

GENDER EQUALITY PROGRAMME

***Gender Equality - An overview of Georgian and
International Legislation***

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Introduction

Law of Georgia on Gender Equality was adopted by the Georgian Parliament on 26 March, 2010. The law aims at strengthening the gender equality principle on the legislative level and establishing corresponding legal guarantees for achieving gender equality. Before its ratification the Georgian Parliament adopted State Concept on Gender Equality in 2006, 24 July and 2007-2009 Action Plan for Implementation of the Gender Equality Policy.¹ Special agencies tasked with monitoring enforcement of the gender equality policy have been established and appointed, though after the adoption of the Law, which undisputedly represents a positive development, it is essential to strengthen the institutional mechanisms to ensure application of the adopted Law.

With this regard it is important to study experience and practice of the countries which represent the best existing model in regards to successfully implementing gender equality policy throughout the world.

The following paper examines the Gender Equality Legislation of Georgia and Nordic countries, namely the Gender Equality Acts of Iceland, Norway, Finland, Sweden and Denmark. The study aims at identifying similarities as well as differences and revealing the best existing institutional mechanisms for effective implementation of provisions set out in the legislation.

The countries mentioned above have been selected based on the Global Gender Gap Index (2011)², according to which these countries are among the top ten countries in the ranking. Since 2006 World Economic Forum publishes annual reports on Global Gender Gap Index which identifies the gender gaps, inequalities and dynamics across the time. The Global Gender Gap report 2011 comprised 135 countries. Georgia took 86th place in the ranking; Compared with the previous year this is a slightly better position, though it has to be highlighted that assessment of Georgia in regards to the gender equality has exacerbated in the last 6 years.³

According to the 2011 Global Gender Gap Index countries still holding the top ten positions are the countries equally distributing resources between women and men.

While examining the gender equality legislation a number of key components have been identified; the following study is structured around these five components:

1. Aims and areas of application (scope of the act)
2. Institutional mechanisms monitoring enforcement of the Gender Equality Act
3. Labor relations

¹ UNIFEM and UNDP 2010. Law of Georgia on Gender Equality. The Guide available: <http://www.ungeorgia.ge/userfiles/files/Gzamkvlevi%2008-2010.pdf>, Accessed 09, September 2012

² Global Gender Gap Index 2011. Available: http://www3.weforum.org/docs/GGGR11/GGGR11_Rankings-Scores.pdf Accessed 10, September 2012

³ According to the World Economic Forum Report 2006, Georgia held 54th position in 2006 ranking Available: http://www3.weforum.org/docs/GGGR11/GGGR11_Rankings-Scores.pdf. Accessed 10 September, 2012]

4. Equal representation of women and men
5. Sanctions

International Legal Practice on Gender Equality

1. Aims and areas of application (scope of the act)

1.1. Iceland

Icelandic Gender Equality Act dates back to 1975. Current Act on Equal Status and Equal Rights of Women and Men was adopted in 2008, final amendments were ratified in 2011. Unlike the Gender Equality Acts of the rest of Nordic countries, there is a separate article that entails definitions of the terms in Icelandic act, furthermore, a detailed list of aims is provided in the Act. A number of key aspects are highlighted among aims listed in the Act, such as improving position of women and increasing their opportunities in the society, increasing research activities in the field of gender studies and raising awareness on gender equality issues.

Among the key terms provided in a separate section, Affirmative Action is defined as a special temporary measure which is essential to apply in a specific field so as to establish gender equality and achieve gender balance.

1.2. Norway

Norwegian Gender Equality Act was adopted in 1978 and since its adoption the Act has been amended a number of times.

Improving conditions of women is listed as one of the significant issues in line with the purpose of the Act.

In the first chapter of the Act the duty of public authorities to carry out active, targeted and systematic activities for promoting gender equality in all spheres of society is emphasized.

Norwegian Act applies to all areas, at the same time it is underlined that the Act does not apply to the internal affairs of religious communities.

Among the Acts analyzed in this paper, only in the Norwegian Act the *UN Convention on the Elimination of All Forms of Discrimination against Women* along with the Optional Protocol of 6 October 1999 applies as a Norwegian law.

1.3. Sweden

Swedish Act on Equality between Women and Men was adopted in 1991. Despite the general nature of the title the Act applies to the specific field of the working life.

