Article 16:** 1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- a) The same right to enter into marriage;
- b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- c) The same rights and responsibilities during marriage and at its dissolution;
- d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interest of the children shall be paramount;
- e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children or similar institutions where these concepts exist in national legislations; in all cases the interests of the children shall be paramount;
- g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

Key Questions	Compliance	Relevant Legislation	Comments
Is marriage registration compulsory by law?			
Is birth registration mandatory by law?			
What is the minimum statutory age of marriage for both men and women? Is it the same for both men and women?			
Do men and women have equal rights to marriage?			

Does the law explicitly state that marriage is the result of the consent of both prospective spouses?			
Does the law allow women the right to choose to marry or remain unmarried, when to marry and whom to marry?			
Do women have the equal right to own and sell property, full contractual rights and obligations and equal rights to movement and guardianship of children?			
Do women have equal rights to divorce?			
In divorce, what are the rights of the wife with respect to marital property? Do women and men have equal rights with respect to property?			
How is property divided after divorce? Is a woman's work in the home or her unpaid agricultural labour counted as a contribution towards the value of the property?			
What is the law and practice relating to <i>de facto</i> wives?			
Do widows have a legal right to inherit land and other property if there is no will?			
In countries where this is a custom, is bridal price and dowry prohibited?			
Do women and men have equal access to property and equal rights to acquire, dispose and manage property acquired during the marriage?			
Does the law allow women and men the equal right to choose the place of domicile of the family and religion of their children after marriage?			
Does the law guarantee men and women reciprocal duties in the marriage and in the family? For example, do women and men have the same responsibilities for childcare and upbringing of children?			

# RELEVANT GENERAL RECOMMENDATIONS TO CEDAW

The General Recommendations of CEDAW help to clarify the provisions of CEDAW. Below is an analysis of some of the General Recommendations that are relevant to gender equality and reproductive rights.

## General Recommendation No. 14 (ninth session, 1990)

### *Female circumcision*

Key Questions	Compliance	Relevant Legislation	Comments
Are there laws against female circumcision (if relevant)?			
Are there educational programmes on female circumcision?			

## General Recommendation No. 15 (ninth session, 1990)

### *Avoidance of discrimination against women in national strategies for the prevention and control of acquired immunodeficiency syndrome (AIDS)*

Key Questions	Compliance	Relevant Legislation	Comments
Are there policies on increasing public awareness of the risk of HIV infection and AIDS, especially in women and children, and of its effects on them?			
Do these policies and programmes focus on the rights of women and children in relation to the reproductive role of women and their subordinate position in some societies, which makes them especially vulnerable to HIV infection?			

## General Recommendation No. 19 (11th Session, 1992)

### *Violence against women*

1. Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.

Key Questions	Compliance	Relevant Legislation	Comments
Do any laws recognize the fact that pregnant women are especially vulnerable to violence?			
Do policies recognize that trafficking in women, prostitution and sexual assault against women takes place in armed conflicts and during the occupation of territories?			
Do policies recognize that rural women are at greater risk of gender-based violence and sexual exploitation when they leave the rural community to seek employment in towns?			
Are there policies that address compulsory sterilization or abortion?			

## General Recommendation No. 24 (20th session, 1999)

### *Women and health*

Access to health care, including reproductive health, is a basic right under the Convention on the Elimination of Discrimination against Women.

Key Questions	Compliance	Relevant Legislation	Comments
What are the policies, including health care protocols and hospital procedures, to address violence against women and abuse of girl children and the provision of appropriate health services?			
What are the procedures and policies put into place to prohibit female genital mutilation and marriage of girl children?			
What are the appropriate legislative, judicial, administrative, budgetary, economic and other measures put into place to ensure the maximum extent of available resources to guarantee that women realize their rights to health care?			

