

# BARRIERS, REMEDIES AND GOOD PRACTICES FOR WOMEN'S ACCESS TO JUSTICE IN AZERBAIJAN



Prepared under the Programmatic Cooperation Framework Project  
“Improving Women’s Access to Justice in the five Eastern Partnership Countries”  
Armenia, Azerbaijan, Georgia, Republic of Moldova, and Ukraine

**Programmatic Cooperation Framework for  
Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus**

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This national study, "Barriers, remedies and good practices for women's access to justice in Azerbaijan", has been prepared by Parvana Bayramova. The opinions expressed in this work are the responsibility of the author and do not necessarily reflect the official policy of the Council of Europe or the European Union. The information contained in this document is up to date as of February 2017.

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# GENERAL INTRODUCTION TO THE FIVE NATIONAL STUDIES

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Important efforts have been made to strengthen gender equality standards both at the level of the Council of Europe and within its member states. Four major treaties underpin the core Council of Europe gender equality standards. These are the “foundational” treaties: the European Convention on Human Rights and the European Social Charter (revised), and the two “new generation” treaties, the Convention on Action against Trafficking in Human Beings<sup>1</sup> and the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).<sup>2</sup> A number of recommendations of the Committee of Ministers on gender equality topics have been adopted since the 1970s.<sup>3</sup>

The first Council of Europe Gender Equality Strategy 2014-2017<sup>4</sup> provides the strategic framework for the implementation of these standards to bring member states closer to *de facto* gender equality. One of the five objectives of the Council of Europe Gender Equality Strategy is to work with member states towards guaranteeing equal access of women to justice. The Strategy establishes that action in this area seeks to: analyse national and international frameworks to gather data and identify the obstacles women encounter in gaining access to the national courts and to international justice; identify, collect and disseminate existing remedies and good practices to facilitate women’s access to justice; and make recommendations to improve the situation.

The regional project Improving Women’s Access to Justice in Five Eastern Partnership countries (Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine) contributes to the overall implementation of the Gender Equality Strategy and in particular the realisation of Objective 3 of the Strategy: guaranteeing equal access of women to justice. The project is funded by the Council of Europe/European Union Eastern Partnership Programmatic Cooperation Framework (PCF) 2015-2017,<sup>5</sup> and implemented by the Council of Europe Gender Equality Unit.

The main objectives of the project are to:

- ▶ identify and support the removal of obstacles to women’s access to justice;
- ▶ strengthen the capacity of Eastern Partnership countries to design measures to ensure that the justice chain is gender-responsive, including through the training of legal professionals.

While knowledge has increased, there are still systematic gaps in data collection concerning different aspects of women’s access to justice. In order to fill such gaps with respect to the beneficiary countries of the project, the Gender Equality Unit of the Council of Europe commissioned five national studies to map the barriers,

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1. Entered into force on 1 February 2008.

2. Entered into force on 1 August 2014.

3. See factsheet with the main Council of Europe standards on gender equality and women’s rights, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168058feef>, accessed 28 November 2016.

4. Available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680590174>, accessed 28 November 2016.

5. See <http://pjp-eu.coe.int/en/web/eap-pcf/home?desktop=true>, accessed 28 November 2016.

remedies and good practices for women's access to justice in Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine. The objectives of each of these studies were to provide:

- ▶ an analysis of the main obstacles to women's access to justice, both legal and procedural, as well as socio-economic and cultural;
- ▶ a set of recommendations for measures to improve women's access to justice in the respective countries, including examples of good practices, where they exist;
- ▶ background information for the subsequent organisation of training for legal professionals (judges, prosecutors, lawyers, and possibly law enforcement).
- ▶ The studies were carried out by five independent national experts who were asked to answer the following questions:
  - ▶ what are the gender gaps in access to justice in your country?
  - ▶ how responsive is the justice system to women's needs?
  - ▶ what can be done to improve the gender responsiveness of the justice system?

All five studies are structured around a similar set of themes and issues. The first part of each study addresses gender gaps in the access to justice, by analysing the legislative and policy frameworks as well as the implementation practices and mechanisms that affect women's access to justice. Socio-economic and cultural barriers to women's access to justice are also discussed in this first part. The second part of each study examines the gender responsiveness of the justice system in the respective country. The following issues are addressed in all five studies: women's access to courts; whether sex-disaggregated data on court applicants is available; gender stereotypes among legal professionals, especially the judiciary; and the availability of gender equality training in the initial and further education of legal professionals. The third part of each study presents the available remedies and good practices and formulates a set of recommendations. When relevant, and to the extent possible in the scope of addressing these general themes and issues, attention has been paid to obstacles affecting women from disadvantaged groups, such as women in rural areas; disabled women; elderly women; women from ethnic minorities; women victims of violence; lesbian, bisexual and transwomen; and women held in detention/prison.

Research for the five studies was mostly desk-based and the national consultants sampled as extensively as possible the existing sources available. In Armenia and Azerbaijan, the consultants conducted a limited number of interviews with lawyers and civil society advocates. In Georgia and the Republic of Moldova, the consultants also requested official data from a number of institutions. In Ukraine, the national consultant conducted a small survey among judges, based on a pre-defined questionnaire. The initial findings of the five studies were presented at the regional conference on Improving Women's Access to Justice in Five Eastern Partnership countries that took place on 5 and 6 November 2015 in Kvareli, Georgia. Feedback received from governmental officials, academic experts and civil society representatives at this conference was integrated in the studies. Furthermore, each consultant presented the findings of their country study to a national audience in the first months of 2016. Feedback from these validation meetings was also integrated in the final version of the studies.

The studies found that there are still significant gaps in women's access to justice, despite progress made especially in the adoption of laws and policies.

With respect to legal and policy frameworks, Eastern Partnership countries have made significant progress in passing legislation and adopting policies to advance gender equality. Guarantees of equality between women and men are included in the constitutions of each participating country, including most recently the Constitution of Armenia. All five countries have specific laws on gender equality, with Azerbaijan having adopted one in 2006, Armenia in 2011, Georgia in 2010, the Republic of Moldova in 2006, and Ukraine in 2005. Special anti-discrimination laws were adopted in Georgia in 2014, the Republic of Moldova in 2012 and Ukraine in 2012. There is no separate anti-discrimination law in Azerbaijan, though a special law on domestic violence was adopted in 2010. In addition, Georgia, the Republic of Moldova and Ukraine have all adopted specific legislation against domestic violence (in 2006, 2007 and 2001, respectively). Armenia, meanwhile, is preparing an anti-discrimination legislation and a law to prevent and combat domestic violence.

As of February 2017, three of the beneficiary countries, Georgia, the Republic of Moldova and Ukraine, have signed the Istanbul Convention with ratification pending. The other two countries have not yet signed the Istanbul Convention.

Despite the significant legislative progress, legal obstacles to women's access to justice persist. Specific barriers include *de jure* discrimination of women or gaps in the anti-discrimination legislative frameworks. The national



studies offer numerous examples of the discriminatory effects of protective labour legislation in each of the five countries. Further barriers have been observed in the area of labour law, such as unlawful dismissal of pregnant women or limitations on fathers' access to parental leave or the.

With respect to implementation practices and mechanisms, the studies found that while national laws uphold equality on the basis of sex, women rarely invoke these laws in court to protect their rights. The standards of proof and the legal mechanisms that are necessary to prove indirect discrimination are not well developed, while this is arguably the more prevalent manifestation of gender inequality. In all countries studied, gaps in access to justice for women victims of gender-based violence persist, in particular regarding non-criminalisation of all forms of violence against women; severe underreporting of crimes of violence against women; very few convictions of rape; and scarce or no state funding for support services for victims.

The studies also reveal a number of common socio-economic and cultural barriers to women's access to justice. A prominent obstacle is women's economic dependence on or economic inequality to men, which means they have less access to resources, often needed for legal proceedings. In addition to women's lower employment rates and significantly lower participation in the business sector, as either employees or entrepreneurs, there is a significant gender pay and revenue gap in all five countries. Secondly, patriarchal attitudes and beliefs persist about men's superiority to women and the naturalness of segregated gender roles that see women mainly as caregivers and men as breadwinners. The belief in men's superiority underpins the still-present practice of prenatal sex selection and selective forced abortions, addressed in the studies on Armenia, Azerbaijan, and Georgia, that results in skewed sex ratios in favour of men and represents a severe violation of women's rights. The same gender-biased attitudes also underlie the high social tolerance or even justification of domestic violence in the five countries. Thirdly, lack of access to information is a significant obstacle, especially among women from rural areas.

The studies provide ample evidence of the limited gender responsiveness of the justice systems in the five countries. There is very limited use of international standards in judicial decisions. In some of the countries, women are also significantly underrepresented in the judiciary. Gender stereotypes persist in the justice system and they are compounded by other stereotypes linked to age, ethnicity or social status. The national studies provide illustrations of such stereotypes, particularly affecting women confronted with gender-based violence.

The studies also present a number of good practices. In Armenia, an action plan to promote gender equality and gender balance in the judiciary was adopted by the judicial self-governance body (the Armenian Council of Court Chairpersons) in 2015. It includes measures such as the development of gender equality training materials and thematic training programmes. The equality bodies set up in Georgia and the Republic of Moldova offer potentially effective mechanisms to combat sex-based discrimination. Since 2013, the Public Defender's Office of Georgia has had a specific Gender Equality Department that monitors the implementation of gender-related legislation and policies, and studies complaints and individual cases of sex and gender-based violations of human rights. It also conducts public-awareness activities and training, collects data to monitor the effectiveness of protection mechanisms to prevent violence against women, and prepares annual reports. In Azerbaijan, the law takes into account the needs of rural women in respect of maternity leave. Women working in agriculture get more days of maternity leave: from 70 calendar days after birth up to 110 calendar days in cases of multiple births. In the Republic of Moldova, the Equality Council set up as an independent body under the anti-discrimination law in 2013 examines individual complaints, including cases of sex-based discrimination. It also analyses draft laws for compliance with anti-discrimination legislation and conducts awareness-raising activities on discrimination issues. The National Human Rights Action Plan of Ukraine, covering the period 2015-2020, offers a good practice example of a human rights policy that contains ample provisions on gender equality closely matching priority areas of the Council of Europe Gender Equality Strategy. A number of civil society initiatives, such as the online Virtual Legal Aid Service for women set up by the Women's Consortium of Ukraine, as well as the specialist support services provided by women's organisations to women victims of gender-based violence, show that civil society expertise is an important resource to improve women's access to justice.

Access to justice is central to the rule of law and integral to the enjoyment of human rights. It is also an essential precondition to social inclusion and a critical element of a well-functioning democracy. The requirement of equality, including gender equality, is at the centre of the scope, exercise and fulfilment of the right to justice. It is hoped that these five national studies will contribute to the further development of tools to improve women's access to justice. In particular, the information provided by the national studies will be used in the elaboration of a training manual for judges and prosecutors on ensuring access to justice for women, to be used by judicial training institutions in the five beneficiary countries of the project.