The main purpose of this Act is to improve conditions of women in working life, ensure improvement of terms and conditions of both women and men in regards to employment, as well as equal opportunities for professional development.

1.4. Denmark

Danish Act on Gender Equality was adopted in 2000. The main purpose of the Act is to promote gender equality in all spheres of society on the basis of women's and men's equal status.

Furthermore, this Act particularly aims at working against sexual harassment and direct/indirect sex discrimination.

1.5. Finland

Act of Finland on Equality between Women and Men was adopted in 1987.

Promoting gender equality, preventing any discrimination based on gender, improving the status of women in the working life are underlined as the main objectives of the Act.

In the similar way as it was illustrated in the Norwegian legislation, the Act of Finland limits the the scope of its application in some areas, namely, the following is stated in Section 2 of the Act:

The provisions of this Act do not apply to:

- 1) Activities associated with the religious practices of the Evangelical Lutheran Church of Finland, the Orthodox Church of Finland or other religious communities;
- 2) Relationships between family members or other relationships in private life. (Act of Finland on Equality between Women and Men, Section 2).

2. Institutional mechanisms monitoring enforcement of the Gender Equality Act

2.1. Iceland

There are quite a number of Institutions that monitor compliance with the Act in Iceland.

Specific attention is paid to the institutional mechanisms administering application of the law. One of the key bodies with this regard is the Centre for Gender Equality. Director of the Centre is appointed by the Minister of Social Affairs and Social Security for a five year term.

The Centre for Gender Equality is a special institution under the control of the Minister. The Center is a main agency responsible for dealing with the gender-related aspects and promoting gender equality.

According to the Act the Center is accountable for monitoring the application of the Act and proper implementation of activities under the Act. Additionally, the Center is authorized to advise government authorities, institutions, companies, non-governmental organisations and individuals on gender equality issues, make suggestions and proposals to the Minister, Gender Equality Council and other government authorities.

In line with the Act, one of the key tasks of the Center is to work towards changing traditional gender images and work against negative gender stereotypes.

It is stated in the Act that Institutions, enterprises and non-governmental organizations are required to provide the Centre with any information regarded essential for its proper functioning. In case activities of any of the above-mentioned institutions do not comply with the provisions of the Act, the Center will decide whether to request the Gender Equality Complaints Committee to examine the case.

According to the Act, all the above institutions are obliged to provide the information in a timely manner, otherwise the corresponding fine (*ISK 50,000 per day*) will be imposed under

the Act until the required information has been provided to the Center so that to investigate the case.

The Icelandic Act states that gender equality representatives (experts in gender issues) will be appointed in the ministries; their work will primarily concentrate on gender mainstreaming in respective areas administered by the ministry.

Additionally, the Minister of Social Affairs and Social Security may provisionally appoint a gender equality counselor to work on gender equality issues which can be required by the existing situation in a specific field.

The Gender Equality Complaints Committee

According to the Icelandic Act the Minister of Social Affairs and Social Security appoints three members (*qualified lawyers*) of the Committee for three years' term, one of the members has to be an expert on gender equality issues.

The Committee is responsible for examining the case and providing the ruling in the written form on violations of relevant provisions in the Act.

Icelandic Law entails all corresponding procedures in regards to complaints, dates, imposition of fines or appealing the case.

The Act states that the enterprises, institutions, non-governmental organizations and individuals may bring the case to the Gender Equality Complaints Committee in case any provision of the Act has been violated. The Center in such case is authorized to apply to the Complaints Committee to examine a case.

Gender Equality Council

Following the parliamentary election eleven members of the Gender Equality Council are appointed by the Minister of Social Affairs and Social Security. Some of them are candidates nominated by womens' organizations (Icelandic Feminist Association, Federation of Icelandic Women's Associations Icelandic Women's Rights Society, Women's Shelter Organisation, etc.)

The Gender Equality Council closely cooperates with the Centre for Gender Equality to provide recommendations on policy making in gender-related aspects for the Ministry of Social Affairs and Social Security, meanwhile placing a special emphasis on gender equality aspects in the labour market and also in regards to the reconciliation of work and family life.

The Gender Equality Forum

In the year following the parliamentary elections the Minister of Social Affairs and Social Security organizes the Gender Equality Forum during which gender equality questions are discussed. The Minister presents the report on the situation and developments in regards to the gender equality in key spheres of the society.