<p><b>Are there any policies put into place to address the high maternal mortality and morbidity rates and to provide information on different forms of contraception?</b></p>			
<p><b>Are there any policies put into place to address the issues of how HIV/AIDS and other sexually transmitted diseases create unequal power relations because women and adolescent girls are often unable to refuse sex or insist on safe and responsible sex practices?</b></p>			
<p><b>Harmful traditional practices, such as female genital mutilation, polygamy, as well as marital rape, may also expose girls and women to the risk of contracting HIV/AIDS and other sexually transmitted diseases. What are the policies in effect to address harmful traditional practices?</b></p>			
<p><b>Is sexual health information made available to sex workers?</b></p>			
<p><b>Are there policies to ensure safe pregnancies, childbirth and post-partum, antenatal and postnatal periods for women?</b></p>			
<p><b>Are there policies that ensure women's right to safe motherhood and emergency obstetric services to the maximum extent of available resources?</b></p>			
<p><b>Are there laws that protect women's health and safety in working conditions, including the safeguarding of the reproductive function, special protection from harmful types of work during pregnancy and provision of paid maternity leave?</b></p>			

## PART TWO

### Other Conventions with Special Relevance to Gender Equality and Reproductive Health and Rights

#### International Covenant on Economic, Social and Cultural Rights (1966)

##### Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
  - a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
  - b) The improvement of all aspects of environmental and industrial hygiene;
  - c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
  - d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

#### Convention on the Rights of the Child (1989)

##### Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
  - (a) To diminish infant and child mortality;
  - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
  - (c) To combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
  - (d) To ensure appropriate prenatal and postnatal health care for mothers;
  - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
  - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international cooperation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

## Convention on the Rights of Persons with Disabilities (2006)

### Article 23 - Respect for home and the family

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:

- a. The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;
- b. The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;
- c. Persons with disabilities, including children, retain their fertility on an equal basis with others.

2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

# PART THREE

## Suggested Format for the Country Reports

### 1) Analysis of the Monist/Dualist System

- Are human rights norms directly applicable in your country, or do they have to be transformed through enabling legislation?

International human rights law does not automatically form part of the national law of the ratifying State. International treaties in countries that follow the 'monist' tradition are not self-executing. That is, they do not have the force of law without the passage of additional national legislation. These States incorporate treaties and norms into their domestic laws by specific 'transformational' devices in order to give treaties domestic effect. However, as a signatory of international instruments, States undertake to bring their national laws into compliance with binding international legal standards.

### 2) Constitutional Analysis

- Is there any reference to international laws in the constitution or any reference to CEDAW, CRC and other human rights conventions in national law?
- Provide constitutional provisions on gender equality, right to health and/or reproductive rights, rights to socio-economic and cultural rights
- Are those provisions justiciable in courts? Are there any examples where international law has been used in courts?

### 3) Gender Equality Lawmaking

(Refer to Articles 1, 2, 3, 4 and 11 of CEDAW and the questions under those articles.)

- What are the laws or policies that deal with gender equality in the workplace, family and access to resources?
- Are there quotas or special measures created for achieving equality of result?
- Are there special measures created for women's access to health care?

#### The following core principles form the basis of CEDAW:

**The principle of substantive equality.** The State is responsible for ensuring equality of opportunity, equality of access to opportunity and equality of results. The indicators of State progress lie not just in what the State does (e.g. a policy to reduce maternal mortality), but in what the State achieves in terms of real change for women (e.g. does the number of women dying in childbirth actually go down?).

**The principle of non-discrimination.** This goes further than the creation of gender-neutral laws and policies. If necessary, the State is obliged to put in place temporary measures to help correct the effects of past discrimination.

**The principle of State obligation.** This means that women are not dependent on the good will of the State. The State has responsibilities toward women from which it cannot withdraw.

#### DE JURE discrimination

**Discriminatory legal provisions such as:**

- Electoral rights only for men
- Inheritance rights only for sons

**Provisions with discriminatory impact such as:**

- Absence of safeguards for pregnancy and childbearing in labour market regulations
- Absence of pension rights for part-time workers

**DE FACTO discrimination****Unequal treatment such as:**

- Cultural barriers that restrict education for girls
- Social and cultural barriers to women's participation in the military
- 

**Unequal opportunity such as:**

- Unequal political representation of women
- Unequal access of women to high-level management positions

**4) Analysis of Health Laws**

(Refer to Article 12 of CEDAW, the relevant questions, and General Recommendation 15 of CEDAW.)