# AZERBAIJAN

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*Report prepared by Parvana Bayramova*

## 1. INTRODUCTION

Since regaining independence in 1991, Azerbaijan has become a state party to a range of international human rights treaties including,<sup>6</sup> and has ratified regional human rights treaties including the European Convention on Human Rights and the European Social Charter (revised). Azerbaijan has not yet signed or ratified the Istanbul Convention. The Constitution of the Republic of Azerbaijan (Government of Azerbaijan 1995)<sup>7</sup> stipulates that international treaties are also an integral part of Azerbaijan's domestic legislative system.<sup>8</sup> International treaties, to which Azerbaijan is a party, have priority over national normative legal acts (with the exception of the Azerbaijani Constitution and acts adopted by referendum) if a conflict arises between them.<sup>9</sup>

Respect and protection of human rights reflected in the above-mentioned international agreements cannot be guaranteed without access to justice, which is an integral element of the rule of law. Women's access to justice, particularly, is one of the keys to the realisation of human rights and freedoms and the realisation of equality and non-discrimination on the grounds of sex and gender. Today, it is possible and important to guarantee women's access to justice through implementation of the requirements of the international human rights system around the globe.

This study is based on the understanding that access to justice is central to the rule of law and integral to the enjoyment of basic human rights. It is also an essential precondition to social inclusion and a critical element of a well-functioning democracy. Access to justice can be construed as the ability of people, including people from disadvantaged groups, to seek and obtain a remedy through institutions of justice, and in conformity with human rights standards. The requirement of equality, including gender equality, is at the centre of the meaning, the exercise and the fulfilment of the right to justice.

The Azerbaijani Constitution provides for the right to equality and prohibits the restriction of rights and freedoms on the ground of gender, among others. It is important to note that the Law of the Republic of Azerbaijan on Gender Equality was adopted in 2006 and it provides definitions of the concepts of gender equality and non-discrimination (Government of Azerbaijan 2006). The Law on Gender Equality defines gender equality as "equality of rights between women and men, equal opportunities to exercise their rights and equal social status."<sup>10</sup> Under the term "equal opportunities" the law understands "equal conditions and provisions created for men and women to exercise human rights."<sup>11</sup> Accordingly, gender discrimination is "any distinction, exclusion or privilege restricting or denying the exercise of rights on the grounds of sex."<sup>12</sup> The principle of equality and non-discrimination is reflected in several other laws, including the Criminal Code and the Labour Code, although there is no separate anti-discrimination law in the country.

It is also important to note that on 6 February 2009, the President of Azerbaijan signed a decree on approval of the State Programme on the Development of the Justice System in Azerbaijan for 2009-2013. One of the main objectives of the State Programme was to improve access of citizens to judicial authorities and courts. Twenty regional legal advisory service centres have been established with the aim of sensitising low-income communities about their rights, especially women – raising their awareness and enhancing their access to free legal aid services under the Judicial Modernisation Project implemented jointly by the Ministry of Justice and the World Bank.<sup>13</sup> There has been no follow up to this programme yet.

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6. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Rights of the Child (CPC), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of Persons with Disabilities.

7. The Constitution of Azerbaijan, 12 November 1995.

8. Article 148, the Azerbaijani Constitution.

9. Article 151, *ibid*.

10. Article 2.0.2, Law on Gender Equality.

11. Article 2.0.3, *ibid*.

12. Article 2.0.4, *ibid*.

13. Consideration of reports submitted by states parties under Article 18 of the Convention. Fifth periodic report of states parties. Azerbaijan (11 March 2013). CEDAW/C/AZE/5.

Azerbaijani legislation stipulates that “justice in the Republic of Azerbaijan is administered on the basic principle of equality of everyone before law and court, irrespective of ... sex”.<sup>14</sup> It is important to note that Azerbaijan has achieved some progress during the last five years in undertaking legislative reforms regarding the rights of women:

- ▶ the adoption of the Law on Prevention of Domestic Violence (2010);
- ▶ amendments to the Criminal Code criminalising trafficking in human beings, including a provision on forced and child marriages (2011);
- ▶ amendment to the Family Code setting the minimum age of marriage at 18 for both women and men (2011);
- ▶ adding a new section on the implementation of cases requiring on long-term protection orders for victims of domestic violence to the Code on Civil Procedures (2011).

The main objective of this study is to map the main obstacles for women’s access to justice in Azerbaijan, as well as remedies and good practices existing in the country. We will try to define gender gaps existing in legislation, policies and practices that limit women’s access to justice in Azerbaijan. The national legal and policy framework in the different fields of law, including constitutional law, criminal law and labour law, will be analysed with this aim.

## 2. GENDER GAPS IN ACCESS TO JUSTICE

### Obstacles to women’s access to justice in national legal and policy frameworks

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#### Possible discriminatory laws and practices

The relevant fields of law are investigated under a set of questions to define discriminatory laws and practice with regard to women. These questions have been compiled by the author on the basis of international and European gender equality standards.

#### Constitutional law

The Azerbaijani Constitution provides for equality of all people with respect to the law and law courts and states that women and men possess equal rights and freedoms. The Constitution imposes a duty on state bodies and institutions to guarantee the equal rights of women and men.<sup>15</sup> It is important that the Constitution contains this anti-discrimination clause binding any person, organisation or enterprise, which means that the Constitution prohibits discrimination against women in public and private spheres.<sup>16</sup>

*Does the Constitution encompass direct and indirect discrimination? Is such a prohibition of discrimination contained in special legislation?*

The Constitution guarantees the equality of rights and freedoms to everyone irrespective of sex, among others, and prohibits restricted rights and freedoms of persons on the ground of sex. As previously mentioned, the Law on Gender Equality provides a definition of gender discrimination and defines it as “any distinction, exclusion or privilege restricting or denying the exercise of rights on the grounds of sex.”

Article 1 of CEDAW, defining “discrimination against women”,<sup>17</sup> covers both direct and indirect discrimination and states that not only acts that have the purpose of discriminating, but also acts that effect in discrimination constitute discrimination against women. The CEDAW Committee differentiates between direct and indirect discrimination in its General Recommendation No. 28, para. 16:

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14. Article 7, Law of the Republic of Azerbaijan on Courts and Judges.

15. Article 25(V), Azerbaijani Constitution: “Everyone shall be guaranteed equal rights in any proceedings before state authorities and bearers of public authority that decide upon his/her rights and duties.”

16. Article 25(IV), Azerbaijani Constitution: “No one may be harmed, granted advantages or privileges, or refused to be granted advantages or privileges on the grounds laid down in paragraph III of the present article.”; Article 25(III): “The State shall guarantee the equality of rights and freedoms to everyone, irrespective of race, nationality, religion, language, sex, origin, financial position, occupation, political convictions, membership in political parties, trade unions and other public organisations. It shall be prohibited to restrict rights and freedoms of human beings and citizens on the grounds of race, nationality, religion, language, sex, origin, financial position, occupation, political convictions, membership in political parties, trade unions and other public organisations.”

17. Article 1, CEDAW: “For the purposes of the present Convention, the term ‘discrimination against women’ shall mean 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 field.”

States parties shall ensure that there is neither direct, nor indirect discrimination against women. Direct discrimination against women constitutes different treatment explicitly based on grounds of sex and gender differences. Indirect discrimination against women occurs when a law, policy, programme or practice appears to be neutral as it relates to men and women, but has a discriminatory effect in practice on women, because pre-existing inequalities are not addressed by the apparently neutral measure.

Thus, the definition of gender-based discrimination in the Law on Gender Equality does not cover both direct and indirect discrimination and does not fully comply with international requirements in this field. In its fifth periodic report to the CEDAW Committee, the Azerbaijani Government refers to Article 12 of the Azerbaijani Constitution providing that all international agreements and conventions that Azerbaijan has ratified are considered to be part of its domestic legislation. Therefore, in the case of any discrepancy between the definition of “discrimination against women” as contained in the Law on Gender Equality, the definition in Article 1 of CEDAW will be given precedence (UN Committee on the Status of Women 2013, para.4). The report indicates that:

[t]here is also regular and ongoing training organized by the Academy of Justice under the auspices of the Ministry of Justice of the Republic of Azerbaijan for all Justice and law enforcement and court officials including Judges, lawyers, notaries and the Prosecutor’s Office. The training programmes cover all the articles of the Convention and more particularly, the importance of giving a broad interpretation to the definition of “gender-based discrimination” in line with Article 1 of the Convention (UN Committee on the Status of Women 2013, para.5).

However, it would be useful to amend the Law on Gender Equality to bring the definition of “discrimination against women” into compliance with international law and to make the real meaning of this notion clear for judges, lawyers, state officials, as well as potential victims and representatives of civil society. From approximately 10 interviews conducted with lawyers for this study and attendance of previous awareness-raising trainings for lawyers, it can be said that lawyers in Azerbaijan are not sufficiently aware of the meaning of direct and indirect discrimination; as far as we know there is also no court decision or judgment where the definition of “discrimination against women” was provided as including direct and indirect discrimination.

*Does the Constitution guarantee substantive equality between men and women?*

The Constitution stipulates the equality of all persons in front of the law and the courts. It also provides for equal rights and liberties for women and men. The relevant provision covers formal equality not stipulating equal opportunities for women and men, which is important for achieving real equality. However, the Law on Gender Equality defines gender equality as legal equality of women and men, equal opportunities for realisation of these rights and their equal social status in society. Thus it is possible to say that Azerbaijani legislation guarantees real equality by giving women and men equal rights and opportunities. However, despite the fact that the equality of women and men is affirmed in the Azerbaijani Constitution and in other legal texts – including the Law on Gender Equality – there is still considerable *de facto* gender inequality in the political, economic and social spheres.<sup>18</sup>

## **Labour law**

Azerbaijan is a party to the ICESR and the European Social Charter (revised). In 2010, Azerbaijan ratified the ILO Conventions No. 156 on Workers with Family Responsibilities and No. 183 on Maternity Protection (revised).

*Has the legislation removed the prohibition for women on working in particular fields of employment or at particular hours? Are there restrictions on women’s choice of employment?*

The Labour Code of Azerbaijan<sup>19</sup> prohibits the employment of women workers in labour-intensive jobs, in hazardous workplaces, including underground tunnels, mines and other underground works.<sup>20</sup> The Cabinet of Ministers of Azerbaijan issued Decree No. 170 in 1999, which sets out 39 areas of employment in which women are not permitted. These include: metal processing; construction and repair work; mining; drilling; oil and gas extraction; work in power plants; the manufacture and repair of aircraft; shipbuilding; chemical production; furniture making; cement making; and the manufacture of glass products. The Labour Code also prohibits the employment of women as workers for lifting or carrying heavy items from one place to another,

18. Report of the Special Rapporteur on Violence against Women, its causes and consequences, Rashida Manjoo. Addendum, Mission to Azerbaijan. 25 April 2014., para. 27.

19. The Labour Code of the Republic of Azerbaijan was approved with the Law of the Republic of Azerbaijan on Approval, Entry into Force and Related Legal Regulation Issues of the Labour Code of the Republic of Azerbaijan No 618-IQ, 1 February 1999.