2.2 . Norway

The Norwegian legislation states that the Gender Equality Centre is the public body that works towards promotion of gender equality principles. The Ministry appoints the board that supervises the Center (Ministry of children, equality and social inclusion).

The King lays down the regulations related to the composition or the term of the board, including other aspects related to the operation of the Centre, although, as it is underlined in the Act the Center is an independent body to carry out its activities.

Gender Equality Ombudsman is appointed for six years term by the King according to the Act. The Ombud is responsible for monitoring compliance with the act.

Another body accountable for the enforcement of the Act on Gender Equality in the country is the Gender Equality Board of Appeals. It is stated in the Act that 'the sphere of activity of the Ombud and the Board of Appeals shall comprise all private enterprise and public administrative and commercial activity.' (Section 10)

2.3. Sweden

According to the Swedish legislation Equal Opportunities Ombudsman and an Equal Opportunities Commission appointed by the government are tasked to monitor application of the Act.

2.4. Denmark

The Gender Equality Board

According to the Danish legislation the Gender Equality minister appoints two members of Gender Equality Board along with the chair of the Board for three years term. At least one representative of the board is required to have an expert knowledge in gender equality and the other one in labor market issues. It is also stated in the Act that both sexes must equally be represented in the board.

The main task of the board is to handle the cases in relation to gender discrimination, employment, maternity leave, equal pay, equal treatment of women and men in Occupational Social Security Schemes.

The National Centre for Research and Information on Gender Equality

Danish National Centre for Research and Information on Gender Equality is an independent body that aims at facilitating initiation of debates on gender equality aspects and setting forth the measures ensuring integration of gender equality aspect in policy planning, implementation and administration processes.

One of the key goals of the Center is to increase awareness on gender aspects and disseminate information on gender equality in the general public.

The Centre's activities entail doing research, analysis, initiate broader discussions on gender equality issues. Furthermore, the Centre may provide recommendations for respective Ministries concerning initiatives and activities in regards to the gender equality.

2.5. Finland

According to the Finnish legislation the Ombudsman for Equality and the Equality Board are key bodies responsible for the supervision on the application of the Act since 1987.

3. Labor Relations

Another area regulated by Acts analyzed in this paper is the labor relations.

3.1. Iceland

In line with the Icelandic Act the Employer is obliged to take all measures to avoid the classification of jobs as women's or men's jobs. Moreover, the employer has to work specifically towards achieving equal representation of women and men in top positions.

A special gender equality programme has to be set forth in enterprises or institutions with more than 25 employees so as to mainstream gender equality principles among the personnel. The mentioned institutions are obliged to provide the Gender Equality Center with the gender equality program or personnel policy. In case of failure to provide such a program the Centre may request the institution to solve the problem within the time limits allowed. Otherwise, institutions or enterprises will be obliged to pay per diem fine till the requested program is provided (fine amounts to ISK 50,000 per day).

Additionally, the employer is obliged to ensure the equal pay for equal work for the employees regardless of sex.

It is directly stated in the Icelandic legislation that the employer has to take all necessary measures to support women and men to reconcile work and family responsibilities. Furthermore, when determining the working hours, the Employer has to consider employee's family circumstances (regardless of sex), needs of the labor market and facilitate the return of employees following the parental leave (both parents are indicated).

Under the Icelandic Act it is illegal to publish an advertisement according to which one specific sex is proffered for a vacant position, thus the law forbids the employer to publish an advertisement the outcome of which is the sex based discrimination.

3.2. Norway

In Norway, in the same way as in Iceland, the law prohibits to advertise a job vacancy for one specific sex unless there is an obvious reason to do so. The vacancy advertisement should not be giving the preference to either sex.

A job applicant who was rejected on the advertised vacant position may demand from the employer the written statement that will include all the data of the appointed applicant (of the opposite sex) - education, professional experience and other qualifications.

Norwegian legislation establishes the equal pay for the equal work in the similar way as the Icelandic Act.

3.3. Sweden

As it was already mentioned, Swedish Act specifically applies to the labor relations, therefore this Act entails most scrupulously stated provisions on the responsibilities of the employer, suitable working conditions to be created for the employee and equal opportunities ensured for women and men when applying for the vacant position.

