



Monitoring of the Implementation of Convention for Elimination of All Forms of Discrimination Against Women (CEDAW) in Kosovo

Publisher: Kosovar Gender Studies Centre

Director of Research: Luljeta Vuniqi

Lead Researcher: Luljeta Demolli

Research Assistant: Erëmirë Krasniqi

Translator: Xhavit Rexhaj

Technical Editing, Design and Printing: Black Sheep - DZG | info@dzgonline.com

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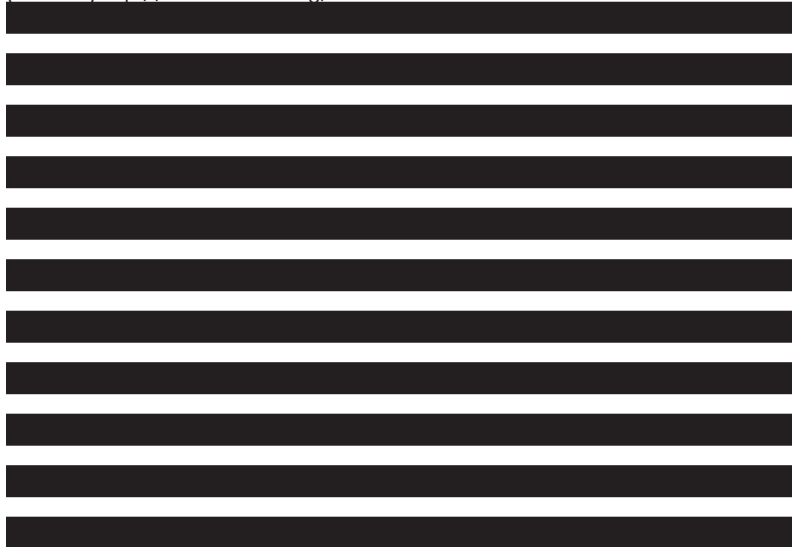


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## METHODOLOGY

In this report CEDAW articles are being analyzed. Each analysis of these articles is comprised of two parts.

Part One is an analysis and a comparative description of compliance of legal infrastructure provisions in Kosovo with the sections of CEDAW, whereas the Part Two is an analysis of data collected from various institutions and NGO-s.

The data and information collected in this way was used by the KCGS to design a research methodology to use in monitoring the level of CEDAW implementation in Kosovo. The report used the Albanian text of CEDAW Convention posted on UNMIK Official Gazette.<sup>1</sup> This methodology has been designed in such a way that it can serve as an instrument for any future monitoring; the same methodology can be used for regular monitoring also by the government.

The research: By using this methodology, the KCGS has carried out a research into the current level of CEDAW implementation in Kosovo. Laws, government programs, experts in various fields, activists of women's rights, statistics, studies and other written materials have served as sources of information for this report. Research instruments used during the design process included content analyses, semi-standardized interviews and group discussions.

Recommendations were finalized in cooperation with representatives of institutions and civil society during a working meeting with the group of experts.

The report analyzed the 16 substantial sections of the CEDAW Convention in the Kosovar context.

This report was completed on 5 Maj 2008 and refers to data and information on gender issues in Kosovo until 30 December 2007.

The views and analyses contained in the report are those of the KGSC and do not necessarily represent the views of UNIFEM, the United Nations, or any of its affiliated organizations.

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<sup>1</sup> Unofficial version, 19 June 2003.  
[http://www.unmikonline.org/albanian/regulations/index\\_alb.htm](http://www.unmikonline.org/albanian/regulations/index_alb.htm)

## ACRONYMS

AGE	Agency for Gender Equality
VFAK	Veterinary and Food Agency of Kosovo
DSCA	Department of Civil Service Administration
PISG	Provisional Institutions of Self-Government
IOM	International Organization for Migration
KEC	Kosovo Education Center
KFOS	Kosovo Foundation for Open Society
KIP	Kosovo Initiative Program
CDHRF	Council for Defense of Human Rights and Freedoms
OGC	Obstetrics and Gynecology Clinics
LGE	Law on Gender Equality
MEST	Ministry of Education, Science and Technology
MJ	Ministry of Justice
MCR	Ministry for Communities and returns
MIA	Ministry of Internal Affairs
MLSW	Ministry of Labor and Social Welfare
WHO	World Health Organization
NGO	Non-governmental Organization
UN	United Nations
OSCE	Organization for Security and Cooperation in Europe
SRSg	Special Representative of the Secretary General
KCGS	Kosovo Center for Gender Studies
KCUC	Kosovo University and Clinical Center
RAE	Roma, Ashkali and Egyptian
NWgK	Network of Women's Groups in Kosovo
HDRK	Human Development Report for Kosovo
KPS	Kosovo Police Service
UNAIDS	Joint United Nations Program on HIV/AIDS
UNDP	United Nations Development Program
UNFPA	United Nations Fund for Population Activities
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
UNMIK	United Nations Interim Administration Mission in Kosovo
PMO	Prime-Minister's Office

## SUMMARY OF KEY FINDINGS

- Since enforcement of mechanisms of the Convention is based on the system of reporting, it is necessary for NGO-s to use this mechanism to keep evidence of the level of responsibility on the part of government structures. Non-governmental organizations play an important role in making the Convention an important instrument for empowering women in the society through advocacy and monitoring of implementation of the treaty by their respective governments
- “Shadow reporting” by NGO-s in CEDAW sessions, provides important insights into the state of affairs and the level of government efforts to promote and protect women’s rights.
- Legal framework of Kosovo, in particular **The National Action Plan for the achievement of Gender Equality**, is seen as one of the most advanced and most comprehensive frameworks in the region. However, there have been only few attempts to monitor the level of implementation of approved laws and established mechanisms
- A detailed analysis on the level of implementation of CEDAW in Kosovo could serve as baseline information for recommendations on future steps in this regard and could also be used as basis on which to build future monitoring efforts after the settlement of the final political status of Kosovo.
- Considering the current political circumstances of Kosova, the CEDAW Committee – without any prejudices regarding the final status of Kosova – requires that UNMIK, in cooperation with the Provisional Institutions of Self-Government (PISG), draft a report on the level of implementation of the Convention in Kosova since 1999. The report must be submitted before June 1, 2008
- The Agency for the Gender Equality is working on the official report and has engaged experts especially those of the legislation
- Level of awareness on legal rights remains relatively low in the Kosovar society. In this context, due to unfavorable social circumstances, a lot remains to be done in increasing the level of awareness among women on the issue of their legally guaranteed rights
- Most of the report sources on the situation of human rights in Kosova, and especially those referring to the so called “vulnerable” groups of persons such as minority communities, persons with special needs, women, children, etc., tell about marginalization of these categories, thus confirming discriminatory practices in all spheres of public life
- As a result, there are significant obstacles to the full implementation of CEDAW in Kosovo, and concerted efforts are necessary in finding adequate channels for dissemination of relevant information regarding the Convention. Media campaigns and concrete field work of activists of women’s rights would help the process of increasing awareness of Kosovar women on the CEDAW and on other important documents providing for women’s rights

- In Kosovo there are a series of institutional mechanisms in place which serve for accomplishment of gender equality, such as: The National Action Plan for the achievement of Gender Equality, the Office for Good Governance, Inter-Ministerial Council for Gender equality, Officers for Gender Equality in the ministries and in municipalities, Unit for Gender Equality within the Ombudsperson's Office, Units for Human Rights in all ministries, etc.
- Even though a number of legal acts and strategies have been approved in Kosovo for the protection of human rights of women and girls in Kosovo, the main problem remains their implementation and respect.
- The legislation regulating issues of gender equality should further adapt to the current situation in Kosovo.
- The Agency for Gender Equality needs further capacity building, more legitimacy and a clearer status. These institutional problems affect the position of women in Kosovo, which is characterized by domestic violence and economic discrimination
- Even though there is not a significant difference in numbers of cases during this period, we however witness an increase by 98 cases in domestic violence between 2002 (1.273 cases) and 2006 (1.371).
- Based on data received by KPS, this phenomenon affects women more than men. Out of the 1.370 cases in 2005, 1.107 or 81 percent are women and only 19 percent are men. There is a slight difference for the year 2006, in which 77 percent are women and 23 percent are men. Another 78 cases have been recorded when victims of domestic violence were children
- According to the Progress Report (2007) Kosovo is still a destination or transit place for victims of trafficking in persons
- Illiteracy rate for Albanian women and girls is 9 percent and is three times higher than with Albanian men and boys. According to the "Report on human development in Kosovo", percentage of illiteracy among adult men is in general lower than among Kosovar women
- Employment opportunities for women are lower than for men. According to data made available by the World Bank, the likelihood for a woman to get employed is at the point of 8.4 percent, whereas for men there are better employment prospects - 35.1 percent. This is determined to a large extent by several factors, such as: unequal access to education, school leaving, early marriages, etc
- According to the report "Prenatal situation in Kosovo for 2000 – 2006", in 2000 9 maternal deaths were reported in 38.907 births with live infants (23.1/100000), whereas in 2006 2 deaths were reported in 28.450 births with live infants (7.0/100000). These figures are comparable to those of the developed countries. However, we must have in mind that "these figures on maternal deaths are reported only from health institutions
- Women of RAE community face more difficulties to access healthcare services, which comes as a result of social and economic conditions, ethnic discrimination, lack of information, health infrastructure, as well as for lack of state policies for healthcare services for this community in general



## INTRODUCTION

During the second part of the last century numerous important initiatives took place internationally in drafting declarations and conventions specifically treating gender issues.

From 1952 until 1962, the Committee on Women's Status<sup>2</sup> drafted several important conventions, such as "Convention on political rights of women" (1952), "Convention on preserving national affiliation of married women" (1957), and "International convention on giving assent to marriage, the minimum age to enter wedlock and registry of wedlock" (1962).

After these three conventions addressing specific issues of gender equality were approved, the work started for drafting a convention that would more generally address issues which more directly affect elimination of gender inequality. Thus, the Declaration for Elimination of Discrimination against Women, which was approved by the general Assembly in 1967, paved the way for the Convention for Elimination of All Forms of Discrimination Against Women (CEDAW<sup>3</sup>), that made protection of civil, political, social and cultural rights an obligation of the states.

The Global Conference of Women, held in Mexico City in 1972, provided that gender issues be regulated by conventions, which would have legal power in the ratifying states.

Such a document with legal powers - the Convention for Elimination of All Forms of Discrimination Against Women (CEDAW) – was adopted by the General Assembly in to become effective in 1981.

From the international perspective, CEDAW sets out rights and obligations for ratifying states. The number of states that have ratified this Convention puts it in the same rank with the International Charter of Rights (which includes the Universal Declaration of Human Rights, the International Civil and Political Treaty and the International Social, Economic, and Cultural Treaty).

The implementation of the Convention is supervised by a monitoring body, called the CEDAW Committee. Based on Article 18 of Convention, CEDAW Committees from ratifying states must submit to the Secretary General a report on legislation, judiciary, administration, and on any other relevant

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2 "Commission for Women's Status" is a functional commission of the United Nations Council for Economy and Society <http://www.un.org/womenwatch/daw/csw/>

3 "Convention on the Elimination of All Forms of Discrimination Against Women – CEDAW". The acronym in English is seen as an international abbreviation of the Convention, but it has also become part and parcel of gender studies in Kosovo; as a result, in stead of the full name ("Convention on the Elimination of All Forms of Discrimination Against Women – CEDAW") this report will use the shorter forms "CEDAW" and "Convention".

measures undertaken for the successful implementation of the provisions of this Convention.

This Committee<sup>4</sup> also makes it possible for experts of specialized agencies and other UN entities to present information and data to the Committee plenary sessions regarding specific sections of the Convention or regarding issues taken in consideration to be given as general recommendations or suggestions.

According to Section 22 of the Convention, specialized agencies are allowed to be present during sessions reviewing implementation of legal measures of the Convention which are part of their mission. The Committee may invite specialized agencies to present their reports regarding the level of implementation of the Convention in respective fields.

The mere act of approval of key instruments (Beijing Platform for Action and the CEDAW) by a large number of states is a proof of existence of a global awareness and of universal political will for institutionalization of principles of anti-discrimination against women and of principles of gender equality. These two aspects influence drafting of laws and development of standards and policies for promotion and protection of women's rights.<sup>5</sup>

The purpose of CEDAW is the elimination of all gender based attitudes, practices, differences, exclusions and preferences. The Convention consists of two main parts: the introduction includes description of structure, the main reasons and emphasizes the commitment needed for implementation by the states after its signing or ratification, whereas the second part makes a detailed account of women's rights and of ways for their protection. By ratifying this Convention, the States agree not only to implement it in their entire territories, but also to carry out and submit reports on measures undertaken for accomplishing its objectives, more particularly in eliminating restrictions and obstacles.

Any discrimination, exclusion or preference on gender grounds negatively affects the development of the society. For this reason, effective implementation of this Convention may eliminate gender based discrimination, exclusion and preferences, which result in inequality between men and women.

This Convention is unique among human rights treaties since it confirms the reproductive right of women and takes in consideration the role of cultures and traditions as a force that affects the shaping gender roles and family relations. It reaffirms the women's right to acquire, change or maintain her national identity and the nationality of her children. States adopting CEDAW also consent that they will undertake all needed measures against all forms of trafficking and exploitation of women.

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4 <http://www.un.org/womenwatch/daw/cedaw/index.html>

5 [http://www.un.org/womenwatch/daw/Review/documents/panel-1/Simonovic\\_formatted.pdf](http://www.un.org/womenwatch/daw/Review/documents/panel-1/Simonovic_formatted.pdf) (14 September 2007).

All signatory states are required to take legal measures and to implement them in practice. They are also required to submit reports about their countries, at least every four years, together with measures they need to undertake in compliance with the treaty requirements.<sup>6</sup>

### Importance of non-governmental organizations when reporting on CEDAW

Since enforcement of mechanisms of the Convention is based on the system of reporting, it is necessary for NGO-s to use this mechanism to keep evidence of the level of responsibility on the part of government structures. Non-governmental organizations play an important role in making the Convention an important instrument for empowering women in the society through advocacy and monitoring of implementation of the treaty by their respective governments.

Government reports and evaluation of their accomplishments is often deficient and entails a tendency to minimize problems and difficulties and to augment accomplishments. For this reason, CEDAW Committee requires the governments to also take in consideration attitudes of NGO-s when drafting their own government reports.

The Committee calls on all NGO-s to get directly involved in the process and to give their inputs independently through the so called "shadow reports" and through informal presentations in CEDAW sessions, in order to convey their perspective on the level of implementation of Convention sections.<sup>7</sup>

"Shadow reporting" by NGO-s in CEDAW sessions, provides important insights into the state of affairs and the level of government efforts to promote and protect women's rights.

### Reporting of Kosovo on CEDAW

Seven years after the end of the war, Kosovo<sup>8</sup> remains without a final political status. This state of affairs affects every sphere of life, more particularly slowing down processes of democratization and building of institutions. The fact that Kosovo is not an internationally recognized state does not allow it to become a signatory party to international resolutions and conventions.

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6 <http://www.un.org/womenwatch/daw/cedaw/>

7 <http://iiraw.igc.org/shadow/CEDAWNGOguideJune2003.doc>

8 Kosovo/a is situated in the central part of the Balkan Peninsula (Southeastern Europe).

It borders with Serbia in its north and east, with Montenegro in northwest, Albania southwest and Macedonia (FYROM) in the south. Kosovo stretches over an area of 10.877 kilometers square. The last full population census was carried out in 1981. According to this census results, Kosova had 1.584.440 inhabitants at that time. In 1991 another population census was organized, but it is considered invalid since it was boycotted by Albanians. Since then the total population of Kosova is estimated to have reached at 1.900.000 inhabitants (according to the Kosovo Institute of Statistics), with 88 percent Albanians, 7 percent Serbs and 5 percent "other"). Approximately 40 percent of the Kosovo population lives in urban areas, whereas 60 percent dwell the rural areas.

However, the presence of United Nations in Kosovo<sup>9</sup> and the work of local activists of women's rights, have brought about preconditions for approval of these resolutions and conventions immediately after the final status settlement. The new legal system in Kosovo<sup>10</sup>, approved by the Kosovo Assembly and promulgated by the Special Representative of the Secretary General, takes account of international resolutions and conventions, such as the Convention for Elimination of All forms of Discrimination Against Women, which is included in the Constitutional Framework of Kosovo.

Legal framework of Kosovo, in particular **The National Action Plan for the achievement of Gender Equality**, is seen as one of the most advanced and most comprehensive frameworks in the region. However, there have been only few attempts to monitor the level of implementation of approved laws and established mechanisms. This remains a necessary issue not only regarding the drafting and implementation of laws in Kosovo, but also for the monitoring of international treaties, such as CEDAW. A detailed analysis on the level of implementation of CEDAW in Kosovo could serve as baseline information for recommendations on future steps in this regard and could also be used as basis on which to build future monitoring efforts after the settlement of the final political status of Kosovo.

Considering the current political circumstances of Kosovo, the CEDAW Committee – without any prejudices regarding the final status of Kosovo – requires that UNMIK, in cooperation with the Provisional Institutions of Self-Government (PISG), draft a report on the level of implementation of the Convention in Kosovo since 1999. The report must be submitted before June 1, 2008.<sup>11</sup>

The interviewed stakeholders, who are directly or indirectly involved in Kosovo reporting about CEDAW, hold different views regarding this reporting.

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9 Kosovo is an entity under interim international administration. Resolution 1244 of June 10, 1999, approved by the United Nations Security Council based on Chapter VII of the United Nations Charter, authorises the Secretary General to establish a civil international presence in Kosovo (UNMIK), in order to set up an interim administration in Kosovo, in harmony with the mandate prescribed in the Resolution. The Special Representative of the Secretary General (SRSG), based on competences vested on him by Resolution 1244 (1999) of the United Nations Security Council of 10 June 1999, and with the purpose of setting up of a meaningful self-government in Kosovo until a final settlement, on 15 May 2001, approved the UNMIK Regulation 2001/9 on Constitutional Framework for Provisional Self-Government in Kosovo, which made way for establishment of Provisional Institutions of Self-Government, such as Assembly of Kosovo, Government, courts, and other organs and institutions as foreseen in the Constitutional Framework.

10 The legal system of Kosovo consists and is regulated by a combination of laws approved by PISG, regulations and directions approved by UNMIK, and Yugoslav laws passed before March 22, 1989.

11 [http://www.iktk.se/publikationer/rapporter/pdf/cedaw\\_kommentarerr\\_skuggrapport.pdf](http://www.iktk.se/publikationer/rapporter/pdf/cedaw_kommentarerr_skuggrapport.pdf) (16 May 2007).

Visare Gashi - Gorani, head of the Agency for Gender Equality, tells that her Agency is preparing to report in the CEDAW Committee. "The largest part of the initial report on the implementation of CEDAW Convention has already been completed. New United Nations member states are expected to submit an initial report in the beginning. There are cases when an analysis of the state of affairs of men and women in the country, but there are also cases when there is an initial report and other reports. In fact, we have completed the situational analysis, always referring to year of 2006. We have got the main structure in place and we are ready to present our initial report, any time that this is required from us. We are maintaining and feeding this report regularly by collecting data and by keeping evidence on trends in specific fields of interest in the implementation of CEDAW. For illustration, we are very well prepared to report on the legislative aspect since Kosovo has a very good legislation, especially when compared to other countries in the region."<sup>12</sup>

On the other hand, Flora Macula, Advisor for Peace and Good Governance for South East Europe UNIFEM, says that there have been numerous initiatives and efforts so far, especially by the civil society, to convey an accurate picture on the position of women and their rights in Kosovo. "These initiatives have come from various agencies, whereas the information was distributed to various international networks and organizations. However, the government has not yet come up with any official reports on these issues. It needs to be pointed out that this year for the first time, there has been a report on Kosovo in the CEDAW Committee, but submitted by the representatives of Serbia. This was an inaccurate report giving a distorted image of the position of women in Kosovo."<sup>13</sup>

Claire Hutchinson, officer for gender issues in UNMIK, tells about the readiness on the part of the international administration in Kosovo to help drafting of the report, but goes on to talk about ambiguities related to the Kosovo agency that should report to the CEDAW Committee. "We are about to finalizing a Memorandum of Understanding with UNIFEM, which will allow us to give our contribution in preparing the CEDAW report, either by training or technical assistance. We will also encourage the Government to treat this issue more seriously, so that the report is finalized by June this year. For this reason "The Memorandum of Understanding" will be addressed to the Prime-Minister to clearly identify a department that will take on this responsibility since currently there are arguments going on as to which of the agencies within the Prime-Minister's Office should report. The reporting should be done by the Agency for Gender Equality, even though it seems that this will be done by the OGA," says Hutchinson.<sup>14</sup>

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12 Interview with Visare Gashi- Gorani, head of Agency for Gender Equality.

13 Interview with Flora Macula, advisor for peace and good governance for South East Europe UNIFEM.

14 Interview with Claire Hutchinson, officer for gender issues in UNMIK

Ariana Qosja, national legal advisor for women and children and member of the OSCE Anti-Trafficking Unit, explains the issue of the official request for a report by the CEDAW Committee. "This request was initially addressed to OSCE, since this institution was involved in coordinating data for the report on the International Convention on Civil and Political Rights and on Economic and Social Rights."<sup>15</sup>

On the other hand, Frode Mauring, representative of the United Nations Development Program in Kosovo, stresses the role of UN in preparing this report, but also conveys his reservations in this respect: "United Nations are required to be active in helping Kosovo in undertaking important steps on the issue of reporting. However and unfortunately, not everybody has come to realize this."<sup>16</sup>

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15 Interview with Ariana Qosja, National Legal Advisor for Women and Children and part of the OSCE Anti-Trafficking Unit

16 Interview with Frode Mauring, representative of United Nations Development Fund in Kosovo

ANALYSIS OF WOMEN'S POSITION IN KOSOVO FROM THE PERSPECTIVE OF CEDAW

I. ARTICLE 1

Article 1.

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.

1.1 Harmonization of the Article 1 with laws

The Constitutional Framework provides that "All persons in Kosovo, free of any discrimination, shall enjoy all fundamental human rights and freedoms."<sup>17</sup>

Even though the Constitutional Framework does not specifically address discrimination against women, in its Article 3.2 it provides that: "Provisional institutions of self-government respect and ensure internationally accepted standards of fundamental human rights and freedoms." This article also outlines these international instruments, including also the Convention for Elimination of All Forms of Discrimination Against Women-CEDAW, also emphasizing that the Provisional institutions of Self-government shall respect and refer to them by saying that: "Provisions for human rights and freedoms addressed in these

<sup>17</sup> 2 Kosovo is an entity under interim administration mission, which together with its people has unique historical, juridical, cultural and linguistic attributes. The mere fact that Kosovo is under interim international administration makes it a specific case in comparison with other independent countries. Another result of this specific situation is that the applicable law in Kosovo includes: Regulations issued by the Special Representative of the UN Secretary General, other auxiliary instruments issued in harmony with them and the legislation which was in effect in Kosovo before 22 March 1989. In case of disputes between the two, UNMIK Regulations and other auxiliary instruments issued in accordance with them shall prevail. If a competent jurisdiction court, an organ or a person in position to apply a legislative provision, finds that a case or an issue can not be addressed properly by the aforementioned legislation, but can be better treated by another provision in effect in Kosovo after 22 March 1989, but which is not discriminating, then the court, organ or the person can exclusively apply that provision. See Article 1 of UNMIK Regulation No. 1999/24 on the applicable law in Kosovo. All UNMIK regulations, administrative instructions, including law adopted by the Assembly of Kosovo and promulgated by SRSG-s, can be found at: <http://www.unmikonline.org/regulations/index.htm>. Laws adopted by the Assembly of Kosovo can be found at <http://www.kuvendikosoves.org/> and <http://www.ks-gov.net/GazetaZyrtare/>. Some of administrative instructions issued by the Government of Kosovo, including those issued by ministries, can be found at: <http://www.ks-gov.net/>

instruments (including CEDAW) shall be applicable directly as integral parts of the Constitutional Framework".<sup>18</sup>

The Constitutional Framework does not make mention of any provision which would provide for direct or implied discrimination. This is however included in the Law on Gender Equality (LGE) and the Law Against Discrimination (LAD).

On June 7th 2004, the Law on Gender Equality (LGE) was promulgated, which defends, addresses and establishes gender equality as a fundamental value of democratic development of the Kosovar society, offering opportunities for participation to men and women equally for their contribution to the political, economic, social and cultural development in all spheres of societal life.<sup>19</sup>

The Law on Gender Equality provides that equal gender treatment "means elimination of all forms of direct or implied gender based discrimination".