20. Article 242, Labour Code.

beyond the limits specified in the legislation.<sup>21</sup> Although even some Azerbaijani lawyers and NGOs refer to these provisions as benefits for women provided in law, they constitute discrimination against women by not allowing them to freely decide on their own employment.

*Are restrictions regarding duties at work for pregnant women or women having children under three years old in compliance with international norms?*

The Labour Code prohibits women who are pregnant or have children under three years of age to work on night shifts, overtime shifts, weekends or on a holiday – considered as a non-business day or other days – or sending them on job-related travel (Government of Azerbaijan 1999, Article 242). Article 8 of the Social Charter stipulates that parties must undertake to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants, in underground mining and all other work that is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women. The relevant provision of the Labour Code therefore does not comply with the relevant requirement of the Social Charter, as the article prohibits conditions of work such as working on weekends or holidays, or being sent on business trips, which are not necessarily dangerous, unhealthy or of an arduous nature for pregnancies. This prohibition reflects cultural stereotypes of women as the main responsible persons for child-raising; restricts the free choice of work for pregnant women and women with children under three years of age; impacts on their career and makes women less advantageous employees than men.

*Are there any discriminatory (direct and/or indirect) provisions in the regulations on maternity, paternity and parental leave?*

According to the law, women shall be granted pregnancy and maternity leave of 126 days, starting 70 calendar days prior to childbirth and ending 56 calendar days after childbirth. In the event of abnormal or multiple births, women shall be granted 70 days leave after childbirth. The Labour Code takes into account the needs of rural women and defines more days of maternity leave after childbirth for women working in the agricultural sector: 70 calendar days after birth for normal childbirth; 86 calendar days for difficult births; and 110 calendar days for multiple births (Government of Azerbaijan 1999, Article 125). According to the Labour Code, the employment contracts of pregnant women and women with children under the age of three, as well as single fathers raising a child under the age of three, may not be terminated (Government of Azerbaijan 1999, Article 79).

A parent who is directly caring for a child until it is three years old shall be eligible for partially paid social leave<sup>22</sup> to the extent determined by legislation. An employee caring for a child may use partially paid social leave completely or in part, at her/his discretion terminated (Government of Azerbaijan 1999, Article 127).

The Labour Code defines additional leave for women with children. Regardless of the amount of basic and additional leave time, working women with two children under the age of 14 shall be eligible for two additional calendar days of leave; women with three or more children of this age or with a child with a health condition shall be eligible for five additional calendar days of leave. The law provides 14 calendar days of unpaid leave for men whose wives are on maternity leave. It provides for 14 calendar days unpaid leave for women or single fathers with children under the age of 16, which are granted in addition to regular paid leave (Government of Azerbaijan 1999, Article 130). Furthermore, the Labour Code provides benefits for women such as breaks for feeding/nursing a child, and payment of wages for the time spent on medical examinations for children.

Azerbaijani legislation provides positive conditions and opportunities for mothers, while fathers do not enjoy the same opportunities. Fathers may benefit from all these labour-related benefits only if they raise the children as single parents for a particular reason (if the mother of the children has died, or has been deprived of her rights to motherhood, or has to be away for therapy in a medical institution, or has to spend time in jail), (Government of Azerbaijan 1999, Article 244 to 246). Fathers are eligible for the same additional leave if they raise their children without mothers (Government of Azerbaijan 1999, Article 117).

21. According to Article 241(2) of the Labour Code “work duties of women workers can include manual lifting and carrying of heavy objects within the limits specified below:

- a) along with performing other duties, lifting by hand and carrying to another place objects of which the total weight is no more than 15 kilograms;
- b) lifting to a height of more than one-and-a-half metres an object of which the weight is no more than 10 kilograms;
- c) lifting by hand and carrying to another place objects of which the total weight is no more than 10 kilograms during the entire workday (work shift);
- d) carrying of objects by carts or other vehicles, the lifting of which would require more than 15 kilograms of power.”

22. The Labour Code differentiates academic leave, labour leave and social leave, depending on the reason.

By being afforded only to women and ensured for men only on condition that they raise their children alone, these benefits and opportunities perpetuate the cultural stereotype that women are mainly responsible for raising children. The Council of Europe recommends that governments of member states take action, within the framework of a general policy promoting equal opportunities and equal treatment, to enable women and men, without discrimination, to better reconcile their working and family lives. Committee of Ministers Recommendation No. R (96) 5 on reconciling work and family life seeks paternity leave for fathers of newly born children and states that “both the father and the mother should have the right to take parental leave during a period to be determined by the national authorities without losing either their employment or any related rights provided for in social protection or employment regulations. The possibility should exist for such parental leave to be taken part-time and to be shared between parents”, (Council of Europe, 1996).

Article 27 of the Social Charter provides for the right of workers with family responsibilities to equal opportunities and equal treatment. Azerbaijani legislation does not fully comply with the relevant international standards in this field.

It shall be also noted that the above-mentioned provisions defining paid leave and additional leave only for women can result in indirect discrimination against women in the labour market. All expenses for paid leave, additional leave and other related benefits shall be covered by the employer, which makes it more advantageous for employers to hire men than women. This is one of the problems faced by women, especially potential mothers, in the recruitment process,<sup>23</sup> despite the fact that this issue is directly addressed by the Law on Gender Equality, which states that “compensations, privileges and fringe benefits for women specified by the Labour Code shall not be considered as discrimination (Government of Azerbaijan 2006). Long leaves also can have a negative influence on women, not least because of the lengthy interruption of their career and education they cause.

*Is there compulsory paternity leave in legislation?*

No.

*Does the legislation provide for an equal retirement age for women and men?*

The Law of Azerbaijan on Labour Pensions defines different ages for women and men for old age work pensions. Men attaining the age of 63 and women the age of 57 (the age limit was raised by six months with effect from 1 January 2016) with at least 12 years of social insurance recorded, shall have the right to an old age work pension. The imposition of a different age of retirement for women constitutes discrimination based on sex and notably, it prevents women from equal access to income, promotion and many associated benefits such as superannuation. Compliance with international standards requires ensuring that women are treated on an equal basis with men and therefore also requires legislation to ensure equal retirement ages for women and men.

## **Family law**

*Do women face any difficulty in divorce cases?*

According to the Family Code of the Republic of Azerbaijan,<sup>24</sup> divorce is possible through administrative procedure or judicially. In case of mutual consent of spouses to dissolve the marriage, when they do not have common minor children, divorce is executed in the appropriate body of the executive power (body of the state registration of the acts of civil status of the Ministry of Justice of Azerbaijan), (Government of Azerbaijan 1999b, Article 17). Disputes about the division of common property of the spouses; payment of funds for maintaining a disabled spouse who is unable to work; and disputes arising between the parties, if one is adjudged to be disabled, imprisoned for a period not less than three years, or about children – are considered judicially (Government of Azerbaijan 1999b, Article 18). Dissolution of marriage is executed judicially if spouses have common minor children (Government of Azerbaijan 1999b, Article 19.1).<sup>25</sup>

23. See [http://femida.az/news.php?id=960#.VWXqp8\\_tmko](http://femida.az/news.php?id=960#.VWXqp8_tmko), accessed 28 November 2016.

24. The Family Code was approved with the Law of the Republic of Azerbaijan on Approval, Entry into Force and Related Legal Regulation Issues of the Family Code of the Republic of Azerbaijan of 28 December 1999, No 779-IQ.

25. On the hand, Article 17.2 provides for the dissolution of a marriage due to the application of one of the spouses regardless of their having common minor children, and is executed by the appropriate body of the executive power (body of the state registration of the acts of civil status of the Ministry of Justice of Azerbaijan), if another spouse:

17.2.1. is judicially judged to be untraceable;

17.2.2. is judicially judged to be disabled;

17.2.3. is convicted for committing a crime with imprisonment for a period not less than three years.

The possibility to divorce through the administrative procedure in a case of mutual consent does not guarantee the rights of a woman to the same extent as judicial proceedings. Common minor children as one of the requirements for dissolution of marriage by the court may constitute discrimination against women without a child, mandating an administrative procedure. The existence of a child in a family is considered one of the most important elements of the family in Azerbaijani society. Infertility is always seen as the fault of the woman and a woman without a child has inferior status, especially in rural areas. Infertility is one of the main reasons leading to divorce through external interference (by older family members, such as a mother-in-law) in Azerbaijani society.<sup>26</sup> The possibility of divorce through administrative procedure creates a context in which women without children may be forced to “agree” to mutual consent, and results in violation of women’s rights, such as property rights or maintenance amounts. The law should take this into account and make divorce possible only through judicial proceedings.

The Family Code of the Republic of Azerbaijan states that spouses must support each other financially (Government of Azerbaijan 1999b, Article 84.1). In case of refusal and absence of agreement between spouses about the payment of alimony, the right to bring to court the party who has the necessary funds belongs to:

- ▶ disabled persons who need the financial aid of a spouse;
- ▶ a wife, during the period of pregnancy and for three years from the birth of common children;
- ▶ an indigent spouse, who takes care of a common disabled child, until the child is 18 years old;
- ▶ an indigent spouse, who takes care of a common Group 1 disabled child (Government of Azerbaijan 1999b, Article 84.2).

This provision restricts women’s rights, especially their access to justice. Spouses should be able to appeal without any restriction in the absence of support from the other side, if they need it. The list of reasons for applying for maintenance for a woman is also limited, and discriminates against women without children (Government of Azerbaijan 1999b, Article 85.2).

*Does the law safeguard the rights of girls and women in unregistered marriages and their children and provide for their access to justice?*

It is important that in 2011 the minimum legal marriage age for both women and men was set at 18 years. However, child/early marriages are still a big problem in Azerbaijani society. Child/early marriages are realised through religious marriages (*kabin*) and in the case of a dissolution of such marriages girls/women and children born as a result have no legal protection. The law should safeguard the rights of girls and women in unregistered marriages and their children. The law should also prohibit the conducting of religious marriages without prior formal registration.

In spite of criminal responsibility being defined for early marriages in the Criminal Code of the Republic of Azerbaijan,<sup>27</sup> this provision is not implemented in practice. The number of criminal cases of child/early marriages is not available. The Family Code does not safeguard the rights of adult women in unregistered marriages either.

## **Criminal law**

*Have such forms of violence against women as domestic violence, stalking and marital rape been criminalised?*

No, non-criminalisation, specifically of such forms of violence as domestic violence, stalking and marital rape restricts women’s access to justice. There is no specific offence of domestic violence in the criminal law legislation, even if in CEDAW’s General Recommendation No. 19(24)(r), the Committee declares that states parties are obligated to adopt laws against family violence and abuse. According to the Declaration on the Elimination of Violence against Women issued by the General Assembly of the United Nations in 1993, violence against women encompasses acts that result in, or are likely to result in, physical, sexual or psychological harm or suffering, including coercion and other deprivations of liberty. While common assault offences, typically present in most penal codes, could be used in some limited circumstances, they do not incorporate the complexity of domestic violence. Therefore, to fully comply with UN standards, domestic violence offences should be incorporated into criminal law legislation. Paragraph 124(b) of the Beijing Platform for Action recommends that governments ensure that the legislation effectively protects women from violence and prosecutes offenders.