Swedish legislation states that the work is defined as of the equal value when its evaluation is based on a number of criteria, such as the knowledge, responsibility and effort; particular emphasis is placed upon working condition during overall assessment.

The same act underlines that the employer is obliged to take all necessary measures to prevent the employee being subjected to sexual harassment in the context of labor relations.

Under the Swedish legislation the Employer who has at least ten employees is obliged to prepare the annual action plan on equal pay and present the report covering survey results and analysis on this aspect.

3.4. Denmark

Danish Legislation states that the aspects of employment and parental leave are regulated under two following acts: the Act on Equal Pay to Men and Women and the Act on Equal Treatment of Men and Women in relation to Occupational Social Security Schemes.

4. Equal Representation of Women and Men

4.1. Iceland

In line with the Icelandic legislation equal representation of women and men has to be ensured in national and local government committees, councils and boards, not less than 40% when the body is represented by more than 3 persons.

When nominating the candidates for the national and local government committees, councils and boards, both sexes must be suggested in the following manner:

If the committee is represented by two or three members, both sexes have to be nominated.

If the committee is represented by four or five members, at least two candidates of each sex have to be nominated.

4.2. Denmark

In councils, committees and similar collective management bodies of the public authorities, equal number of candidates of both sexes must be suggested.

Both sexes have to be equally recommended by authorities or organizations when nominating candidates for the committees and similar bodies.

If the entity is represented by more than two members, both sexes have to be nominated; In case of uneven number of representatives, one more candidate of one gender may be suggested.

There is a separate section regulating composition of committees and councils in the Danish Act. It is stated that the equal gender composition should be ensured in public committees, commissions and similar entities.

4.3. Finland

As to the Finnish Act it lays down the following regulations on equal representation of women and men:

The proportion of women and men represented in government committees, advisory boards, other corresponding bodies and municipal bodies must be at least 40 per cent.

The authority or any party authorized to nominate a candidate has to suggest both a woman and a man for the position.

5. Sanctions

5.1. Iceland

The Icelandic legislation states that anyone who deliberately or unintentionally violates the Act will be liable to pay the fine according to the established rules.

The law also states that if anyone deliberately or unintentionally disregards any provision of the Act will be liable to pay the fine based on the administrative decision; Moreover, it is pointed out that the violation under this Act is handled as the criminal case.

5.2. Sweden

In line with the Swedish legislation the employer is accountable to pay compensation for the damages to the employee or an applicant who has been discriminated against as an outcome of the violation of this Act (for instance, if the violation involves the sexual harassment).

5.3. Finland

According to the Finnish legislation, the compensation amounts EUR 3,000 in case the discrimination prohibition provision has been violated. If the violation is related to the breach of any provision concerning labor relations (*such as an employee recruitment*) the compensation may amount to EUR 15,000.

Gender Equality Ombud and Gender Equality Council are authorized to decide on the imposition of the fine.

5.4. Denmark

According to the Danish Act victims of sexual harassment are entitled to the compensation. In this case special regard will be taken of the relationship of dependence between the victim and the violator.

5.5. Iceland

Icelandic Act sets forth the prohibition in regards to publishing or placing an advertisement that is disrespectful towards either sex. It is highlighted in the Act that the advertisement should comply with the principles of gender equality. It is illegal to use such advertisements either in media or in any public venue.

Law of Georgia on Gender Equality

Law of Georgia on Gender Equality, as mentioned above, was adopted in 2010. The law establishes the fundamental guarantees of equal rights, freedom and opportunities of women and men granted by the Constitution, defines legal mechanisms and conditions for their implementation in relevant spheres of social life'. (Article 1)

A separate chapter in the Law provides the definitions of the key terms used in the Law such as *Gender, Direct and Indirect Discrimination, Equal Opportunities, Equal Treatment*. For instance, the term *Special measure* is defined as a 'measure intended for correction of results induced by an act of discrimination and targeted at the group of people in need of special protection due to gender characteristics' (Article 3).

The Law emphasizes recognition of gender equality in different spheres of social life, such as labor relations, education, healthcare and social protection, family relations, access to informational resources, equal voting rights, etc.