Article 2 (points 3 and 4) of the Law on Gender Equality in Kosovo (LGE) defines direct gender discrimination as meaning "any unfair treatment of an individual compared to another individual of a different sex in similar or identical circumstances".<sup>20</sup> On the other hand, "indirect gender discrimination is defined as placing an individual of a given sex in an unequal position with reference to neutral provisions and standards, or unequal treatment in similar or identical circumstances, exceptionally for cases when these provisions, standards and unequal treatment are made necessary, if they can be objectively justified and if they are not based specifically on one gender".<sup>21</sup>

In the same direction, LGE (in its Article 2.5) sees instigation to gender discrimination as gender discrimination. Article 2.6 determines that harassment and sexual harassment too are considered gender discrimination.<sup>22</sup>

The Law Against Discrimination (Article 3) too offers a similar definition of direct and implied discrimination.<sup>23</sup> According to the LAD: Direct discrimination shall be taken to have occurred where one person is treated less favourably than another is, has been or would be treated in a comparable situation based on

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18 Article 3.2, UNMIK Regulation No. 2001/9 on Constitutional Framework for Provisional Self-Government in Kosovo, 15 May 2001. Constitutional Framework.

19 Article 1.1.of UNMIK Regulation No. 2004/18 (7 June 2004) on promulgation of the Law on Gender Equality in Kosovo, adopted by the Kosovo Assembly. Assembly of Kosovo Law No. 2004/2 on gender equality. LGE.

20 Article 2.3 LGE

21 Article 2.4 of the LGE.

22 Article 2.5 of the LGE.

23 Article 3, UNMIK Regulation No. 2004/33 (20 August 2004) on promulgation of the Anti-Discrimination Law, adopted by the Assembly of Kosovo, The Assembly of Kosovo Law No. 2004/32 against discrimination (ADL).

Article 3 of the Anti-Discrimination Law defines other forms of discrimination: harassment, victimization, segregation and inciting others to discriminate other persons.



one or more grounds such as those stated in Article 2(a)<sup>24</sup>. On the other hand, it describes indirect discrimination as a situation where an apparently neutral provision, criterion or practice would put persons, on the basis of one or more grounds such as those stated in Article 2(a), at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.<sup>25</sup>

## 1.2. Harmonization of the Article 1 with facts

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Level of awareness on legal rights remains relatively low in the Kosovar society. In this context, due to unfavorable social circumstances, a lot remains to be done in increasing the level of awareness among women on the issue of their legally guaranteed rights.

The Institution of Ombudsperson in Kosovo<sup>26</sup> points out that there is still little appreciation in the society regarding the principle of discrimination and the combating of the same in Kosovo. "All reports on the situation of human rights in Kosovo, and especially those referring to the so called "vulnerable" groups of persons such as minority communities, persons with special needs, women, children, etc., tell about marginalization of these categories, thus confirming discriminatory practices in all spheres of public life. The universal concept of human rights often does not include the rights of certain groups. Therefore, this has brought about the need for more commitment towards their promotion and practical implementation, with the sole purpose of preventing and eliminating direct and indirect discrimination according to the international standards and laws."<sup>27</sup>

As a result, there are significant obstacles to the full implementation of CEDAW in Kosovo, and concerted efforts are necessary in finding adequate channels for dissemination of relevant information regarding the Convention. Media campaigns and concrete field work of activists of women's rights would help the process of increasing awareness of Kosovar women on the CEDAW and on other important documents providing for women's rights.

According to Claire Hutchinson, UNMIK officer for gender issues, "there are

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24 Article 2 (a) of ADL, the principle of equal treatment implies that there will be no discrimination whatsoever, either direct or indirect, against a person any grounds of gender, age, marital status, language, physical or mental impairment, sexual orientation, nation, opinion or political conviction, respectively ethnic, social, racial affiliation, property, birth or any other status).

25 Article 3 (a and b) ADL.

26 IMPLEMENTATION OF THE ANTI-DISCRIMINATION LAW a challenge for Kosovo, June, 2007

27 IMPLEMENTATION OF THE ANTI-DISCRIMINATION LAW a challenge for Kosovo, June, 2007

many persons who are not even aware that there is a Law on gender Equality. As a matter of fact, this happens with other laws, too. So the situation in Kosovo is that we have remarkable instances of very progressive laws meeting international standards, but at the same time we encounter frequent failures in their implementation.”

Hutchinson thinks that the problem rests with ambiguities in division of responsibilities between the two agencies within the Office of the prime-Minister involved gender issues. “I think that issues of anti-discrimination fall primarily under the responsibility of the Office for Good Governance, Equal Opportunities and Gender issues than with the Agency on Gender. Therefore, the implementation of CEDAW Convention should be a responsibility of Office for Good Governance,” she says.

## II. ARTICLE 2

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### Article 2.

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

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

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## 2.1 Harmonization of the Article 2 with laws

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The Law on Gender Equality protects addresses and establishes gender equality as a fundamental value.<sup>28</sup> This Law provides that gender equality means: “equal participation of women and men in all spheres of life, equal position, and equal opportunities to enjoy all their rights and to make their individual potential available for the societal development and also to personally benefit from the accomplishments of this development”.<sup>29</sup>

Article 1.2 of the LGE defines terms and opportunities for gender equality through policies that support overall development and improvement of the women’s position in particular, so that they are adequately appreciated and enjoy authority in the family and in society.

Any warranty of equal rights is an obligation of the entire society and it implies elimination of obstacles for accomplishment of gender equality, as provided for in Article 1.3 of the LGE. Article 1.4 of the LGE determines that gender equality is based on the principle of equal opportunities and is implemented through positive measures and through policies with due gender equality awareness.

This Law also provides that gender discrimination is made illegal in all spheres of social life in Kosova.<sup>30</sup>

In the course of performing their duties, all persons holding public office have to respect internationally accepted human rights standards and must not discriminate any person on any grounds whether gender, race, color, language, religion, political opinion or attitude or based on their national, ethnic or social origin related to society, property, birth or any other status.<sup>31</sup>

Article 3.1 of LGE determines that: affirmative legal measures help in allowing equal participation of women and men in all levels of legislative, executive, and juridical authorities and in public institutions, in a way that their participation in these institutions reaches proportions of their participation in the overall population of Kosovo.

“The Assembly of Kosovo respects the principles of equal gender representation in the process of setting up its working bodies and delegations in accordance with its internal rules and procedures”.<sup>32</sup>

The government is also responsible to be active in the field of gender equality by promoting and guaranteeing equal gender rights.<sup>33</sup>

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28 Article 1.1., LGE

29 Article 2.1., LGE

30 Article 18.2 of the LGE

31 Article 2 (Respecting of internationally accepted standards) amendment of UNMIK Regulation 1999/1 on authorizations of interim administration mission in Kosovo.

32 Article 4.1, LGE

33 Article 4.7, LGE

In the same direction, "local authorities should, in harmony with their competences, promote and bring about equal opportunities, develop their policies based on gender equality and should also approve needed measures for creation of equal opportunities for women and men".<sup>34</sup>

UNMIK Regulation 2000/45 on Self-government of Municipalities in Kosovo, in its Article 2.3 provides that «All municipal bodies and authorities shall make sure that inhabitants of the municipality enjoy all rights and freedoms without any discrimination regarding their race, ethnicity, color, gender, language, religion, political or other opinion, regardless of their national or social origin or their property, birth or any other status, so that they enjoy equal rights, including the right to employment in communal services at all levels...<sup>35</sup>

The Institution of Ombudsperson ensures mechanisms which allow easy and timely access for people to address actions which may entail embezzlement of power by the Kosovo institutions and offers recommendations for their correction. In cases when embezzlement of power produces continuous and unreparable damage, the Institution of Ombudsperson expedites review of such actions that stage embezzlement of power and offers recommendations for their correction.<sup>36</sup>

The Ombudsperson Institution shall have jurisdiction to receive and investigate complaints from any habitual resident of Kosovo or any natural or legal person in the territory of Kosovo concerning violations of international human rights standards as incorporated in the applicable law and acts, including omissions, which constitute an abuse of authority by the Kosovo Institutions.<sup>37</sup>

The Law against Discrimination (LAD) is effective against all action or inaction by physical or legal entities in both public and private sector, including public authorities, which violate rights of physical or legal entities in the following fields: a) Terms for access to employment, self-employment and employment in one's profession, including requirements for employment and selection criteria, regardless of any activity in all levels of professional hierarchy and promotions b) access to all types and levels of professional leadership, professional training, advanced professional training and requalifications, including practical work experiences c) terms of employment and conditions of work, including dismissal from work and any payments d) membership to and inclusion in workers' or employers' organizations or in any other organization whose members practice a given profession, including possible profits made by such organizations e) social protection, including social welfare schemes, social security and health

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34 Article 4.14, LGE

35 Article 2.3 UNMIK Regulation 2000/45 (11 August 2000) on self-government of municipalities of Kosovo

36 Article 1.2 of UNMIK Regulation 2006/6 (16 February 2006) on the Institution of Ombudsperson of Kosovo.

37 Article 3.1 of UNMIK Regulation 2006/6 (16 February 2006) on the Institution of Ombudsperson of Kosovo.

security f) social commodities, including humanitarian aid g) education h) access to shelter and accommodation and to any other forms of property (movable or immovable) i) Access to supplies with material goods and services which are available to the public opinion j) fair treatment before courts of justice and all other instances that administer justice k) Personal safety l) Participation in public affairs, including the right to elect and to be elected m) Access to public offices and n) Any other right foreseen by the legislation in power.<sup>38</sup>

Public and private sector undertakings and legislative and executive institutions shall provide equal rights and opportunities for females.<sup>39</sup>

The Ombudsperson Institution shall monitor, promote and protect the rights and freedoms of habitual residents of Kosovo and natural and legal persons in the territory of Kosovo in order to ensure that all such persons are able to exercise effectively the human rights and fundamental freedoms safeguarded by international human rights standards as incorporated in the applicable law pursuant to section 1.3 of UNMIK Regulation No. 1999/24 of 12 December 1999, as amended, on the Applicable Law in Kosovo and paragraph 3.3 of the Constitutional Framework for Provisional Self-Government in Kosovo (UNMIK Regulation No. 2001/9 of 15 May 2001), in particular the European Convention on Human Rights and its Protocols, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.<sup>40</sup>

The Law on Gender Equality also foresees penalties for violations of these provisions.

In this regard Article 17.1. of the Law on Gender Equality determines that: Employers are subject to a fine of 1.000 to 5.000 Euros in case of violation of paragraph 13.5 of the Law on Gender Equality. This sanction is foreseen as a protecting measure to Article 13.5 which provides that: "employers shall pay an equal salary for both males and females, for the same work and for the work of the same importance and shall also provide equal employment and working conditions and rights. Employers who do not observe this provision will be subject to a fine of 1.000 to 5.000 Euros, whereas the responsible person is subject to fine of 500 to 1.500 Euros.<sup>41</sup>

In cases when an employee is dismissed from work when such employee demands the implementation of the present law, or for expulsion from work, temporary suspension, unfairness regarding the work safety, working conditions or the recognition of his/her work due to his/her complaint for sexual harassment or discrimination on gender bases, the employers are subject to

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38 Article 4, ADL.

39 Article 12.1, LGE

40 Article 1.1.4 UNMIK Regulation 2006/6 (16 February 2006) on the Institution of Ombudsperson of Kosovo.

41 Article 16, (paragraph 1 and 2) (penalty provisions) LGE

a fine of 5.000 to 10.000 Euros, whereas the responsible person is subject to fine of 1.000 to 3.000 Euro. Identical fines are also foreseen for cases of violation of paragraph 14.2 of the LGE, which foresees that: the Broadcasting and publishing of gender discrimination programs, materials or information is prohibited, as is dissemination of information in electronic format based on gender discrimination.<sup>42</sup>

LGE (paragraphs 6 and 7) foresee that: "The property created during matrimony is registered in the public registers as a common property in the name of both partners, and that the institution that exercises the registration of property shall act in accordance with this provision of the Law. In cases of violation of this provision the authorised institutions and the person responsible for the registration of properties in the public register are subject to a fine of 10.000 to 20.000 Euros.<sup>43</sup>

Article 9 of the Anti-Discrimination Law also foresees sanctions for its violation. A court of competent jurisdiction or an administrative body which has determined that a violation of this Law has occurred may impose sanctions, depending on the nature and scope of the violation and its impact on the victim or victims. According to Article 9.3 of the ADL, "the court, at its option, may impose judicial imposition of positive measures."<sup>44</sup>

The imposition of any sanctions under this Law shall not preclude the imposition of any other sanctions available under any other law within the applicable law in Kosovo.<sup>45</sup>

though the Law provides the right to property, rental and heritage, the customary law does not foresee this. In many cases this has resulted in women renouncing their rights to property, which has diminished their economic perspective and sustainability.<sup>46</sup>

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42 Article 16 (paragraph 3) (penalty provisions). LGE

43 Article 16 (paragraph 3) (penalty provisions). LGE

44 Article 9 ADL. Sanctions foreseen by the decision of the competent body against a natural or legal persons who violate provisions of the ADL include:

(a). Compensation for both pecuniary and non-pecuniary damages, suffered by victims of violations which compensation may include restitution of all rights and other remedies, provided within the applicable Law which the competent body deems appropriate; and

(b). A natural or legal person or persons, or any combination thereof, that has been found to be in violation of this Law will be fined based upon the nature and scope of the violations in accordance with the following ranges:

(i) a natural person - from 500 Euro to 1.000 Euro

(ii) an independent contractor - from 1000 Euro to 5.000 Euro

(iii) a legal person - from 1000 Euro to 1.0000 Euro

(iv) a natural person within a legal person who is responsible for a violation – from 500 Euro to 2.000 Euro

(v) a person exercising a public function who is responsible for a violation – from 500 Euro to 2.000 Euro.

45 Article 9.6 of the ADL

46 Progress report on Kosovo (under UN SC Resolution 1244) for year 2005 – European

The customary law is still very much present in numerous cases.

The Kosovo Law on Religious Freedom in its Article 1.1 foresees that: "Everyone has the right to freedom of thought, conscience and religion. This right includes the freedom to have, not to have, to retain or to change one's religion or belief and the freedom, either alone or in community with others, in public or in private, to manifest one's religion or belief, in worship, teaching, practice and observance Çdo njëri ka të drejtë të gëzojë lirinë e mendimit, ndërgjegjes dhe të besimit fetar."<sup>47</sup> Further in its Article 3, this Law provides that "aall persons, regardless of their belief or conviction or affiliation to any religious denomination, or participation in any religious ceremony, are equal before the law and are entitled to the same rights in their civil, political, economic, social and cultural life. All legal and natural persons are entitled to equal protection by law."<sup>48</sup>

Gender discrimination is prohibited by law in all spheres of societal life in Kosovo, as is foreseen in Article 18.2 of the LGE. This Law also endorses implementation of other applicable laws in Kosovo that sanction violations of gender equality.<sup>49</sup>

Further to these, Article 18.1 of the LGE foresees that judicial protection of gender equality is guaranteed.

However, LGE does not annule internal legal provisions that discriminate women.

UNMIK Regulation No. 2003/12 on Protection Against Domestic Violence (Article 1.2) determines that: "Domestic violence" means one or more intentional acts or omissions when committed by a person against another person with whom he or she is, or has been, in a domestic relationship.<sup>50</sup>

Domestic violence is not treated as a special criminal act. However, UNMIK Regulation No. 2003/12 on Protection Against Domestic Violence, in its Article 16 requires that several criminal acts are prosecuted automatically if they are

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Commission – Brussels, November 9, 2005, SEC (2005) 1423, pg. 21)

47 Article 1.1. of UNMIK Regulation No. 2006/48 (24 August 2006) on promulgation of the Kosovo Law on Religious Freedoms adopted by the Kosovo Assembly. Kosovo Assembly Law No. 02/L-31 on Religious Freedoms in Kosovo (Law on Religious Freedom).

48 See the Law on Religios Freedoms

49 Article 18.3, LGE.

50 Article 1.2. of the UNMIK Regulation 2003/12 on protection from domestic violence. The following are considered domestic violence:

(a) Inflicting bodily injury; (b) Non-consensual sexual acts or sexual exploitation; (c) Causing the other person to fear for his or her physical, emotional or economic well-being; (d) Kidnapping; (e) Causing property damage; (f) Unlawfully limiting the freedom of movement of the other person; (g) Forcibly entering the property of the other person; (h) Forcibly removing the other person from a common residence; (i) Prohibiting the other person from entering or leaving a common residence; or (j) Engaging in a pattern of conduct with the intent to degrade the other person.

carried out in the context of domestic relationship. Thus, violation of a protection order, emergency protection order or an interim protection order shall be automatically prosecuted. Besides, if there is a case of "light bodily injury, when committed within the context of a domestic relationship" and "damaging the property of another person, when committed within the context of a domestic relationship", shall be automatically prosecuted.<sup>51</sup>

On top of this, in accordance with the Provisional Criminal Code of Kosovo several criminal offences are sanctioned with longer sentences if they are committed against persons with whom the perpetrator is in domestic relationship.<sup>52</sup>

UNMIK Regulation No. 2003/25 (of 6 July 2003) on Provisional Criminal Procedure Code of Kosovo in its 193 gives a comprehensive list of acts or offences which can be categorized as domestic violence if they are committed against persons with whom the perpetrator is in domestic relationship.<sup>53</sup>

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51 Article 16, Article 1.2. of UNMIK Regulation 2003/12 against domestic violence

52 UNMIK Regulation 2003/25 of June 6, 2003 on Provisional Criminal Code of Kosovo. See the following criminal acts: bodily injuries (Article 153(4), heavy bodily injuries (Article 154(3), threat (article 161(3), unlawful deprivation of freedom (article 162(4), rape (article 193(3), sexual assault article 195(3), and acts against sexual integrity article 196(3) On definition of domestic relationship in PCCK see article 107(2) of the PCCK.

53 Article 193 of UNMIK Regulation 2003/25 on Provisional Criminal Code of Kosovo gives a list of acts or offences which can be categorized as domestic violence: (1) Whoever subjects another person to a sexual act without such person's consent shall be punished by imprisonment of two to ten years.

(2) Whoever subjects another person to a sexual act:

i) By force; ii) By threat of an imminent danger to the life or body of such person or of another person; or iii) By exploiting a situation in which the person is unprotected and where his or her security is in danger; shall be punished by imprisonment of three to ten years.

(3) When the offence provided for in paragraph 1 or 2 of the present article is committed under one or more of the following circumstances, the perpetrator shall be punished by imprisonment of five to fifteen years:

The offence is preceded, accompanied or followed by an act of torture or inhumane treatment;

The perpetrator causes serious bodily injury or serious disturbances to the mental or physical health of the person;

The perpetrator uses a weapon or a dangerous instrument;

The perpetrator intentionally causes the person to become intoxicated by alcohol, drugs or other substances;

The offence is jointly committed by more than one person;

The perpetrator knows that the person is exceptionally vulnerable because of old age, physical or mental disorder or disability, or pregnancy;

The perpetrator is the parent, adoptive parent, foster parent, step parent, grandparent, uncle, aunt or older sibling of the person and such person is between the ages of sixteen and eighteen years;

The perpetrator shares a domestic relationship with the person and such person is between the ages of sixteen and eighteen years.

(4) When the offence provided for in paragraph 1 or 2 of the present article is committed against a person under the age of sixteen years, the perpetrator shall be punished by imprisonment of five to



Furthermore, in the sense of Article 195 of the Provisional Criminal Procedure Code of Kosovo several criminal offences may be punished with longer sentences if they are carried out against a person with whom the perpetrator is in domestic relations.<sup>54</sup>

## 2.2 Harmonization of the Article 2 with facts

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The principle of equality between men and women is present in the Kosovar legislation. In Kosovo there are a series of institutional mechanisms in place which serve for accomplishment of gender equality, such as: The National Action Plan for the achievement of Gender Equality, the Office for Good Governance, Inter-Ministerial Council for Gender equality, Officers for Gender Equality in the ministries and in municipalities, Unit for Gender Equality within the Ombudsperson's Office, Units for Human Rights in all ministries, etc.

The CEDAW Convention has not had an authorised translation into official languages in Kosovo; however, an authorised version is available in the UNMIK Official Gazette.<sup>55</sup>

The Institution of Ombudsperson is authorised to receive and investigate complaints dealing with cases of discrimination. Apart from this, the government is responsible to lead awareness raising campaigns against discrimination. Lately special trainings have been taking place for judges and prosecutors on the need for continuous and practical utilization and application of the Anti-Discrimination Law.

Since 2006 when the Institution of Ombudsperson was transferred to local authority, UNMIK does not have the mandate to investigate into cases of discrimination involving international agencies or individuals. The report of this Institution sets out that there had been violations of the right of applicants for

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twenty years.

(5) When the offence provided for in paragraph 1 or 2 of the present article results in the death of the victim, the perpetrator shall be punished by imprisonment of at least ten years or by long-term imprisonment.

54 Article 195 of UNMIK Regulation No. 2003/25 (6 July 2003) on the Provisional Criminal Code of Kosovo determines that:

<sup>(1)</sup> Whoever touches another person for a sexual purpose or induces another person to touch the perpetrator or a third person for a sexual purpose, without the consent of such other person, shall be punished by a fine or by imprisonment of six months to five years.

<sup>(2)</sup> The perpetrator shares a domestic relationship with the person and such person is between the ages of sixteen and eighteen years.

<sup>(4)</sup> When the offence provided for in paragraph 1 or 2 of the present article is committed against a person under the age of sixteen years, the perpetrator shall be punished by imprisonment of five to ten years.

(5) When the offence provided for in paragraph 1 or 2 of the present article results in the death of the victim, the perpetrator shall be punished by imprisonment of at least ten years or by long-term imprisonment.

55 [http://www.unmikonline.org/albanian/regulations/index\\_alb.htm](http://www.unmikonline.org/albanian/regulations/index_alb.htm)

access to courts as is guaranteed by Section 6 of the European Convention on Human Rights. Women who had been working for UNMIK Railways and who filed complaints that they had been expelled from their jobs in a discriminatory way, could not file their complaints to the courts because UNMIK Railways were partly managed by UNMIK personnel, who, according to UNMIK Regulation No. 2000/47, enjoy immunity from criminal and civil charges and proceedings.<sup>56</sup>

Even though the applicable law guarantees women the property and leasing rights and the right to inherit property, the customary law however denies them these basic rights. The situation gets worse by the fact that the customary law is still present and applied in some cases in Kosova.<sup>57</sup>

This has often resulted in women giving up from their inheritance rights, which only worsened their economic perspective.

Also the issue of equal salaries implies that men and women are equally regarded and stimulated. However, a lot remains to be done in order to accomplish this in Kosova. Currently, men in Kosova earn four time more than women (134 to 42 Euros a month, and women in general hold positions which are paid less. There is also discrimination in likelihood for education and for employment. Whereas 75 % of the men participate in the labour force, this percentage among women is as low as 31 %. In average men complete two school years more than women, they have higher enrolment rates than women both in primary and secondary education, whereas literacy is higher among women.<sup>58</sup>

The law does not specifically provide in favour or against women covering their face in public institutions<sup>59</sup>. This has brought about dilemmas and caused debates whether wearing a scarf should be allowed or banned in public institutions, and in particular in schools and universities. A debate has recently

56 "Implementation of the Anti-Discrimination Law - A challenge for Kosovo," June 2007

57 Social norms based on tradition and on informal codes, such as "The Code of Lekë Dukagjini", often interfere in the process of implementation of court decisions related to property rights. The decision to start a prosecuting procedure in the public interest is often confused with traditional values of informal codes, which has often resulted in significant difficulties. Lekë Dukagjini's Code or simply Code (also called "the Canon" in English), is a set of laws drafted by Lekë Dukagjini and applied mainly in the north of Albania from the XV to the XX century; after a break during communist times, it was revived immediately after the fall of communism beginning of the nineties of the last century. The set of laws was carried from one cohort to another as an unwritten and uncodified legal framework until the nineteenth century. It was put in writing and compiled first by Father Shtjefën Gjegovi. The Canon evolved during the centuries always with the sole purpose of establishing law and order in these areas. It was divided in several parts: The Church, Family, Marriage, House, Livestock and Property, Labor, Transfer of Property, Besa (the pledge), Honor, Compensation, Penal related Law, Juridical law and Expectations and Exclusions.

58 UNDP Indexing

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taken place in the Kosovar media on the issue of women covering themselves in public institutions or not. A television debate<sup>60</sup> was organized to address the issue from different perspectives, including challenges faced by women wearing scarves and covering themselves at work. Asked whether wearing a cover is a handicap for her daily life, a student of psychology wearing a scarf said that “the cover attracted more attention of the people but that this did not stop her from living a normal life.”