- Are there specific laws on health?
- Do these laws call for the highest attainable standard of health (refer also to Article 24 of the CRC and Article 12 of the ICESCR)?
- Is there a specific law on reproductive health?
- Are there other laws that refer to equal access to health care?
- List any law that might deal with HIV/AIDS; and sex selective abortion.
- Is there any relevant case law on reproductive rights and access to anti-retroviral drugs?

**5) Analysis of Education Laws**

(Refer to Articles 5 and 10 of CEDAW and the relevant questions.)

- Are there laws on education?
- What are the provisions that deal with gender equality in schools, sports, transportation to schools, job training, curriculum, etc.?
- Are there provisions that deal with dismantling gender stereotypes in the curriculum and textbooks?

**6) Analysis of Laws on Political Participation**

(Refer to Article 7 of CEDAW and the relevant questions.)

- What are the laws that deal with political participation?
- Are there quotas for women in political parties?
- Are there quotas for women in political office?
- Are there laws that deal with NGO participation?

**7) Citizenship Laws**

(Refer to Article 9 of CEDAW and the relevant questions.)

- Do citizenship laws create a distinction between men who marry foreigners and women who marry foreigners?
- Do children whose mothers are married to foreign citizens have the same rights to access resources as others?

## 8) Laws and Policies on Development

(Refer to Article 14 of CEDAW and relevant questions.)

- Do laws and policies integrate rural women in development initiatives and policies?
- Do rural women participate in law and policymaking on development?

## 9) Laws on Domestic Violence and Sexual Harassment

(Refer to General Recommendation 19 on violence against women and General Recommendation 14 on female circumcision.)

- Provide laws and policies on domestic violence and sexual harassment.
- Provide provisions of the criminal law and criminal procedure law that address domestic violence.

## 10) Disability Laws

(Refer to CRPD Article 23.)

- What are the laws that address the rights of persons with disabilities?
- Do these laws provide that persons with disabilities have equal rights to marriage, family, parenthood and relationships, on an equal basis with others?
- Do these laws allow persons with disabilities to choose freely and responsibly the number and spacing of their children and have access to age-appropriate information, reproductive and family planning education?

## A List of Relevant Laws

Below is a list of laws that are relevant to this analysis. The mapping exercise and analysis should include an examination of the laws below, and the country partner's work must reflect an inquiry into the following laws:

- laws on reproductive rights
- equality laws
- health laws<sup>33</sup>
- anti-violence against women laws
- maternal health laws
- criminal codes
- right to information
- inheritance laws/property laws
- anti-abortion laws
- anti-discrimination against HIV/AIDS laws
- antenatal laws and policies

## ANNEX 4: Terms of Reference

### Legislative Analysis and Mapping for Regional Partners and Terms of Reference for National Consultants

#### I. Background

International legal instruments, in particular conventions and treaties ('instruments'), provide an important framework for defining the human rights of women and girls. As duty-bearers, States Parties to these instruments are obligated to fulfil and guarantee the individual and collective rights outlined in them, in accordance with the specified terms. A key step to the fulfillment of the rights of women and girls (rights-claimants) is to ensure that national legislation and law conforms with international norms generally and with the treaty obligations of the State in question in particular (*de jure* compliance). Once *de jure* compliance is established, further analysis of secondary legislation and the application and enforcement of international law at the country level is required to better understand whether the rights of women and girls have actually been realized, and to determine what gaps exist in national capacity that would prevent fulfillment of these rights. Improving the collective understanding of rights achieved and rights not yet fulfilled is critical to measuring country success in meeting the Millennium Development Goals (MDGs) and identifying capacity gaps and national priorities for action.