It should be noted that the Criminal Code includes several crimes such as deliberate murder (Article 120), causing someone to commit suicide (Article 125), deliberate causing of serious harm to health (Article 126), deliberate causing of less serious harm to health (Article 128), torture (Article 133), threat to murder or causing

26. Alternative report to the CEDAW Committee. Counterpart International. p. 56.

27. The Criminal Code was approved with the Law of Azerbaijan on Approval, Entry into Force and Related Legal Regulation Issues of the Criminal Code of Azerbaijan of 14 July 2000, No. 907-IQ.



of serious harm to health (Article 134), rape (Article 149), and violent actions of a sexual nature (Article 150). Many domestic violence crimes would fall under one of these categories. However, it would be more effective for the prevention and prosecution of domestic violence to include it in the Criminal Code as a specific crime or at least as an aggravating circumstance to any other crimes.

*Is the definition of rape in compliance with international standards?*

The Criminal Code defines rape as “sexual relations with the application of violence or with threat of its application to the victim or to other persons, or by taking advantage of the helpless condition of the victim”, (Government of Azerbaijan 2000, Article 149.1). This definition does not comply with international standards, as it is based on the use of force, rather than lack of consent. Women may submit to intercourse because of threats, coercion or intimidation, or blackmail including threats of harm to a third party (such as a child, sibling or mother). A statutory definition of consent in criminal law legislation would afford greater protection to women by specifically determining the range of circumstances involved. Such a definition would also designate the standards of acceptable sexual conduct, and should specifically include the variety of situations where a woman may submit due to threats or coercion or may not be able to express consent or lack of consent. The definition should clarify that such situations do not constitute consent. It should also be non-exhaustive, allowing the court discretion to determine the facts of a particular case before making a finding that the woman consented.<sup>28</sup> The definition of rape should be amended accordingly in the Criminal Code, and include marital rape.

*Are there provisions on forced pregnancy and forced abortion in the Criminal Code?*

Male preference and sex-selective abortions are common problems affecting women in Azerbaijan. Women, especially in rural areas, are subject to forced pregnancy with the aim of having them give birth to boys, and forced abortion when it is known that a girl will be born. Patriarchal attitudes and stereotypes about male preference also affect the high level of sex-selective abortions. NGOs working on the protection of women’s rights report that “cases when husbands, the husbands’ parents or other relatives force the women to have an abortion and get rid of the girl are fairly common.”<sup>29</sup> One woman, a 34-year-old mother of a son and a daughter, said: “My husband forced me to go for an abortion six times before I gave birth to a son. Each time I was pregnant, when the time came to find out the sex of the child, I was so scared. Every time I had to go through this hell and I could not explain to my husband what a torture it is to have an abortion, especially so many times.”<sup>30</sup>

The Criminal Code does not have any specific provisions for victims of such situations. It has a provision on forced pregnancy, but only in the context of crimes against peace and “security of humanity”, (Government of Azerbaijan 2000, Article 108.1).<sup>31</sup> The relevant provision of the Criminal Code on illegal abortion does not cover forced abortion.

The Parliamentary Assembly of the Council of Europe, in its Recommendation 1979 (2011) on prenatal sex selection draws attention to skewed sex ratios at birth in a number of member states, including Azerbaijan. The Parliamentary Assembly in its Resolution 1829 (2011) on prenatal sex selection, recalling the Istanbul Convention, expresses the belief that the social and family pressure placed on women to have sex-selective abortions is to be considered a form of psychological violence and that the practice of forced abortions is to be criminalised.<sup>32</sup> The Parliamentary Assembly calls on member states to introduce legislation with a view to prohibiting sex selection in the context of assisted reproduction technologies and legal abortion, except when it is justified to avoid a serious hereditary disease.<sup>33</sup> There is no provision in the legislation or mechanisms of implementation that would allow women in such situations to apply for justice.<sup>34</sup>

28. Jivan, V. and Forster, C. Translating CEDAW into law. CEDAW legislative compliance in the Cook Islands. UNDP, UNIFEM, 2008. p. 16.

29. See [www.infosud.org/Azerbaijan-Abortions-of-females-on,7204](http://www.infosud.org/Azerbaijan-Abortions-of-females-on,7204), accessed 28 November 2016.

30. *ibid.*

31. Article 108-1 of the Criminal Code on Forced Pregnancy: “Illegal imprisonment of a woman, for forced pregnancy with a view to change the ethnic structure of this or another population or accompanying other gross infringements of international law, shall be punished by imprisonment for a term between 10 to 15 years, upto life imprisonment.”

32. *ibid.* para. 5.

33. *ibid.* para. 8.7.

34. The draft law on protection of reproductive health and family planning prohibits sex-selective abortions, with exceptions for when there is a possibility of high risk of genetic disorders because of the sex. This law is pending approval by the Milli Mejlis (the National Parliament) of Azerbaijan.

## Negative impact of gender-neutral legislation

According to the Code of Criminal Procedures of the Republic of Azerbaijan:<sup>35</sup>

proof shall consist in the procurement, verification and assessment of evidence in order to establish facts of importance for the lawful, thorough and equitable determination of the criminal charge. The prosecutor shall be responsible for proving the grounds for the criminal responsibility of the accused and whether or not he/she is guilty.<sup>36</sup>

This gender-neutral provision restricts women's access to justice in cases of sexual violence and discrimination. In practice, one of the reasons why women do not apply to the courts in cases of sexual harassment, violence or other forms of discrimination is the difficulty of proving that the offence took place and the absence of reversal of the burden of proof. The Council of the European Union (EU) in its Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex states:

Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.<sup>37</sup>

Even if Azerbaijan is not a member of the EU, the requirement that the burden of proof shall be on the respondent party in cases of violence and discrimination has achieved the level of customary norm. There are often no witnesses to sexual offences and this requirement discriminates against sexual assault victims as it implies that women may lie about sexual assaults. Similar requirements are not made of victims of other offences such as common assault and there is no reason why victims in trials of sexual offences should be viewed as a particularly unreliable class of witness and/or that the word of a woman is inherently worth less than that of an accused man. Therefore, in order to provide effective complaints procedures and remedies for victims, the legislation shall remove the burden of proof from the applicant in cases related to discrimination and violence against women. The Code of Criminal Procedure should therefore include an exception regarding cases of violence against women and discrimination.

## Shortcomings of the special laws aimed at equality between women and men or the protection of women

### The Law on Prevention of Domestic Violence

The adoption of the Law of the Republic of Azerbaijan on Prevention of Domestic Violence in 2010 is one of the progressive steps taken for achieving the necessary level of protection of women's rights and prevention of violence and discrimination against women, and was welcomed by international organisations and international treaty bodies. However, there are several shortcomings in the law and its implementation. The shortcomings can be summarised as follows:

- ▶ according to the law, "If there are any data on committed or prepared crimes in a complaint on domestic violence, this kind of complaint shall be considered in the manner prescribed by the criminal procedure law" (Government of Azerbaijan 2010, Article 5.1). However, the Criminal Code clearly states that "the laws providing the criminal liability and providing punishment of the person who committed a crime shall be subject to application only after inclusion in the present Code" (Government of Azerbaijan 2000, Article 1.3). Domestic violence has not yet been included in the Criminal Code as a specific crime. It is relevant to note that the Criminal Procedural Code has no specific provisions to address the particular needs and rights of women victims of domestic violence;
- ▶ the law states that if the case of domestic violence is not criminal, the complaints will only be investigated with the consent of the victim or her/his legal representative (Government of Azerbaijan 2010, Article 6.3). Incompatibility existing between the law and the Criminal Code mentioned above makes this provision unclear. The law does not specify which acts of domestic violence should be subject to criminal prosecution and which should be addressed through administrative procedures;
- ▶ the law clearly mentions the state's duty to "assist in normalisation of relations between parties and resumption of family affairs" (Government of Azerbaijan 2010, Article 7.4). This provision can be interpreted

35. The Code of Criminal Procedures was approved with the Law of Azerbaijan on Approval, Entry into Force and Related Legal Regulation Issues of the Code of Criminal Procedures of Azerbaijan of 14 July 2000, No. 907-IQ.

36. *ibid.* Article 138, Code of Criminal Procedures.

37. Article 4, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31997L0080&from=EN>, accessed 28 November 2016.

as privileging mediation and reconciliation over the protection of women's human rights (Manjoo 2014, para. 64). Practice shows that it is the main policy of state bodies, including the State Committee on Family, Women and Children Affairs (SCFWCA), to achieve mediation and reconciliation in domestic violence cases. Even judges, while considering related cases, refer to this provision. For example, the Trial Monitoring Team of the Organization for Security and Co-operation in Europe (OSCE) reported that in one case, the judge repeatedly asked that the victim say the word "reconcile" for the court record, despite the victim's apparent reluctance to do so. Such an expression of formal consent could be used as the basis to terminate the proceedings;<sup>38</sup>

- ▶ the law provides for the possibility of issuing a "warning" to the perpetrator not to engage in violence in the future (Government of Azerbaijan 2010, Article 11). However, there is some confusion as to whether this warning could be issued together with a short-term protection order, if it could be used as evidence during a trial, or if it is a prerequisite to obtain a protection order. In practice, this lack of clarity reportedly results in law enforcement personnel not taking appropriate action (Manjoo 2014, para. 65).

### **Vulnerable groups**

Azerbaijani legislation does not specifically enumerate lesbian, gay, bisexual, transgender and intersex (LGBTI) status among the grounds for non-discrimination. Intolerance based on sexual orientation and gender identity remains a problem and is still a taboo topic in Azerbaijan. Easily identifiable data has not been collected on some important human rights dimensions of public health, including participation in policy making, implementation and review, and there is limited data on particular vulnerable population groups, such as people involved in prostitution, street children, people with disabilities, and LGBTI persons.

### **Access to legal aid**

Qualified and effective legal aid is one of the main guarantees of access to justice. Expensive legal services and lack of access to free legal aid are among the main obstacles that women face to bring violations of their rights to court. Insufficient economic means is a barrier to women's access to justice as they cannot afford to pay for qualified legal assistance and free legal aid is often not of a high standard. The results of surveys with victims, focus groups and expert interviews conducted by NGOs confirm that the extremely expensive legal services of lawyers, which very few women can afford, are among the barriers to justice in Azerbaijan (Gender Association "Symmetry" and Karat Coalition 2011, page 3).

Article 61 of the Constitution stipulates everyone's right to receive qualified legal assistance. In cases envisaged by law, legal assistance shall be provided free of charge, at the expense of the state. According to Article 20 of the Law on Advocates and Advocacy, the accused person and everyone who lacks funds to be represented in court has the right to be represented by advocates funded by the government. In practice, free state legal aid is usually provided in cases where involvement of a legal counsel is mandatory. A law on free legal aid has been drafted, but its adoption is still pending.