During this debate, Visare Gorani-Gashi, Managing Director of the Agency for Gender Equality, said that women working in institutions should wear formal outfit. She also pointed out that “A woman wearing the scarf in institutions will attract more negative attention than women wearing usual clothes. Only a small percentage of women in Kosova are covered” she maintained.

As a result of the lack of the family court and of courts for minors, there is limited knowledge among authorised persons regarding the rights on these two categories. Several trainings from the perspective of gender equality have been carried out to cover for domestic violence. These trainings have been used to offer detailed information to judges and other lawyers on the contents of the Law on Gender Equality and on its importance within the legislative framework.

According to the Chair of the District Court in Gjiilan, in several cases even the Convention on Human Rights was applied and on one occasion he personally resorted to international conventions. “A married couple wanted to get divorce, but they had hired the same lawyer to represent them. I insisted that another lawyer should be hired in order that the interests of both parties are duly protected. In this case I referred to the convention on human rights.”

Even though there is not a significant difference in numbers of cases during this period, we however witness an increase by 98 cases in domestic violence between 2002 (1.273 cases) and 2006 (1.371).

Based on data received by KPS, this phenomenon affects women more than men. Out of the 1.370 cases in 2005, 1.107 or 81 percent are women and only 19 percent are men. There is a slight difference for the year 2006, in which 77 percent are women and 23 percent are men. Another 78 cases have been recorded when victims of domestic violence were children.

According to Tahire Haxholli, officer for domestic violence in the KPS<sup>61</sup>, in most of the cases women are victims of domestic violence, which comes as a reflection of inequality between men and women.

Data for 2006 show that men “participate” by 92 % as perpetrators of domestic violence, whereas women exercised violence in 8 percent of cases.

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60 RTK program “Jeta në Kosovë” (Life in Kosova), Topic

61 Interview with Tahire Haxholli, Officer for Domestic Violence in the Kosovo Police Service. 06.07.2007

Most often, domestic violence is exercised between married couples. However, cases of domestic violence are not limited only to marital relations. Consequently, domestic violence has a wider distribution and family relations between the victim and perpetrator touches on other than marital relation in the broader family. The following table presents only a number of cases of domestic violence that involved other members of the family than spouses.

Flora Macula, from UNIFEM, says that: "even though domestic violence has not been addressed by the government, the civil society was very active by campaigning to raise awareness among women, by reporting violence in relevant institutions and by removing the issue away from closed private spheres.

Tahire Haxholli, officer in the KPS division for domestic violence tells that there has been an increase in the number of reported cases of domestic violence and not an increase of violence.

Adile Basha, head of division for protection of family in the Ministry of Labor and Social Welfare, thinks that domestic violence is a social problem present for centuries and that Kosovo is not a unique country in the world facing this phenomenon.<sup>62</sup>

Behxhet Shala, executive director of the CDHRF, says that: 'Majority of Albanians used to consider their wife and children as their private property. Starting from this assertion, we gave ourselves the discretion to decide whether the family 'deserved' to be penalized or not. Therefore, we beat our wife because we thought that the nature, Lekë Dukagjini's Code and the god itself entitled us to this.'<sup>63</sup>

The OSCE report "The report on cases of domestic violence in Kosovo"<sup>64</sup> shows that the key problem in addressing cases of domestic violence rests in unlawful delays in taking decisions on requests for protection orders or for scheduling court sessions, in spite of the clear provision of the Regulation that a request for protection should be placed fifteen days from the day of receiving a request from the court.<sup>65</sup>

According to Behar Selimi "We can not rely only on police to fight domestic violence. What the police does is to take the victim away from the venue of violence, but this is not enough: there must be the needed infrastructure to take care of their security."<sup>66</sup>

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62 Interview with Adile Basha, head of division for protection of family, Ministry of Labor and Social Welfare. 11.07.2007. Prishtina.

63 Interview with Behxhet Shala, executive director KLMDNJ. 16.07.2007. Prishtina.

64 Organization for Security and Cooperation in Europe (OSCE) Mission in Kosovo "Report on cases of domestic violence in Kosovo," July 2007

65 Section 7 (1) of the Regulation

66 "Whose security?" documentary. Interview with Behar Selimi. 2005

### III. ARTICLE 3

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#### Article 3.

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

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#### 3.1 Harmonization of the Article 3 with laws

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Government of Kosovo approved on 11 October 2005, its Action Plan for implementation of the Anti-Discrimination Law (Decision No. 4/170) which sets out timelines of concrete measures and activities, responsibilities of agents/institutions involved, together with a detailed description of the implementation budget to come both from the Kosovo Consolidated Budget and from donors.<sup>67</sup>

#### 3.2 Harmonization of of the Article 3 with facts

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The Government of Kosovo approved in 2004 the The National Action Plan for the achievement of Gender Equality. This Plan includes recommendations for addressing and solving specific gender problems and issues in Kosovo. As a concrete mechanism for ensuring gender equality, The National Action Plan for the achievement of Gender Equality was tailor made to address real needs of women in Kosovo and has been structured in such a way that it reflects local efforts in the wider context of international trends for advancing the status of women globally. The Plan also proposes concrete measures for the roadmap of Kosovo on her way towards equality and development.<sup>68</sup>

### IV. ARTICLE 4

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#### Article 4.

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

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<sup>67</sup> See Government of Kosovo Decision No. 4/170 of 11 October 2005 on approval of Comprehensive National Plan of Action for Implementation of Anti-Discrimination Law.

<sup>68</sup> See, National Plan of Action for Accomplishment of gender equality in Kosovo, Government of Kosovo, Prishtina, 2004.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.
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#### 4.1 Harmonization of the Article 4 with laws

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As determined by the LGE, "Legal measures are measures that aim at achieving the complete equality of females and males in the society, that provide specific priorities that enable the members of a certain gender equal access in all fields of social life, eliminating the existing gender inequality and providing certain rights that they did not enjoy before".<sup>69</sup>

General measures are measures of a normative nature which aim at preventing gender discrimination through legislation that regulates specific fields, behaviors in certain circumstances or at undertaking the appropriate efforts for the provision of equal gender treatment, such as the penalties that shall be imposed in case of violation of these restrictions or requirements.<sup>70</sup>

Special measures are temporary measures that aim at providing gender rights and promoting gender equality in specific fields of social life which have been identified as not representing gender equality regarding representation or position of persons belonging to one gender.<sup>71</sup>

There are only a small number of temporary legislative measures in Kosovo for improving the position of women compared to men.

Aiming at ensuring equal participation of men and women as foreseen in Article 3 (3.1 and 3.2) of the Law on Gender Equality, the Ministry of Public Services of Kosovo has issued the Administrative Instruction No. 2007/03-MSHP foreseeing measures for accomplishing gender equality in public administration institutions. This administrative instruction is applicable in all institutions of public administration. Article 9 of this instruction reads that: All institutions of public administration are required to undertake special provisional measures during 2007, which would aim in establishing gender equality, referring to but not restricting measures to those provided for in the administrative instruction 2007/03.<sup>72</sup>

#### 4.2 Harmonization of the Article 4 with facts

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Even though a number of legal acts and strategies have been approved in Kosovo for the protection of human rights of women and girls in Kosovo, the

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69 Article 2.9 of LGE.

70 Article 2.10 of the LGE

71 Article 2.11 of the LGE

72 Article 3 of the Administrative Instruction No. 2007/03-MSHP on measures for accomplishing gender equality in institutions of public administration during 2007.

main problem remains their implementation and respect.

The legislation regulating issues of gender equality should further adapt to the current situation in Kosovo. The Agency for Gender Equality needs further capacity building, more legitimacy and a clearer status. These institutional problems affect the position of women in Kosovo, which is characterized by domestic violence and economic discrimination.

## V. ARTICLE 5

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States Parties shall take all appropriate measures:

- a. To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
  - b. To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.
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### 5. Harmonization of the Article 5 with facts

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Institutions of the Kosovo government have not organized a Kosovo-wide campaign for the elimination of gender discrimination. Most part of campaigns and activities in this direction came from women NGOs, with the purpose of mitigating gender based stereotypes and prejudices

Women in Kosovo retain most of the decision making powers when regarding children and their education, domestic supplies and managing of everyday housework. On the other hand, men keep the upper hand on issues pertaining to managing the family budget, marriage of their sons and daughters, letting the woman get employed and deciding for what job to do, purchase and selling of immovable estates, selling and buying of household appliances, etc.<sup>73</sup>

If we view these family relations from the general social perspective, we find that they are reflected also in the market labor. Women are not seen anywhere in the macro-economic processes, in running businesses or in decision making positions or in other professions tagged by the society as 'male' jobs, but, in stead, in other professions, which reflect their role and position in the family.

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73 Justina Shiroka-Pula, PARTICIPATION OF WOMEN IN THE LABOR MARKET IN KOSOVO (A comparative and empirical analysis)

Kosovo has not done enough in equal sharing of responsibilities in the field of childcare either. Women still carry the most responsibility in this respect, regardless if they are employed and have to leave home for most of the day or not. For illustration the Labor Law, which is applicable law in this field in Kosovo, foresees that "male civil servants are entitled to two days of fraternal leave for birth of every child." A more typical parental leave for husbands in cases of birth of children would be a positive signal for the men to take on more responsibilities for the childcare and would also significantly improve the position of women in the labor market.

Having in mind the role and influence of the media in shaping the public opinion, the expert group<sup>74</sup> on gender issues and legislation considers that: "To a large extent, media in Kosovo only add and strengthen the existing gender stereotypes in Kosovo, by depicting women in a discriminative way. In electronic and printed media, women are mainly presented as erotic objects or in their traditional roles of a mother, housewife, spouse, or in professions traditionally considered as female jobs.

During 2004 and 2005, the Ministry of Education, Science, and Technology developed its Strategic Plan of Action "Inclusion of Gender Perspective in Education", wherein in its Strategic Objective 2 it foresees the inclusion of the gender perspective in curricula and in school text-books. However, in spite of this, prejudices and stereotypes continue to be very much present in numerous school text-books.

The group of experts who participated in the discussion agreed that in order to successfully prevent and combat stereotypes and prejudices in the Kosovo media, a mechanism must be set up or a group of activists brought together who would react and even take legal action against the media who continue current practices of a stereotyped approach when reporting or addressing women and women issues.

## VI. ARTICLE 6

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### Article 6.

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

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### 6.1 Harmonization of the Article 6 with laws

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Article 192 (7) of UNMIK Regulation No. 2003/25 (6 July 2003), on the

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<sup>74</sup> Kosovo Center for Gender Studies organized a discussion with a group of experts on human rights, gender issues and legislation, on one side and government and civil society representatives on the other. (For more information on this event, please see the Methodology of work.



Provisional Criminal Code of Kosovo, defines the term “prostitution” as offering or providing sexual services in exchange for money, goods, or services.<sup>75</sup>

Prostitution is considered as criminal activity and is sanctioned by article 201 of the Provisional Criminal Code of Kosovo:

1. Whoever knowingly recruits, organizes or assists another person or provides premises to another person for the purpose of prostitution shall be punished by a fine or by imprisonment of up to three years.
2. When the offence provided for in paragraph 1 is committed within a 350 meter radius of a school or other locality which is used by children, the perpetrator shall be punished by imprisonment of six months to five years.
3. Whoever, by force, threat of force, or by holding another person in a situation of personal or economic dependency compels such person to engage in prostitution shall be punished by imprisonment from one to eight years.
4. When the offence provided for in paragraph 1, 2 or 3 of the present article is committed against a person between the ages of sixteen and eighteen years, the perpetrator shall be punished by imprisonment of one to ten years. When the offence provided for in paragraph 1, 2 or 3 is committed against a person under the age of sixteen years, the perpetrator shall be punished by imprisonment of one to twelve years.
5. The period of statutory limitation for the prosecution of the offence provided for in paragraph 4 shall begin to run on the day the victim reaches the age of eighteen years.<sup>76</sup>

The Provisional Criminal Code of Kosovo defines the term “trafficking in persons” as recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.<sup>77</sup>

UNMIK has promulgated its Regulation 2001/4 (12 January 2001) on banning of trafficking in persons in Kosovo with the purpose of ensuring special legislation to fight and prosecute perpetrators of heavy crimes with trafficking in persons and other criminal offences related to it, as well as aiming at protecting

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<sup>75</sup> Article 140 Provisional Criminal Code of Kosovo defines the term “exploitation” as it is used in item 1 of this paragraph, to include among others using of prostitution of others of other forms of sexual exploitation, services or forced labor, slavery or other activities similar to slavery, abuse or removal of organs.

<sup>76</sup> Article 201 (Allowing prostitution to take place) Provisional Criminal Code of Kosovo

<sup>77</sup> Article 139 and 140 (8) of the Provisional Criminal Code of Kosovo.

and assisting victims of trafficking in persons and other offences related to it.

This regulation defines “trafficking in persons” in Kosovo as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

UNMIK Regulation No. 2001/4 on prohibiting trafficking in persons in Kosovo (in articles 2.1 – 2.5) also foresees penalty provisions for cases of trafficking in persons.<sup>78</sup>

The Special Representative of the Secretary General appoints a Victim Assistance Coordinator who is responsible for coordinating implementation of Regulation on the prohibition of trafficking in persons in Kosovo. In carrying out his/her responsibilities, the Victim Assistance Coordinator shall liaise with relevant law enforcement authorities, with international governmental and non-governmental organizations and other parties as necessary. Expenses incurred by the implementation of this Regulation will be financed, depending on funds available, from donor contributions given for this specific purpose and earmarked as donor grants to the Kosovo Consolidated Budget. The Victim Assistance Coordinator may ask for more funds in this purpose from the Kosovo Consolidated Budget.<sup>79</sup>

The SRSG promulgated Administrative Direction No. 2005/3 (11 February 2005) implementing Regulation No. 2001/4 on the prohibition of trafficking in persons in Kosovo with the purpose of clarifying responsibilities of the victim assistance coordinator, setting up funds for offering financial assistance and reparations to victims of trafficking, for establishing a review panel to review appeals of decisions by the coordinator on applications for assistance or reparation of victims, and for rendering additional assistance to victims of trafficking and witnesses outside of Kosovo.

Article 1 of the Administrative Direction No. 2005/3 implementing Regulation

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78 Article 2, UNMIK Regulation Nr. 2001/4 on prohibition of trafficking in persons in Kosovo. Articles 2.1 – 2.5 foresees the following penalties for cases of trafficking in persons: 2.1 Any person who engages or attempts to engage in trafficking in persons commits a criminal act and shall be liable upon conviction to a penalty of two (2) to twelve (12) years' imprisonment. 2.2 Where the victim of trafficking is under the age of 18 years, the maximum penalty for the person engaging in trafficking shall be up to fifteen (15) years' imprisonment. 2.3 Any person who organizes a group of persons for the purpose of committing the acts referred to in paragraphs 2.1 and 2.2 shall be liable upon conviction to a penalty of five (5) to twenty (20) years. 2.4 Any person who, through negligence, facilitates the commission of trafficking in persons commits a criminal act and shall be liable upon conviction to a penalty of six months to five (5) years' imprisonment.

79 See Article 9 and 10 of UNMIK Regulation No. 2001/4 on prohibiting of trafficking in persons in Kosovo.

No. 2001/4 on the prohibition of trafficking in persons in Kosovo, describes the scope of responsibilities of the Victim Assistance Coordinator as follows: The Victim Assistance Coordinator ("the Coordinator") who shall be appointed by the Special Representative of the Secretary General pursuant to section 9.1 of UNMIK Regulation 2001/4, shall be assigned to the Department of Justice.<sup>80</sup>

The Provisional Criminal Code of Kosovo in its Article 139, sanctions trafficking in persons as a separate criminal act:

1. Whoever engages in trafficking in persons shall be punished by imprisonment of two to twelve years.
2. When the offence provided for in paragraph 1 of the present article is committed against a person under the age of 18 years, the perpetrator shall be punished by imprisonment of three to fifteen years.
3. Whoever organizes a group of persons to commit the offence in paragraph 1 of the present article shall be punished by a fine of up to 500.000 EUR and by imprisonment of seven to twenty years.
4. Whoever negligently facilitates the commission of trafficking in persons shall be punished by imprisonment of six months to five years.
5. Whoever uses or procures the sexual services of a person with the knowledge that such person is a victim of trafficking shall be punished by imprisonment of three months to five years.

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<sup>80</sup> Article 1 of Administrative Direction No. 2005/3 (11 February 2005) implementing Regulation No. 2001/4 on the prohibition of trafficking in persons in Kosovo, among others foresees the following responsibilities of the Victim Assistance Coordinator:

(a) Develop in coordination with the Ministry of Finance and Economy a strategy for obtaining funds from, inter alia, court fines, confiscated property (pursuant to section 6.1 of UNMIK Regulation No. 2001/4), individual and donor contributions, the Kosovo Consolidated Budget and other sources; (b) Create the mechanisms for providing financial assistance and reparation to the victims of trafficking in the form of funds; (c) Establish the criteria and procedures for evaluating applications by victims of trafficking for assistance and reparation, render decisions on such applications and facilitate the provision of such assistance; (d) Provide support to victims of trafficking participating in judicial proceedings pursuant to section 10.1 of UNMIK Regulation No. 2001/4; (e) Coordinate with UNMIK authorities and other relevant parties on policies and actions relating to trafficking in persons; (f) Issue a bi-annual report on trafficking in persons in Kosovo, including data on the scope of the problem and the number, status and disposition of cases prosecuted under the applicable criminal law; (g) Raise awareness about the issue of trafficking in persons and the rights of victims of trafficking; (h) Seek advice on cases and issues pertaining to victims of trafficking who are minors, mentally ill or otherwise disabled; and (i) Under the supervision of and subject to clearance by the DSRSG for Police and Justice, cooperate in regional and international efforts to combat trafficking and to provide assistance to victims of trafficking. In carrying out his or her responsibilities, the Coordinator shall work closely with UNMIK authorities, law enforcement authorities, the Provisional Institutions of Self-Government, inter-governmental and non-governmental organizations and other relevant parties as necessary.

6. When the offence provided for in paragraph 5 of the present article is committed against a person under the age of 18 years, the perpetrator shall be punished by imprisonment of two to ten years.
7. When the offence provided for in the present article is committed by an official person in the exercise of his or her duties, the perpetrator shall be punished by imprisonment of five to fifteen years, in the case of the offence provided for in paragraph 1 or 2, by imprisonment of at least ten years, in the case of the offence provided for in paragraph 3, by imprisonment of two to seven years in the case of the offence provided for in paragraphs 4 or 5 or by imprisonment of five to twelve years, in the case of the offence provided for in paragraph 6.<sup>81</sup>

## 6.2 Harmonization of the Article 6 with facts

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Trafficking in persons is a complex problem embedding various significant aspects of the functioning of the society. If, in analyzing the phenomenon of trafficking, we take in consideration numerous and continuous problems of the Kosovar society, then the problem becomes even more complicated and acute. However, an adequate approach to get a clearer picture of the trafficking in persons in Kosovo today would be to identify and focus on some key elements, such as: causes of increased rates of trafficking, level of effectiveness of responsible authorities in combating trafficking in persons, and the opinion of authorized officials on awareness raising campaigns and on opportunities for rehabilitation of victims.

According to the Progress Report (2007)<sup>82</sup>, Kosovo is still a destination or transit place for victims of trafficking in persons. This report points out that there is very limited cooperation in practice between the division against trafficking in persons and the regional units. Most of the regional units have only few female staff and even these are not well trained to carry out their duties. Moreover, the personnel of these units are often engaged in tasks other than trafficking in persons. At the same time, efficiency in preventing trafficking in persons differs largely from one region to another.

According to the original terms of reference, "The anti-trafficking unit is a unit within the Kosovo Police Service with a mission to combat trafficking in persons in three directions: prevention of crime and other such acts, prosecution of perpetrators and reporting facts before courts, and offering protection and assistance to victims of trafficking."<sup>83</sup>

In its report for period January - June 2007<sup>84</sup>, it is stated that there is shortage

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81 Article 140 of UNMIK Regulation 2003/25 (6 July 2003) on the Provisional Criminal Code of Kosovo

82 EMRI I RAPORTIT DHE DATA E PUBLIKIMIT

83 Kosovo Police Service (KPS), Official web-page: <http://www.kosovopolice.com/>

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of personnel in several regions and that, in general, there are ambiguities in the organizational structure of this unit.

During this period 591 hotel facilities suspicious of exercising illegal prostitution were searched and 10 of them closed down. The report outlines that 46 persons were interviewed suspected for trafficking in persons, 15 for "emigration" and 83 witnesses.

In the framework of its operations, the Unit engaged in 91 surveillances, 37 undercover operations, 56 joint operations with other units and 15 operations in municipalities.

During this period, members of this Unit arrested 26 persons, of which 18 were men and 8 women. Regarding the number of cases, 29 new cases were opened during January – June 2007, 13 cases were sent to the court, 10 cases were closed and 17 are under investigation.

A new phenomenon during 2007 is the increased number of local girls and women involved in internal and external trafficking.

Only during January – June 2007, 19 victims of trafficking were identified.<sup>85</sup> Of these, 9 were Kosovar, 6 were citizens of Albania, 2 from Moldova, 1 Albanian from Macedonia and 1 Albanian from Serbia. Of the 19 victims, 13 have been offered help by institutions and 6 were repatriated.<sup>86</sup>

Two national officers involved in this issue share the opinion of grown numbers of local victims of trafficking.

According to Violeta Krasniqi, officer for gender equality within the Office of Ombudsperson, the number of victims of trafficking has increased significantly after the war of 1999. "During the first years of the postwar period victims of trafficking came mainly from other countries but, unfortunately, according to more recent information local girls and women are also appearing as victims of trafficking," said Krasniqi.<sup>87</sup>

Virgjina Dumnica, from UNDP office in Kosovo, shares the same opinion: "After the end of the war of 1999 there were numerous women trafficked from other countries, such as Moldova, but this situation has changed now since there is an ever growing number of Kosovar girls being trafficked. The issue of internal trafficking needs to be urgently addressed in order to find ways to help girls internally trafficked in Kosovo. This especially happening in the region of Ferizaj and in parts of Prizren municipality, where we encounter most frequent cases of

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85 For purposes of comparison, IOM statistics for period 2001 - 2006 tell about 91 victims of trafficking, of which 85 were sexually exploited, 4 were used for forced labor, and 2 were used for street begging and stealing.

86 Statistics made available by the KPS.

87 Interview with Violeta Krasniqi, Office for Gender Equality within the Ombudsperson's Office, 26/06/07.

trafficking in persons.”<sup>88</sup>

Behxhet Shala, director of the CDHRF holds a sterner view on the causes that have brought to increased rates in internal trafficking. He says that “the level of trafficking went high after the war, with the arrival of internationals, because the need for trafficking goes high in countries where there are international missions and numerous military and police troops.” He adds that internationals should be blamed for trafficking since, in stead of setting up mechanisms for prevention of trafficking, they deal only with consequences by extraditing or by providing temporary shelter to women who were victims of trafficking. “Internationals should be blamed to have helped the booming of trafficking. They ran the trafficking without taking any measures for its prevention,” says Shala.

Ariana Qosja–Mustafa, of OSCE, also mentions the overt militarization of Kosovo as one of the causes of increased rates of trafficking. She maintains that, “in the beginning it was mainly internationals, who made use of these services, but this has changed now with the local men becoming the main exploiters of trafficked women and girls, which has been proved also by statistical data. Initially women came from Southeastern and Eastern Europe, such as Russia and Moldova, and in some cases from Bulgaria, and occasionally from Albania and Romania,” pointed out Qosja.<sup>89</sup>

The International Organization for Migration (IOM), found that 60 percent of the local victims of trafficking are persons under age of 18 and the majority of them come from rural areas of Kosovo.<sup>90</sup>

Initiatives for increasing awareness on dangers from trafficking in Kosovo are launched and implemented by the Office for Good Governance in the Prime-Minister’s Office, by the Agency for Gender Equality, and by some international organizations (OSCE, UNDP, IOM, OGA).

There is clear distinction between rural and urban areas regarding anti-trafficking campaigns in that much less is done in rural areas to increase awareness on the dangers from this malady.