The 2nd chapter of the Law regulates the issues concerning the gender equality in the area of labor relations. It is stated that the state ensures equal employment opportunities for both sexes. One of the significant aspects set forth in this chapter is the prohibition of sexual harassment in labor relations : 'Any type of unwanted verbal, nonverbal or physical act of sexual nature that is aimed at or induces impairment of a person's dignity or creates humiliating, hostile or abusive conditions for him/her' (Chapter 2, Article 6).

Special attention is paid to ensuring gender equality in the sphere of education and science. It is pointed out in Article 7 that the State ensures equal conditions in receiving education and equal access to education for women and men without discrimination.

Article 9 of the Gender Equality Law covers the gender equality aspect in the sphere of healthcare and social protection. It is emphasized in article that 'equal access to medical assistance shall be ensured for the population without discrimination based on sex' (Article 9).

The same chapter covers the aspect of gender equality in family relations. Specifically the following questions are underlined in this section: equal rights of women and men with regards to marriage and divorce, right to choose a family name, profession and occupation, equal rights of spouses to own, purchase, manage or use the property. This chapter also underlines the obligations of women and men in the social sphere of family relations, such the obligations concerning the house work or parenting.

Article 11 of the Gender Equality Law sets forth the guarantees of equal voting rights. According to this article 'everyone has the right to take part in elections on equal terms without any discrimination and equal opportunity for participation of representatives of both sexes shall be ensured in enforcement of the right to be elected in a representative body' (Article 11).

Chapter 3 of the Law covers the aspect of establishment of institutional mechanisms for the supervision over the enforcement the Gender Equality Law.

According to the Law the Georgian Parliament and the Gender Equality Advisory Council (established by the parliament) represent the key entities ensuring compliance with the provisions of the Gender Equality Law.

Gender Equality Advisory Council is the key agency authorized to ensure coordination and monitoring of implementation of the Action Plan for Gender Equality, perform analysis of the legislation and draft proposals for overcoming gender inequalities existing in the legislation; elaborate and plan activities to achieve gender equality, ensure enforcement of equal rights of women and men, elaborate and implement the monitoring and evaluation system of activities targeted at ensuring gender equality (Article 12).

The Law on Gender Equality also elaborates the involvement of local authorities in the activities aimed at ensuring gender equality. Article 13 states that 'local self-government bodies shall [...] develop and implement activities on the local level to ensure identification and elimination of discrimination based on sex (Article 13).

According to the Article 14 of the Georgian Law on Gender Equality Public Defender of Georgia is authorized to monitor enforcement of the Law and take relevant measures when the violations occur.

Conclusion

Examination of the legislative practice in the Nordic countries has shown that the Acts analyzed in this study pay particular regard to the following issues: supervisory mechanisms, imposition of sanctions and fines when provisions of the Act are violated, ensuring equal representation of women and men in different bodies, strict regulation of aspects concerning working life.

As mentioned above the practice of these countries is regarded as the best according to the Index indicators related to gender equality in the last years, correspondingly they are holding top positions in the rankings of the Global Gender Gap Index.

As for the Georgian legislation, it is important to pay due attention to the areas which need to be improved. It is essential to establish relevant entities that will ensure enforcement of the Gender Equality Law, set up the Gender Equality Ombudsman institution, lay down the sanctions and fines for violations of the Law, appoint gender equality experts/consultants in the Ministries for promotion of gender equality principles and implementing gender mainstreaming, introduce the sanctions particularly in the field of labor relations and include a detailed list of employer's obligations in the Act.

It has to be emphasized that the proper regulation of labor relations will only be possible after the *scrupulous* revision of the Labor Code.

Improvement of areas in the Law of Georgia on Gender Equality and compliance of its provisions with the international standards (considering the points and components analyzed in this paper) may serve as the precondition for further effective application of the Law.

About the Author

Nargiza Arjevanidze cooperates with CSS since 2010. She completed her undergraduate studies at Iv. Javakishvili Tbilisi State University (Sokhumi Branch) in English Language and Literature and earned her Master's degree in Gender Studies from the Central European University (Budapest).

She is teaching at the TSU MSocSc program in Gender Studies (courses: Gender and Forced Displacement, Gender and State Socialism) as an AFP Returning Scholar of the Higher Education Support Program. Since 2007 she has worked in United Nations High Commissioner for Refugees (UNHCR) and the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia (MRA) joint project "Protection of Refugees and Asylum-seekers in Georgia" as a COI (country of origin information) researcher.

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