There is no mechanism for receiving free legal aid in civil cases. According to Azerbaijani legislation, the lawyer responsible for providing free legal services shall be appointed by the first instance court. However, to submit an application to the first instance court on provision of free legal aid, plaintiffs need a lawyer to help draft the application to the court. The Law on Advocates and Advocacy and the Code of Civil Procedure do not foresee any legal mechanism on provision of free legal aid before the appeal court and the first instance court for the low-income part of the population.

During her 2014 mission to Azerbaijan, the UN Special Rapporteur on Violence against Women received complaints about the poor quality of legal representation that is available from the state legal aid services. This result in perceptions of a lack of justice, particularly as indicated by the women interviewed in prison. The hiring of private lawyers by some women leads to the conclusion that women from precarious socio-economic backgrounds are less likely to have their rights properly defended because of their dependence on poor quality legal aid lawyers (Manjoo 2014, para. 32).

The limited number of lawyers in rural areas restricts women's access to justice in these regions, especially in remote villages. Vulnerable groups such as women, migrants and children faced with problems can rarely get full access to justice even in cases where domestic legislation exists.<sup>39</sup> The CEDAW Committee recommends that legal aid is made available to all victims of violence, including through the establishment of legal aid clinics, especially in rural areas.

38. Domestic Violence Cases in the Justice System of Azerbaijan. Rule of Law and Human Rights Unit. OSCE Office in Baku, 2013 (OSCE report), p. 20.

39. *ibid.*, p. 17.

### Domestic violence cases

In Azerbaijan, major challenges exist because of the discrepancy between the legal framework and its implementation, and the reality of widespread gender stereotyping. The UN Special Rapporteur notes that the right of access to justice for women is seriously compromised. The first challenge lies in the significant underreporting of cases of violence against women to the police. Numerous stakeholders explained that victims are very often reluctant to report, due, *inter alia*, to the fact that violence against women has been normalised, and even sometimes accepted, by the women themselves but also because of the responses of authorities, who promote notions of family unity, shame and stigma. These factors prevent women from breaking the silence around violence. The authorities, including Family Support Centres and the police, prefer not to intervene, as they consider violence against women a private matter that should be solved within the family. Cases of violence tend therefore not to be prosecuted in most instances; protection orders are not granted; and divorce is not easily achieved, even when requested due to violence in the marriage (Manjoo 2014, para. 31).

There are still several problems in implementing the Law on Prevention of Domestic Violence, which limits women victims' access to justice. Despite the fact that the law was adopted in 2010, a national implementation mechanism has not been developed yet. Both the National Strategy on Prevention of Domestic Violence and the National Action Plan on Prevention of Domestic Violence are still pending approval.<sup>40</sup> Unless these documents are approved and the state sets a specific budget for combating violence, the implementation and enforcement of the law will not take place. Since the nationwide research on the prevalence rates of domestic violence in 2008, no systematic data collection has been put in place to assess the extent of the phenomenon, change over time, or the effectiveness of the measures undertaken. The law highlights the importance of collecting data, in particular through a national databank. Accountability is a crucial aspect in the effective prevention and elimination of violence against women, but the UN Special Rapporteur observed that impunity seemed to be the norm for crimes committed against women (Manjoo 2014, para. 59).

In Azerbaijan, the main challenges relating to the investigation, prosecution and punishment of perpetrators for acts of violence against women are the minimal implementation and enforcement of the legal framework but also the lack of a gender perspective among law enforcement and judicial actors. The common resort to mediation as a means of dispute resolution is also a factor. Deeply rooted patriarchal attitudes regarding cases of violence against women on the part of police, judicial officers, other relevant civil servants as well as community leaders and families contribute significantly to the underreporting of cases (Manjoo 2014, para. 70).

The process of issuing long and short-term protection orders stipulated in the law (Government of Azerbaijan 2010, Article 10) is not well developed yet. This is complicated by the fact that long-term protection orders can only be issued if and when perpetrators violate a short-term order (Government of Azerbaijan 2010, Article 11.3), and since local executive bodies rarely issue short-term orders, courts almost never issue long-term protection orders. There were three court cases on long-term protection orders in 2013, and one case in 2014. All four cases took place in Baku.<sup>41</sup>

Women victims of domestic violence continue to face multiple obstacles to accessing mechanisms of support and protection. The law refers to the establishment of public support centres for victims of domestic violence to provide them with legal and medical assistance, psychological rehabilitation, social protection and allowances, and emergency shelter, among others, on a no-cost basis (Government of Azerbaijan 2010, Article 7.1). However, the number of support and referral centres is very limited and these are mainly run by NGOs reliant on donor funding. There are only three NGOs providing, *inter alia*, shelter services to victims of violence and functioning under the authority of the Ministry of Labour and Social Protection of the Population with the financial support of the Council of State Support to Non-Governmental Organizations and international donor agencies. They provide a set of services to victims of human trafficking and children victims of domestic violence.<sup>42</sup> Further, there is no 24/7 national helpline for victims of domestic violence. Only a few NGO-funded helplines are in place and these services are heavily dependent on donor funding.

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40. The CEDAW Committee, in its 2015 Concluding Observations, welcomes the information provided by the state party's delegation concerning the current consideration by the Ministers' Cabinet of the National Strategy on Prevention of Domestic Violence and the National Action Plan on Prevention of Domestic Violence, and the establishment of an online database on violence against women.

41. See [www.scfwca.gov.az](http://www.scfwca.gov.az), accessed 28 November 2016.

42. "Clean World" Public Union in Baku functions to accommodate victims of domestic violence alongside the victims of human trafficking. The shelter at the Azerbaijan Children Union in Baku accommodates child victims of domestic violence and the shelter at the "Temas" Public Union in Ganja is also mainly for victims of human trafficking.

## Divorce cases

Enforcement of court decisions on alimony for children faces difficulties in practice. Fathers refuse to pay alimony defined by the court. In fact, 25% of applications between 2000 and 2007 to the Legal Clinic at Azerbaijan Private University, specialised in protection of women's rights, were on non-enforcement of court decisions on alimony. Procedures on enforcement of court decisions need to be strengthened.

A special reference to the issue of employment of refugee and women Internally Displaced Persons (IDPs) was made in the President's decree concerning the realisation of the state policy on women. Within the framework of implementation of this decree, the SCFWCA obtained statistical data on women's employment from the Employment Service of the Ministry of Labour and Social Protection of Population: 18 381 women were provided with appropriate work, 739 of whom were refugees; 1 669 women were employed in the public sector, including 266 refugees; and unemployment benefits were issued to 7 998 persons, of whom 4 049 were refugees.<sup>43</sup>

## Forced and child marriages

As previously mentioned, the Family Code was amended in 2011 to set the legal age of marriage at 18 for both women and men. The Criminal Code was accordingly amended through the introduction of Article 176-1, which criminalises forced marriages and establishes specific sanctions for such actions. The Criminal Code also establishes more severe penalties for forced marriages of children.

There is a lack of official data on the dynamics of child marriages and the investigation and prosecution of such cases. According to the head of the SCFWCA, a few instances of child marriages were prevented in different regions in 2014: "The relevant government bodies sent letters to those families informing them that they violated the Azerbaijani legislation and it could constitute a sufficient ground for initiating a criminal case against them."<sup>44</sup> There is a high prevalence of early and/or forced marriage in Azerbaijan. Although statistics may not be accurate due to the illegal nature of the practice, the SCFWCA stated that there were more than 5 000 early marriages in 2013 and 4 000 early marriages in 2012 (Manjoo 2014, para. 15), the increase accounted for by the raising of the age of marriage. The existence of impunity regarding early marriage is emphasised by local NGOs (Counterpart International 2015: 43).

## Sexual harassment

The Law on Gender Equality prohibits sexual harassment (Government of Azerbaijan 2006, Article 4) and defines it as "immoral behaviour humiliating and abusing a person of the opposite gender, comprising physical acts (touching, hand touching), offensive remarks, gestures, threats, dishonourable advances and offers of employment in exchange for sexual acts." (Government of Azerbaijan 2006, Article 2.0.5) While the law prohibits sexual harassment, the enforcement of this provision is poor. According to a representative of the SCFWCA, many women complained to the Committee regarding sexual harassment in the workplace and the Committee contacted the Ministry of Labour and Social Protection of Population to resolve the problem.<sup>45</sup> However, women who face sexual harassment at work rarely want to take their case to court. According to an NGO representative the reason, alongside corruption in the judiciary, is that judges are mostly men.<sup>46</sup> Cultural stereotypes also influence women's decision not to apply to the courts and not share information about their experiences of sexual harassment, as it may lead to rumours and damage their reputations.

## Women's participation

There is limited data available on the participation of women in the planning, development, implementation and monitoring of relevant laws, policies and programmes. The Law on Public Participation entered into force on 1 June 2014 (Government of Azerbaijan 2013b). It establishes the right of, and mechanisms for, the public to discuss and provide input on draft laws before their enactment and, importantly, it provides sanctions for violations of this right.<sup>47</sup> Proper implementation of this law, especially the establishment of the Public Council at the SCFWCA, would be an excellent opportunity to boost participation of women and enable NGOs working in related fields to take an active part in formulating, implementing and monitoring strategies and programmes.

43. Responses to the list of issues and questions for consideration of the combined second and third periodic report of Azerbaijan. CEDAW/C/AZE/Q/3/Add1.

44. See [www.gun.az/xeber-hicran-huseynova-bu-il-7-8-erken-nikahla-bagli-toyun-qabagini-almisq-t160211.html#.VHCvjTSUf5M](http://www.gun.az/xeber-hicran-huseynova-bu-il-7-8-erken-nikahla-bagli-toyun-qabagini-almisq-t160211.html#.VHCvjTSUf5M) LINK NOT WORKING.

45. See <https://iwpr.net/global-voices/azerbaijans-women-endure-workplace-harassment>, accessed 28 November 2016.

46. *ibid.*

47. Bayramova, Parvana Overview, of the Law of the Republic of Azerbaijan on Public Participation, prepared by ICNL under the SEDA Project of USAID (not published).

There is limited data on particularly vulnerable groups, such as people involved in prostitution, street children, women with disabilities, and LGBT persons.

## **Socio-economic and cultural barriers to women's access to justice**

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Among socio-economic and cultural barriers in women's access to justice in Azerbaijan we can include gender stereotypes; lack of trust in the justice system; lack of funds; lack of women working in the justice system; and lack of knowledge on women's rights. All these problems are interdependent and interrelated and the removal of these barriers requires a systemic approach.

### **Rights of women working in the informal sector**

The Employment Strategy of the Republic of Azerbaijan for 2006-2015 was approved by the Decree of the President of Azerbaijan of 26 October 2005. The Employment Strategy acknowledges that women are usually employed in activities with low status and low wages, and notes, "Shortage of work places for women today is mostly reflected in insufficiency of flexible jobs (part-time, flexible working days, flexible schedule, work at home, etc.) relevant to the role of women both in society and in family." This reflects the Azerbaijani Government's ambivalent approach towards women's empowerment, fostering at the same time family-friendly employment policies and cultivating harmful stereotypes about gender roles (para. 37 of the Strategy).