Violeta Krasniqi says that regarding efforts for prevention of trafficking, the Ombudsperson’s attempts to offer ample information on the ways a citizen may inform on such cases and allow for effective prevention of the phenomenon of trafficking. “We frequently have information meetings with students of primary and secondary schools, in which we discuss with them various ways of reporting either via electronic mail and public telephone numbers, or by visiting police stations, where victims of trafficking or citizens can report cases

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88 Interview with Virgjina Dumnica, UNDP, 22/06/07

89 Interview with Ariana Qosja-Mustafa – National Legal Advisor for Women and Children and member of the OSCE Anti-Trafficking Unit. Interviewed by Lynne Alice. 26.06.2007. Prishtina

90 Express, daily newspaper, 9 January 2007, page 12. Author: Besiana Xharra

of trafficking.”<sup>91</sup>

Another important issue, besides information campaigns, is the issue of rehabilitation of victims. According to Violeta Krasniqi, “a lot has been done by various agencies to develop a long term anti-trafficking strategy. However, a significant shortcoming of all these strategies is that they have not come up with solutions regarding the very important aspect of rehabilitation of victims – both victims of trafficking and those of domestic violence.”<sup>92</sup>

Because of the prevailing mentality in Kosovo, victims of trafficking are not only left without any institutional support, but they are also stigmatized. This is to a large extent reflected in the numerous difficulties during the process of the re-socialization. According to Qosja – Mustafa, these victims are very young and because of the traditional mindset they are considered as prostitutes by the society: “I can illustrate this by a case in the municipality of Peja when a family was isolated by the villagers since they agreed to have their daughter – a victim of trafficking – back in the family”.<sup>93</sup>

Igballe Rogova, executive director of the Kosovo Women Group’s Network emphasizes that difficulties in fighting the phenomenon of human trafficking are related to the problems existing in the justice system and to the lack of political of UNMIK and KFOR to prevent this phenomenon. “Mechanisms are in place, but the system of justice has to function in order to fight traffickers,” says Rogova.<sup>94</sup>

According to Ariana Qosja – Mustafa, there is a saying among the traffickers, which says that: “Traffickers are always one step ahead,” since their trend and methods change with the time. For this very reason, the reactions of institutions must be more dynamic, stronger and multi-dimensional.

## VII. ARTICLE 7

### Article 7.

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected

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91 Interview with Violeta Krasniqi, Office for Gender Equality within the Ombudsperson’s Office, 26/06/07.

92 Interview with Violeta Krasniqi, Office for Gender Equality within the Ombudsperson’s Office, 26/06/07.

93 Interview with Ariana Qosja Mustafa – National Legal Advisor for Women and Children and member of the OSCE Anti-Trafficking Unit. Interviewed by Lynne Alice, 26.06.2007, Prishtina.

94 Interview with Igballe Rogova

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

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## 7.1 Harmonization of the Article 7 with laws

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The Law Against Discrimination applies to all natural and legal persons as regards both the public and private sectors, including public bodies, in relation to any action or inaction which violates the right or rights of any natural or legal person or persons, to participate in public affairs, including the right to vote and be voted for.<sup>95</sup>

The Law on Gender Equality in its article 3.1. provides that: The implementation of legal and affirmative measures establish equal participation for both females and males in legislative, executive, judicial bodies of all levels and in public institutions, so that representation of both genders in these institutions high its level of their representation in the general population of Kosovo. Further, section 3.2 foresees that equal gender participation of both females and males, according to Section 3.1, is achieved in cases where the participation of the particular gender in the institutions, bodies or at the level of authority is 40%.

Violating equal status of residents of Kosovo, is a special act sanctioned by Article 158 of the Provisional Criminal Code of Kosovo: (1) Whoever unlawfully denies or limits the freedoms or rights of a resident of Kosovo, as set forth in the Constitutional Framework and the applicable law, on the basis of a difference of race, colour, sex, language, religious belief or non-belief, political or other opinion, national or social origin, property, birth, education, social status or other personal characteristics or affiliation to an ethnic, religious or linguistic community in Kosovo or whoever unlawfully grants a resident of Kosovo any privilege or advantage on the basis of such a difference or affiliation shall be punished by imprisonment of six months to five years.<sup>96</sup>

The right to vote in elections in Kosovo is foreseen in Section 9.1.3 (c) of the Constitutional Framework for Provisional Self-Government: Every person 18 years of age or over on the day of election meeting other voting criteria, shall be entitled to vote, in the same manner as was done in the municipal elections held in Kosovo on 28 October of 2000.<sup>97</sup>

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95 Article 4 (1) ADL

96 Section 158 – UNMIK Regulation 2003/25 (6 July 2003) on the Provisional Criminal Code of Kosovo

97 UNMIK Regulation No. 2000/39 on municipal elections in Kosovo. Article 4 of this Regulation provides that: Elections for municipal assemblies will be carried out according to the system of proportional representation based on lists of candidates of political parties, civil initiatives and coalitions and independent candidates included in the ballots in harmony with rules of the Central Election Commission.



Aiming to create basic provisions for carrying out municipal elections of 2002, the SRSG promulgated UNMIK Regulation No. 2002/22 on municipal elections in Kosovo. Section 8 (8.1) of this Regulation determines that: All persons eligible to vote in an election in Kosovo shall be 18 years of age or over on the day of the election.

On the other hand, Section 5.5 of UNMIK Regulation No. 2002/11 on municipal elections in Kosovo foresees the following: "All candidate lists of certified political entities shall have, in respect of the first 67% thereof, at least 33% female candidates with at least one candidate of each gender included in each group of three candidates counting from the first candidate on the list. If a candidate list of a certified political entity consists of two or fewer candidates, the gender requirements set out in this section shall not be mandatory." SEE NEW REGULATIONS 2007

The Central Elections Commission, as a permanent and independent body as provided for in Chapter 11 of the Constitutional Framework for Provisional Self-government, carrying out its functions independently from provisional institutions of self-government, has its competences, obligations and membership determined by UNMIK Regulation No. 2000/21 (18 April 2000) on Establishment of Central Elections Commission and by UNMIK Regulation No. 2004/9 on Central Elections Commission, which contains provisions regarding activities and operations of the Central Elections Commission and for organizing and carrying out elections in Kosovo.

Prevention of exercise of the right to vote and violation of the free voters will are two criminal offences foreseen by Articles 176 and 177 of the provisional criminal code of Kosovo: Whoever, in the exercise of duties entrusted to him or her relating to elections in Kosovo and with the intent to prevent another person from exercising his or her right to vote, unlawfully fails to record such person in a voter registration list or removes such person from the voter registration list or in any other manner prevents another person from exercising his or her right to vote shall be punished by a fine or by imprisonment of up to one year.<sup>98</sup> Whoever, by the use of force, serious threat, bribery or abuse of the economic and professional dependence of a voter, influences a voter in Kosovo to vote in a particular way or to abstain from voting in an election shall be punished by imprisonment from six months to three years.<sup>99</sup>

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4.1. Each candidates' list shall include at least thirty percent of female candidates in the first fifteen candidates. Within the first fifteen candidates on each candidates' list, at least one female shall be placed among the first three candidates, and at least one female shall be placed in each full set of three candidates thereafter. This rule shall not apply to those lists comprised of less than three candidates.

98 Article 176 (Denying the exercise of the right to vote); UNMIK Regulation 2003/25 (6 July 2003) on the Provisional Criminal Code of Kosovo.

99 Article 177 (Violation of the free will to vote); UNMIK Regulation 2003/25 (5 July 2003) on the Provisional Criminal Code of Kosovo

The Law Against Discrimination applies to all natural and legal persons as regards both the public and private sectors, including public bodies, in relation to any action or inaction which violates the right or rights of any natural or legal person or persons, to participate in public affairs, including the right to vote and be voted for.<sup>100</sup>

Violation of workers' rights to participate in management is a criminal offence as provided for by the Provisional Criminal Code of Kosovo: Whoever, in violation of the Law, obstructs or renders it impossible for a worker to exercise his or her right to participate in management or abuses those rights shall be punished by a fine or by imprisonment of up to one year.<sup>101</sup>

UNMIK Regulation No. 1999/22 (15 November 1999) on registration and functioning of non-governmental organizations in Kosovo regulates establishment, registration, activities and distribution of legal persons organized as non-governmental organizations (NGOs) in Kosovo. This Regulation defines a local NGO as an Association or a Foundation established in Kosovo to accomplish legal goals in the public benefit or for mutual interest.

An association is an organization consisting of its members. An association can be established by at least three legal or natural persons ("Persons"), local or foreign, with at least one of them having residence or an office in Kosovo. Whereas, Foundation is an organization without membership, established to administer property and assets. A foundation may be made up of one or more persons with at least one of them is resident or has an office in Kosovo.

In this regard, the Kosovar legislation provides equal rights for all, regardless of their sex, to establish or to be part of non-governmental organizations and associations which address public and political life in Kosovo.

A registered NGO which, among other activities, focuses in promoting gender equality and principles of democracy and civil society, may request a public benefit status, which makes them eligible to reduction of fiscal and tax obligations, including waiving of customs duties, tax on sales and other taxes, which however does not include payments for various services, such as communal services.<sup>102</sup>

Civil society entities play an important role in implementation of the Law on Gender equality: "Non-governmental organizations, associations and foundations in the field of gender equality shall collaborate and coordinate their work with government institutions and other institutions as foreseen by the

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100 Article 4 (1) of ADL.

101 Article 184; UNMIK Regulation 2003/25 (5 July 2003) on the Provisional Criminal Code of Kosovo

102 See Article 10 of UNMIK Regulation No. 1999/22 (15 November) on registration and functioning of non-governmental organizations in Kosovo.

present Law".<sup>103</sup>

Paragraph 3.2 of the LGE provides that: Equal gender participation of both females and males, according to Section 3.1, is achieved in cases where the participation of the particular gender in the institutions, bodies or at the level of authority is 40%.

Equal gender participation, in compliance with section 3.2, must be observed during appointments in central and local government bodies, as well as in other legal entities with public authority.<sup>104</sup>

Equal gender participation must be observed during the appointment of members of certain councils, committees and representative bodies within and outside Kosovo, by the competent institutions.<sup>105</sup>

The Assembly Kosovo shall observe the principles of equal gender representation during the establishment of working groups and delegations in accordance with its rules of procedure.<sup>106</sup>

The government and the ministries shall promote and provide for equal gender rights.<sup>107</sup>

Local government bodies shall promote and establish equal opportunities, shall draft their policies taking into account gender equality and shall approve any necessary measures and undertake any activities to provide equal opportunities for both females and males.<sup>108</sup>

The competent bodies and legal entities with public authorizations, and financial institutions shall, under equal conditions, provide both females and males with access to revenues and the distribution of revenues that are allocated for the stimulation of businesses and self-employment.<sup>109</sup>

## 7.2 Harmonization of the Article 7 with facts

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In efforts to improve the position of women in the society and to increase the number of women with decision-making powers, in the first democratic elections after the war in Kosovo, the principle was applied for the municipal elections of 2000 that women would be represented by 30 % of the total number in the lists of candidates for municipal councilors. But 8.6 % of women among the elected councilors in the 30 municipal assemblies was the most that this concrete

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103 Article 10 of LGE.

104 Article 3.3 of LGE

105 Article 3.4 of LGE

106 Article 4.1 of LGE

107 Article 4.1 of LGE

108 Article 4.14 of LGE

109 Article 11.2 of LGE

measure could accomplish. Whereas, after the second municipal elections, when the quota of women's representation in the assemblies was applied, women take 28 percent of all seats in the 30 municipal assemblies of Kosovo. However, only in two municipalities women hold the position of chief executive officer.

In the first central elections of 2001, again based on quota set by the Central Elections Commission, political parties in Kosovo were required to have one woman in every three candidates in their candidate lists. This decision made that 30 percent of the women in the Assembly of Kosovo were women. In concrete terms, out of 120 seats in the Kosovo Assembly, women occupy 35 or 28.3 percent of the total number of members of assembly. Whereas, in the second national elections of 2004, the Kosovo Assembly continued to have 120 seats in total, out of which 33, or 27.5 percent, were women.

In spite of the relatively high representation of women in the Assembly of Kosovo and in municipal assemblies, especially compared to other countries in the region, we can not still say that we have achieved a satisfactory level of participation of women in the political and public life of Kosovo.

Number of women in leading positions is however, still very low. Of the 893 leading positions, only 90 are held by women.

Fourteen political parties, clustered in five parliamentary groups, are represented in the Assembly of Kosovo. Whereas none of the political parties is run by women, two out of five parliamentary groups are led by women (Gjylnaze Sylaj chief of parliamentary group of AAK and Teuta Sahatçiu chief of parliamentary group of ORA reform party). At the same time, there are 18 Assembly Committees, seven of which are run by women.

The government of Kosovo consists of 15 ministries, but only one of them is run by a woman. Of the 35 political parties active in the political scene of Kosovo only two are led by women: the Social Democratic Party of Kosovo led by Kaqusha Jashari and the Democratic Alternative of Kosovo led by Edita Tahiri, who did not win any seats in the general elections of 2004.

On the other hand, regarding representation of women in the leadership of political parties, in particular those who won the majority of Kosovo Assembly seats in the elections of 2004, women are represented by 20 % in LDK, by 10 % in PDK, and by 20 % in AAK.

Gender structure in the leading positions in municipalities<sup>110</sup> according to the data made available by the Ministry of Public Services/Department of Administration of Civil Service<sup>111</sup>

110 Comment: Municipalities of Zubin Potok and Zveçan are not included in these data

111 MPS/DCSA

- Chief Executive Officers: 1 women among 28 officials
- Head of department: 28 women among 280 officials
- Deputy/Head of Department: 3 women out of 24 officials
- Head of division: 40 women among 346 employees
- Chief of unit: 10 women among 80 employees
- Chief of office: 3 women out of 27 employees
- Personnel manager: 5 women out of 18 employees

Women are under-represented in the senior position within the justice system, too. There are only three female judges among the 14 judges of the Kosovo Supreme Court. From the 46 judges of the District Court, 10 are women, whereas in the Court of Appeals for Minor Offences there is a more balanced representation (three men and two women). On the other hand, women are represented by only 6.7 percent in the Lawyers' Association of Kosovo.

In the Kosovo Police Service, women participate by 14 percent in all structures, whereas in the Kosovo Protection Corps women are represented only by 2 percent in all structures.

It is estimated that over 2000 non-government organizations are currently operating in Kosovo. Around 10 percent of these are involved in women issues.

Even though there has been no population census in Kosovo since 1981, it has been estimated that women represent about 50 percent of the population. There is significant lack in Kosovo of relevant and accurate data and information on the numbers and causes of illiteracy among girls and women in Kosovo. As a rule, primarily due to the lack of a population census there is chronic lack of consistency of data and information provided on the phenomenon of illiteracy. However, it appears that illiteracy has taken disturbing proportions in the Kosovar society. "Percentage of illiteracy among the adults is 5.8 percent. This percentage is higher among women (12.5 percent), than with men (3.4 percent). This percentage is uneven among the women belonging to different ethnicities. Women of Roma, Ashkali, Egyptian women, which are leading this list, is 26 percent; Albanian women reach up to the point of 8 percent of illiteracy rate, the Serb women 4 percent, and women of other communities 11 percent."<sup>112</sup>

Based on data made available by the Kosovo Institute of Statistics for 2002 and also according to the The National Action Plan for the achievement of Gender Equality of 2003, only 6.5 percent of businesses in Kosovo are run by women. At the same time, a research carried out in 2004 by the Ministry of Trade and Industry with 500 small and medium enterprises, 98 % of the owners of businesses are men and only 2 % are women. One of the main reasons for this low percentage of business owning women rests in the lack direct access to financial support and opportunities to obtain bank loans, since their family property is usually registered on the men in the family. Family heritage in the

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112 Human Development Report for Kosovo, 2004, p. 36.

Kosovar society is regulated based on internal agreements in the families according to traditional norms. Based on local customs, the property is divided between the men in the family (only occasionally we witness cases when women get any shares in this division), which does not allow women to start small businesses and to develop individual initiatives.<sup>113</sup>

## VIII. ARTICLE 8

### Article 8.

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

### 8. Harmonization of the Article 8 with laws

LGE determines that: Equal gender participation must be observed during the appointment of members of certain councils, committees and representative bodies within and outside Kosovo, by the competent institutions.<sup>114</sup>

## IX. ARTICLE 9

### Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband. 2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

### 9.1 Harmonization of the Article 9 with laws

The Constitutional Framework does not contain any provisions that would give women equal rights with men in the field of obtaining, changing or retaining citizenship. There are no provisions either that would protect them from changing their citizenship in cases of marrying a foreigner or when their husbands change their citizenship status. At the same time, there is no provision

113 Justina Shiroka-Pula PARTICIPATION OF WOMEN IN THE LABOR MARKET IN KOSOVO (an empirical research and comparative study)

114 Article 3.4 of LGE

that would make her in such situations apatride (leaving her without citizenship) or that would make her take on her husband's citizenship.

UNMIK Regulation No. 2000/13 on Central Registrar's Office, in its Article 3 determines that the Central Registrar's Office shall have a register of residents of Kosovo: The Civil Registrar shall register the following persons as habitual residents of Kosovo:

- a. Persons born in Kosovo or who have at least one parent born in Kosovo;
- b. Persons who can prove that they have resided in Kosovo for at least a continuous period of five years;
- c. Such other persons who, in the opinion of the Civil Registrar, were forced to leave Kosovo and for that reason were unable to meet the residency requirement in paragraph (b) of this section; or
- d. Otherwise ineligible dependent children of persons registered pursuant to subparagraphs (a), (b) and/or (c) of this section, such children being under the age of 18 years, or under the age of 23 years but proved to be in full-time attendance at a recognized educational institution.<sup>115</sup>

UNMIK Regulation No. 2000/18 (29 March 2000) on Travel Documents, in Section 1 provides that: Persons registered in the Central Civil Registry having the status of habitual residents may apply to the Central Civil Registry for a travel document. The travel document does not confer nationality upon its holder, nor does it affect in any way the holder's nationality.<sup>116</sup>

Draft Law on Kosovo Citizenship (June 2007) in Article 3 (multiple citizenship) provides that: A Kosovo citizen may be a citizen of one or more other states. Obtaining or keeping another citizenship does not result in losing Kosovo citizenship.

Ways of acquiring citizenship have been foreseen in Article 5 of the draft law on Kosovo Citizenship, which provides that Kosovo citizenship can be acquired by: birth, adoption, naturalization, based on international agreements and according to articles 28 and 29 of the draft law on Kosovo Citizenship.<sup>117</sup>

Based on effective legislation all citizens of Kosovo have the status of Kosovo residents and Article 3 of UNMIK Regulation No. 2000/13, on the Central Registrar's Office, determines cases when the registrar can register persons as permanent residents.

Draft Law on Kosovo Citizenship in Article 11, foresees that:

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115 Article 3 of UNMIK Regulation 2000/13 on Central Civil Registry Office.  
116 Article 1, UNMIK Regulation No. 2000/18 (29 March 2000) on Travel Documents  
117 Draft Law on Kosovo Citizenship (June 2007)

1. A foreign person, spouse to a Kosovo citizen, gains Kosovo citizenship based on a request, if on the day of application, he or she meets the following requirements:
  - a. At least three (3) years of valid marital relation with the Kosovo citizen and
  - b. Lives permanently in Kosovo for at least one (1) year and owns a valid permit of residence.
2. Provisions of Article 10, paragraph 1, items a), c), d) and e) apply also for naturalization of the spouse.

The draft law on Kosovo citizenship in Article 16 provides for Ways of Losing Citizenship:

Kosovo citizenship can be lost by way of:

- a. Renouncing of citizenship,
- b. Being deprived of citizenship,
- c. International agreements.

The Constitutional Framework of Kosovo does not contain any provisions that would guarantee women equal rights compared to their husbands regarding citizenship of their children.

Section 3 of UNMIK Regulation No. 2000/13 on Central Civil Registry, determines the following: The Civil Registrar shall register the following persons as habitual residents of Kosovo: (a) Persons born in Kosovo or who have at least one parent born in Kosovo; (b) Persons who can prove that they have resided in Kosovo for at least a continuous period of five years; (c) Such other persons who, in the opinion of the Civil Registrar, were forced to leave Kosovo and for that reason were unable to meet the residency requirement in paragraph (b) of this section; or (d) Otherwise ineligible dependent children of persons registered pursuant to subparagraphs (a), (b) and/or (c) of this section, such children being under the age of 18 years, or under the age of 23 years but proved to be in full-time attendance at a recognized educational institution.<sup>118</sup>

Kosovo Assembly draft law on Kosovo Citizenship, in its article 12, provides that:

1. The juvenile child of a person who has filed an application for naturalization, shall acquire Kosovo citizenship of Kosovo when its parent obtains this citizenship even if the child does not meet the requirements set out in article 10, paragraph 1. The application for naturalization of the child is attached to the application for naturalization filed by the parent.

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118 Article 3, UNMIK Regulation No. 2000/13 on the Central Civil Registry Office.



2. Paragraph 1 applies also for adopted juvenile persons.

Article 18 of the draft law on Kosovo citizenship foresees Renouncing of citizenship of juvenile persons in the following circumstances:

1. The juvenile person loses Kosovo citizenship by renouncing it if this is requested by both parents who have also lost Kosovo citizenship by renouncing it, or when this is demanded by a parent who has renounced his/her Kosovo citizenship and the other person is not a Kosovo citizen.
2. Paragraph 1 also applies to adopted juvenile persons.

## 9.2 Harmonization of the Article 9 with facts

Having in mind the current status of Kosovo, as an entity under provisional international administration, the issue of marriage with a foreigner, or the issue of change of spouse's citizenship in marriage (which does not automatically change the citizenship, leaves it without citizenship or requires her to obtain her husband's citizenship) has not been regulated by any legal act in Kosovo.

## X. ARTICLE 10

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

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

- g. programmes for girls and women who have left school prematurely;
  - g. The same Opportunities to participate actively in sports and physical education;
  - h. Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.
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### 10.1 Harmonization of the Article 10 with laws

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The LGE determines that: Gender discrimination is prohibited in all schools and other educational and pedagogical institutions.<sup>119</sup>

Equal right to education must be provided for females and males in all levels of education to ensure their equal active participation in the society, family and the labor market.<sup>120</sup>

The competent bodies and institutions in the field of education of all levels shall establish, implement and supervise policies with the purpose of ensuring gender equality, especially concerning:

- a. Access to education;
- b. Gender Equality Education;
- c. The preparation, approval and implementation of the of the curriculum
- d. The preparation of school materials and texts and the review of existing school materials;
- e. Research on the status of genders in Kosovo, as a specific method in education.
- f. The inclusion of females and males in professional and advisory training, for those professions which have been traditionally considered only for males or females;
- g. Equal participation of females and males in all sports and leisure activities during the educational hours.<sup>121</sup>

The Anti-Discrimination Law is applied against all action or inaction of physical or legal entities of both private and public sector, including public authorities, that violate rights of physical and legal entities, regarding any rights foreseen by applicable law, including the field of education.<sup>122</sup>

UNMIK Regulation No. 2005/15, of 16 March 2005, amending UNMIK Regulation No. 2001/19 on Executive Branch of Provisional Institutions of Self-Government, in Section 1.7 determines the following: "In the course of performing their responsibilities and functions, ministers will ensure that their respective ministries provide reliable, transparent and accountable services free

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119 Article 13.3 (Education) of LGE.

120 Article 13.1 (Education) of LGE.

121 Article 13.2 (Education) of LGE.

122 Article 4 (g) of ADL.

of any discrimination based on ethnic grounds or social origin, gender, physical inability, religion, political or any other opinion."<sup>123</sup>

In this regard, the minister of Education, Science and Technology (MEST) makes sure that in the range of responsibilities of the MEST (which has been set out in Annex IV of UNMIK Regulation No. 2005/15), in the education sector the ministry provides reliable, transparent and accountable services free of any discrimination based on ethnic grounds or social origin, gender, physical inability, religion, political or any other opinion.

Therefore, the Ministry of Education, Science and Technology shall:

- (i) Develop policies and implement legislation for the development of education, including higher education, and science in Kosovo;
- (ii) Promote a non-discriminatory educational system in which each person's right to education is respected and quality learning opportunities are available to all;
- (iii) Extend non-formal education and adult education on all levels, including remote areas, and promote life-long learning opportunities for all;
- (iv) Design, implement and supervise equitable and effective forms of educational administration and school management;
- (v) Improve the quality, relevance and efficiency of education at all levels;
- (vi) Facilitate the development and qualitative improvement of the education system and the efficient delivery of educational services;
- (vii) Promote research related to the social, economic, scientific, technological and cultural development of Kosovo;
- (viii) Develop a comprehensive library system, which will include general, special and school libraries;
- (ix) Promote an inclusive policy for the integration of impaired and disabled persons into the educational system; and
- (x) Promote parental and community participation in educational activities and appropriate forms of school-community partnership at the local level.<sup>124</sup>

In accordance with the LGE, Ministry of Education, Science and technology is the authority responsible for education and for institutions in the education sector in all levels, with the task to establish, implement and oversee policies with the purpose of ensuring gender equality, especially concerning:

- a. Access to education;
- b. Gender Equality Education;
- c. The preparation, approval and implementation of the of the curriculum
- d. The preparation of school materials and texts and the review of existing schoolmaterials;

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123 UNMIK Regulation No. 2005/15, of 16 March 2005, amending UNMIK Regulation No. 2001/19 on Executive Branch of Provisional Institutions of Self-Government, in Section 1.7(c).