In light of the above, UNFPA's Eastern Europe and Central Asia Regional Office seeks to undertake regional legislative analysis in order to discern the degree to which national legislation related to gender equality and reproductive rights in the region is congruent with international legal norms and instruments. In this analysis, the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted by the UN General Assembly on 18 December 1979, serves as a key framework instrument. In addition, the Eastern Europe and Central Asia Regional Office aims to identify partners at the country and regional level who have contributed to national legislative processes for the advancement of the rights of women and girls. This activity supports the 2008 Eastern Europe and Central Asia Regional Programme Work Plan and indicator "number of countries interacting with regional networks and coalitions in policy dialogue on gender equality and reproductive rights."

Following the legislative analysis, and during a second stage of research to be conducted at a later time, the Eastern Europe and Central Asia Regional Office seeks to determine the extent to which countries have implemented the international laws related to gender equality and reproductive rights (*de facto* compliance) and analyse gaps in national capacity to realize the rights of women and girls. In addition to providing an important resource tool for governments, the review is intended to help national partners jointly identify priorities for action, take concrete steps to comply with international law and facilitate strengthened partnerships in support of gender equality and the reproductive rights of women and girls.

#### **Specific Task**

##### **Regional legislative analysis in light of international legal instruments**

The objective of the desk review is to assess if, how and the degree to which the national laws of 20<sup>97</sup> countries and territories in the Eastern Europe and Central Asia region comply with international legislation, legal norms and standards pertaining to gender equality and reproductive rights and

<sup>97</sup> Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, Macedonia, Moldova, Romania, Russia, Serbia, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan.

gender-based violence prevention. In addition, partners who have contributed to national or legislative processes will be identified.

## II. Methodology

### Desk review of national legislation in light of international legal instruments

- a. The appropriate and binding international law and instruments for the above task should be identified.
- b. As a point of departure, it is important to ascertain which countries in Eastern Europe and Central Asia are parties to CEDAW and other international instruments. Additionally, it is equally important to establish and note any reservations articulated by States Parties.
- c. Assessment of country compliance with international legislation will be undertaken in light of available **primary information sources**, including the legislation and constitutions of States Parties in the region.
- d. In order to systematically review national legislation across countries and ensure a high degree of comparability across countries, **a number of key questions will be formulated for each article of the CEDAW and other relevant international instruments**. Each country will be asked the same key questions, thus facilitating a snapshot/mapping of current norms and legislative shortfalls in the region. The development and finalization of the instruments (key questions) and country reporting format has been undertaken by the lead consultant, in close consultation with the Eastern Europe and Central Asia Regional Office.
- e. Guidance to each key question may need to be formulated to ensure the intent behind each question is clear and thus improve the consistency of high quality responses at the country level.
- f. UNFPA Country Offices will identify appropriate national consultants with appropriate technical expertise (national laws and legislation/human rights/gender equality and reproductive rights) and English writing skills.
- g. **National consultants will review national legislation and laws in order to respond to standardized key questions and will also review the country reporting format to be submitted to the lead consultant, the UNFPA Country Office and the Eastern Europe and Central Asia Regional Office. In addition, national Consultants will identify partners at the national level who have contributed to national legislative processes for the advancement of women and girls. The lead consultant will provide substantive guidance via email to the national consultants as needed.**
- h. The outline and content of the final document will be developed by the lead consultant and agreed to by the Eastern Europe and Central Asia Regional Office.
- i. Preliminary (draft) consolidated findings will be shared with the respective UNFPA Country Offices and partners at the country level as well as with UNFPA colleagues at Headquarters for comment.
- j. UNFPA Country Offices are encouraged to share draft findings with a select group of partners with technical expertise in the subject matter in order to get their comment and input. Country comments will be compiled by the UNFPA Country Office and forwarded to the lead consultant and to the Eastern Europe and Central Asia Regional Office.
- k. The final report of the desk review will be developed and submitted by the lead consultant to the Eastern Europe and Central Asia Regional Office.





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