The State Programme on Implementation of the Employment Strategy of the Republic of Azerbaijan for 2011-2015 was approved by the Decree of the President of Azerbaijan of 15 November 2011. It intends to prevent work in the informal sector.

Persons in informal employment represent the sum of informal jobs in formal enterprises, informal sector enterprises, and households producing goods for their own consumption or hiring paid domestic workers. The informal sector consists of unregistered and/or small unincorporated private enterprises engaged in the production of goods or services for sale or barter.<sup>48</sup> According to the Department of Statistics of the ILO, the informal employment ratio is 41.7% for women and 16.6% for men in Azerbaijan.<sup>49</sup> Women mostly work in the informal sector in the lowest paying jobs as domestic or agricultural workers, and men work in unregistered unincorporated private enterprises. Men's employment in the informal sector affects the amount of defined alimony in divorce cases, when in reality men's income can be more than the indicated salary. The gender gap in involvement in the informal sector affects decisions on the allocation of alimony. In most cases the real income of men (when they work in the informal sector) is higher than their official income, but the courts only take into account the latter while defining the amount of alimony.

The rights of women working in the informal sector are not protected by law.

### **Level of women's awareness of their rights**

The literacy rate among women and men, as well as the official enrolment rate of girls in secondary education, is high in Azerbaijan. However, the high literacy rate among women is not an indicator of women's awareness about their rights. Women's rights and gender equality are not included in the secondary school curriculum as mandatory subjects.<sup>50</sup> For a country like Azerbaijan, where patriarchal attitudes subordinating women and strong stereotypes regarding women's roles and responsibilities in the family and society prevail, the role of education in changing attitudes and cultural stereotypes is especially important. The existence of gender stereotypes in educational materials and the absence of women's rights and mandatory gender equality subjects in secondary school curricula and in professional training for teachers strengthen cultural stereotypes among women and compounds their lack of knowledge.

The results of surveys conducted by several NGOs show that women have a poor understanding of their legal rights, laws and what to do in case of abuse or violence. Lack of knowledge and awareness of their rights is one of the barriers to women's access to justice (Gender Association "Symmetry" and Karat Coalition 2011, page ). Women are not aware of relevant administrative bodies or courts to which they can apply in cases of violation of their rights. The level of knowledge of their rights and awareness of existing national remedies among women is quite low; on the other hand, they do not trust national schemes. However, experience has

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48. Statistical update on employment in the informal economy. ILO Department of Statistics. June 2011, available at [www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/presentation/wcms\\_157467.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/presentation/wcms_157467.pdf), accessed 28 November 2016. p. 12.

49. *ibid.*, p. 8, Graph II.

50. It is important to note that since 2010 a "Gender and children's rights" course has been included in the curriculum of the LLM Human Rights Law Programme at the Law Faculty of Baku State University. In 2014, the Law Faculty decided to make this course optional.

shown that women prefer to apply to the First Lady of Azerbaijan and the Heydar Aliyev Foundation chaired by her, due to the trust they invest in her.<sup>51</sup>

Lack of knowledge is reflected in women's attitudes towards gender-based violence issues and also in their behaviour in such situations. The findings of the 2007 National Survey on Gender Attitudes in Azerbaijan revealed respondents' negative attitudes towards women seeking formal protection from domestic violence (UNFPA/SCFWCA 2011, p.160). Half the female respondents believed that women should tolerate violence from their husband. Both male and female respondents were reluctant to think of the possibility for women in violent relationships to seek any formal assistance. For example, only 5.2% of men and 8.2% of women acknowledged that calling the police could be a solution for an outbreak of intimate partner violence. An even smaller number of women and men considered it acceptable for a woman victim of violence to receive help from neighbours, friends and psychologists. Respondents were not aware of the possibility of hiring a lawyer to protect women's rights in court (UNFPA/SCFWCA 2011, page161). At the same time, 34.2% of women and every second man were of the opinion that women in violent relationships should not call anyone for help and should not inform anyone else about their husbands' violent behaviour (UNDP/SCFWCA 2007, pages. 68-70).

Many women view violence from their partner as part of family life, to be kept undisclosed and free from outside intervention. According to the survey, about 61% of women subjected to partner abuse did not tell anyone about the violence. Those who did disclosed their experience of violence did so to parents, relatives and friends. Less than 1% of the abused women who took part in the survey requested the assistance of public institutions. Their reasons include: the fear of retaliation and escalation of violence; shame and fear of impact on the family's reputation; not being believed; being blamed; the belief that official reporting will not help (as reflected in the experiences of other women); the fear that it will end the relationship; and the fear of losing their children (UNDP/SCFWCA 2007). Lack of knowledge of their rights is also one of the main reasons for such fears, especially the fear of losing their children; the ineffectiveness of official reporting mechanisms also plays a role. This situation emphasises the importance of raising awareness of the media on the need to eliminate gender stereotypes; revising school books and other teaching materials and removing any harmful gender stereotypes and introducing mandatory education on women's rights and gender equality in school curricula and in professional training for teachers at all levels of education.

It is important to note that the National Action Plan for Increasing Effectiveness of Protection of Human Rights and Freedoms<sup>52</sup> includes several paragraphs on increasing legal knowledge among the population, including women.

## **Discussion of specific socio-economic and cultural barriers that may affect women's access to justice**

Gender stereotypes are social and cultural constructions of women and men related to their different physical, biological, sexual and social functions.<sup>53</sup> In Azerbaijan, men are still expected to be the primary breadwinners, and decision-makers within society and the family, while women are viewed first and foremost as mothers, persons who should take care of domestic affairs and individuals of the "inferior sex".<sup>54</sup> Gender stereotypes are linked to all existing issues related to women's rights in Azerbaijan, including early marriages, sex-selective abortions and gender-based violence. Gender stereotypes influence women's roles and status in the home and community, and consequently affect their access to justice as well.

As mentioned, gender stereotypes affect women's attitudes to being subject to domestic violence. Most women in violent situations consider domestic violence "normal" and do not perceive a need to seek assistance. Social stigma, shame and dependence on the husband and his family for economic support also severely restrict a woman's perceived ability to report violence.

According to the results of the 2011 survey on violence against women in Azerbaijan, the majority of women (60.8%) who have ever suffered from intimate partner violence did not disclose the abuse to anyone (see above). This silence may be explained by both the influence of patriarchal family values that do not condone

51. See [http://musavat.com/news/olke/mehriban-eliyevaya-daha-cox-qadinlar-muraciet-edir\\_56317.html?welcome=1](http://musavat.com/news/olke/mehriban-eliyevaya-daha-cox-qadinlar-muraciet-edir_56317.html?welcome=1), accessed 28 November 2016 (in Azerbaijani).

52. The National Action Plan in Increasing Effectiveness of Protection of Human Rights and Freedoms was approved by the Decree of the President of the Republic of Azerbaijan of 27 December 2011.

53. Cook R. and Cusack S., *Gender Stereotyping: Transnational Legal Perspectives* (University of Pennsylvania Press, 2010).

54. UNDP/SCFWCA, Azerbaijan Human Development Report Gender attitudes in Azerbaijan: trends and challenges (Baku, Azerbaijan, 2007); UNFPA/SCFWCA National survey report on violence against women in Azerbaijan (Baku, Azerbaijan, 2011); UNFPA/SCFWCA, Qualitative assessment of violence Against IDP Women in Azerbaijan (Baku, Azerbaijan, 2011); UNFPA/SCFWCA (unpublished draft) Mechanisms behind skewed sex ratio at birth in Azerbaijani population.

the disclosure of intimate partner violence outside of the family circle and the lack of a well-developed system of assistance for victims of violence (crisis centres, help lines, shelters) in the country. According to the survey findings, women who turned to formal assistance or left home had suffered at least one night of constant and severe abuse and worried for their own and their children's well-being.

The survey conducted an initial assessment of the main coping strategies used by women confronted with intimate partner violence. A very small number of respondents reported turning for assistance to agencies or authorities: 19 out of 357 abused women filed a total of 32 appeals to various public institutions. Women who sought help most frequently went to police departments, courts and medical centres. 15 out of the 19 respondents who sought institutional support reported experiencing frequent and persistent intimate partner violence accompanied by physical injuries, in some cases more than five times during the course of their marital life. Of the 357 physically abused respondents, 338 had never applied to public institutions for assistance. Their silence is enforced by the fear of retaliation and more violence (26%); the fear of bringing a bad name to the family (15%); the shame and fear of not being believed or being blamed (6%); the belief that it will not help, as it did not help other women (4%); and the fear of losing their children (1%). At the same time, 14% of women believed that intimate partner violence is not an issue to complain about. A considerable group of respondents (27%) did not know or remember why they did not apply for assistance. This may indicate a certain recollection bias related to respondents' desire to block unwanted memories and not reflect on difficult decisions (UNFPA/SCFWCA 2011, p. 159).

The survey results demonstrated that women in Azerbaijan are not likely to seek formal help and protection from domestic violence. This decision is conditioned by a complex set of factors including cultural barriers and the underdevelopment of a formal service system for domestic violence survivors. As a result the vast majority of women confronted with domestic violence learn to survive by silencing their voices. In these unfavourable conditions, women develop their own strategies for surviving intimate partner violence, such as fighting back, leaving the house, and engaging the assistance of family, friends and neighbours (UNFPA/SCFWCA 2011, p. 161).

Under the influence of cultural stereotypes, women's awareness of their rights, especially on the issues of domestic violence is very limited. In the majority of cases they see it as a private issue rather than a violation of rights. According to a 2008 survey, very often, interviewees considered beatings justified, especially in cases when the wife was unfaithful (32%), when she went out without informing her husband (24%), and when she disobeyed her husband (18%) (Manjoo 2014, para. 10).

### **Brief overview of key statistics concerning women's position in society, the economy and politics vis-à-vis men's position**

There are three women deputy ministers in 20 ministries in Azerbaijan; the chairperson of one State Committee out of 10 is a woman; the chairperson of one State Commission is a woman; and only three women are rectors in higher education institutions.<sup>55</sup> The Commissioner for Human Rights (Ombudsperson) is also a woman. The representation of women in the Milli Mejlis (the National Parliament) has increased from 11% (13 deputies out of 125) in the 2005 elections to 16% (20 women out of 125 deputies) in the last elections, in 2010.<sup>56</sup> This is higher than in 2005, but remains very low.

In the last municipality elections in December 2014, the number of women in self-government bodies increased six-fold to a total of 5 236 women. Now women comprise 35% of municipality members. In previous elections, this figure stood at just 4%.<sup>57</sup> The CEDAW Committee welcomed the increase in the number of women holding positions at municipal level but is concerned that women remain significantly underrepresented in national and local legislative bodies, in the Azerbaijani Government and in the civil service, in particular in senior and decision-making positions.<sup>58</sup>

Of a total of 524 judges, 461 are men (88%) and 63 are women, and of 74 court presidents, 70 are men (94%).<sup>59</sup> As of 31 December 2012, the total number of prosecutors is 1 069 of which 96% are men (1 022 men; 47 women).<sup>60</sup>

55. Consideration of reports submitted by states parties under Article 18 of the Convention. Fifth periodic report of states parties. Azerbaijan. CEDAW/C/AZE/5. Para. 54.