124 Annex IV of UNMIK Regulation No. 2005/15, of 16 March 2005, amending UNMIK Regulation No. 2001/19 on Executive Branch of Provisional Institutions of Self-Government in Kosovo.

- e. Research on the status of genders in Kosovo, as a specific method in education.
- f. The inclusion of females and males in professional and advisory training, for those professions which have been traditionally considered only for males or female s;
- g. Equal participation of females and males in all sports and leisure activities during the educational hours.<sup>125</sup>

According to applicable law in Kosovo "Harassment and sexual harassment constitute gender discrimination".<sup>126</sup> Harassment includes all forms of behavior that aim or constitutes a threat to personal dignity.<sup>127</sup> Sexual harassment includes any form of sexual, verbal, non-verbal, physical or symbolic behavior that constitutes a threat to personal dignity.<sup>128</sup> According to provisions of this Law, "harassment and sexual harassment in the working place is prohibited"<sup>129</sup>, and go further providing that: Expulsion from work, temporary suspension, unfairness regarding the work safety, working conditions or the recognition of his/her work due to his/her complaint for sexual harassment or discrimination on gender bases, is prohibited.<sup>130</sup> Sexual harassment of another civil servant can be defined as physical or verbal behaviour sexual in nature that violates the dignity of women or men at work, is against the will or degrading to the persons it is addressed, or takes place in form of conditioning for employment resulting in a hostile, threatening or endangering working environment for that person.<sup>131</sup>

Public administration authorities do not make any discrimination between natural or legal entities regarding their: race, color, language, political or any other opinion, ethnic or social origin, wealth, birth or any other status, during administrative activities.<sup>132</sup>

## 10.2 Harmonization of the Article 10 with facts

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There is a general lack of reports and statistical data on the numbers and causes of illiteracy with women and girls. Level of illiteracy presented in different reports is inconsistent primarily because of the lack of a popular census in Kosovo. However, illiteracy seems to have reached alarming proportions for the Kosovar society. Luljeta Vuniqi, executive director in the Kosovo Center for Gender Studies believes that in order to lower the illiteracy rate in Kosovo, a lot

125 Article 13.2 (Education) of LGE.

126 Article 2.6 of LGE.

127 Article 2.7 of LGE.

128 Article 2.8 of LGE.

129 Article 12.11 of LGE.

130 Article 12.13 of LGE.

131 Administrative Direction No. 2003/2 implementing UNMIK Regulation No. 2001/36 on the Civil Service of Kosovo, article 30.1(g).

132 Article 5.2 of UNMIK Regulation 2006/33 on promulgation of the Law on Administrative Procedure approved by the Kosovo Assembly.

more must be done for education of women and girls. "In spite of considerable efforts by the local and international organizations to lower the illiteracy rates in Kosovo, education of women and girls remains an issue requiring special attention."<sup>133</sup>

A report made public by UNICEF, which refers to a study carried out by the Kosovo Foundation for Open Society and the Kosovo Education Center, says that the level of illiteracy among women and girls in rural areas is at the point of 40 percent, out of which 14.8 percent are fully illiterate (unable to read and write), whereas 12.5 percent have limited reading and writing skills. The thing that concerns most is the fact that the illiteracy rate among girls of age 16-19 is higher than in all other groups and this has come as a result of abandoning schooling during the parallel education system of the nineties (of the last century).<sup>134</sup>

Illiteracy rate for Albanian women and girls is 9 percent and is three times higher than with Albanian men and boys.<sup>135</sup> According to the "Report on human development in Kosovo", percentage of illiteracy among adult men is in general lower than among Kosovar women. The same is confirmed and supported by facts in the report "Review of internal security sector in Kosovo" which refers to sources from UNMIK office for gender issues, which reports that "percentage of women with no education whatsoever is (6.6%) twice higher than with men (3.1%)."<sup>136</sup>

Illiteracy percentages among women according to national communities in Kosovo are the following: Serbs 4 percent, Albanians 9 percent, for other ethnic groups 11 percent, and for Roma, Ashkali and Egyptian communities 25 percent.<sup>137</sup>

Afërdita Jaha, officer for informal education in the Regional Education Office, tells about projects of informal education that aim at reducing the level of illiteracy among men and women. The basic literacy course for women and girls has been implemented since 2001.<sup>138</sup>

School leaving is also another disturbing issue, which threatens the individuals' security.

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133 KGSC "Auditing of Gender Issues in the Education System", page 4, Prishtina, 2007

134 Study report on situation of children and girls in Kosovo. UNICEF. February 2004, page 49

135 Human Development Report: Rise of the citizen: Challenges and Opportunities. UNDP. Kosovo. 2004. page 30

136 UNDP Report: "Review of the Internal Security Sector in Kosovo", UNDP, Kosovo, 2006, page 81

137 Voice of Women, a report by (KWN, KWI, UNICEF, UNIFEM, UNDP, UNFPA, WHO, UNHCR), Prishtina (2004) page 18

138 Interview with Afërdita Jaha, officer for informal education in the Regional Education Office in Prishtina, Prishtina, 06.06.2007

A considerable number of pupils in the municipality of Skenderaj are made to drop out from schools because of the dire economic situation. The accurate number of these pupils remains unknown, but, according to municipal officials of education, it is growing constantly.<sup>139</sup>

A report by the Kosovo Institute of Statistics on the same issue "Women and men in Kosovo", points out that boys are more likely than girls to attend schooling or go to university. "Difference between genders grows with the level of education. In the age-group of 5-14, boys enjoy advantage in education, but margins are insignificant. In the 15-19 age-groups, however, boys escape by 17 % in education opportunities from girls. Whereas, in the 25-29 cohorts, compared to women, there is a significant advantage of men in education opportunities."<sup>140</sup>

According to the report "Girls' enrolment and drop out levels in Kosovo", about 20 % of those pupils who enroll in grade one drop school until they reach grade eight of compulsory education. And from among these, participation in education of girls, children coming from rural areas and children of Roma, Ashkali and Egyptian communities is comparatively lower than that of other children in Kosovo

## XI. ARTICLE 11

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### Article 11.

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
  - a. The right to work as an inalienable right of all human beings;
  - b. The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
  - c. The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
  - d. The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
  - e. The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
  - f. The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

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139 Express, 16 January 2007. Jeton Rushiti, page 9

140 Kosovo Institute of Statistics, report, "Men and Women in Kosovo", Prishtina, Feb. 2007, page. 28

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
    - a. To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
    - b. To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
    - c. To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
    - d. To provide special protection to women during pregnancy in types of work proved to be harmful to them.
  3. 3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.
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#### 11.1 Harmonization of the Article 11 with laws

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The LGE determines in its Article 12.2 that: Vacancies shall be available equally for females and males. Announcement of job vacancies shall not contain any words or expressions that might cause gender discrimination. This paragraph 13.3 shall not be applied to cases where such announcement or declarations are published to achieve a gender balance in a certain professional sector, provided however that such intention is clearly stated in the announcement.<sup>141</sup>

The election criteria and conditions for the vacancies of any field or sector and in all professional levels in the private and public sector, take into account gender equality.<sup>142</sup>

According to UNMIK Regulation No. 2001/36 on Civil Service of Kosovo defines a "civil servant"<sup>143</sup> as any employee of an employing body whose salary is paid by the Konsolidated Budget, apart from members of the Independent Supervisory Council of Kosovo, also excluding appointed persons and members of the Kosovo Protection Corps (KPC).

Among the main principles of the Civil Service of Kosovo is the Principle of Nondiscrimination, which is defined as: prohibiting any direct or indirect discrimination on grounds of gender, race, color, language, religion, political opinion, national, ethnic or social origin, affiliation to any ethnic community, property, birth, physical inability, family status, pregnancy, sexual orientation or age.

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141 Article 12.3 of LGE.

142 Article 12.13 of LGE.

143 Article 1 (a) of UNMIK Regulation No. 2001/36 on the Civil Service of Kosovo

Civil servants shall act in accordance with the principles of civil service in their day to day contacts with government officials, with their colleagues in the Civil Service and with the public. Government officials shall act in harmony with these principles at all times during their contacts with all civil servants.<sup>144</sup>

Public and private sector enterprises and legislative and executive institutions shall provide equal rights and opportunities for females and males in labor and employment sector.<sup>145</sup>

Employers ensure that both female and male employees have equal opportunity to attend education and professional training and attend courses that aim to improve professional skills or prepare them for other professions.<sup>146</sup>

Employers or institutions that provide professional training or any individual participating in such training shall not discriminate any individual on gender basis.<sup>147</sup>

Employers shall provide equal treatment for females and males in the labor sector and shall take measures to ensure that vacancies or positions are not categorized specifically for females or males.<sup>148</sup>

UNMIK Regulation No. 2001/27 regulates employment in Kosovo, including relationships under which work or services is performed. Employment relationships within the civil service, UNMIK, KFOR and the offices or missions of foreign governments and international governmental organizations shall not be governed by this regulation.

According to Article 2 of UNMIK Regulation No. 2001/27, all kinds of discrimination in employment are prohibited. This article provides that:

2.1 Discrimination in employment and occupation is prohibited. The terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

2.2 The term discrimination includes any distinction, exclusion or preference made on the basis of race, color, sex, religion, age, family status, political opinion, national extraction or social origin, sexual orientation, language or union membership which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

2.3 Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

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144 Ibid. See Article 2.2 and 2.3

145 Article 12.1 of LGE.

146 Article 12.6 of LGE.

147 Article 12.7 of LGE.

148 Article 12.8 of LGE.



2.4 Discrimination against a disabled person, whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognized natural or mental impairment, is prohibited.

2.5 Discrimination, direct or indirect, against a female employee arising from her pregnancy or childbirth is prohibited.

2.6 Sexual harassment at the workplace is prohibited.

Gender discrimination is prohibited by law in all fields of social life in Kosovo, as is determined in the LGE.<sup>149</sup>

The election criteria and conditions for the vacancies of any field or sector and in all

professional levels in the private and public sector, take into account gender equality.<sup>150</sup>

Public and private sector undertakings and legislative and executive institutions shall provide equal rights and opportunities for females and males in labor and employment sector.<sup>151</sup>

Section 3.3 of Administrative Direction No. 2003/2, implementing UNMIK Regulation No. 2001/36 on Civil Service in Kosovo foresees that: Recruitment to the Civil Service shall be done after fair and open competition, on the basis of merit and in conformity with the principle of equitable representation of communities in Kosovo, and equitable gender representation all areas and levels according to section 5.4 of UNMIK Regulation No. 2001/19 and section 2.1 (f), (g) and (h) of UNMIK Regulation No. 2001/36. This should be done in accordance with specific community representational ranges that may apply to different parts of the Civil Service, as promulgated from time to time by the Special Representative of the Secretary-General (SRSG).

Administrative Direction No. 2003/2, implementing UNMIK Regulation No. 2001/36 on Civil Service in Kosovo in its section 10.1 determines that: All employing authorities shall monitor and implement procedures to ensure multi-ethnic representation and gender balance within their ministry, municipality or executive agency, in accordance with section 3.3 and may utilize the following affirmative action measures as needed: ... They do not exclude specific ethnicities or genders from the open and meritorious competition for specific position(s) that do not have a legitimate ethnic or gender criteria as a qualification for the post; and Article 10.3 of the same Administrative Direction No. 2003/02 determines the obligation of the Ministry of Public Services to: "The Ministry will develop an administrative instruction containing further criteria

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149 Article 18.2 of LGE.

150 Article 12.4 of LGE.

151 Article 12.1 of LGE.

and procedures for implementing and monitoring fair representation in the Civil Service at all levels.” In this respect the Ministry of Public Services has issued its Administrative Instruction No. MSHP / DASHC 2003/12, (12.09.2003) on Procedures of Equal Opportunities.

The main goal of the Equal Opportunities Procedures as determined by the Ministry of Public Services Administrative Instruction No. 2003/12 is to instruct and guide employing authorities in facing with and carrying out their legal responsibilities while building a civil service based on Equal Opportunities free of any direct or indirect discrimination on grounds of gender, race, color, language, religion, political opinion, national, ethnic or social origin, affiliation with any national community, property, birth, impairment, family status, pregnancy, sexual orientation or age.<sup>152</sup>

The Law on Gender Equality, in its Article 12.5 determines that: “Employers shall pay an equal salary for both males and females, for the same work and for the work of the same importance and shall also provide equal employment and working conditions and rights.”<sup>153</sup> UNMIK Regulation 2001/27 (8 October 2001) on Essential Labor Law in Kosovo regulates employment in Kosovo, including employment relationships under which work or services is performed. Whereas Article 13 of this Law provides that: “An employer shall pay equal remuneration, which includes the basic salary/wage and any additional entitlements and emoluments payable directly or indirectly, in cash or in kind, by the employer to the employee, to women and men for work of equal value. The Labor Law also determines that “labour inspector shall ensure the enforcement of this regulation and other relevant provisions in the applicable law relating to working conditions, working hours, salary/wage, safety and health.”<sup>154</sup>

The Law on Gender Equality, in Article 12.5 foresees: “Employers shall pay an equal salary for both males and females, for the same work and for the work of the same importance and shall also provide equal employment and working conditions and rights.”

Article 13 of UNMIK Regulation 2001/27 on Essential labor Law in Kosovo foresees that “An employer shall pay equal remuneration, which includes the basic salary/wage and any additional entitlements and emoluments payable directly or indirectly, in cash or in kind, by the employer to the employee, to women and men for work of equal value.”<sup>155</sup>

Article 15.14 of the LGE provides that “People of both genders shall have equal

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152 Administrative Instruction No. MSHP/DASHC 2003/12 (12.09.2003), Equal Opportunities Procedures.

153 Article 12.5 of LGE.

154 Article 24.4 of UNMIK Regulation 2001/27 of 8 October 2001 on Essential Labor Law in Kosovo.

155 Article 13; UNMIK Regulation 2001/27 of 8 October 2001 on Essential Labor Law in Kosovo.

access to the insurance system and social welfare during their entire life.”

The Ministry of Labor and Social Welfare has overall responsibility for the organization of the provision of Social and Family Services in Kosovo and it ensures that inhabitants of Kosovo have fair and equal access to Social and Family Services without distinction of any kind, such as race, ethnicity, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>156</sup>

The Law on Social and Family Services provides for and regulates provision of social and family services for persons and families in need in Kosovo.<sup>157</sup>

In its Article 1.2, the Law on Social and Family Services foresees that: In circumstances where there is no family support or where this is insufficient to ensure the welfare of an individual the State has a duty to provide to those people who would not otherwise be helped, Social and Family Services in a manner that respects their dignity as human beings and their fundamental rights based on Kosovo Legislation and International Human Rights Conventions. Unless there are overriding circumstances of need or of protection, these services will be provided to persons in need and families within a community setting and not in residential homes.

The Law on Rights and Responsibilities determines the rights and responsibilities of the citizens within the health care and establishes mechanisms to protect and ensure these rights and responsibilities.<sup>158</sup>

UNMIK Regulation on Pensions in Kosovo sets out and describes various forms of private and government schemes of pension insurances in Kosovo. Pensions administration alone, the Kosovo Pensions Savings Fund, additional pensions funds or pensions insurances licensed to insure individual additional in accordance with this Regulation, may insure pensions in Kosovo.<sup>159</sup>

A licensed insurance company providing Annuities<sup>160</sup> may not impose any special terms or rates on the grounds of health, gender, race, religion,

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156 Article 2.1; UNMIK Regulation No. 2005/46 (14 October 2005) promulgating Law on Social and Family Services passed by the Kosovo Assembly. Kosovo Assembly Law No. 02/L-17 on social and family services.

157 UNMIK Regulation No. 2005/46 (14 October 2005) promulgating Law on Social and Family Services passed by the Kosovo Assembly. Kosovo Assembly Law No. 02/L-17 on social and family services.

158 UNMIK Regulation 2004/47 on promulgation of the Law on rights and responsibilities of Kosovo residents in the social system of health care approved by the Kosovo Assembly. Kosovo Assembly Law on rights and responsibilities of Kosovo residents in the social system of health care

159 UNMIK Regulation No. 2005/20 (29 April 2005) amending UNMIK Regulation 2001/35 on Pensions in Kosovo.

160 “Annuity” implies a policy which a client has purchased from an insurance company in exchange for monthly payments during the clients lifetime as provided for in this Regulation.

nationality or any other similar criteria.<sup>161</sup>

The objective of the Law on Occupational Safety, Health and the Working Environment<sup>162</sup>, is to prevent occupational injuries and diseases at the workplace and to protect the working environment.

In compliance with Section 2 of the Law on Occupational Safety, Health and the Working Environment, the employer shall be obliged to create conditions for occupational safety, health and working environment of his/ her employees. The employer shall be liable for payment of any expenses associated with treatment of work-related accidents and illnesses. The establishment of the social security scheme, out of the employers' contributions for all employees shall acquit them from the commitments for expenses transfer. The employer shall be responsible to organize and undertake measures necessary for occupational safety, health and working environment, including the prevention of risks at work, offering information, trainings, respective organization and proper measures in order to provide, maintain machinery, instruments, equipment, tools, workplace, and access to the workplace.<sup>163</sup>

The Law on Occupational Safety, Health and the Working Environment provides special protection to young persons, women and disabled persons by foreseeing that: Employees under 18 years of age, pregnant women, disabled persons shall not be assigned to particularly hard manual work, work beyond working hours and night work.<sup>164</sup>

UNMIK Administrative Direction No. 2003/2, provides the following: Each employing authority shall ensure that civil servants have a safe and healthy working environment. Claims or grievances about the working environment shall be directed to the personnel manager of the employing authority, and appealed to the Appeals Board.<sup>165</sup>

The legal framework of Kosovo foresees the right of women to keep their job and to return to it after their maternity leave. Article 13.13 of the Law on Gender Equality prohibits expulsion from work, temporary suspension, unfairness regarding the work safety, working conditions or the recognition of his/her work due to his/her complaint for sexual harassment or discrimination on gender bases. Moreover, Article 12.8 of the Law on Gender Equality

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161 Section 13.11 of UNMIK Regulation No. 2005/20 (of 29 April 2005) amending UNMIK Regulation 2001/35 on pensions in Kosovo.

162 UNMIK Regulation No. 2003/33 (of 6 November 2003) promulgating Kosovo Assembly Law on Occupational Safety, Health and the Working Environment.

163 Section 2 UNMIK Regulation No. 2003/33 (of 6 November 2003) promulgating Kosovo Assembly Law on Occupational Safety, Health and the Working Environment (Law No. 2003/19).

164 Section 4, UNMIK Regulation No. 2003/33 (of 6 November 2003) promulgating Kosovo Assembly Law on Occupational Safety, Health and the Working Environment (Law No. 2003/19).

165 Article 34 of Administrative Direction No. 2003/2 implementing UNMIK Regulation 2001/36 on civil service in Kosovo.

determines that “Employers shall provide equal treatment for females and males in the labor sector and shall take measures to ensure that vacancies or positions are not categorized specifically for females or males.” Apart from general provisions which regulate health and safety at work, the legal framework of Kosovo does not provide any specific rules which would warranty safety at work place or health care for pregnant women and breastfeeding mothers. In Kosovo, the maternity leave both in the private and public sector lasts 12 weeks. While the public sector compensates the full salary, the private sector compensates minimum 2/3 of the full salary of mothers caring for their babies.

Pregnant women employees are entitled to regular medical check-ups without loosing their salary, if these check-ups take place during the working hours.

Every permanent resident of Kosovo or a person meeting requirements to register as a permanent resident of Kosovo is entitled to the health care that is conditioned by his state of health. The health care should be adequate and continuously accessible to all without discrimination.<sup>166</sup>

The Law on rights and responsibilities of the citizens in the social care determines: Health care is provided without any discrimination, if, in the course of the medical treatment citizens are not discriminated on the basis of their social position, political views, origin, nationality, religion, gender, sexual preferences, age, marital status, physical or mental disability, qualification or on any other grounds not related to their state of health.<sup>167</sup>

The Kosovar legislation does not have any specific legal norms that would prohibit the termination of employment contracts with pregnant and women who have children under the age of three.

“Discrimination, direct or indirect, against a female employee arising from her pregnancy or childbirth is prohibited,” reads in Article 2.5 of UNMIK Regulation 2001/27 on the Essential Labor Law of Kosovo.<sup>168</sup>

Article 12.13 of the Law of Gender Equality foresees that: Expulsion from work, temporary suspension, unfairness regarding the work safety, working conditions or the recognition of his/her work due to his/her complaint for sexual harassment or discrimination on gender bases, is prohibited.

The Law on Promotion and Protection of Infants’ Breastfeeding, in Article 14, provides that: The employer can not terminate the working contract of the

166 Article 4.1 of UNMIK Regulation 2004/47 on promulgation of the Law on rights and responsibilities of Kosovo residents in the social system of health care approved by the Kosovo Assembly.

167 Article 4.5 of UNMIK Regulation 2004/47 on promulgation of the Law on rights and responsibilities of Kosovo residents in the social system of health care approved by the Kosovo Assembly.

168 Article 2.5, UNMIK Regulation 2001/27 of 8 October 2001 on Essential Labor Law in Kosovo.

breastfeeding employee who is using her maternity leave. The employer can not terminate the working contract of a breastfeeding mother in effect of the rights she enjoys in harmony with provisions of this Law. In case of termination of contract with a breastfeeding mother for reasons other than those listed in paragraph 2 above, the employer shall justify this in writing. In cases of violation of legal provisions of this Article, the employer will have to pay adequate penalties equal in funds that would be needed for a breastfeeding mother for the next six months. In cases of paragraph 2, the breastfeeding employee is entitled for continued payments according to paragraph 4 for another six months from the funds for health insurance or from social funds.

The Law on Gender equality also foresees penalty provisions for violations of this Law. In cases of expulsion of an employee when such employee demands the implementation of the present law and expulsion from work, temporary suspension, unfairness regarding the work safety, working conditions or the recognition of his/her work due to his/her complaint for sexual harassment or discrimination on gender bases, employers are subject to a fine of 5.000 to 10.000 Euros, whereas the responsible person is subject to a fine of 1.000 to 3.000 Euro.<sup>169</sup>

The Anti-Discrimination Law (ADL), in Article 9, also provides penalties for violations of its provisions. A court of competent jurisdiction or an administrative body which has determined that a violation of this Law has occurred may impose sanctions, depending on the nature and scope of the violation and its impact on the victim or victims.<sup>170</sup>

According to the ADL the court, at its option, may impose judicial imposition of positive measures. The imposition of any sanctions under this Law shall not preclude the imposition of any other sanctions available under any other law within the applicable law in Kosovo.<sup>171</sup>

In Kosovo, the maternity leave both in the private and public sector lasts 12 weeks. While the public sector compensates the full salary, the private sector compensates minimum 2/3 of the full salary of mothers caring for their babies.

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169 Article 16 (paragraph 3) (Penalty provisions) of LGE.

170 Article 9 – ADL- Sanctions foreseen in a decision of the competent body against a natural or legal person or persons violating the provisions of this Law include: (a). Compensation for both pecuniary and non-pecuniary damages, suffered by victims of violations which compensation may include restitution of all rights and other remedies, provided within the applicable Law which the competent body deems appropriate; and (b). A natural or legal person or persons, or any combination thereof, that has been found to be in violation of this Law will be fined based upon the nature and scope of the violations in accordance with the following ranges: (i) a natural person - from 500 Euro to 1.000 Euro (ii) an independent contractor - from 1000 Euro to 5.000 Euro (iii) a legal person - from 1000 Euro to 1.0000 Euro (iv) a natural person within a legal person who is responsible for a violation – from 500 Euro to 2.000 Euro (v) a person exercising a public function who is responsible for a violation – from 500 Euro to 2.000 Euro.