56. *ibid.* para. 55.

57. See <http://oxu.az/society/66242>, accessed 28 November 2016.

58. CEDAW Committee, Concluding Observation on Azerbaijan 2015, para. 26.

59. COE. GRECO. Fourth Evaluation Round. Corruption prevention in respect of members of parliament, judges and prosecutors. Evaluation Report Azerbaijan. 2 April 2015, available at [www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4\(2014\)2\\_Azerbaijan\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4(2014)2_Azerbaijan_EN.pdf), accessed 28 November 2016.

60. European Commission for the Efficiency of Justice (CEPEJ). Scheme for Evaluating Judicial Systems 2013. Azerbaijan, available at [www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Azerba%C3%AFdjan\\_2014.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Azerba%C3%AFdjan_2014.pdf), accessed 28 November 2016.



According to information received from the Ministry of the Economy, of the half a million entrepreneurs who are currently registered, 15% are women. Women represent the majority of the workforce in fields such as education (71.7%), social work (78.1%), and art and entertainment (63.8%). Men continue to dominate in fields such as trade, management and the technical domains of engineering, construction, etc. According to the State Statistical Committee, the unemployment rate for women is 6% (4% for men) for 2013.<sup>61</sup>

### 3. GENDER RESPONSIVENESS OF THE JUSTICE SYSTEM

There is no data available on the number of cases women bring before the national courts, due to a lack of sex-disaggregated data on court applicants.

#### Gender bias, gender stereotypes, poor services and hostile attitudes among legal professionals and the police

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As previously mentioned, gender stereotypes are deeply rooted in Azerbaijani society. The UN Special Rapporteur on Violence against Women notes in her report that violence against women “seems to be underpinned by the persistence of patriarchal social norms, deeply rooted gender stereotypes and misconceptions, as well as customary practices that are harmful to women”, (Manjoo 2014, para. 4). Such attitudes prevail among legal professionals and the police as well.

According to the Code of Criminal Procedure, the victim is a party in the criminal procedure. As participants in the procedure, victims have certain procedural rights, as well as duties, which judges are obliged to explain. In 2013, the OSCE established the Trial Monitoring Team for monitoring of domestic violence cases in the justice system of Azerbaijan. The Trial Monitoring Team recorded that in court proceedings related to domestic violence, the victims generally represent themselves. In such cases, the judge’s duty to explain their rights to them is particularly important. The trial observers reported that in many cases judges did not announce the list of rights and in some cases merely announced the rights without any explanation. By failing to instruct the victims about their rights in a full and understandable manner, especially in cases of unrepresented victims, the courts jeopardise the victims’ legal rights.<sup>62</sup>

During its monitoring of criminal proceedings involving domestic violence, the Trial Monitoring Team recorded cases such as:

- ▶ a prosecutor mentioning a proverb extolling the benefits of domestic violence to a victim;
- ▶ a judge telling a victim that her words and behaviour in the courtroom showed that she was “as guilty as her husband”;
- ▶ a judge trying to convince a victim to proceed with a hearing in closed session, using the reasoning that since she was a woman, some of the facts to be investigated in the trial would be “shameful” for her.<sup>63</sup>

Domestic violence is still accepted and is a taboo topic to be dealt with within the family. There are no systematic and consistent efforts towards societal transformation to address traditional gender roles and stereotypes limiting the personal, social, economic and political freedom of women in Azerbaijan. The OSCE Trial Monitoring Team observed several criminal proceedings related to domestic violence. They reported inappropriate language by justice actors towards victims. They noted that justice system actors do not always give victims the respect to which they are entitled by the law. Although not common, inappropriate language that indicates discriminatory attitudes, where gender-based stereotypes appear to substitute for the facts, may further victimise the victim.<sup>64</sup>

Corruption in the judiciary is also one of the reasons women’s access to justice is difficult. It is a factor behind the low level of applications to authorities for help or investigation, especially in domestic violence or sexual violence cases. This is connected to a lack of trust in the authorities and the ineffectiveness of bringing any cases to the courts or the police. Corruption is one of the reasons why, even if people seek justice and can physically access the institutions, the outcome may not be fair or just (Gender Association “Symmetry” and Karat Coalition 2011, page 2).

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61. Women and Men in Azerbaijan\_2013, State Statistical Committee of the Republic of Azerbaijan, available at [www.stat.gov.az/source/gender/indexen.php](http://www.stat.gov.az/source/gender/indexen.php), accessed 28 November 2016.

62. Domestic violence cases in the justice system of Azerbaijan. Rule of Law and Human Rights Unit. OSCE Office in Baku, 2013 (OSCE Report), p. 18.

63. *ibid.*, p. 19.

64. *ibid.*, p. 19.

The lack of women working in the judiciary and in the police further hinders women's ability to report cases. This, combined with widespread stereotypes, economic dependence and the fear of stigma make reporting almost non-existent. The UN Special Rapporteur noted the low number of women working in the criminal justice sector as a contributing factor to the inappropriate handling of such cases (Manjoo 2014, para. 70).

It is important to note that gender stereotypes and hostile attitudes against women among legal professionals are manifest in cases that deal directly with gender issues. In cases that have no relation to gender such attitudes and stereotypes do not appear. Brief interviews conducted among lawyers for this study confirm this.

### **Existing gender training for judges and lawyers**

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The Ministry of Justice has undertaken specific education and training programmes about the principles and provisions of CEDAW and its Optional Protocol. The training is provided to all government agencies, public officials and, in particular, the legal profession and the judiciary. Since July 2011, special training has been dispensed on the importance of invoking CEDAW and of making reference to the Convention in judgments whenever possible. The Ministry of Justice in collaboration with the SCFWCA also regularly publishes special materials with the aim of raising awareness. The SCFWCA (as the central body responsible for the implementation of gender policy in the country), gender focal points in state bodies and representatives of NGOs also benefit from trainings conducted by the Ministry of Justice. The Ministry, besides training programmes, also organises seminars that are attended by judges, prosecutors and lawyers with expertise in CEDAW and other human rights treaties. The education of judges at the Academy of Justice is dispensed in co-operation with the Council of Europe, the OSCE, the United Nations International Children's Emergency Fund (UNICEF), the German Technical Cooperation Agency (GTZ) and other agencies. The Ministry of Justice has also been involved in the ongoing Joint Project, Application of the European Convention for the Protection of Human Rights and Fundamental Freedoms, for court system and human rights advocates, in the framework of the Council of Europe/European Union Programmatic Cooperation Framework. The Ministry of Justice also has an agreement on long-term co-operation with the European General Juridical Centre of Greece, which holds regular seminars and symposiums for judges, law enforcement personnel and court officials, and all those working in the human rights protection system.<sup>65</sup>

Hundreds of lawyers, policemen and prosecutors have attended training and other educational and capacity-building programmes of international organisations and NGOs, including the Council of Europe, the European Union, the OSCE, the American Bar Association Central European and Eurasian Law Initiative, and UN agencies. However, based on observations, it can be stated that the trainings on women's rights are mostly of an informative nature about existing domestic laws and international standards. A specific curriculum on women's rights-related standards directed towards changing the attitude of judges and lawyers about gender equality, women and their role in family and society should be prepared to achieve real success. It is also important to include such a course on rights-related standards law into the curriculum at law faculties to instruct the next generation of lawyers in a new way of thinking on gender equality issues. It should be noted that currently there is no module addressing women's rights in the curriculum of the initial training course for candidate-judges at the Academy of Justice.

### **Extent to which women's rights and gender equality issues have been introduced in the education of legal professionals**

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In 2010, Baku State University's LLM Programme on Human Rights Law included in its curriculum a course on Gender and Children Rights. This was a mandatory course until 2014, but it is now taught as an optional course. It is the only course reflecting women's rights law as a separate subject at higher education institutions in Azerbaijan.

## **4. REMEDIES, GOOD PRACTICES AND RECOMMENDATIONS**

### **Existing remedies to facilitate women's access to justice**

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According to the CEDAW Committee's General Recommendation No. 28, remedies for women who are subject to discrimination should include different forms of reparation such as monetary compensation, restitution, rehabilitation and reinstatement; measures of satisfaction, such as public apologies, public memorials and

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<sup>65</sup> Consideration of reports submitted by states parties under Article 18 of the Convention. Fifth periodic report of states parties Azerbaijan (11 March 2013). CEDAW/C/AZE/5, paras. 9-11.

guarantees of non-repetition; changes in relevant laws and practices; and bringing to justice the perpetrators of violations of women's human rights.<sup>66</sup> Without reparation, the obligation to provide an appropriate remedy is not fulfilled.<sup>67</sup>

Article 68 of the Azerbaijani Constitution states that victims have the right to participate in the administration of justice and to demand compensation for loss. The Law on Gender Equality states that "damage to people exposed to gender-based discrimination shall be paid in compliance with the legislation of the Republic of Azerbaijan. Damage to employees exposed to sexual harassment shall be paid by an employer in compliance with the legislation of the Republic of Azerbaijan" (Government of Azerbaijan 2006, article 17).

In the spirit of ensuring that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary, the State Programme on the Development of the Justice System in Azerbaijan for 2009-2013 was approved in February 2009, one of the main objectives being to improve the access of citizens to judicial authorities and courts. With the Judicial Modernisation Project implemented jointly by the Ministry of Justice and the World Bank, 20 Regional Legal Advisory Service Centres have been established with the aim of sensitising the poor, especially women, about their rights, raising their awareness and enhancing their access to free legal aid services, including in relation to violence against women (UN Committee on the Elimination of Discrimination against Women 2013, para. 8).

As in all jurisdictions, the courts are the main providers for redressing violations of the law in Azerbaijan. Women can also apply to the Commissioner for Human Rights (Ombudsperson) and the SCFWCA when they face violations of their rights. The Ombudsperson, who has oversight of the implementation of human rights provisions in Azerbaijan, can receive and investigate complaints of human rights violations by individuals and legal entities,<sup>68</sup> such as complaints concerning court bureaucracy, document loss, and delay in court decisions.<sup>69</sup> The SCFWCA can receive and consider complaints in relation to its area of activities.

The provision of effective remedies for victims involves ensuring the rights of women to access both criminal and civil remedies and the establishment of effective protection, support and rehabilitation services. Effective remedies must address the root causes of violence, inequality and discrimination (Manjoo 2014, para. 75). During her visit to Azerbaijan, the UN Special Rapporteur could not access any data on measures to ensure redress for women victims of violence. The low rate of prosecution and convictions for acts of violence against women contributes to the lack of effective redress provided to victims. Women in Azerbaijan face numerous obstacles to access mechanisms of redress including quality legal aid, counselling services and shelters (Manjoo 2014, para. 76). Instead of being provided with proper redress, women victims of violence are re-victimised and exposed to further risk of violence through the intervention of the family, the community or the authorities as a result of out-of-court settlements. The UN Special Rapporteur states in her report that judges are particularly reluctant in granting divorces and often encourage both parties to seek reconciliation instead of ensuring effective redress to women survivors of domestic violence (Manjoo 2014, para. 77).