171 Article 9.3 and 9.6 of ADL

Section 23 of Administrative Direction No. 2003/2, implementing UNMIK Regulation No. 2001/36 on Civil Service in Kosovo foresees that: Female civil servants are entitled to twelve (12) weeks paid maternity leave on the birth of each child, paid at the normal rate of salary, on the maternity being certified by a recognized medical practitioner. At the request of the civil servant, additional unpaid maternity leave may be granted, at the discretion of the employing authority, subject to a maximum of an additional forty (40) weeks. A civil servant shall maintain her seniority rank while on paid or unpaid

maternity leave and such civil servant shall have the right to be re-instated in her former position of employment or in an equivalent position and paid at the same rate of pay. After resumption of work, subsequent to paid or unpaid maternity leave, a female civil servant may be granted a total of two (2) paid hours of reduction of working hours daily during the first six (6) months for breast feeding and one hour daily thereafter until the end of the ninth month after childbirth. Male civil servants are entitled to two (2) days of paternity leave on the birth of each child. At the request of the male civil servant, additional unpaid paternity leave may be granted, at the discretion of the employing authority, subject to a maximum of an additional five (5) days. Parental leave shall be used for the purpose for which it is intended and cannot be accumulated or commuted to cash in part or in whole.<sup>172</sup>

Female civil service employees are entitled to paid maternity leave for 12 consecutive weeks for every born child. This leave can be taken after confirmation of pregnancy by a qualified physician. Such maternity leave can be authorised by the personnel manager. The paid maternity leave can be used only for the designated purpose and cannot be accumulated or replaced entirely or partially by cash payments. The female employee may agree the starting date of maternity leave with the personnel manager, but this date cannot be set for more than 10 weeks before the date of expected birth. After the conclusion of this period of paid maternity leave, the female employee may be given an additional unpaid leave of maximum 40 weeks or until the end of contract. The unpaid maternity leave can be used only for the designated purpose and cannot be accumulated or replaced partially or entirely by cash value. After the conclusion of paid or unpaid maternity leave, the female civil servants are entitled to return to their working places or to an equivalent position within the same ministry or municipality with the same level of salary. Before starting the maternity leave, the female employee, her manager and the personnel manager will discuss and agree on the position the female employee will assume after returning from maternity leave. Paid or unpaid maternity leave does not damage pre-eminence of the female employee's interests. After return to work at the end of paid or unpaid maternity leave, the female employee is entitled to reduced working shifts by two paid hours for every working day for a period of six months from the day of the child's birth; similarly, she is entitled to one

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<sup>172</sup> Article 23 of Administrative Direction No. 2003/2 implementing UNMIK Regulation 2001/36 on civil service in Kosovo.

hour reduction until the ninth month of the child's birth. The female worker will discuss and agree with her manager the times of her work during these periods of reduced working hours. The managing director will maintain evidence of working hours and will present the same to the personnel manager at the end of the ninth month after the child's birth in order to insert them in the personal confidential files of the female employee.<sup>173</sup>

The Law on Gender Equality in its Section 12.9, provides that, Employers take all necessary measures to enable females and males to correspond to both their professional and family obligations. The time schedule, in accordance with the needs of labor the market and family state of employees, must be organized in such a way that female employers can return to their previous posts after maternity leave, parental leave, abortion leave, sick leave or after the time spent out of the place of work due to family emergencies or professional training.

There are no specifically set legal norms in the Kosovar legislation that would prohibit termination of contracts with pregnant women and with women with children under age of three.

Article 23 of the Framework Collective Contract of Kosovo regulates the maternity leave: A female employee is entitled to an uninterrupted maternity leave of six (six) months during her pregnancy and after the child birth.

The maternity leave is considered as working period of time and, consequently, the first three months of this period will be paid by the employer by 70 % of her salary level, whereas the payment for following three months will be charged to the Kosovo government fund for protection of maternity which will reimburse her by at least 70 % of her salary. During her maternity leave the female employee ceases to enjoy all her labor rights, with the exclusion of health insurance. Based on the recommendation of a competent health authority, the female employee may commence her maternity leave forty five days (45) days before the birth of the child. The child's father may enjoy the protection, respectively rights foreseen in paragraph 1 of this Section in case of the mother's death or if she abandons the child, based on confirmations provided by competent authorities or the by the Center for Social Work. Upon a personal written request, the female employee may start work before the child reaches six (6) months of age, but not before forty five (45) days. In case of children who need special care due to their health condition, or due to heavy impairments according to health provisions, one of the parents will be entitled, even beyond the maternity leave period, to work part time until the child reaches the age of two (2) years.<sup>174</sup>

The Provisional Criminal Code foresees penalties for depriving or denying of women's rights in the field of employment. According to Article 182, "Whoever knowingly fails to comply with the law or a collective contract relating to

173 Administrative Direction No. MSHP/DASHC 2003/10, of 20.05.2003, on Procedure of Holidays.

174 Article 23, the Framework Collective Contract of Kosovo.



employment or termination of labour relations, salaries or other income, the length of working hours, vacation or absence from work, protection of women, children or disabled persons, or overtime work or night shifts and in this way denies or restricts the rights to which an employee is entitled shall be punished by a fine or by imprisonment of up to one year".<sup>175</sup>

The Law on Health foresees forms of health services that need to be provided and implemented free of charge in the Public Health Institutions, and also include reproductive health care which includes health care during the pregnancy, birth and maternity as well as family planning excluding forcing prevention of pregnancy.<sup>176</sup>

The objective of the Law on Occupational Safety, Health and the Working Environment is to prevent occupational injuries and diseases at the workplace and to protect the working environment.<sup>177</sup> On the other hand, Section 3 determines rights and responsibilities of the employee. In this regard, the employee has the right and obligation for occupational safety, health and working environment. The employee implements and complies with measures necessary for occupational safety, health and working environment, cares for its safety and health and of other persons affected by his/hers work, uses properly safety equipment and PPE, uses them carefully and maintain them in working order. Employee shall also have the responsibility to ensure safety and health of all persons affected by their work. Article 4 of the Law on Occupational Safety, Health and the Working Environment foresees that: "Employees under 18 years of age, pregnant women, disabled persons shall not be assigned to particularly hard manual work, work beyond working hours and night work."<sup>178</sup>

Article 2 of the Law on Occupational Safety, Health and the Working Environment, sets out obligations and responsibilities of the employer, who is obliged to create conditions for occupational safety, health and working environment of his/ her employees. The employer shall be liable for payment of any expenses associated with treatment of work-related accidents and illnesses. The establishment of the social security scheme, out of the employers' contributions for all employees shall acquit them from the commitments for expenses transfer. The employer shall be responsible to organize and undertake measures necessary for occupational safety, health and working environment, including the prevention of risks at work, offering information, trainings, respective organization and proper measures in order to provide, maintain machinery, instruments, equipment, tools, workplace, and access to the workplace. The employer shall be responsible to organize and implement occupational safety, health and working

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175 Criminal Code, Article 182

176 Article 22.2 (b) UNMIK Regulation 2004/31, 20 gusht 2004, on promulgation of the Law on Health passed by the Kosovo Assembly. Kosovo Assembly Law 2004/4 on Health.

177 Article 1, UNMIK Regulation No. 2003/33, 6 November 2003, promulgating the Law on Occupational Safety, Health and Working Environment passed by the Assembly of Kosovo.

178 Article 1, UNMIK Regulation No. 2003/33, 6 November 2003, promulgating the Law on Occupational Safety, Health and Working Environment passed by the Assembly of Kosovo.

environment measures. The employer shall inspect the efficiency and especially shall undertake necessary measures for further improvement. The enterprise with 50 or more employees must designate a part-time safety officer. The enterprise with 250 employees or more must designate a full-time safety officer. The employer shall carry out a detailed risk assessment for each workplace.

The Law on Occupational Safety, Health and the Working Environment, in its Section 2.7 provides that “the employer shall inform the employee of the dangers of the job carried out by the employee. The employer shall inform as soon as possible the employee who is to be exposed to the high risk about the risks and protective measures in order to minimize the risk. In case of immanent risk on his/hers and the life of others, the employer is allowed to enforce suitable countermeasures, if the supervisor is not present. Taking into account the received training and technical means on disposal, the employees

shall not suffer disadvantages for such acts, except in cases of flagrant negligence or deliberate sabotage.” Whereas Section 15 of this Law foresees penalty measures for employers who violate the provisions of this Law (by setting fines ranging from 100 to 20.000 Euros).

The Law on Promotion and Protection of Breastfeeding gives in its Annex I an incomplete list of agents, processes, and working conditions. Every employer is required to carry out a risk assessment of the workplaces and the working conditions, in particular to the risks included in the list in Annex I, which is an integral part of this Law.<sup>179</sup>

A number of institutions have been established in Kosovo for the purpose of

<sup>179</sup> Article 12.1 of UNMIK Regulation No. 2007/7 (of 31 January 2007) promulgating the Law on Promotion and Protection of Breastfeeding approved by the Kosovo Assembly. Kosovo Assembly Law 02/L-81 on the Law on Promotion and Protection of Breastfeeding. Annex I of this Law, the incomplete list of factors, processes and working conditions, includes: Factors: Physical factors that are treated as factors causing fetus injury and/or splitting the womb, and that particularly cause: (a) shock, trembling or movement; (b) reaction against the danger of burden, especially that one of spinal nature; (c) noise; (d) ion radiation (\*) (e) non-ion radiation; (f) extreme cold or heat; (g) movements and condition, traveling- inside and outside of the company-physical or psychic tiredness, and other physical burdens, related to the activities of the breast-feeding woman employee. Biological Factors Biological factors of groups in danger such as: Groups 2, 3 and 3 within the terms of Article 2 (d) numbers 2, 3 and 4 of the Direction 90/679/EEC (1), up to the degree to be known that these factors or therapeutic measures required by these factors, endanger the health of the pregnant women and the unborn babies, that are not mentioned in the Appendix II.

Chemical Factors: The following chemical factors, when it is known that they endanger the health of the pregnant women and unborn babies, that it seems they are not mentioned in Appendix II: (a) The substance marked as R 40, R 45, R 46, and R 47 under the Direction 67/548/EEC (2), that seems not to be mentioned in Appendix II; (b) Chemical factors in the Appendix I of the Direction 90/394/EEC (3); (c) Mercury and mercury derivatives; (d) Anti-mitotic medicines; (e) Carbonic oxide; (f) The known and dangerous chemical factors that penetrates through the skin.

B. Processes: The industrial processes mentioned in Appendix I of Direction 90/394/EEC.

C. Working Conditions: Underground work in the mine.

protecting and promoting gender equality. After the promulgation of the Law of Gender Equality, the main body is the Office for Gender Equality. This Office was established through Kosovo government Decision No. 5/31, of 01 February 2005.

One of the main tasks of the Office for Gender Equality is the periodical review of protecting legislation (pertaining to Article 11 of CEDAW) from the perspective of scientific and technologic achievements. This is determined in Article 5.2 of the LGE. The Law on Gender Equality has the following competences: a) Implement and monitor the provisions of the present law and the regulations passed in accordance with the present law; b) Propose before the Government and the ministries the compilation, alteration and amendment of laws and regulations, and the approval of other measures;... l) Propose research and analysis initiatives in the field of gender equality.

In the course of performing its duties in the field of gender issues, the Office for Gender Equality coordinates its activities with the advisory Office for Good Governance, human rights, equal opportunities and gender, whereas issues of discrimination directly related to gender are addressed by the Unit for Gender Equality within the institution of Ombudsperson (established by UNMIK Regulation 2000/38), which also responsible to review draft laws and to give comments regarding the implementation of this law and of the effective legislation whenever it relates to gender issues.<sup>180</sup>

However, even though clearly foreseen in Article 5.2 of the LGE as one of the key tasks of the Office for Gender Equality, periodical review of existing legislation (pertaining to Article 11 of CEDAW) is still not taking place.

#### 11.2 Harmonization of the Article 11 with facts

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The World Bank Report on Poverty Assessment in Kosovo concludes that “37 percent of population is classified as “poor” – living with fewer than 1.42 Euros a day, whereas 15 percent are accounted as living in a situation of extreme poverty, living with less than 0.93 Euros a day.”<sup>181</sup>

This report addresses more specifically the issue of poverty in family economies run by men and in those run by women. The report emphasizes that family businesses run by women are a lot poorer than those run by men. Whereas women run family businesses and economies present only about 4.7 percent of all family economies in Kosovo, however, they make as much as 28.2 percent of family economies endangered by extreme poverty, which is much higher than the percentage of endangered family economies run by men (14.6 percent). The poverty is more expressed with women heads of family economies due to gender differences in sources of income and the level of education.<sup>182</sup>

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180 See Article 5 of LGE.

181 The World Bank, “Poverty assessment in Kosovo”, 16 June 2005, Prishtina

182 Ibid.

A good illustration of the high level of poverty in Kosovo is made available by the data of the Kosovo Statistics Institute, which in its reports for 2006 gives a figure of 42.569 families living on social welfare. According to a comparative analysis, this figure is on a dropping trend due to the stricter control by the Ministry of Labour and Social Welfare regarding criteria a family has to meet in order to benefit from the status of socially supported families.<sup>183</sup>

One of the main sources of economic insecurity of women is also unemployment, which results from unequal opportunities and access to fundamental living resources.

When we look at the study "Progress Report on Kosovo - 2007" we find that at the end of 2006 there was an increase in unemployment rates in Kosovo by 2.4 percent compared to year 2005; statistical data show that this trend continued during 2007, too. The number of unemployed women reaches the figure of 47 %. Lack of statistical data on the level of unemployment makes it extremely difficult to analyse trends in labor market. Lack of economic and social statistics is one of the main features of the Kosovar economy. According to estimates on labor force, unemployment reached the alarming proportions of 44.9 percent of total labor force in 2006. However, a number of persons registered as unemployed do have access to informal economy. In general, partly due to inaccuracies of estimates on the grey economy, it is difficult to come to accurate data on unemployment and on economic trends."<sup>184</sup>

Employment opportunities for women are lower than for men. According to data made available by the World Bank, the likelihood for a woman to get employed is at the point of 8.4 percent, whereas for men there are better employment prospects - 35.1 percent. This is determined to a large extent by several factors, such as: unequal access to education, school leaving, early marriages, etc. According to the UNIFEM report, another cause making employment of women more difficult rests in the lack of structural reforms, in inadequate qualifications compared to the marked needs and to the lack of restructuring of jobs.

"Women over 45, who used to work before, but who are currently unemployed, find it very difficult to adapt to the demands of the new labour market due to structural changes in it."<sup>185</sup>

The Division for Professional Training in the Ministry of Labour and Social Welfare organizes vocational training programs for persons recorded as unemployed in the centers for employment. Number of women partaking in and benefiting from these programs is in disproportion with that of men. In spite of the growing number of women participating in these trainings, this remains one of the more difficult issues, since the number of unemployed and unqualified

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183 Institute of Statistics

184 European Commission, Progress Report – 2007, for Kosovo (under UN SC Resolution 1244), Brussels, 06.11.2007

185 "Participation of women in the labour market in Kosovo" (Comparative analysis and empirical study), authors: Justina Shiroka- Pula, Kosovo 2006

women still remains too high, whereas their participation in training events too low compared with corresponding figures referring to men. This issue gets even worse when we think of the difficulties “unqualified” women face regarding their reintegration into the labour market.<sup>186</sup>

The report “Monitoring of equal opportunities for men and women in Kosovo” points out that the difference in salaries between men and women is legally non-existent. However, the position of women in the labour market is very much unfavourable, especially having in mind that in average they earn less than men. One of the many reasons for this inequality in personal earnings is that women are rarely found in leading positions or holding adequate senior positions compared to their aptitude and qualifications.

According to this, we conclude that “significant differences in earnings between men and women are the key reason for the relatively low index of gender development in Kosovo.”<sup>187</sup>

The difference between men and women in the level of participation in the labour force is made obvious due to yet other reasons. “A lot of aged women leave their jobs before they reach their retiring age, since most of them take on themselves responsibilities for the family and for family economies, which than does not leave much room for engagement in economic activities.”<sup>188</sup>

Apart from this, the criteria set in various vacancy announcements do not favour women in their middle age.

## XII. ARTICLE 12

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### Article 12.

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
  2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.
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### 12.1 Harmonization of the Article 12 with laws

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186 Promotion of employment – Performance report 2005/2006 (Department of Labour and Employment)

187 Kosovo Center for Gender Studies (KGSC) “Monitoring of Equal Opportunities for Men and Women in Kosovo,” 2006, page 26

188 Men and Women in Kosovo, Institute of Statistics, page 29

Equality, inclusiveness and non-discrimination are among the key guiding principles of the health care system according to the Kosovo Healthcare Law.<sup>189</sup>

The Kosovo Health Law by “equality” implies: The correct treatment of the citizens based on law and full respect of the basic human rights and freedoms without discrimination defined by international conventions; Insuring full access to the health care in all levels and to all citizens including easy access to the health care for the persons with disability; the equal distribution of the health care resources based on social and economic equity.<sup>190</sup>

Inclusiveness and non-discrimination according to (Article 12.5 of) the Kosovo Law on Healthcare implies: equal health care for all citizens by ensuring the standards during fulfilling the needs at all levels of health care as well as ensuring health care without discrimination regardless: gender, nation, race, color, language, religion, political preferences, social status, the property status, the level of physical or mental abilities, family status, or age differences.<sup>191</sup>

The Law on Health foresees forms of health services that need to be provided and implemented free of charge in the Public Health Institutions, and also include reproductive health care which includes health care during the pregnancy, birth and maternity as well as family planning excluding forcing prevention of pregnancy.<sup>192</sup>

The Law on Reproductive Health in its Article 4.1 provides that: “Each individual, regardless of gender, ideological, religious or cultural orientation is guaranteed-ensured the right to information and education for sexual and reproductive health during all his/her life cycle.”<sup>193</sup> Article 5 of this Law determines that: “Each individual has the right to a healthy sexual and reproductive life chosen by his/her will. No female can be forced to get pregnant.

According to Article 8 of the Law on Reproductive Health: “All females, before and during the pregnancy, during birth and in confinement period have the right to benefit without any co-payment in the public health institutions for following services:

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189 UNMIK Regulation 2007/11, 7 shkurt 2007, on promulgation of the Law on Reproductive health passed by the Kosovo Assembly. Kosovo Assembly Law No. 02/L-76 on Reproductive Health. (Law on Reproductive Health)

190 Article 12.2. UNMIK Regulation 2004/31, 20 gusht 2004, on promulgation of the Law on Health passed by the Kosovo Assembly. Kosovo Assembly Law 2004/4 on Health.

191 Article 12.5. UNMIK Regulation 2004/31, 20 gusht 2004, on promulgation of the Law on Health passed by the Kosovo Assembly. Kosovo Assembly Law 2004/4 on Health.

192 Article 22.2. (b) UNMIK Regulation 2004/31, 20 gusht 2004, on promulgation of the Law on Health passed by the Kosovo Assembly. Kosovo Assembly Law 2004/4 on Health.

193 UNMIK Regulation 2007/11, 7 shkurt 2007, on promulgation of the Law on Reproductive health passed by the Kosovo Assembly. Kosovo Assembly Law No. 02/L-76 on Reproductive Health. (Law on Reproductive Health)

1. pre-conception advice,
2. periodical antenatal health care,
3. health care during birth,
4. periodical and health care attendance while in confinement,
5. Baby care.

Every female has the right to health care during her pregnancy, the right to the assistance during the birth and to benefit from the application of methods and practices which minimize the risk of her health or the fetus's, newborn's and the child's health.<sup>194</sup>

Article 22.2. of the Kosovo Health Law determines forms of health services that need to be provided and implemented free of charge in the Public Health Institutions, which include the following:

- a) Preventive health care:
  - i. Early detection of communicable diseases and compulsory immunization;
  - ii. Provision of conditions for collection of blood and blood storage;
  - iii. Early detection and adequate treatment of diseases which cause the damage of physical and mental abilities;
  - iv. Other measures from sections 34 to 37 of this Law;
- b) Reproductive health care which includes health care during the pregnancy, birth and maternity as well as family planning excluding forcing prevention of pregnancy.
- c) Health care for patients suffering from diseases, disorders and injuries that severely endanger or hamper their lives, to be defined by special sub-legal act;
- d) The rehabilitation services integrated in all three levels of health care for diseases and injuries defined by special sub-legal act;
- e) Family Medicine Center will provide health care treatment to the dying citizen at his/her house.<sup>195</sup>

The Law on rights and responsibilities of the citizens in the health care determines the rights and responsibilities of the citizens within the health care and establishes mechanisms to protect and ensure these rights and responsibilities.<sup>196</sup>

Every citizen is entitled to the health care that is conditioned by his state of

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194 Article 8, Law on Health

195 Article 22.2. of the Kosovo Health Law.

196 Unmik Regulation 2004/47 of 10 Nov. 2004 for promulgation of the Law on Rights and responsibilities of Kosovo Residents in the system of health care approved by the Kosovo Assembly. The Kosovo Assembly Law on rights and responsibilities of Kosovo Residents in the system of health care.

health. The health care should be adequate and continuously accessible to all without discrimination. Health care is provided without any discrimination, if, in the course of the medical treatment citizens are not discriminated on the basis of their social position, political views, origin, nationality, religion, gender, sexual preferences, age, marital status, physical or mental disability, qualification or on any other grounds not related to their state of health.<sup>197</sup>

Article 9 of the Law on rights and responsibilities of the citizens in the health care determines that: The citizen is entitled to receive full information in an individualized form. The citizen is entitled to receive detailed information on:

- a. His state of health, including its medical evaluation;
- b. The recommended examinations and interventions;
- c. The possible advantages and risks of performing or not performing the recommended examinations and interventions;
- d. The planned dates for performing the examinations and interventions;
- e. His right to decide in respect of the recommended examination or intervention;
- f. The possible alternative procedures and methods;
- g. The course of the medical treatment and the expected outcome;
- h. The success or failure of the medical treatment, upon completion of each examination and intervention, including if the result deviated from what was expected and the reasons for this;
- i. The recommended lifestyle; and
- j. Any other information related to the citizen's state of health or a medical treatment.

The citizen is entitled to become acquainted with the names, specialized qualifications and positions of the persons directly involved in his medical treatment. The citizen with legal incapacity or reduced disposing capacity is also entitled to information corresponding to his age and mental state. The citizen is entitled to receive information in a way that is comprehensible for him, with regard to his, age, education, knowledge, state of mind and his wish expressed on the matter. When necessary an interpreter or sign language interpreter shall be supplied for offering information, to the extent possible. The conditions necessary for exercising the rights attached to obtaining information shall be provided by the maintaining entity. A citizen with full disposing capacity may waive the right of being informed except in cases when he must be aware of the nature of his illness, in order not to endanger the health of others. If an intervention takes place at the citizen's initiative and not for therapeutic purposes, renunciation of the right of being informed shall only be valid in writing. A citizen with full disposing capacity is entitled to designate a person in writing or in any other credible manner who is to be informed instead of him. The citizen is entitled to the right to be informed even in cases where his

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<sup>197</sup> Article 4.1. and 4.5 of UNMIK Regulation 2004/47 of 10 Nov. 2004 for promulgation of the Law on Rights and responsibilities of Kosovo Residents in the system of health care approved by the Kosovo Assembly.



consent is not otherwise a condition for beginning the therapy.<sup>198</sup>

The citizen has the right to make a personal decision on whether to undergo a certain treatment or not. This right may only be restricted as established by law. Within the framework of exercising the right of a personal decision, the citizen is free to decide whether he wishes to use health care services or not, and which interventions to consent to or to refuse, in the course of using such services, taking into account the restrictions set out in the law.<sup>199</sup>

## 12.2 Harmonization of the Article 12 with facts

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According to the report "Prenatal situation in Kosovo for 2000 – 2006", in 2000 9 maternal deaths were reported in 38.907 births with live infants (23.1/100000), whereas in 2006 2 deaths were reported in 28.450 births with live infants (7.0/100000). These figures are comparable to those of the developed countries. However, we must have in mind that "these figures on maternal deaths are reported only from health institutions."<sup>200</sup>

"There is not a reliable system in place to ascertain causes of maternal deaths in Kosovo. Nevertheless, some of the reasons for high maternal death rates rest in the difficult political and economic conditions, together with the poorly developed institutions in the period before and after the conflict."<sup>201</sup> Thus, Kosovo leads with prenatal infant mortality with 23 babies in 1000 births, which is estimated to be the highest rate in Europe.<sup>202</sup>

The report "Prenatal situation in Kosovo for 2000 – 2006" emphasizes several of the main causes of prenatal death, such as: congenital anomalies, prenatal infections, birth traumas, disorders caused by pregnancy complications, the social and economic situation, age and weight of the mother, high number of births and quality of healthcare services.

According to Teuta Hadri, a gynaecologist, "the main reasons for infant mortality rest is social and economic situation and in the mentality".<sup>203</sup> She adds that infant children death rates are higher in rural than in urban areas, and comes as a result of poor information and lack of any family planning among women in rural areas

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198 Article 9 of Unmik Regulation 2004/47 of 10 Nov. 2004 for promulgation of the Law on Rights and responsibilities of Kosovo Residents in the system of health care approved by the Kosovo Assembly.

199 Article 10 Unmik Regulation 2004/47 of 10 Nov. 2004 for promulgation of the Law on Rights and responsibilities of Kosovo Residents in the system of health care approved by the Kosovo Assembly.

200 Prenatal state in Kosovo for 2000-2006, April 2007, Prishtina, page 19

201 Baseline Report of Millennium Development Goals for Kosovo, MDG, United Nations Agency, March 2004

202 Koha Ditore newspaper daily, Friday, 21 September 2007. "Kosovo leads with infant mortality in Europe." Author: Faton Ismajli

203 Interview with Teuta Hadri, gynaecologist. 04.09.2007. Prishtina

Statistics show that level of infant mortality has changed from one year to another, by dropping or going up slightly. Thus in 2002, the total number of dead infants was 403, with 205 girls and 198 boys. In 2003, however, this number grew to a total of 464 deaths with 265 girls and 199 boys, marking further a slight fall in infant mortality in 2004, when there were 415 cases of death in total, with 233 girls and 182 boys. This falling trend continued into 2005, when a total number of 357 deaths was recorded, with 155 girls and 202 boys.

Looking at the overall number of infant deaths during these years, we find that there were more cases of deaths among girl infant population.

Visare Mujko – Nimani, from UNFPA, thinks that more care should be accorded to mothers' and infants' health, since mortality rates of infants and mothers is very high in Kosovo.<sup>204</sup>

When talking about human resources, the aforementioned report shows that the number of obstetricians and pediatricians is above the needs, but their distribution is inadequate, which affects the functioning of several maternity wards and quality of healthcare services. For instance, there are cases when in several maternity wards there is only a very limited number or no gynecologists – obstetricians present at all.

Identification of causes bringing to high infant mortality rates, an adequate distribution of medical capacities, improvement of working conditions and advancing the quality of healthcare services would play a significant role in addressing these issues and in reducing the number of infant mortality in Kosovo.

The current situation with the mortality of mothers and babies remains a very grave question that requires mobilization and intensive actions by competent authorities and institutions, which should work to reduce the level of mortality among mothers and infants.

The "Health education of girls and women of RAE communities" project, implemented by the "Foleja" group of RAE women, in cooperation with two other NGO-s and health institutions, has underlined that young women of RAE communities face health problems in a very young age, and continue living with chronic illnesses during their lifetime.<sup>205</sup> The report further points out that: "This a consequence of the low level of education, the difficult material situation, lack of information by various local media on their current situation, etc."<sup>206</sup>

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204 "Express" daily, Sunday, 19 August 2007. "Pregnant women endangered". Author: Artan Behrami

205 Health education of girls and women of Roma, Ashkali, and Egyptian community, "Foleja" ("Nest"), Prizren, February 2007, page 8

206 Ibid.

According to UNAIDS, Kosovo is a region with a low level of epidemics, but with a potential for a quick spreading of HIV/AIDS. "An increase, which may take on alarming proportions, may appear for most various reasons, such as: the large number of youth, high level of unemployment, together with the growing consumption of drugs, growing sex market, high level of mobility of the Kosovar population and of the international community."<sup>207</sup>

In 2005 there were 4 there were 41 infected persons, of whom 25 were men and 16 women. "Statistics show that men are more vulnerable to this virus, whereas the most endangered age group is from 20 – 49, or more specifically 30 - 39"<sup>208</sup>.

### XIII. ARTICLE 13

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States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to family benefits; (b) The right to bank loans, mortgages and other forms of financial credit; (c) The right to participate in recreational activities, sports and all aspects of cultural life

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#### 13.1 Harmonization of the Article 13 with laws

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Article 4 of the Family Law of Kosovo provides that: All persons enjoy equal treatment of rights and obligations set forth in this Law. There shall be no direct or indirect discrimination against any person or persons based on sex, age, marital status, language, mental or physical disability, sexual orientation, political affiliation or convictions, ethnic origin, nationality, religion or belief, race, social origin, property, birth or any other status.<sup>209</sup>

Having in mind that the Family law of Kosovo regulates "engagement, marriage, relations between parents and children, adoption, custody, protection of children without parental care, family property relations and special court procedures for disputes of family relations", then we can conclude that Kosovo laws provide equal rights to women so that they benefit from family privileges regardless of their civil status.

According to the Law on Liability Relations (LLR), in order to conclude a legally

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207 "Review of internal security sector in Kosova." Weaker points, page 64, Prishtina, March 2006

208 Interview with leaders of the KAPHA (Kosovo Association for People Living with HIV/AIDS) non-governmental organization.

209 Official gazette of Provisional Institutions of Self-Government Kosovo/Prishtina/No.4/1 September 2006

valid contract the contractee needs to have acting capacity, which is necessary for entering into such a contract (article 56). A person achieves contracting capacity when he or she reaches age of maturity. Provisions of the Family Law determine as to when the age of maturity is reached by a person.<sup>210</sup>

The Anti-Discrimination Law is applied against all action or inaction of physical or legal entities of both private and public sector, including public authorities, that violate rights of physical and legal entities, regarding any rights foreseen by applicable law,<sup>211</sup> including cases of discrimination related to gender based contracts and civil status.

The LGE in its Article 11 provides that: The economical, financial, employment and social welfare legislation and the macroeconomic, micro-economic, financial and privatization programs including the right of heritage and property, loans and natural resources shall enable the equal and full participation of both females and males.<sup>212</sup> The competent bodies and legal entities with public authorizations, and financial institutions shall, under equal conditions, provide both females and males with access to revenues and the distribution of revenues that are allocated for the stimulation of businesses and self-employment.<sup>213</sup>

The Law on Mortgages establishes the exclusive means for the creation of mortgages, their effects on the parties to such agreements, their effects on third persons, and the means by which certain mortgages by business organizations may be enforced through non-judicial foreclosure in cases of default under the terms of the mortgage document.<sup>214</sup>

The Law on Sport regulates organization, conditions and ways of development of sports activities, rights and obligations of their agents, as well as other issues relevant for these activities, founding, registration and management of sports organizations, in particular.<sup>215</sup> This Law determines that every Kosovar citizen enjoys the right to involve in sports activities in accordance with this Law.<sup>216</sup> Article 2 of the Kosovo Law on Sport provides: All persons regardless of their age, gender, nationality, political affiliation, religion, physical abilities, and the social and economic level have the right of participating in the physical-sportive

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210 Law on Liability Relations "Official Gazette of SFRY" No. 29/78 with amendments and changes done in the o.g. No. 39/85, 45/89, and 31/93.

211 Article 4, ADL.

212 Article 11.1, LGE.

213 Article 11.2, LGE.

214 UNMIK Regulation No. 2002/21, 20 December 2002 promulgating Law on Mortgages passed by the Assembly of Kosovo. Article 3, Object of Mortgage can be an immovable property or a title to it which entitle the owner to possess it in the frame of law.

215 UNMIK Regulation No. 2004/26 (28 July 2004) promulgating the Law on Sport passed by the Assembly of Kosovo.

216 Article 9.1, UNMIK Regulation No. 2004/26 (28 July 2004) promulgating the Law on Sport passed by the Assembly of Kosovo.

activities.<sup>217</sup>

Law on the cultural institutions is basic system law and of special importance for culture. By this law are regulated conditions, criteria and the procedure for establishment of the cultural institutions, their character, organizational and managerial structure, works and activities, obligations and responsibilities, status matters, as well as other matters on the activities and functioning of the cultural institutions.<sup>218</sup>

Article 2.2 of the Law on the cultural institutions provides that: The institution is established to carry out cultural, scientific and artistic activities.

The institution may be established by a:

- a. natural person
- b. legal person; or
- c. natural and legal person.<sup>219</sup>

### 13.2 Harmonization of the Article 13 with facts

According to the Statistical Office of Kosovo (2002) and the National Action Plan for the Achievement of Gender Equality (2003), approximately 6.5 percent of Kosovar businesses are owned by women. The Ministry of Trade and Industry's 2004, survey of 500 small and medium size enterprises showed that 98 percent of businesses are owned by men and only 2 percent by women.

Among the most important reasons why so few Kosovar women own businesses is the dominant patriarchal mentality and stereotypes regarding women's capacity for leadership in the business sector in Kosovo. Patriarchy and prejudices negatively impact the creation of appropriate conditions for women's economic development and independence. Another important reason is women's lack of direct access to financial support such as bank loans because family property is registered primarily under male family members. Thus only a few women have accessed bank loans; according to one financial institution, only 3 percent of its loans went to women.<sup>220</sup>

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217 Article 9.1, UNMIK Regulation No. 2004/26 (28 July 2004) promulgating the Law on Sport passe by the Assembly of Kosovo.

218 Article 2 (Purpose of the Law), UNMIK Regulation No. 2006/44 (18 August 2006) promulgating the Law on Institutions of Culture passed by the Assembly of Kosovo. Assembly of Kosovo Law No. 02/L-57 on Institutions of Culture.

219 Article 2.2, UNMIK Regulation No. 2006/44 (18 August 2006) promulgating the Law on Institutions of Culture passed by the Assembly of Kosovo. Assembly of Kosovo Law No. 02/L-57 on Institutions of Culture.

220 MEB Bank, "Report," 2001.

## XIV. ARTICLE 14

## Article 14.

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.
2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
  - (a) To participate in the elaboration and implementation of development planning at all levels;
  - (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
  - (c) To benefit directly from social security programmes;
  - (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
  - (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
  - (f) To participate in all community activities;
  - (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
  - (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

## 14.1 Harmonization of the Article 14 with laws

The purpose of the Anti-Discrimination Law (ADL) is prevention and combating discrimination, promotion of effective equality and putting into effect the principle of equal treatment of the citizens of Kosovo under the rule of Law. According to the ADL, regulation of issues dealing with non-discrimination is based also on the principle of equal treatment which implies that there shall be no direct or indirect discrimination against any person or persons, based on social origin or any other status, which also prohibits discrimination of women coming from rural areas.<sup>221</sup>

On the other hand, it has to be pointed out that the Constitutional Framework of Kosovo determines that "All persons in Kosovo, without any discrimination and in full equality, enjoy all fundamental human rights and freedoms,"<sup>222</sup> which

<sup>221</sup> See Article 2, ADL.

<sup>222</sup> Article 3.2, Constitutional Framework.

also means that there cannot be any legal division of women in urban and rural women.

In Kosovo there is no legal division of its residents into rural and urban, which consequently means that regulation of issues pertaining to non-discrimination and to equal implementation of all provisions of CEDAW equally apply to all residents of Kosovo.

UNMIK Regulation No. 2005/15, of 16 March 2005, amending UNMIK Regulation No. 2001/19 on the executive branch of provisional institutions of self-government, in its Section 1, paragraph 7, provides that: "In carrying out their responsibilities and functions, Ministers shall ensure that their respective Ministries: Ensure that reliable services are provided in a transparent and accountable manner not discriminating against ethnic or social origin, race, gender, disability, religion, political or other opinion."<sup>223</sup>

In this regard, the minister of the Ministry of Agriculture, Forestry, and Rural Development, must ensure that in the field of responsibility of MAFRD, as provided for in Annex X of UNMIK Regulation No. 2005/15, covering the sectors of Agriculture, Forestry and Rural Development, has to ensure reliable services are provided in a transparent and accountable manner not discriminating against ethnic or social origin, race, gender, disability, religion, political or other opinion.

Annex X of UNMIK Regulation No. 2005/15, of 16 March 2005, amending UNMIK Regulation No. 2001/19 on the executive branch of provisional institutions of self-government sets out the field of activities of the Ministry of Agriculture, Forestry, and Rural Development (MAFRD), which, *inter alia*, includes: developing policies and implementing legislation for the development of agriculture, including livestock and plant production, and rural development, including the setting of standards to be maintained. In accordance with the effective legal framework, the Ministry of Agriculture, Forestry, and Rural Development (MAFRD) facilitates the development of credit schemes aimed at supporting agriculture, forestry and rural development activities in the private sector.<sup>224</sup>

#### 14. 2 Harmonization of the Article 14 with facts

Regarding the difference in employment between rural and urban areas, no gender disaggregated data on unemployment have been collected. According to unofficial information, women in villages are more engaged in the informal market than women in cities.<sup>225</sup> Rural women work in agriculture, gardens,

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223 UNMIK Regulation No. 2005/15 amending UNMIK Regulation No. 2001/19 on the executive branch of provisional institutions of self-government in Kosovo, Article 1.7 (c).

224 See Annex X of UNMIK Regulation No. 2005/15 amending UNMIK Regulation No. 2001/19 on the executive branch of provisional institutions of self-government in Kosovo, Article 1.7 (c).

225 67 Information from local women's NGOs that work in the field.

markets where they sell their products, and forestry. Women rarely manage agricultural businesses.

For rural women, the only opportunities for employment in the public sector are in education and healthcare.

## XV. ARTICLE 15

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### Article 15

1. States Parties shall accord to women equality with men before the law.
  2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
  3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void. 4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.
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### 15. Harmonization of the Article 15 with laws

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Liability relations is a legal relationship between two or more entities in the capacity of debtors and creditors, with mutual demands and obligations, which according to the law on Liability Relations (LLR) are qualified as participants in liability relations. Since every liability relation assumes existence of two sides – parties, it is more accurate to speak about parties to liability relations, which according to the Law on Liability Relations, can be both legal and natural persons (article 2). Parties and participants to these liability relations, according to this provision, are public legal persons, natural persons and civil juridical persons. Both men and women can be seen as natural persons.<sup>226</sup>

Kosovo legal framework ensures equal rights in all phases and proceedings of courts and other authorities in their respective functions.

Applicants for judges must be honest, competent and to be familiar with the legal framework and its application. Candidates meeting these requirements must have equal opportunities to be elected as judges. The public authority involved in selection of candidates must perform its duty regardless of race,

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<sup>226</sup> Law on Liability Relations “Official Gazette of SFRY” No. 29/78 with amendments and changes done in the o.g. No. 39/85, 45/89, and 31/93.



color, gender, language, religion, national origin, political opinion, wealth, conviction or status.

The Constitutional Framework for Provisional Self-Government in Kosovo in its Chapter 4 (Judicial System), item 9.4.7, points out that judges in all courts of Kosovo must be renowned lawyers, with highest moral standing and with adequate qualifications. Membership of the justice, according to this provision of the Constitutional Framework, must reflect the diversity of Kosovar population.

Appointment of judges, prosecutors, and legal professionals is regulated by UNMIK Regulation 2001/8 (6 April 2001) on Establishment of the Kosovo Judicial and Prosecutorial Council, which in its Article 5 prescribes that: The Council shall invite, by public announcement, applications of legal professionals in Kosovo for service as judges and prosecutors, as well as applications of qualified candidates in Kosovo for service as lay-judges. It may also accept recommendations from regional and municipal authorities, or judicial authorities and other bodies within the legal profession, regarding persons considered suitable to be interviewed as lay-judges. It shall review the individual applications and make its recommendation in writing to the Special Representative of the Secretary-General on candidates indicating the reasons therefore.

Criteria for selection of candidates to serve as judges, prosecutors and lay-judges are guided by the goal to establish a professional, independent, impartial and multi-ethnic judiciary and prosecution service, which is also free of any gender discrimination. These criteria have been set in Article 6 of UNMIK Regulation No. 2001/8 (6 April 2001) on Establishment of the Kosovo Judicial and Prosecutorial Council.<sup>227</sup>

On the other hand, UNMIK Regulation No. 2003/26 (of 6 July 2003) on the Provisional Criminal Code of Kosovo (Article 53) determines that: Under conditions provided for by the present Code, the injured party can file a motion for a prosecution or undertake a private prosecution or a subsidiary prosecution.

The Law on bar Examination sets forth the conditions, the criteria and the

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<sup>227</sup> Article 6 of UNMIK Regulation No. 2001/08 (of 6 April 2001) on establishment of the Kosovo Judicial and Prosecutorial Council Article foresees the following criteria for appointment of judges, lay judges and prosecutors. In section 6.1 it provides that: Applicants for service as judges or prosecutors shall satisfy the following criteria: have a university degree in law; have passed the examination for candidates for the judiciary, or, in the case of applicants for the position of a judge in the Minor Offences Court, have passed the professional examination; be of high moral integrity; and not have a criminal record. Article 6.3: Applicants for service as lay-judges shall satisfy the following criteria: be at least twenty-five (25) years of age at the date of submission of their application; be of high moral integrity; not have a criminal record; and have professional qualifications and/or experience involving juveniles, if lay-judges will be involved in adjudicating actions involving juveniles.

procedures for undertaking the bar examination with which graduate lawyers earn the right to perform professional work and tasks in an independent manner, performance of which is conditioned by passing the bar examination.

The general conditions for undertaking the bar examination are set forth in Article 2 of the Law on Bar Examination: Individuals which can undertake the bar examination, must be graduated lawyers from the Faculty of Law, based on previous four year program or master studies, without any differences on the basis of race, color, religion, gender, political opinion, national, social origin, wealth, birth or position.<sup>228</sup>

The Law on Gender Equality in its Article 11.2 provides that: Marriage is legally recognized, by the civil registration act and establishes rights and obligations, except if otherwise foreseen by other legislation.

Legal framework in Kosovo does not explicitly declare invalid all other private contracts and instruments of any kind when they have legal effect on restricting legal capability of women. However, in dealing with these situations, it starts from general principles of the LGE and from Article 18.2 of the LGE, which prohibits "any gender based discrimination in all spheres of social life in Kosovo."<sup>229</sup> Based on this, we can say that all private contracts and instruments of any kind are invalid if they produce a legal effect which restricts judicial capability of women.

According to the Family law: Spouses decide on the place of residence and for the maintenance of the common family economy through agreement, and each spouse is independent in selecting a job and vocation.<sup>230</sup>

## XVI. ARTICLE 16

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### Article 16.

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
  - (a) The same right to enter into marriage;
  - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
  - (c) The same rights and responsibilities during marriage and at its dissolution;
  - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children

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228 UNMIK Regulation No. 2006/30 (2 May 2006) promulgating the Law on Bar Examination passed by the Kosovo Assembly. Kosovo Assembly Law No. 02/L-40 on Bar Examination.

229 Article 18.2 of LGE

230 Article 44 (Place of Residence, Family Economy, Profession), Family Law

shall be paramount; (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation; (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration. 2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

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## 16. Harmonization of the Article 16 with laws

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The Kosovo Family Law regulates engagement, marriage, relations between parents and children, adoption, custody, protection of children without parental care, family property relations and special court procedures for disputes of family relations.<sup>231</sup>

All persons enjoy equal treatment of rights and obligations set forth in this Law. There shall be no direct or indirect discrimination against any person or persons based on sex, age, marital status, language, mental or physical disability, sexual orientation, political affiliation or convictions, ethnic origin, nationality, religion or belief, race, social origin, property, birth or any other status.<sup>232</sup>

One of the four principles for the regulation of family relations is the principle of equality between husband and wife, respect and mutual assistance between them and family members.<sup>233</sup>

According to the Family Law of Kosovo, men and women, without any limitation due to race, nationality or religion, have the right to marry and found a family as well as they are equal to marriage, during marriage and at its dissolution.<sup>234</sup>

The Kosovo Family Law in its Article 14, determines the following: Marriage is a legally registered community of two persons of different sexes, through which they freely decide to live together with the goal of creating a family.

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231 See Article 1, Kosovo Family Law (Law No. 2004/32) – Official Gazette of Provisional Institutions of self-Government in Kosovo / Prishtina: Year 1 / No. 4 / 1 September 2006, (16 February 2006 UNMIK/REG/2006/7), further in this document Kosovo Family Law

232 Article 4 of the Kosovo Family Law.

233 Article 3, par. 1, of the Kosovo Family Law.

234 Article 14, par. 2, of the Kosovo Family Law.

Article 15.2 of the LGE foresees that: Marriage is legally recognized, by the civil registration act and establishes rights and obligations, except if otherwise foreseen by other legislation.

The Kosovo Law on Family in its Article 14 (2) provides: men and women, without any limitation due to race, nationality or religion, have the right to marry and found a family as well as they are equal to marriage, during marriage and at its dissolution.

Article 68 of the Kosovo Family Law provides that: Marriage may be dissolved by divorce only upon decision of a court. One spouse or both by mutual agreement may request a divorce by filing a claim with the competent court.

Principles on regulation of family relations, provided for in Article 3 of the Family Law of Kosovo foresee the following:

1. Equality between husband and wife, respect and mutual assistance between them and family members
2. Protection of children's rights and the responsibility of both parents for the growth and education of their children, where by children are meant persons under age of 18.
3. Parents and children owe to each other assistance and consideration for the entire span of their lives
4. Children of parents, who were not married at the time of birth, enjoy the same rights and have the same obligations as children born from parents who were married at the time of birth.

The Family Law of Kosovo in Article 39 determines: (2) A factual relationship (out-of-marriage relationship) is equal with the marital status on the aspect of rights and obligations for caretaking, reciprocal financial support, and property rights as specified in this law. They support each other financially, especially in cases when one of them does not have a material basis for solid life. Spouses shall develop the feeling of mutual solidarity, as well the solidarity towards their children, either born of their marriage or adopted.

Protection of children's rights and the responsibility of the two parents for their education and growth (where by children are meant persons under age of 18) and the obligation of parents and children for assistance and consideration of each other for the entire span of their lives are two of the four principles for the regulation of family relations as foreseen by the Family Law of Kosovo.<sup>235</sup>

Article 125 of the Family Law of Kosovo sets out principles for the protection of children:

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235 Article 3, par. 3 and 4 of the Kosovo Family Law.

1. Each child enjoys the undeniable right for life.
2. Children have the right to grow up in a family with parents. Children not living together with both parents, have the right to regularly meet the parent they are not living together with.
3. Children with diagnosed mental or physical impairments are eligible to special care, suitable conditions of life which guarantee their dignity and facilitate active participation in social life.
4. Children are eligible to free of charge primary schooling and access to information regarding different professions and schools.
5. Children enjoy the right for protection from economic utilization, child exploitation trafficking and sexual exploitation and from any activity which could be harmful or hazardous to their education or health.
6. Children shall be protected from maltreatment and sexual violations.
7. Children shall be protected from illegal usage of narcotic drugs and psychotropic substances and it shall not be permitted that children are used for illegal production and trafficking of such substances.

This Law further provides for other principles of parental care:

... (4) Parental responsibility includes rights and obligations, aiming to ensure emotional, social and material welfare of the child, by looking after the child, preserving personal relations, providing proper growth, education, vocational training, legal representation and administration of property.

(5) By applying these principles parents shall consider skills, inclinations and desires of their children.

Children have the right to grow with their parents. Children who do not live together with both parents have the right to regularly meet with the parent not living with them. Parents are obliged to ensure at any times that the principles laid out in Article 125 of this Law are utilized for the protection of their minor children.<sup>236</sup>

Article 4 of the family law determines: Spouses are equal in marriage, in all personal or property relations. Both spouses shall contribute equally in taking care of their family in due proportion with their individual abilities.

In Article 4.1, the Kosovo Law on Reproductive Health determines (4.1): "Each individual, regardless of gender, ideological, religious or cultural orientation is guaranteed-ensured the right to information and education for sexual and

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236 Article 128 of the Kosovo Family Law.

reproductive health during all his/her life cycle".<sup>237</sup>

Whereas Article 5 of the same Law foresees that: "Each individual has the right to a healthy sexual and reproductive life chosen by his/her will and that no female can be forced to get pregnant".

The Family Law of Kosovo regulates engagement, marriage, relations between parents and children, adoption, custody, protection of children without parental care, family property relations and special court procedures for disputes of family relations.<sup>238</sup>

All persons enjoy equal treatment of rights and obligations provided for by the Family Law.