According to the Law of the Republic of Azerbaijan on reimbursement of damages to individuals caused by illegal acts of the preliminary investigating bodies, prosecutors and courts adopted on 29 December 1998, all such damages should be reimbursed by the state. According to the Code of Criminal Procedures, the court considers the application of the victim regarding compensation of damages caused by the crime to be at the expense of the state budget.<sup>70</sup> According to the Law on Approval, Entry into Force and Related Legal Regulation Issues on the Code of Criminal Procedures, the provisions of the Code of Criminal Procedures concerning the payment of compensation to victims of a crime will come into force after completion of judicial-legal reform and the adoption of the relevant law in this field.<sup>71</sup> This requirement covers compensation from the state. The phrase "completion of judicial-legal reform" is quite ambiguous and this process may take many years. This provision postpones the payment of compensation to the victims of a crime for an indefinite period. It affects women victims of crime, including victims of human trafficking, from receiving compensation from the state.

66. CEDAW Committee, General Recommendation No. 28 on the core obligations of states parties under Article 2, UN Doc. VEDAW/C/GC/28, 2010, para. 32.

67. *ibid.*

68. Article 8.1, Constitutional law of the Republic of Azerbaijan on the Commissioner on Human Rights (Ombudsman), No. 246-IKQ, 28 December 2001.

69. Article 1.6, *ibid.*

70. Article 191.1, Code of Criminal Procedures.

71. Article 2.

## Remedies for victims of human trafficking

Azerbaijan has achieved some progress in providing remedies for victims of human trafficking. The National Action Plan on Combating Human Trafficking in Azerbaijan (2014-2018) contains an impressive list of policy measures including the provision of physical, psychological and social rehabilitation; safe living conditions; medical examination and treatment; access to translation services; legal representation in courts; and ensuring access to education as well as vocational training and the labour market. The National Action Plan for 2009-2013 ensures that once the victims of human trafficking are identified, they are given immediate and adequate material, social, medical or psychological support.<sup>72</sup> Since August 2012, allowances paid to victims of human trafficking in the course of reintegration have been increased from 200 AZN to 400 AZN (approximately 100 to 200 euros). The Programme on Social Rehabilitation and Reintegration of Children Victims of Human Trafficking<sup>73</sup> was adopted in 2014. With the changes made to the Criminal Code in 2013, the definition of human trafficking therein has been brought into compliance with international law (Government of Azerbaijan 2013). To strengthen the implementation mechanism, a series of orders has been issued by the Cabinet of Ministers.<sup>74</sup>

However, victims of human trafficking also experience barriers in applying to available remedies. According to the Law of Azerbaijan on Combating Human Trafficking, the courts shall resolve the matter of material and moral damages related to the victims of human trafficking, who shall be compensated from the assets of human traffickers, or from the trafficking victims' assistance funds if the assets of human traffickers are not enough for compensation in accordance with procedural legislation.<sup>75</sup> According to the Code of Civil Procedures, a civil claim arising out of a criminal case shall be filed for review under the civil procedure during the criminal proceedings. NGOs working with victims of human trafficking state that this provision causes some problems in practice, as the victims of human trafficking are informed about the date of the court proceeding and provided with a lawyer late, as a result of which the victims of human trafficking do not have enough time to prepare civil claims before a criminal case is settled.<sup>76</sup>

## National good practices to promote equal access of women to justice

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The Labour Code prohibits refusing to sign a labour contract with a woman who is pregnant or has a child under the age of three. If an employer refuses to sign, he or she has to explain in writing the reason behind his/her decision to the woman, who can seek justice from a court of law in order to protect her rights (Government of Azerbaijan 1999, article 240). According to the law, women shall be granted pregnancy and maternity leave of 126 days, starting 70 calendar days prior to childbirth and ending 56 calendar days after childbirth. In the event of difficult or multiple births, women shall be granted 70 days of leave after childbirth. The law takes into account the needs of rural women and defines more days of maternity leave after childbirth for women working in the agricultural sector: 70 calendar days after birth in normal childbirth; 86 calendar days in difficult births; and 110 calendar days in multiple births (Government of Azerbaijan 1999, article 125). According to the Labour Code, employment contracts for pregnant women and men with a child under the age of three, as well as men independently raising a child under the age of three, may not be terminated (Government of Azerbaijan 1999, article 79).

## Measures to address the obstacles that prevent equal access to justice for women

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We propose the following amendments to the relevant laws for removing direct and indirect discrimination against women and obstacles preventing equal access to justice for women:

### Labour law

- ▶ remove the prohibition of women from working in particular fields of employment or particular hours, and the restrictions on women's choice of employment;
- ▶ remove the restrictions regarding duties at work for pregnant women or women having children under three years of age and bring them into compliance with international standards;

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72. National Action Plan on Combating Human Trafficking in Azerbaijan for 2009-2013, approved by the Decree of the President of the Republic of Azerbaijan dated 6 February 2009.

73. This was approved with the Decision of the Cabinet of Ministers of the Republic of Azerbaijan, 6 February 2014, No. 37.

74. Rules of National Referral Mechanism for Victims of Human Trafficking (11 August 2009); Rules (indicators) on Identifying Victims of Human Trafficking (3 September 2009); Rules on Placing and Keeping the Children Victims of Human Trafficking in Shelters (19 November 2009); Rules on Repatriation of Victims of Human Trafficking (10 September 2013).

75. Article 26, Law on Combating Human Trafficking.

76. Experience of Azerbaijan in Combating Human Trafficking. Baku, 2012, Ed., Bayramova P. (in Azerbaijani). p. 39.

- ▶ ensure that legislation encourages the equal share of responsibilities in raising children for women and men;
- ▶ amend the provision of the Law on Gender Equality stating “compensations, privileges and fringe benefits for females specified by the Labour Code shall not be considered as discrimination”, as there are some provisions in the Labour Code that constitute direct and indirect discrimination against women;
- ▶ include compulsory paternity leave in legislation;
- ▶ safeguard the rights of women working in the informal sector.

### **Family law**

- ▶ provide for an equal retirement age for women and men;
- ▶ make divorce possible only through the judiciary;
- ▶ remove the list of reasons for applying for maintenance for a woman;
- ▶ safeguard the rights of women in unregistered marriages and their children and provide for their access to justice;
- ▶ prohibit religious marriages prior to state registration;
- ▶ take into account the level of remuneration in the informal sector when defining alimony for children in divorce cases;
- ▶ strengthen the enforcement of court decisions, especially on payment of alimony.

### **Criminal law and criminal procedure**

- ▶ include stalking and marital rape in the Criminal Code;
- ▶ revise the definition of rape in the Criminal Code as covering lack of consent;
- ▶ include forced pregnancy and forced abortion in the Criminal Code in the context of sex-selective abortions;
- ▶ remove the burden of proof from the applicant in the Code of Criminal Procedures in cases related to discrimination and violence against women;
- ▶ include domestic violence in the Criminal Code as a specific crime;
- ▶ include a specific provision in the Code of Criminal Procedures to address the particular needs and rights of women victims of domestic violence;
- ▶ implement the provisions on forced and child marriage in practice.

### **Law on Prevention of Domestic Violence**

- ▶ remove the state’s duty to “assist in normalisation of relations between parties and resumption of family affairs” from the Law on Prevention of Domestic Violence;
- ▶ clarify the possibility of issuing a “warning” in the Law on Prevention of Domestic Violence;
- ▶ adopt the National Strategy on Prevention of Domestic Violence and the National Action Plan on Prevention of Domestic Violence;
- ▶ develop the mechanisms of short and long-term protection orders.

### **Law on Gender Equality**

- ▶ amend the Law on Gender Equality to bring the definition of “discrimination against women” in compliance with international law, as encompassing both direct and indirect discrimination;
- ▶ enforce the prohibition of sexual harassment.

### **National remedies**

- ▶ adopt the law on free legal aid;
- ▶ improve the mechanism in legislation for receiving free legal aid in civil cases;
- ▶ undertake measures to ensure qualified and effective legal assistance;
- ▶ establish free, sustainable and state-supported services for women, including a free 24/7 hotline;
- ▶ increase the number of state-funded shelters for women victims of domestic violence;
- ▶ ensure the availability of childcare facilities and shelters for victims of domestic violence in rural areas;
- ▶ increase the number of female staff in the criminal justice sector;

- ▶ ensure full implementation of the policy framework on national referral mechanisms to combat human trafficking;
- ▶ take measures to combat corruption in the judiciary;
- ▶ take temporary special measures to achieve *de facto* gender equality in the political, economic and social spheres;
- ▶ establish legal aid clinics, especially in rural areas, for providing free legal aid;
- ▶ investigate and prosecute cases of domestic violence and other forms of violence against women;
- ▶ implement the Law on Public Participation and establish the Public Council;
- ▶ take measures to enhance women's participation in public life, especially in decision-making bodies, including the parliament, the government, the diplomatic service, regional and local municipalities and the upper level of the judiciary.

### **Raising awareness**

- ▶ raise awareness of judges, police, law enforcement officers and lawyers on women's rights with special trainings intended to challenge their cultural attitudes to violence and discrimination against women;
- ▶ include women's rights law into curricula in secondary schools and law faculties;
- ▶ revise the content of school teaching materials and the curriculum to address gender stereotyping;
- ▶ raise the awareness of women about their rights;
- ▶ develop a special curriculum on women's rights' law for judges, law enforcement officials and lawyers with the intention to challenge attitudes to and cultural stereotypes about women;
- ▶ include a course on women's rights' law into the curriculum at law faculties with the aim to educate the new generation of lawyers with a new way of thinking on gender issues.

### **Measures to address research and data needs in the field of women's equal access to justice**

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We propose the following measures to address research and data needs to advance women's access to justice:

- ▶ collect data on the number of cases brought by women before national courts, in comparison to men;
- ▶ take measures to fill in the lack of official sex-disaggregated data on the dynamics of child marriages;
- ▶ collect data on political and public participation that is disaggregated by gender, ethnicity, urban/rural status, region, age and disability;
- ▶ improve data collection on particularly vulnerable population groups, such as people involved in prostitution, street children, people with disabilities and LGBTI persons;
- ▶ conduct comprehensive research on women's rights in Azerbaijan, including women's access to justice.

### **Relevant actors in the field of women's access to justice**

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The following actors should be engaged in promoting reforms to guarantee women's access to justice:

- ▶ Ministry of Justice;
- ▶ Academy of Justice at the Ministry of Justice;
- ▶ State Committee on Family, Women and Children Affairs;
- ▶ Commissioner of Human Rights (Ombudsman);
- ▶ Law Faculty of Baku State University;
- ▶ Judiciary Legal Council;
- ▶ Collegium of Advocates;
- ▶ the courts;
- ▶ NGOs specialised in protection of women's rights and other civil society human rights defenders.

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