The Family Law in its Article 42 determines that: In marriage, namely in all personal and property relations, spouses are equal, the wedlock is entered into for the entire lifespan, spouses are obliged to be faithful to one another and reciprocally assist, respect and financially support one another, especially in case that the other is lacking a sufficient material basis for living. Spouses shall develop and live out the feeling of reciprocal solidarity, as well as solidarity towards their own or adopted children.<sup>239</sup>

The Family Law, in Article 43, determines that:

- (1) Spouses shall determine their common surname.
- (2) When entering into wedlock, the spouses through agreement may decide:
  1. that each of them retains his surname
  2. that the common surname shall be the one of either spouse
  3. to add to one surname the surname of the spouse.
- (3) A surname combination shall not be possible, if the surnames of the spouses are already composed of a double surname. In this case only one of the surnames may be combined with the name of the other spouse to become the matrimonial surname.
- (4) In case spouses do not decide on a matrimonial surname, each of them retains his own surname.<sup>240</sup>

The spouse, who at the time of wedlock has changed the surname, after dissolution of marriage, may acquire the previous surname. The statement for

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237 UNMIK Regulation 2007/11, 7 shkurt 2007, on promulgation of the Law on Reproductive health passed by the Kosovo Assembly. Kosovo Assembly Law No. 02/L-76 on Reproductive Health. (Law on Reproductive Health)

238 Article 1, Scope of regulation, Kosovo Family Law.

239 Article 42. Matrimonial life, Kosovo Family Law.

240 Article 43. Matrimonial surname, Kosovo Family Law.

acquiring the previous surname shall be submitted within six months from the dissolution of marriage. The statement shall be submitted to the registrar who maintains the register of marriages where marriage was bonded based on the place of residence of the person providing the statement.<sup>241</sup>

Likewise the Family Law foresees that “each spouse is independent in selecting a job and vocation”.<sup>242</sup>

This Law also provides that “None of the spouses shall arbitrarily be deprived of his property”.<sup>243</sup>

The property of spouses may be separate property or joint property.<sup>244</sup>

Spouses carry responsibility for their personal obligations resulting from separate property and their obligations resulting from the share in joint property. Both spouses are bound by joint and individual obligations through their joint and separate property and for obligations that one of the spouses has to fulfill towards third persons, as well as by obligations, which need to be fulfilled by both spouses. The spouse, who through separate property has fulfilled common obligations, has the right to request that the other spouse compensates for his spouses share.<sup>245</sup>

Article 46 of the Family Law of Kosovo foresees: Property belonging to the spouse at the time of entering into wedlock remains separate property of his. Separate property is also property acquired during marriage through inheritance, donation, or other forms of legal acquisition. Property belonging to the spouse based on the proportion of common property is also separate property. The product of art, intellectual work or intellectual property is considered separate property of the spouse who has created it. Each spouse independently administers and possesses his/her separate property during the course of the marriage.<sup>246</sup>

Whereas Article 47 of the Family Law of Kosovo determines that: (1) Joint property of spouses is the property acquired through work during the course of the marriage as well as income deriving from such property. Joint property may be comprised also of intangible and obligatory rights. Property of spouses acquired jointly through gambling games is considered joint property. Spouses are joint owners in equal shares of the joint property unless otherwise agreed on.<sup>247</sup>

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241 Article 96. (Surname), Kosovo Family Law.

242 Article 44, (Place of Residence, Family Economy, Profession), Kosovo Family Law.

243 Article 52, Kosovo Family Law.

244 See Article 45 (Key principles) legal institution “Joint ownership on property gained after wedlock”, Kosovo Family Law.

245 Article 57, Kosovo Family Law.

246 Article 46, (Separate property of the spouses), Kosovo Family Law.

247 Article 47, (Common Property of the Spouses) Kosovo Family Law. Effective legal frame-

The spouses shall carry out the administration and disposition of the joint matrimonial property together and in agreement.<sup>248</sup>

According to the same Family Law, rights of spouses regarding immovable objects, which are their joint property, are recorded in the public register for immovable property on behalf of both spouses as joint property with undetermined shares. When only one of the spouses is registered as property right holder of the joint property in the immovable property rights register, it shall be considered as if registration was carried out on behalf of both spouses. The property cannot be alienated or administered without the consent of both spouses as defined by the applicable law. When both spouses register in the public register relating to immovable property as joint owners for determined shares, it shall be considered that they have portioned out the joint property.<sup>249</sup>

According to Article 51 of this Law, Spouses may contract that administration and possession of joint property in a whole or in parts shall be carried out by one of the spouses. The contract may be limited only to the administration or rights of possession. Unless otherwise contracted, administration includes possession within regular activity. The contract may also refer to all special acts of regular administration or special acts that have been determined.<sup>250</sup>

Apportioning of property is also regulated by the Family Law, which determines that: Spouses, at any time may apportion their joint property by agreement. The apportioning of the joint property may be carried out when spouses determine or request determination of their shares in their joint property, and by this become co-owners to the determined shares. The agreement shall be concluded in writing, in accordance with the formal requirements defined by the applicable property law for conclusion of such agreements.<sup>251</sup>

When the agreement is not reached while the share of each spouse belongs to the joint property, it shall be decided upon by the court. The decision shall be based on the spouses contribution, by evaluating all circumstances and considering not only personal income and other revenues of each spouse, but assistance of one spouse provided to the other spouse, i.e. children's care, conduct of housework, care and maintenance of property and any other form of work and co-operation pertaining to the administration, maintenance and increase of joint property. The competent court shall also decide in case of disputes regarding the spouses' share.<sup>252</sup>

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work regulating rights and obligations on immovable property will be applied on common property, apart from cases when the Kosovo Family Law foresees differently.

248 Article 49, (Administration of Joint Property), Kosovo Family Law.

249 See Article 50 (Immovable Property), Kosovo Family Law.

250 Article 51. (Contractual agreements on possession and administration), Kosovo Family Law.

251 Article 53 (Apportioning of joint property of spouses), Kosovo Family Law.

252 Article 54 (Evaluation of joint property in cases of disputes), Kosovo Family Law.



The other spouse is not responsible for the obligations that one of the spouses had before entering into wedlock, as well as for personal obligations, that he accepts during the marriage.<sup>253</sup>

Article 11.1 of the LGE determines that: the economical, financial, employment and social welfare legislation and the macroeconomic, micro-economic, financial and privatization programs including the right of heritage and property, loans and natural resources shall enable the equal and full participation of both females and males.

The same Law in Article 15 provides that: The age of adulthood for both genders in Kosovo is eighteen (18). Marriage is legally recognized, by the civil registration act and establishes rights and obligations, except if otherwise foreseen by other legislation. The marriage registration act is allowed after reaching the age of consent, except if otherwise foreseen by other applicable laws. Any person female or male may not register more than one marriage at the same time. Conditional and forced marriages and marriages against the will of the persons who are to be married are illegal and punishable by law.<sup>254</sup>

The Kosovo family Law determines in its Article 16 that: A person who has not reached the age of eighteen shall not enter into wedlock. Due to justifiable reasons, the competent court may allow wedlock for a minor person older than sixteen years upon his request, if it concludes that the person has reached the necessary physical and psychological maturity for exercising his marital rights and to fulfill his marital obligations. Prior to the decision, the court shall seek the opinion of the Custodian Body and shall hear the minor and his parents respectively the custodian. The court shall also hear the person with whom the minor intends to enter into wedlock and shall investigate other circumstances important for the decision.<sup>255</sup>

The registrar is obliged to allow the wedlock procedure if there is no ban or prohibition. The registrar is obliged to refuse cooperation in the wedlock procedure, if any prohibition or ban exists. The registrar is not entitled to refuse cooperation, if no prohibitions or bans exist.<sup>256</sup>

The wedlock bond commences with the report presented by the registrar, stating the presence of the future spouses and the non-existence of marital bans and prohibitions provided for in this Law. This is concluded, based on the documents and statements of future spouses and witnesses.<sup>257</sup>

If the registrar concludes the existence of any marriage ban or prohibition, he orally informs the applicants that they cannot marry and makes official record in

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| 253 | Article 97 (Restrictions of responsibility) Kosovo Family Law |
| 254 | Article 15, LGE.  |
| 255 | Article 16, Kosovo Family Law.                                |
| 256 | Article 29, (Registrar's consent), Kosovo Family Law.         |
| 257 | Article 30, (Entering into wedlock), Kosovo Family Law.       |

the minutes therein.<sup>258</sup>

According to the Family Law, Marriage is a legally registered community of two persons of different sexes, through which they freely decide to live together with the goal of creating a family.<sup>259</sup> Wedlock is solemnly entered into in specifically designated premises. Wedlock may be entered into in other premises, if so requested by the spouses, provided they emphasize justifiable reasons.<sup>260</sup>

To enter into wedlock, it is necessary that two persons of opposite sex in the presence of one another freely declare their will and full consent for marriage in front of the registrar. The statement shall be absolute and without dating. Participating parties during the wedlock bond are the future spouses, two witnesses and the registrar. Any person with the capacity to act may serve as witness during the wedlock bond.<sup>261</sup>

In case the registrar concludes the non-existence of prohibition and bans, he then shall inform the future spouses about the provisions of this Law regarding their rights and obligations, and shall read the same as well. The registrar shall ask each future spouse separately, whether they agree to marry with one another. After providing statements consenting for the marriage, the registrar shall announce the wedlock bonded.<sup>262</sup>

The registrar records the bonded wedlock in the marriage register, which is then signed by the spouses, two witnesses and the registrar. Immediately upon wedlock, the spouses are provided with a certificate from the marriage register.<sup>263</sup>

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258 Article 32. (Refusal to enter into wedlock), Kosovo Family Law.

259 Article 14. (Marriage), Kosovo Family Law.

260 Article 27. (Procedure for entering into wedlock – place of entering into wedlock), Kosovo Family Law .

261 Article 28. (Procedure in the registrar's office), Kosovo Family Law.

262 Article 31. (Entering into wedlock), Kosovo Family Law.

263 Article 35. (Marriage register), Kosovo Family Law.

## RECOMMENDATIONS

- Government of Kosova should report on the implementation of CEDAW Convention in harmony with requirements of the UN CEDAW Committee
- Non-governmental women's organizations are enabled to participate in the process of drafting of government report on the implementation of CEDAW
- There should be cooperation and coordination in place between Kosova Government and UN Agencies with the purpose of informing women about the CEDAW Convention and about legislation on their rights
- There must be cooperation and coordination in place between Kosova Government and NGOs with the purpose of informing women about the CEDAW Convention and about legislation on their rights
- The Government of Kosova should continue the process of building capacities with the purpose of making institutional mechanisms engaged in accomplishing gender equality in Kosova fully functional
- The Government of Kosova makes sure that there is full participation of women in the process development of all government policies
- The Agency for Gender Equality should involve in organizing training programs for members of Assembly, court officials, for civil servants and for security institutions with the purpose to get more familiar with the CEDAW Convention
- Institutional mechanisms for accomplishment of gender equality and non-governmental organizations should engage actively in monitoring of implementation of drafted laws and strategies for protection of human rights and freedoms of women and girls
- Government of Kosova ensures better representation of women in politics and in decision-making structures in institutions of Kosova
- The Agency for Gender Equality and institutional mechanisms for accomplishment of gender equality and for promotion of human rights should develop and implement programs and strategies, with an impact in changing the current schemes and paradigms of prejudiced social and cultural behavior about the roles of men and women in the society
- The Independent Media Commissioner should engage in developing gender sensitive policies.

## Recommendation on education

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- Ministry of Education, Science, and Technology (MEST) should collect and systematize accurate data organized on gender grounds, which reflect attendance and drop out from schools among girls in all levels of the system of education
- MEST in cooperation with Municipal Education Departments must identify and register accurate figures of illiterate persons in Kosova and organizes them according to their gender
- MEST makes sure to develop and implement special programs and policies for girls from rural areas and provides grants for enabling them to continue their education in the upper secondary and higher education
- MEST should include sexual education as a required subject in the curricula of the lower secondary education
- Non-governmental and professional organizations should be involved in continuous auditing of existing curricula and school textbooks for the gender perspective with the purpose of eliminating stereotypes and prejudices on genders and gender roles in the society
- MEST should work to implement the law on compulsory education by setting up effective mechanisms through which to enforce sanctions for termination of schooling among children and more particularly among girls.

## Employment of girls

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- Kosovar legislation should be harmonized with the relevant European Union directives
- MLSW should integrate gender perspectives in its policies and implement existing affirmative policies that advance the position of women in the labor market and employment
- MLSW and other relevant institutions actively engage in organizing trainings and professional development programs for women in profiles in demand in the labor market
- MLSW should organize information campaigns about employment programs and opportunities for women, with special attention to women from rural areas and to minority women
- Ministry of Agriculture should offer affirmative action and more favorable conditions for women active in the business of farming and agriculture

- MLSW ensures implementation of the labor law and law on gender equality with special emphasis on provisions dealing with indiscriminate employment of women in both the public and private sector
- Relevant public and private institutions make sure that there is childcare for children under one year available in adequate public and private institutions in order to increase access of women to employment and professional development
- Trade unions actively engage in monitoring the level of implementation of the labor law by the employers and employees in small and medium enterprises aiming at protecting the workers' rights
- Policies should be developed that foresee parental leave also for men in cases of childbirth aiming at increasing their responsibilities in bringing up children
- The Government must education programs which involve women from rural areas and former refugees so that they can accomplish their full economic and educational potential
- Ministry of Economy and Finance, in cooperation with banks in Kosova, should make various loans available for women by developing affirmative policies including various forms of joint crediting, low interest micro-loans, etc.
- Employers in the public and private sector should make available adequate and regular breaks during the working hours in order to allow the working mothers to breast feed their babies.
- The legislation providing for maternity leave must be duly changed and amended to extend the current 12 weeks of maternity leave to minimum six months.

### Women's health

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- Ministry of Health must develop policies and strategies addressing improvement of healthcare for women
- The Assembly of Kosova should expedite approval of the law on termination of pregnancy
- Ministry of Health and health institutions must actively engage to establish a sustainable and reliable system for collection of accurate data and information on causes for termination of pregnancies in public and private institutions
- Health institutions and non-governmental organizations must organize

awareness raising and information campaigns on the topic of healthcare targeting women and girls of all communities living in Kosova

- Ministry of Health must engage to set up the needed health infrastructure for treating breast cancer (making the Oncology Institute functional)
- Responsible health institutions and Ministry of Health must urgently address the issue of lack of statistical data on the number of cases with breast cancer in Kosova
- Health institutions and non-governmental organizations should organize awareness raising campaigns on HIV/AIDS and on ways of infections with virus, as well as on importance of voluntary testing on HIV/AIDS

### Trafficking

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- Institutional mechanisms and local and international NGOs must take on a more pro-active role in preventing and combating trafficking in persons
- The Action Plan Against Trafficking in Persons must be adequately implemented
- The Office for Good Governance, Human Rights, Equal Opportunities and Gender Issues in the Prime-Minister's Office, in cooperation with other institutional mechanisms, should develop programs that aim at rehabilitating and integrating girls and women – victims of trafficking
- There should be improved cooperation and coordination between local and international institutions in addressing issues of trafficking in persons
- Government of Kosova must actively support and stimulate regional cooperation for preventing and combating trafficking in persons

### Domestic violence and violence against women

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- Government of Kosova, in cooperation with NGOs, should develop the National Plan of Action for combating violence against women
- The Government of Kosova should set up a financial scheme to compensate damages incurred to women victims of domestic violence
- Agency for Gender Equality and other institutional mechanisms should come up with programs for treating perpetrators
- Shelters of victims of domestic violence must receive regular financial support from government institutions

- Agency for Gender Equality should engage actively to monitor the implementation of Regulation 2003/12 on domestic violence
- The Agency for Gender Equality and other institutions engaged in protecting and promoting gender equality, in cooperation with NGOs, should organize information and awareness raising campaigns on Regulation 2003/12 on domestic violence

### The inheritance law

- Ministry of Justice, Agency for Gender Equality and other institutional mechanisms engaged in promoting gender equality and human rights should engage more actively in monitoring the implementation of the inheritance law
- Non-governmental organizations, in cooperation with institutional mechanisms engaged in protecting and promoting gender equality ought to launch awareness raising and information campaigns on women's rights to inheritance
- Agency for Gender Equality and women NGOs should organize training programs on gender issues targeting judges and attorneys
- Ministry of Justice should support professional organizations in carrying out studies and research which give an accurate picture of women benefitting or not benefitting from the provisions of the inheritance law

### Minorities

- Ministry of Returns and Communities should engage in monitoring implementation of existing laws and strategies dealing with improvement of position of women belonging to minority communities living in Kosova
- Agency for Gender Equality should engage in information and awareness raising campaigns on the legally approved age for entering wedlock
- The Government of Kosova should support activities of non-governmental organizations of Serb, RAE, Bosnian, and Turkish women in their efforts to address problems and issues pertaining to girls and women of these communities
- There should be increased cooperation and coordination between government institutions and RAE women NGOs in addressing problems faced by women and girls of this community
- MEST must stimulate research institutions to engage in studying and in researching the causes of the phenomenon of dropping out from schools by young girls of RAE community in Kosova

- MEST should engage actively in monitoring the implementation of its strategy that addresses the issue of education of RAE community members, with special attention to education of RAE girls

## Sport

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- Ministry of Culture and Sport should develop policies which ensure equal access and opportunities for women in sport and cultural activities



## CONSULTED LEGISLATION

1. UNMIK Regulation 2001/9 (of 15 May 2001) on Constitutional Framework for Provisional Self-Government in Kosovo;
2. UNMIK Regulation 2004/18 (7 June 2004) on promulgation of the Law on Gender Equality in Kosovo, approved by the Assembly of Kosovo. The Kosovo Law on Gender Equality 2004/2 (LGE);
3. UNMIK Regulation 2004/32 (20 August 2004) on promulgation of the Anti-discrimination Law, approved by the Assembly of Kosovo. The Kosovo Anti-discrimination Law 2004/3. (ADL);
4. UNMIK Regulation 2000/45 (11 August 2000) on self-government in Kosovo municipalities.
5. UNMIK Regulation 2000/54 (27 September 2000) amending UNMIK Regulation No. 1999/1, on competences of interim administration in Kosovo;
6. UNMIK Regulation 2006/6 (16 February 2006) on the Institution of Ombudsperson in Kosovo;
7. UNMIK Regulation 2006/48, (24 August 2006) on promulgation of the Law on Freedom of Religion in Kosovo approved by the Assembly of Kosovo. Assembly of Kosovo Law No. 02/L-31 on Freedom of Religion in Kosovo. (The Law on Freedom of Religion);
8. UNMIK Regulation 2003/12 on protection against domestic violence;
9. UNMIK Regulation 2003/25 (6 July 2003), On Kosovo Provisional Criminal Code;
10. UNMIK Regulation 2001/4 on prohibition of trafficking in persons in Kosovo;
11. UNMIK Regulation 2000/39, 8 July 2000, on municipal elections in Kosovo.
12. UNMIK Regulation 1999/22 (15 November 1999) on registering and functioning of non-governmental organizations in Kosovo.
13. UNMIK Regulation 2000/13 Central Civil Registry.
14. UNMIK Regulation 2000/18 (29 March 2000) on Travel Documents.
15. UNMIK Regulation 2005/15 amending UNMIK Regulation No. 2001/19 on the executive branch of provisional institutions of self-government in Kosovo.
16. Administrative Instruction 2003/2 on implementation of UNMIK Regulation 2001/36 on Civil Service of Kosovo.
17. UNMIK Regulation 2006/33 promulgating the Law on Administrative Procedures passed by the Kosovo Assembly.
18. UNMIK Regulation 2004/31, 20 August 2004, promulgating the Law on Health passed by the Kosovo Assembly. Kosovo Assembly Law 2004/4 on Health.
19. UNMIK Regulation 2007/11, 7 February 2007, promulgating the Law on Reproductive Health passed by the Kosovo Assembly. Kosovo Assembly Law No. 02/L-76 on Reproductive Health.
20. UNMIK Regulation 2001/36 on Civil Service of Kosovo.

21. UNMIK Regulation 2001/27 - 8 October 2001 on Essential Labor Law in Kosovo.
22. UNMIK Regulation 2005/46 (14 October 2005) promulgating the Law on Social and Family Services passed by the Kosovo Assembly. The Kosovo Assembly Law 02/L-17 on Social and Family Services.
23. UNMIK Regulation 2004/47 (19 November 2004) promulgating the Law on Rights and Responsibilities of Kosovo Residents in the Social System of Healthcare approved by the Kosovo Assembly. Assembly of Kosovo Law No. 2004/38 on rights and responsibilities of Kosovo residents in the social system of health care.
24. UNMIK Regulation 2005/20 (29 April 2005) amending UNMIK Regulation No. 2001/35 on Pensions in Kosovo.
25. UNMIK Regulation 2003/33 (6 November 2003) promulgating the Law on Occupational Safety, Health and the Working Environment (Law No. 2003/19). Kosovo Assembly Law on UNMIK Regulation No. 2003/33 (of 6 November 2003) promulgating Kosovo Assembly Law on Occupational Safety, Health and the Working Environment.
26. UNMIK Regulation 2004/47 promulgating the Law on rights and responsibilities of Kosovo residents in the social system of health care approved by the Kosovo Assembly.
27. UNMIK Regulation 2007/7 (31 January 2007) promulgating the Law on Promoting and Encourageing Protection of Children and Breastfeeding passed by the Assembly of Kosovo. Assembly of Kosovo Law No. 02/L-81 on Promoting and Encourageing Protection of Children and Breastfeeding.
28. The Law on Liability Relations "Official Gazzette of SFRY", No. 29/78 with changes and amendments made in official gazettes No. 39/85, 45/89, 57/89 and 31/93.
29. UNMIK Regulation 2002/2120 of December 2002 promulgating the Law on Mortgages passed by the Assembly of Kosovo.
30. UNMIK Regulation 2004/26 (28 July 2004) promulgating the Law on Sport passed by the Kosovo Assembly.
31. UNMIK Regulation 2006/44 (18 August 2006) on promulgation of the Law on Cultural Institutions passed by the Kosovo Assembly. The Kosovo Assembly Law 02/L-57 on cultural institutions.
32. UNMIK Regulation 2005/15 amending UNMIK Regulation 2001/19 on executive branch of provisional institutions of self-government in Kosovo;
33. UNMIK Regulation 2001/8 (6 April 2001) on Establishment of Judicial and Prosecutorial Council of Kosovo.
34. UNMIK Regulation 2006/30 (2 May 2006) promulgating the Law on Bar Examination passed by the Kosovo Assembly. The Kosovo Assembly Law 02/L-40 Bar Examination.
35. The Family Law of Kosovo (Law No. 2004/32); Official Gazzette of the Provisional Institutions of Self-Government in Kosovo / Prishtina: Year I / No. 4 / 1 SEPTEMBER 2006, (16 February 2006, UNMIK/REG/2006/7)
36. UNMIK Administrative Instruction 2003/2 (25 January 2003) implementing UNMIK Regulation 2001/36 on Civil Service in Kosovo.

37. Administrative Instruction 2005/3 (11 February 2005) implementing UNMIK Regulation 2001/4 against trafficking in persons in Kosovo.
38. Administrative Instruction MPS/DCSA 2003/10, date 20 May 2003 Procedure of Holidays.
39. Administrative Instruction MPS/DCSA 2003/12, (12.09.2003) Equal Opportunities Procedures.
40. Administrative Instruction 2007/03-MSHP on measures for accomplishing gender equality in institutions of public administration during 2007.
41. Progress Report on Kosovo (under UN SC Resolution 1244) for 2005; European Commission – Brussels, 9 November 2005, SEC (2005) 1423, pg. 21).
42. The Comprehensive Action Plan for implementation of the Anti-Discrimination Law. Government of Kosovo, October 2005.
43. The National Action Plan for the achievement of Gender Equality, Government of Kosovo, Prishtina, 2004.
44. The Framework Collective Contract of Kosovo.
45. Draft Law on Kosovo Citizenship (June 2007).

## LIST OF INTERVIEWEES

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Visare Gashi Gorani - Head of Agency for Gender Equality, 7 June 2007.

Flora Macula - Director of UNIFEM office in Kosovo, 12 September 2007.

Claire Hutchinson - Officer for gender issues in UNMIK, 19 June 2007.

Ariana Qosja - National Legal Advisor for Women and Children and part of the OSCE Anti-Trafficking Unit, 26 June 2007.

Frode Mauring - Representative of United Nations Development Fund in Kosovo, 22 June 2007.

Tahire Haxholli - Officer for Domestic Violence in the Kosovo Police Service, 3 July 2007.

Adile Basha - Head of division for protection of family, Ministry of Labor and Social Welfare, 11 July 2007.

Cyme Mahmutaj - High Officer Advisory Office for Good Governance, Human Rights, Equal Opportunities and Gender Issues, 20 September 2007.

Behxhet Shala - Executive Director KLMDNJ, 16 July 2007.

Violeta Krasniqi - Office for Gender Equality within the Ombudsperson's Office,

Virgjina Dumnica - UNDP, 26 June 2007.

Igballe Rogova - Executive Director, Kosova Women's Network, 18 september 2007.

Afërdita Jaha - Officer for informal education in the Regional Education Office in Prishtina, 6 July 2007.

Teuta Hadri- Gynaecologis, 4 September 2007.

## Meeting with the group of experts

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Valbona Salihu - Executive Director Norma

Flora Macula - Advisor for Peace and Good Governance for South East Europe UNIFEM

Nazmie Krasniqi - Human rights Coordinator Ministry of Labor and Social Welfare

Shala Behxhet - Executive director KLMDNJ

Fatmire Mullhaxha Kollçaku - President of Committee Parliamentary Committee for Health

Luljeta Vuniqi - Executive Director, Kosovar Center for Gender Studies

Medi Geci - Agency for Gender Equality

Besim Kajtazi - Legal expert on gender issues